DIRECTED AND NONDIRECTED DUTIES NOT TO EXERCISE RIGHTS TO WAGE DEFENSIVE WAR[1]

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ABSTRACT: This paper argues that unjustly attacked parties can have moral duties to abstain from exercising their right to wage defensive war against liable aggressors. This thesis sounds paradoxical but is in fact perfectly coherent. The notion of a liberty-right, or moral freedom, is equivocal. Hohfeldian liberty-rights express the absence of directed duties upon the right-holder: duties owed to another party, who is wronged upon their violation. Deontological liberty-rights, by contrast, are all-things-considered moral permissions. Introducing the language of directed and nondirected duties and permissions helps clarify the links between proportionality and liability. Narrow proportionality, I argue, is constitutive of Hohfeldian liberty-rights to violently defend oneself, while the wide proportionality requirement poses an external constraint on the exercise of such rights. Using the 1939 Finnish-Soviet war as a case-study, I aver that both directed and nondirected duties can make it all-things-considered impermissible to use narrowly proportionate defensive force against liable attackers.

KEYWORDS: Ethics of war; theories of rights; defensive war; directed and nondirected duties and permissions; liberty-rights; liability; proportionality; the bloodless invasion objection

THE BLOODLESS INVASION OBJECTION

On 30 November 1939, 400,000 Soviet soldiers crossed the Finnish border over a length of 1,500 km for what they expected would be a short war, over before New Year.[2] The Red Army possessed overwhelming military superiority over the Finns in terms of manpower, armoured vehicles, and aircraft. Despite two decades of break-neck growth, Finland was still one of the poorest countries of Europe. The Finns had virtually no tanks or planes at their disposal, and compensated their lack of anti-tank guns with Molotov cocktails. Supported by nearly 10,000 mostly Scandinavian

[1] Please do not cite or circulate this text without permission.
[2] Olli Vehviläinen, *Finland in the Second World War: Between Germany and Russia*, transl. Gerard McAlester (Basingstoke: Palgrave, 2002), p. 50.

volunteers and with military materiel belatedly supplied by Western allies, the highly motivated Finnish army put down an impressive fight, inflicting casualties on the Soviets at a rate of four to one. Ill-prepared for the arctic conditions, the Soviets suffered heavy losses during the first three months. For a while, it seemed that tiny Finland could stave off the vast and technologically advanced army of Europe's largest country. A huge Russian offensive in mid-February 1940, based on concentrated use of artillery and tanks, quickly proved this wrong. In a matter of days, the Soviets broke through the Finnish defence lines on the Karelian Isthmus, capturing Vyborg, the country's third largest city. Exhausted, the Finns accepted the Soviet's harsh peace terms unconditionally on March 5, 1940.[3] Finland ceded 10% of its territory to the Soviet Union and permitted Moscow to establish a long-term military base on the Hanko peninsula, at the entrance of the Gulf of Finland. Unlike the Baltic States, it retained its political independence.

Lasting a mere 105 days, the Winter War left an estimated 150,000 combatants dead or missing, including almost 25,000 on the Finnish side. A further 450,000 combatants were wounded in combat, or injured by privation or frostbite.[4] Casualties that could have been avoided. The Soviet attack began after Finland had rejected extensive diplomatic overtures. Despite having signed a non-aggression pact with Hitler's Germany, Stalin fretted about the strategic vulnerability of Russia's largest city. Located at the end of the Gulf of Finland, Leningrad lay a mere 32 km away from the Finnish border, well within the reach of German artillery fire. Germany controlled the Baltic Sea and was Finland's most important trading partner. Stalin dreaded that Nazi-Germany would break the Molotov-Ribbentrop Pact and attack the Soviet-Union via Finland – a fear that would come true spectacularly in June 1941.[5] To better defend Leningrad's 3,5 million inhabitants, the Soviet-Union had asked Finland in October 1939 for a thirty-year lease of the Hanko peninsula to construct a Soviet naval base, and to move the Soviet-Finnish border 40 km northwards, away from Leningrad. Stalin offered Finland in compensation twice as much land in Eastern Karelia as well as military support.[6] The Finns rebuffed these demands, opting to fight instead.

Was it morally permissible for Finland to defend itself against the patently unjust Soviet invasion? According to modern international law, it plainly was. UN Charter art. 51 affirms "the inherent right of individual or collective self-defence" against any armed attack (sanctioned until the Security Council has taken measures to safeguard international peace and security). Revisionist

[3] Vehviläinen, *Finland in the Second World War*, p. 68.
[4] Roger R. Reese, 'Lessons of the Winter War: A Study in the Military Effectiveness of the Red Army, 1939-1940', *Journal of Military History* 72, no. 3 (2008), p. 830. Cf. Timo Toivonen, 'War and Equality: The Social Background of the Victims of the Finnish Winter War', *Journal of Peace Research* 35, no. 4 (1998), p. 473.
[5] Vehviläinen, *Finland in the Second World War*, pp. 74-89.
[6] William R. Trotter, *A Frozen Hell: The Russo-Finnish Winter War of 1939-1940* (Chapel Hill: Algonquin Books, 1991), p. 21.

moral theorists have recently drawn in question the existence of such rights of national self-defence. "Defensive action is impermissible," David Rodin contends, "when it foreseeably produces harmful effects that are disproportionate to the good one is seeking to achieve".[7] War being what it is, even belligerents fighting for a just cause will inevitably intentionally and collaterally kill innocent people, and produce many other moral calamities besides.[8] Is retaining political control over the Karelian Isthmus morally valuable enough to justify the intentional and collateral killing of innocents? As Rodin emphasizes, the Soviet Union made a conditional threat to Finland: no blood would have been shed had the Finns acquiesced to the Russians' "extremely specific and limited" territorial ambitions.[9] The threat being conditional, Finland was in his view morally and causally responsible for at least some of the ensuing harm. And duties of care disallow imperilling civilians by taking up arms for lost or disproportionate causes.

Not every moral theorist has deemed Finnish resistance against the Soviet invasion morally unjustified. Michael Walzer discusses the Winter War at some length, declaring: "We not only justify resistance; we call it heroic; we do not measure the value of justice, apparently, in terms of lives lost".[10] "If the Finnish war is commonly thought to have been worthwhile", he explains, "it is because independence is not a value that can easily be traded off".[11] Who is right? Is taking up arms in defence of national independence and territorial integrity against an unjust invader always morally permissible?

The Winter War has figured prominently in recent discussions in the ethics of war as an historical example of a potential 'bloodless invasion'. Soviet aims were purely political – territorial usurpation to heighten security. Killing Finnish combatants and citizens was not itself a Soviet war objective, although the Russians were willing to apply lethal force to achieve their aims. In a slogan: "mayhem [was] not their end, but their means".[12] Consequently, no one would have been killed had Finland given in to Moscow's demands. The bloodless invasion objection to the political defensive privilege is usually discussed in the context of reductivist individualism about the ethics of war.[13] Reductivists hold that the rules governing killing in war are reducible to those regulating

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[7] David Rodin, 'The Myth of National Self-Defence', in C. Fabre and S. Lazar (eds.), *The Morality of Defensive War* (Oxford: Oxford University Press, 2014), p. 82.
[8] Seth Lazar, 'National Defence, Self-Defence, and the Problem of Political Aggression', in C. Fabre and S. Lazar (eds.), *The Morality of Defensive War* (Oxford: Oxford University Press, 2014), pp. 14-15.
[9] David Rodin, *War and Self-Defense* (Oxford: Clarendon Press, 2002), p. 136. Cf. Gerhard Øverland, 'Conditional Threats', *Journal of Moral Philosophy* 7, no. 3 (2010), pp. 334-45.
[10] Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic Books, 1977), p. 67.
[11] Walzer, *Just and Unjust Wars*, 71.
[12] Lazar, 'National Defence', p. 19.
[13] The objection has been developed by Richard Norman, *Ethics, Killing and War* (Cambridge: Cambridge University Press, 1995), pp. 133-35; David Rodin, *War and Self-Defense*, pp. 131-38; idem, 'Beyond National Defense', *Ethics and International Affairs* 18, no. 1 (2004), pp. 93-98; idem, 'The Myth of National Self-Defence'.

everyday interpersonal killing. Reductivism is thus the opposite of moral exceptionalism about war. Individualists maintain that individuals, rather than corporations or states, are the ultimate locus of moral value; states therefore have no rights or morally valuable interests irreducible to those of their constituent population.[14] Reductivist individualists have had a hard time justifying the common-sense view that states may defend themselves against unjust wars of purely political aggression. By definition, such wars only threaten non-vital interests (e.g. territorial integrity, political sovereignty). Ordinary morality does not countenance the use of lethal defensive force except in response to vital threats. Why would war be any different? Some, like Norman and Rodin, embrace the revisionist implications of the bloodless invasion objection. Others regard the objection as a *4blige4on ad absurdum*, and seek to revise reductivist individualism to render it compatible with the widely accepted political defensive privilege.[15]

This paper does not address the question of how, if at all, the use of lethal defensive force against purely political aggression can be justified. I have invoked the Winter War for two other reasons. First, to corroborate the underlying revisionist principle that it can be morally impermissible for a state to violently defend its territorial integrity against an unjust aggressor. Political control over what has been described as "an obscure, intrinsically worthless bit of terrain" of 4000 km^2 cannot morally justify critically endangering so many lives, especially since Finland could not reasonably have expected to win the war.[16] Perhaps the reader disagrees. To nonetheless prove that surrendering to an unjust aggressor is sometimes morally obligatory, let doubters inflate the numbers. Shrink the contested area to 100 km^2 and quadruple the number of people killed to 600,000, proportionately divided between both sides: would resisting unjust attempts to forcibly occupy this area – a Finnish swamp, mind you – still be justified? Any remaining dissenters are invited to augment the figures further. Is it permissible to take up arms against an unjust aggressor who seeks to annex a mere 1 km^2 of worthless territory, when the ensuing war would foreseeably result in 1 billion deaths? This is purportedly a rhetorical question.

Second, and more importantly, the Winter War case will help me elucidate which moral constraints apply to initiating defensive war against unjust aggressors, and clarify the moral rights and duties of unjustly invaded countries and unjust invaders respectively. I do so by mapping the logical space around concepts of 'rights to wage defensive war'. The plural is used purposefully:

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[14] Helen Frowe, *Defensive Killing* (Oxford: Oxford University Press, 2014), p. 13.

[15] E.g. Deane-Peter Baker, 'Defending the Common Life: National Defense After Rodin', in D. Rodin (ed.), *War, Torture and Terrorism: Ethics and War in the 21st Century* (Malden, MA: Blackwell Publishing. 2007), pp. 19-34; Patrick Emerton and Toby Handfield, 'Order and Affray: Defensive Privileges in Warfare', *Philosophy and Public Affairs* 37, no. 4 (2009), pp. 382-414; idem, 'Understanding the Political Defensive Privilege', in C. Fabre and S. Lazar (eds.), *The Morality of Defensive War* (Oxford: Oxford University Press), pp. 40-65; Lazar, 'National Defence'.

[16] Trotter, *A Frozen Hell*, p. 5.

the phrase 'rights to wage defensive war', I contend, can mean two things. Sometimes the right in question expresses an all-things-considered moral permission to engage in defensive warfare. At other times, it signifies that violent resistance is morally permissible in the sense that it does not wrong the aggressor – i.e. the unjustly attacked party has no duties vis-à-vis their attackers to abstain from inflicting proportionate defensive force.[17] My contention is that these two senses of 'right', or moral freedom, are extensionally non-equivalent. As the Winter War attests, it might be all-things-considered impermissible to take up arms in national defence, even if doing so would not wrong the aggressor. This paper spells out this thought with the help of cutting-edge philosophical work on directed and nondirected duties and permissions. Invoking these conceptual distinctions, I hope to show, clarifies ethical thinking about war.

Directed and nondirected duties form distinct kinds of moral constraints on permissible defensive killing against liable aggressors. The *ad bellum* proportionality and success requirements impose nondirected duties. Waging wars of national defence is impermissible insofar as states lack a reasonable prospect of success and insofar as armed resistance is disproportionate – producing more evil than good. The second set of moral constraints has received much less attention in the literature. Directed duties owed to non-liable third parties, e.g. to not foreseeably mortally endanger them, likewise constrain the permissible exercise of political defensive privileges. I will argue that such directed duties are both conceptually and substantively irreducible to proportionality requirements.

The distinction between directed and nondirected duties and permissions also elucidates how proportionality requirements relate to liability. Jeff McMahan has helpfully distinguished two kinds of proportionality.[18] Wide proportionality concerns the harms war intentionally and foreseeably poses on innocent (i.e. non-liable) third parties. It contrasts with narrow proportionality, which constrains the imposition of harm on those liable to suffer it – disallowing excessive force (i.e. inflicting harm exceeding liability). I will argue that narrow proportionality constitutes directed ('Hohfeldian') liberty-rights to wage defensive war, while the wide proportionality requirement forms an external constraint on the permissible exercise of those rights.

Accepting the revisionist view of the political defensive privilege – that it is sometimes morally impermissible for a people to violently resist an unjust invasion – does not exonerate wars of aggression such as the unprovoked Soviet invasion of Finland in 1939. Unjust aggressors remain

[17] Note that my concern is throughout with *jus ad bellum*, and more particularly with rights to start *defensive* war. For stylistic reasons, I treat phrases like 'employing defensive force' and 'initiating a defensive war' as interchangeable. While there undoubtedly are structural differences between the ethics of war and that of self-defence, they do not as far as I can see affect my argument.

[18] Jeff McMahan, *Killing in War* (Oxford: Clarendon Press, 2009), pp. 20-21.

morally blameworthy in the highest degree. Moreover, I argue that the Finns did not *wrong* the Soviets by violently resisting their invasion, even if they *acted wrongfully* by engaging in armed defence. The following two propositions, I contend, are hence logically compatible: 1) the Soviet Union was morally liable to the Finns' narrowly proportionate defensive force; and 2) Finland nonetheless acted impermissibly in subjecting the Soviet Union to the defensive force the latter was liable to receive. Finland, I suggest, had a directed liberty-right to violently defend itself vis-à-vis the Soviet Union – even though they ought to have surrendered immediately.

WRONGING VS. ACTING WRONGFULLY

Moral philosophers have cleared much conceptual ground lately by disentangling two distinct kinds of moral duties. "Directed duties are duties that an agent owes to some party – a party who would be wronged if the duty were violated".[19] Nondirected duties are not similarly owed to other persons. They rather reflect the general demands moral principles place on us. It is always *pro tanto* wrongful to violate moral duties without adequate excuse. But only violations of directed duties wrong other human beings. The distinction between directed and nondirected duties has so far been neglected by ethicists of war. This paper aspires to show that introducing these notions clarifies ethical thinking about war.

States have a right not to be invaded without just cause. Individuals have a right not to be wantonly harmed. Were I to wantonly harm you, then I would both wrong *you* and commit a wrong *simpliciter*. The first wrong is a violation of the directed duty I have against you not to harm you (I owe it *to you* not to harm you), the second of the nondirected moral duty not to needlessly harm people. The word 'owe' is key here. I can imagine myself as having a duty to refrain from injuring you, without thinking that I *owe it to you* not to injure you.[20] I am then imagining myself as having a nondirected duty not to injure you. Your existence is necessary for this duty to have content and application. Yet you are not the target of my duty; the duty is not itself directed at you. Nondirected duties do not generate claim-rights against the duty-holder with respect to the content of the obligation. Directed duties, by contrast, do entail corresponding claim-rights against the duty-bearer.[21]

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[19] Simon Căbulea May, 'Directed Duties', *Philosophy Compass* 10, no. 8 (2015), p. 523. Gopal Sreenivasan, 'Duties and Their Direction', *Ethics* 120, no. 3 (2010), p. 467: "a duty is a *directed duty* if there is someone to whom it is owed... it is a *nondirected duty* if there is no one to whom it is owed". See more generally, Michael Thompson, 'What is it to Wrong Someone? A Puzzle about Justice', in R. Jay Wallace, P. Pettit, S. Scheffler and M. Smith (eds.), *Reason and Value: Themes from the Philosophy of Joseph Raz* (Oxford: Oxford University Press, 2004), pp. 333-84.

[20] Joel Feinberg, 'The Nature and Value of Rights', *The Journal of Value Inquiry* 4, no. 4 (1970), pp. 243-57.

[21] For a conceptual analysis of claim-rights, see Leif Wenar, 'The Nature of Claim-Rights', *Ethics* 123, no. 2 (2013), pp. 202-229.

Directedness does not exhaust the conceptual differences between directed and nondirected duties. As Stephen Darwall has argued, agents are held morally accountable for fulfilling these duties in diverging ways. In *The Second-Person Standpoint*, he avers that 'moral obligation', 'right', and 'wrong' are conceptually tied to mutual accountability and respect. Moral obligations cover the things we can hold each other morally accountable for.[22] Moral authority, and the relation of mutual accountability between addresser and addressee, are implicit in the idea of moral obligation. While both directed and nondirected duties are on Darwall's view intrinsically relational, they each entail different forms of second-personal authority and accountability. Nondirected duties imply what Darwall calls *representative authority*. All second-personally competent members of a moral community have the representative authority to hold similarly competent fellow members (and themselves) accountable for living up to moral demands. The minimal sanction which such members can place on unjustified immoral conduct is moral blame and impersonal reactive attitudes like indignation and resentment.[23] Directed obligations entail a distinctive *individual authority* which the right-holder uniquely has against the obligor. Only the right-holder can claim or forgo her right, pardon offences, and generally hold her obligor answerable to her. Indeed, "the normative significance of the concept of direction is precisely that it ties duties to individual's moral status".[24]

A third conceptual distinction is that directed duties are never conclusive, whereas nondirected duties at least sometimes are. It is always conceptually open to ask: do I have conclusive reason to fulfil my directed duties? As Sreenivasan puts it: "That one has a directed duty to φ does not entail that one ought all-things-considered to φ".[25] Consider a paradigmatic case of a directed duty: those incurred by promising. The Soviets would wrong the Finns were they to break promises made to them. Yet they might be all-things-considered justified in doing so – for instance when stopping Nazi world-domination requires breaking faith with Finland. Nondirected duties, by contrast, *can* express what we ought all-things-considered to do. Indeed, all-things-considered oughts – which denote what we have conclusive moral reason to do – are themselves

[22] Stephen Darwall, *The Second-Person Standpoint: Morality, Respect, and Accountability* (Cambridge, MA: Harvard University Press, 2006), p. 17.
[23] Stephen Darwall, *Morality, Authority, and Law: Essays in Second-Personal Ethics*, *Vol. I* (Oxford: Oxford University Press, 2013), pp. 27-42; P.F. Strawson, 'Freedom and Resentment', in idem, *Freedom and Resentment and Other Essays* (New York: Routledge, 2008), pp. 1-28.
[24] Simon Căbulea May, 'Moral Status and the Direction of Duties', *Ethics* 123, no. 1 (2012), p. 121. What it is that makes a duty a directed duty, and in virtue of what duties are directed to one party rather than to another, are contested questions. For discussions of the so-called direction problem, see Sreenivasan, 'Duties and Their Direction'; May, 'Directed Duties'.
[25] Sreenivasan, 'Duties and Their Direction', p. 470.

nondirected duties.[26] Let the verb 'wronging' henceforth be synonymous with violating claim-rights; let 'acting wrongly' refer to flouting all-things-considered oughts.

It is customary among rights-theorists to say that B's right is *infringed* whenever A permissibly overrides B's right. We speak of a rights-*violation* whenever A impermissibly overrides B's right.[27] Arguably, there are two types of justified rights-infringements: those that involve no rights-violations, and those that involve justified rights-violations.[28] As Francis Kamm has suggested, permissible rights-infringements can, but need not, wrong the right-holder. Breaking into a house without the owner's consent to obtain urgent life-saving medicine is generally deemed morally permissible. If it is moreover impermissible for the owner to stop me from taking the indispensable medicine, then this evinces that he is not wronged by my infringement of his property rights.[29] Likewise, A arguably does not wrong B by breaking her leg and thereby saving her life – despite A's infringement of B's claim-right not to have her leg be broken intentionally. Riding roughshod over rights is more commonly justified as a lesser evil: the wrong done in violating someone else's rights is outweighed by the overall moral good achieved by such wronging.[30] Compensation might in that case be due to the right-holder, who retains the second-personal individual authority to hold accountable the person justifiably wronging him. For instance, international law and common-sense morality permit just combatants to unintentionally but foreseeably kill innocent civilians ('collateral damage') provided the *in bello* proportionality and necessity requirements are met. Insofar as civilians have done nothing to forfeit their right not to be so killed, just combatants wrong them by justifiably killing them.[31]

I will not further pursue cases where it is all-things-considered morally permissible to wrong people. Instead, I will focus on structurally obverse cases: where it is all-things-considered morally impermissible to kill B even though doing so does not wrong B. More specifically, I will

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[26] Sreenivasan argues in 'Duties and Their Direction', pp. 471-73, that not every nondirected duty is an all-things-considered ought. Duties of generosity, for instance, are not typically regarded as directional. But when faced with conflicting other duties, it may be all-things-considered permissible, better, or even required to flout such duties. Present purposes allow me to stay neutral on whether there are indeed any non-conclusive nondirected duties. Cf. Judith Jarvis Thomson, *The Realm of Rights* (Cambridge, MA: Harvard University Press, 1990), pp. 61-64.

[27] Judith Jarvis Thomson, 'Self-Defense and Rights', in idem, *Rights, Restitution, and Risk*, ed. W. Parent (Cambridge, MA: Harvard University Press, 1986), pp. 40-41; McMahan, *Killing in War*, p. 10.

[28] Specificationists about rights will disagree. Specificationists regard rights as absolute: their infringement can never be permissible. To forestall the possibility of rights-conflicts, specificationists casuistically delimit the content of a right to what it is impermissible to do to the right-holder. Specificationists can avoid revisionist pacifist conclusions by denying that individuals have a right never to be killed as collateral damage; at most, individuals have a right not to be killed in violation of *in bello* necessity and proportionality requirements. For a critical assessment of specificationist theories of rights, see Danny Frederick, 'Pro-Tanto Versus Absolute Rights', *The Philosophical Forum* 45, no. 4 (2014), pp. 375-94.

[29] F.M. Kamm, *Intricate Ethics: Rights, Responsibilities, and Permissible Harm* (Oxford: Oxford University Press, 2007), pp. 231-32.

[30] We might call all-things-considered justified violations of directed duties 'mere injustices', following Seth Lazar, 'Necessity in Self-Defense and War', *Philosophy and Public Affairs* 40, no. 1 (2011), p. 3.

[31] David Rodin, 'Justifying Harm', *Ethics* 122, no. 1 (2011), p. 87.

examine the coherency of the thought that it might sometimes be all-things-considered morally impermissible for A to kill B defensively even though B has made herself liable to A's lethal defensive force.

As Gopal Sreenivasan has recently and pioneeringly observed, liberty-rights can be directional or nondirectional. Indeed, this is entailed by the existence of directed and nondirected duties. On the Hohfeldian conception of rights, 'A has a liberty-right to φ' if and only if A is under no directed duty to φ (i.e. no one has a claim-right against her that she φ).[32] Hohfeldian liberty-rights are directional and localized: they express the absence of claim-rights against, and thus of directed duties upon, the liberty-right holder. That A has no directed duties with respect to φ does not entail that A is therefore morally free to φ.[33] For A might well be subject to an nondirected duty not to φ. For instance, it is impermissible to kill an unjust aggressor in self-defence if one can also safely run away – even if killing the aggressor would wrong no one (the aggressor having *ipso facto* forfeited his right not to be killed). It follows that the term 'liberty-right' is equivocal, denoting two logically distinct normative conditions. What Sreenivasan calls 'Hohfeldian liberty-rights' express the absence of directed duties. Such liberty-rights are expressive of the normative relation between two parties. I can be said to have a Hohfeldian liberty-right to φ vis-à-vis you if and only if I have no duty *to you* that I abstain from φ-ing. Having that liberty to φ merely means that I cannot wrong you by φ-ing. So-called deontological liberty-rights are nondirected: they denote all-things-considered moral permissions.[34] Only deontological liberty-rights give moral discretion. My contention is that the 'right to wage defensive war' can either denote a Hohfeldian or a deontological liberty-right. Keeping them apart increases clarity of thought.[35]

Let us now examine what having either such liberty-right entails for the normative condition of the unjust aggressor. Hohfeldian liabilities are those second-order legal incidents that correlate with powers, declaring an agent liable to having her Hohfeldian legal incidents altered by the corresponding power-holder.[36] Ethicists of war use 'liability' in a slightly different sense, as denoting a 'no claim'.[37] A is morally liable to attack only insofar as A has lost the right not to be attacked. Liability thus presupposes the absence of claim-rights. But, at least on McMahan's

[32] Leif Wenar, 'The Nature of Rights', *Philosophy and Public Affairs* 33, no. 3 (2005), pp. 223-52.
[33] Sreenivasan, 'Duties and Their Direction', pp. 478-79.
[34] Sreenivasan, 'Duties and Their Direction', pp. 478-82.
[35] Present purposes do not require fully elaborating what the right to wage defensive war consists in. Uwe Steinhoff argues that rights of self-defence are composed of a permission, a claim-right to non-interference, and an "act-specific agent-relative prerogative" in 'Self-Defense as Claim Right, Liberty, and Act-Specific Agent-Relative Prerogative', *Law and Philosophy* 35, no. 2 (2016), pp. 193-209. Cf. Oberman's argument that rights of national defence cannot involve prerogatives since waging war is never morally optional. Kieran Oberman, 'The Myth of the Optional War: Why States are Required to Wage the Wars They are Permitted to Wage', *Philosophy and Public Affairs* 43, no. 4 (2015), pp. 255-86.
[36] W.N. Hohfeld, 'Fundamental Legal Conceptions, I', in idem, *Fundamental Legal Conceptions*, ed. W.W. Cook (New Haven: Yale University Press, 1923), pp. 23-64.
[37] Massimo Renzo, 'Rights Forfeiture and Liability to Harm', *Journal of Political Philosophy* 25, no. 3 (2017), p. 328n.

account, it is not identical with this absence.[38] Kickboxers permissibly harm each other during fights because they have conditionally waived their right not to be kicked in the head. We would not however say that kickboxers are therefore liable to be harmed by their opponents. Liability can only be the result of rights-forfeiture (not of rights-waivers). Indeed, "the person's being liable to attack *just is* his having *forfeited* his right not to be attacked".[39] Furthermore, to be "*liable* to attack [means] that he would not be *wronged* by being attacked, and would have no justified complaint about being attacked."[40]

Persons liable to attack may not be attacked by all and sundry. Judgments of liability always express three-place relations: one is liable to someone else for something. Directional analyses bring this out clearly. 'A is liable to B for φ' implies that 'A has no claim-right against B not to impose φ on A'. Thus, the Soviet Union is liable to suffer Finnish defensive harm if and only if it has no claim-right against Finland to abstain from inflicting such harm on it. If the Red Army is liable to suffer Finnish defensive harm, then Finland has a Hohfeldian liberty-right against it to initiate defensive war, and can do so without wronging the Soviets (who thus lack standing to complain). Hohfeldian liberty-rights do not, however, entail deontological liberty-rights. That Finland does not wrong the Soviet Union in waging defensive war does not mean that they have moral discretion, or even moral permission, to do so. As Rodin writes: "Liability is a localized comparison between persons in a situation of conflict; it concerns their interacting rights and duties and so values outside that relationship are irrelevant".[41] Before exploring what can render it impermissible to exercise Hohfeldian liberty-rights, I will examine whether the distinction between two kinds of liberty-rights commits us to particular justifications of defensive killing and conceptions of liability. For some such views, it seems, conceptually preclude this distinction.

LIBERTY-RIGHTS, LIABILITY, AND JUSTIFICATIONS FOR DEFENSIVE KILLING

It is a bad thing to intentionally take someone's life. What, if anything, can make it the case that killing in self-defence is nonetheless justified? Philosophical justifications of defensive killing roughly fall into two groups: forfeiture theories vs. lesser evil justifications. Forfeiture theorists argue that killing in self-defence is permissible insofar as the person killed has made herself liable to be killed, where liability is due to rights-forfeiture. Forfeiture theorists have put forth a variety

[38] McMahan, *Killing in War*, pp. 9-10; idem, 'Individual Liability in War', *Utilitas* 24, no. 2 (2012) p. 292.
[39] McMahan, *Killing in War*, p. 10.
[40] McMahan, *Killing in War*, p. 8.
[41] Rodin, 'Justifying Harm', p. 99.

of grounds for liability. Culpability is a prominent one. Other proposed grounds include moral responsibility for posing an unjustified, or a justified threat.[42]

Lesser evil justifications appeal directly to moral asymmetries between Victim and Attacker, i.e. without mediation by rights. If someone is to die, then – such views state – it better be the aggressor than the victim. For it is worse if an innocent person is killed than if a culpable person is. Lesser evil justifications are sometimes called necessity justifications.[43] For by definition, killing in self-defence cannot be justified as a lesser evil if there was no necessity to kill to begin with. Lesser evil justifications can take agent-neutral and agent-centred forms. 'Distributive justice' theories of self-defence – which states that harm or risk of harm ought to be divided justly between Victim and Aggressor, i.e. in accordance with some metric like desert – are examples of agent-neutral lesser evil justifications.[44] Lesser evil justifications that admit agent-centred prerogatives allow agents to give greater moral weight to their own interests, thus lowering the threshold for permissible defensive killing.

Does my analysis commit me to a particular philosophical justification for defensive killing? To answer this question, let us briefly explore the main deontic differences between forfeiture and lesser evil justifications.[45] The first difference concerns the role of necessity. As stated, lesser evil justifications of self-defence presuppose that the necessity requirement is met: the attack cannot be averted except by defensive killing. The necessity requirement can be adjusted for uncertainty, and substantiated along belief-relative, evidence-relative, or fact-relative lines.[46] Forfeiture theorists need not deny that necessity is required for permissible defensive killing. But, importantly, necessity need not be regarded as a necessary condition for liability to be killed (a point elaborated below). An aggressor may, by engaging in sheer acts of aggression, forfeit her right not to be subject to lethal force even though applying such lethal force is not necessary to ward off the attack. For "the forfeit of the right to life, in other words, need not imply the right to kill on another's part".[47] Observe that the first right here is a Hohfeldian claim-right, whereas the second is a deontological liberty-right.

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[42] E.g. Jeff McMahan, 'The Basis of Moral Liability to Defensive Killing', *Philosophical Issues* 15, no. 1 (2005), pp. 386-405; Jonathan Quong, 'Liability to Defensive Harm', *Philosophy and Public Affairs* 40, no. 1 (2012), pp. 45-77.
[43] E.g. Steinhoff, 'Self-Defense', p. 194.
[44] E.g. Phillip Montague, 'Self-Defense and Choosing Among Lives', *Philosophical Studies* 40 (1981), pp. 207–19. Cf. Whitley Kaufman, 'Torture and the "Distributive Justice" Theory of Self-Defence: An Assessment', *Ethics and International Affairs* 22, no. 1 (2008), pp. 93-115.
[45] Following e.g. Rodin, 'Justifying Harm', pp. 74-110.
[46] The terminology comes from Derek Parfit, *On What Matters, Vol. I*, ed. S. Scheffler (Oxford: Oxford University Press, 2011), ch. 7. See also Seth Lazar, *Sparing Civilians* (Oxford: Oxford University Press, 2015), p. 6.
[47] Cheyney Ryan, 'Self-Defence, Pacifism, and the Possibility of Killing', *Ethics* 93, no. 3 (1983), p. 512. Also Steinhoff, 'Self-Defense', p. 195.

A second deontic difference concerns Attacker's rights. On lesser evil justifications, the Attacker's right not to be subject to lethal defensive force is overridden (i.e. justifiably infringed). Forfeiture theorists, by contrast, hold that Attacker no longer has any such right. Consequently, provided her defensive force meets the narrow proportionality requirement, Victim would not infringe any rights of Attacker in violently thwarting his attack. This explains why Finnish combatants did not wrong their Soviet opponents by engaging in all-things-considered impermissible defensive killing. By dint of implication in an unjust war of aggression, Soviet combatants had forgone the right not to be defensively killed by their Finnish enemies. Hence even if the Finns acted wrongly in defensively killing their enemies, they did not thereby wrong them.

Forfeiture theories are better-placed than lesser evil justifications to explain why the Finns did not wrong the Soviet aggressors by impermissibly resisting their unjust invasion. Indeed, it seems that lesser evil justifications cannot account for my moral analysis of the Winter War at all. Such justifications disallow defensive killing insofar as it overall produces greater evil than rival available courses of action do. However, the same principle forbids overriding the –non-forfeited– rights of the aggressor: defensive killing is permissible on lesser evil justifications only if it is the morally least costly option. If so, then how can defensive killing be both all-things-considered impermissible and not wrong the aggressor? Lesser evil justifications, it seems, foreclose the conceptual space occupied by actions that are Hohfeldian permissible but deontologically impermissible. They thus always seem to be all-things-considered judgments (or to be materially equivalent to them).

It may hence be concluded that my argument is valid only on the rights-forfeiture justification of defensive killing. That, I contend, would be too hasty. Lesser evil justifications indeed require no conceptual space for the idea of all-things-considered impermissible defensive force against those liable to suffer such force. Yet this can be alleviated by simply introducing the concept of liability, understood as the upshot of rights-forfeiture. Lesser evil justifications can accept that concept without letting it figure in their explanation of what justifies defensive killing. Forfeiture theorists advance the distinctive *normative* claim that what makes defensive killing justified is, *inter alia*, that it involves no rights-violations. Proponents of the lesser evil justification of self-defence can coherently reject this substantive claim, while holding that (whatever else justifies defensive killing), such killing does not wrong people who have become liable to suffer it.[48] This attests that my argument is neutral with respect to the question of what justifies defensive killing. Yet I do need the concept of liability – understood as a three-placed notion – as a place-

[48] Cf. Renzo's insightful analysis of the justificatory role forfeiture plays in 'Rights Forfeiture'.

holder correlate of Hohfeldian liberty-rights, signifying that persons whom we have a right to attack are not wronged by being attacked and hence have no cause for complaint or compensation.

Would *any* conception of liability do? Philosophers have advanced internalist and externalist conceptions of liability. Internalists about liability hold that people cannot be liable to suffer harm which is all-things-considered impermissible to inflict. As McMahan writes: "a person cannot be liable to a certain defensive harm if there is an alternative means of achieving the defensive aim that would be better, all things considered."[49] Both necessity and proportionality requirements constrain liability assignment: "the restrictions on liability are… 'internal' to liability itself. A person cannot be liable to attack when attacking him would be wrong because it would be unnecessary or disproportionate."[50] By rendering it conceptually impossible for defensive force to be Hohfeldian permissible but deontologically impermissible, internalism about liability rules out my analysis by fiat. Rival externalist accounts of liability conceptually disconnect liability from proportionality and necessity restrictions on permissible defensive force, and are to that extent preferable.[51]

Both conceptions of liability can, however, be fleshed out along different lines. Externalists deny that liability is conditioned by principles of wide proportionality and necessity. Yet even they should hold that narrow proportionality is internal to liability. No one is ever blanketly liable. What people are liable to is determined by the narrow proportionality principle. It is therefore incoherent to maintain, for instance, that nuclear bombing Leningrad in defence of the Karelian Isthmus is narrowly disproportionate, while simultaneously holding that the Soviet Union is not wronged by such bombing since they were liable to it. Narrow proportionality determines liability. And since Hohfeldian liberty-rights are correlates of liability ('no claims'), narrow proportionality also determines the extent of Hohfeldian liberty-rights of self-defence. All this is a "corollary of the claim that a person is not wronged by the infliction of harms to which he is liable".[52]

What internalists and externalists really disagree over is the relation between liability and all-things-considered judgments. Not any such relation: few deny that it can be all-things-considered justified to impose harm on non-liable parties as a lesser evil. Think of bombers fighting for a just cause who unintentionally but foreseeably kill innocent bystanders in necessary and

[49] Jeff McMahan, 'Proportionality and Just Cause: A Comment on Kamm', *Journal of Moral Philosophy* 11, no. 4 (2014), p. 433.
[50] McMahan, *Killing in War*, p. 10.
[51] E.g. Suzanne Uniacke, 'Proportionality and Self-Defence', *Law and Philosophy* 30, no. 3 (2011), pp. 269-72; Frowe, *Defensive Killing*, pp. 189-95; Jonathan Quong, 'Proportionality, Liability, and Defensive Harm', *Philosophy and Public Affairs* 43, no. 2 (2015), pp. 144-73.
[52] McMahan, *Killing in War*, p. 10.

proportionate airstrikes.[53] The contested question is whether people can be liable to suffer harm which it is all-things-considered impermissible to inflict on them. Internalists about liability deny this; indeed, they rule this out conceptually. It is generally deemed good practice not to decide controversial questions by verbal legerdemain. We therefore have reason to adopt an externalist conception of liability even if it turns out that no one is ever liable to suffer harms that cannot all-things-considered permissibly be imposed. Moreover, appealing to the Winter War, this paper argues that such cases are conceivable.

My analysis of distinct kinds of liberty-rights thus gives further reason to reject internalism about liability. While the narrow proportionality principle is 'internal' to liability and constitutive of Hohfeldian liberty-rights of self-defence, the wide proportionality requirement is external to both liability and correlative Hohfeldian liberty-rights. The wide proportionality requirement does determine deontological liberty-rights – in this case, whether a people has an all-things-considered moral permission to engage in defensive warfare. Whether inflicting defensive harm wrongs the aggressor is a different question than whether one acts wrongly in inflicting such harm.

NONDIRECTED DUTIES NOT TO EXERCISE RIGHTS TO WAGE DEFENSIVE WAR

From the fact that A does not wrong B by violently resisting her in self-defence, it does not follow that A is all-things-considered morally free to resist B. There are moral constraints on permissible defence other than those informed by the aggressor's rights. Put differently, liability to defensive killing is not a sufficient condition of justified self-defence.[54]

Some moral duties constraining permissible defence are nondirected. For instance, a people is morally obliged not to start a defensive war if defeat is nigh certain. The requirement that defensive force must have a reasonable prospect of success in averting the attack has long been a staple of just war theory. It would be odd if Finland's lack of a reasonable prospect of success would diminish Soviet liability. That would turn almightiness into right. Moscow cannot reasonably complain against Helsinki that Finnish continued resistance, heroic but foolish, wrongs the Soviets. Following Feinberg and Darwall, I have suggested that lacking such a standing to complain against A about φ is part of what it means to be liable to suffer φ by A. The conceptual disconnect between liability and the moral prohibition against hopeless wars holds, I think, even if the success condition is reducible to some more foundational norm. For instance, if hopeless wars are

[53] McMahan, *Killing in War*, p. 41; Rodin, 'Justifying Harm', pp. 86-87. A more difficult question is whether objectively just bombers can be liable to be defensively killed by collaterally targeted innocent bystanders.
[54] David R. Mapel, 'Moral Liability to Defensive Killing and Symmetrical Self-Defense', *Journal of Political Philosophy* 18, no. 2 (2010), p. 200.

impermissible because they can never meet proportionality requirements: in hopeless wars, the moral goods fighting will achieve are inevitably outweighed by the evils thereby produced.[55]

Rodin's main argument against a categorical right of national defence appeals to proportionality rather than success conditions. *Ad bellum* proportionality declares defensive war impermissible whenever the moral goods achieved by fighting are outweighed by the evils produced. Again, to cater for uncertainty, this principle can be fleshed out along belief-relative, evidence-relative, or fact-relative lines. Recall that there are two kinds of proportionality. Narrow proportionality concerns the fit between the threat posed by the attacker and the harms that may defensively be inflicted on her. Wide proportionality additionally takes into account any harm inflicted on non-liable bystanders (and possibly also environmental and other impersonal harms).[56]

Rodin doubts whether non-vital interests like securing territorial integrity and political independence can justify the use of lethal force. Reductivist individualists, he argues, cannot appeal to the ethics of self-defence to justify intentional killing to safeguard such lesser interests. For individual self-defence is permitted only to protect life and limb. The proportionality principle at work here is the narrow one: of goods protected to force used. Rodin's critics have proposed several strategies to salvage the political defensive privilege at this point, suggesting that harms on separate individuals aggravate,[57] and that there is additional value in upholding the international order.[58] Suppose Rodin is right, and that the Soviet invasion of the Karelian Isthmus only threatened non-vital interests. What makes Finnish use of defensive lethal force impermissible in that case is Soviet non-liability to suffer force of such intensity – only non-lethal defensive force would then meet the narrow proportionality condition. The Finns would then wrong Soviet combatants by defensively killing them in defence of their cherished Karelian Isthmus. For by determining liability, narrow proportionality constitutes the Hohfeldian liberty-right to use defensive force. Rodin's lesser-interest argument for disallowing unjust bloodless invasions thus gainsays Finland a Hohfeldian liberty-right to defend itself against unjust purely political aggression. Implausible as this evaluative judgment about the Winter War is, it is also presently irrelevant. My concern is with moral prohibitions on employing defensive force against *liable* aggressors.

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[55] Daniel Statman, 'On the Success Condition for Legitimate Self-Defence', *Ethics* 118, no. 4 (2008), pp. 659-86; Suzanne Uniacke, 'Self-Defence, Just War, and a Reasonable Prospect of Success', in H. Frowe and G. Lange (eds.), *How We Fight: Ethics in War* (Oxford: Oxford University Press, 2014), pp. 62-74; Frowe, *Defensive Killing*, pp. 147-56.
[56] McMahan, *Killing in War*, 20-24; idem, 'Proportionality and Just Cause', pp. 435-38. For discussion, see Uniacke, 'Proportionality and Self-Defence', pp. 267-69.
[57] Frowe, *Defensive Killing*, pp. 139-43.
[58] Uwe Steinhoff, 'Rodin on Self-Defense and the "Myth" of National Self-Defense: A Refutation', *Philosophia* 41, no. 4 (2013), pp. 1022-23.

As Uwe Steinhoff has pointed out, Rodin's discussion shifts from considerations of narrow to wide proportionality.[59] Having questioned the proportionality of using lethal force to secure non-vital interests, Rodin proceeds to address harms defensive force imposes upon innocent bystanders. Narrow proportionality, I have suggested, is *constitutive* of Hohfeldian liberty-rights to wage defensive war – belligerents lack such a right to the extent that their opponents lack liability. Wide proportionality, by contrast, *constrains* pre-existing Hohfeldian liberty-rights. As an external moral constraint, wide proportionality can render it impermissible to exercise these liberty-rights. The wide disproportionality requirement is thus best understood as imposing an nondirected duty not to exercise directed liberty-rights to wage defensive war. That constraint does not destroy the said liberty-right. After all, that Hohfeldian liberty-right expresses the distinct normative relation Finland stands in vis-à-vis its unjust aggressor. It would be odd to think that Finland violates the claim-rights of its unjust aggressor by engaging in defensive force that disproportionally harms third parties.

Indeed, for the same reason, it has seemed to some that wide proportionality poses *no* moral constraint on permissible defensive war at all. Rodin has been criticized for holding the unjustly attacked state responsible for evils produced in a war they did not ask for. As Frowe writes: "foreseen mediated harms can never render Victim's action impermissible on the grounds that it would be disproportionate defence. This is because the predicted harms are not to be understood as part of Victim's defensive action at all".[60] To be sure, Frowe proceeds to reject this view, which she attributes to Frances Kamm.[61] And duly so: it indeed seems counterintuitive to think that the defending party is causally but not morally responsible for harms to others brought about by bellicose resistance against wrongful aggression. The scourges of war make the decision to take up arms in defence against political aggression a tough one. In part because, war being what it is, many innocent people will be mortally endangered if not intentionally and collaterally killed by the defending party. The moral responsibility to engage in defensive warfare is heavy indeed.

Frowe's considered view is that unjustly invaded countries cannot be held *fully* morally responsible for mediated harms produced by armed resistance. "Even if members of the victim state foresee that their resistance will cause the aggressor state to wage a war that endangers the lives of their co-citizens and of innocent non-combatants in the aggressor state, the members of the victim state need not proceed as if they are themselves inflicting these harms". Foreseen mediated harms, she argues, ought to be "heavily discounted in a defender's proportionality

[59] Steinhoff, 'Rodin on Self-Defense', 1024-30.
[60] Frowe, *Defensive Killing*, p. 132.
[61] Cf. Francis Kamm, 'Substitution, Subordination and Responsibility: A Reply to Scanlon, McMahan and Rosen', *Philosophy and Phenomenological Research* 80, no. 3 (2010), p. 715.

calculation".[62] If true, this explains why violent resistance against unjust but limited territorial invasions may be proportionate even if it critically imperils innocent lives. Sometimes, however, wide proportionality will prohibit exercising Hohfeldian liberty-rights to wage defensive war. How often it does so will depend, first, on our rate of discount. The more we discount evils produced in response to wrongful aggression, the fewer defensive wars will violate wide proportionality.[63] Second, it will depend on how bad we deem purely political aggression to be. If we regard territorial integrity and sovereign independence, with Rodin, as 'lesser interests', then harms to citizens' vital interests caused by violent resistance will swiftly render the latter disproportionate. Where we should set those thresholds is of no concern to me. Either way, it proves my point that the nondirected wide proportionality requirement can render it impermissible to exercise Hohfeldian liberty-rights to wage defensive war.

DIRECTED DUTIES NOT TO EXERCISE RIGHTS TO WAGE DEFENSIVE WAR

'Duties of care', Rodin has claimed, may disallow a nation to take up arms in collective self-defence. "The victims of the aggressor's conditional threats are typically people who are bound to us by relationships of loyalty, community, and kinship. The additional people who will be killed by the conditional aggressor if we defend against the direct threat are 'our people'… to whom we owe a duty of care. These duties of care affect the way that harmful consequences of action affect moral permissibility".[64]

Are duties of care directed or nondirected? Although the word 'owe' may suggest otherwise, Rodin seems to believe, rightly, that they can be either. Duties of care are not entirely waivable, he explains, because they "are different from most other duties in that they are *not only* the correlates of rights".[65] Directed duties can normally be waived by those to whom these duties are owed (except when the corresponding claim-rights are themselves inalienable).[66] Rodin suggests that duties of care are nonwaivable, not because of any inalienable right to care, but because they are not always the correlates of claim-rights – i.e. because they are sometimes nondirected. *Pace* Rodin, I contend, directed duties of care are not only owed to people we stand

[62] Frowe, *Defensive Killing*, p. 137.
[63] Thomas Hurka, 'Proportionality in the Morality of War', *Philosophy and Public Affairs* 33, no. 1 (2005), pp. 49-50; Saba Bazargan, 'Varieties of Contingent Pacifism in War', in H. Frowe and G. Lang (eds.), *How We Fight: Ethics in War* (Oxford: Oxford University Press, 2014), pp. 10-14.
[64] Rodin, 'The Myth of National Self-Defence', p. 83.
[65] Rodin, 'The Myth of National Self-Defence', p. 85, emphasis added.
[66] May, 'Directed Duties', pp. 525-26; cf. Hillel Steiner, 'Directed Duties and Inalienable Rights', *Ethics* 123, no. 1 (2013), pp. 230-44.

in a special relation to ('of loyalty, community, and kinship'). Some duties of care are owed to anyone.[67]

Finland had a choice, albeit an exceedingly unhappy one, when confronted with Soviet territorial demands in October 1939. It could have given in to these demands or reject them, risking an invasion. When the invasion commenced, on 30 November 1939, Finland faced another unenviable choice. It could surrender immediately, renouncing the Isthmus and the Hanko peninsula to prevent a war taking place on its territory. Or it could choose to fight. (Finland also appealed to the international community for help, largely in vain.) The Finnish government did not reason that the blood of Finnish civilians killed in the oncoming war would be the moral responsibility of the Soviets, and that armed defence was therefore permissible. However much we blame the Soviet Union for the ensuing harm caused by their aggression, the Finnish government still faced an exceedingly hard moral conundrum: resist or surrender? "In some cases the aggressors will kill only because they are resisted. If there were not resistance, they could invade without having to take any lives. It is precisely this resistance that has to be justified".[68]

If moral phenomenology is indicative of moral duties, then it is noteworthy that Finnish politicians felt a grave responsibility toward their citizens to protect their vital interests. Faced with some threats, however, the best protection is surrender. Some of the duties Finnish politicians owed to their nationals were no doubt special ones, arising from distinctive relations of democratic accountability. Such special ties surely augment the weight of directed duties of care.[69] Yet directed duties do not presuppose such special relations. Suppose that Finnish resistance would primarily imperil Estonian rather than Finnish nationals. Brazenly disregarding Estonian security concerns would, I contend, violate directed duties owed to Estonians. For all of us have claim-rights not to be gravely imperilled – the correlates of directed duties of care. We have these rights not as citizens, but as humans.

What do directed duties of care exactly consist in and require? Steinhoff wonders whether duties of care really forbid mortally endangering individuals: "there are certainly an infinite number of things worth *risking* death for. We do it all the time; we also often impose, quite justifiably, such risk on our children or fellow citizens".[70] At the same time, he concedes that even wars with just causes might sometimes be impermissible because disproportionate. Steinhoff's critique attests that 'duty of care' is rather vague a notion. Perhaps we should prefer: 'directed duties owed to third parties to not contribute to the creation of conditions that acutely imperil their lives and welfare'.

[67] Cf. Frowe, *Defensive Killing*, pp. 138-39.
[68] Norman, *Ethics, Killing and War*, p. 135.
[69] E.g. Jeremy Waldron, 'Special Ties and Natural Duties', *Philosophy and Public Affairs* 22, no. 1 (1993), pp. 3-30.
[70] Steinhoff, 'Rodin on Self-Defense', 1030.

Observe that this directed duty differs logically from nondirected ones with comparable content, such as: 'do not gravely endanger innocent people'. For directed duties of care entail corresponding claim-rights to be cared for. Nondirected duties by definition lack such corresponding claim-rights. Since this paper's aim is limited to formally mapping the logical interlinkages between various principles, norms, rights, and duties, I will not here try to spell out the exact content of the concept 'directed duty of care'.

More pressing for me is the question: what kind of moral constraints do directed duties pose on agents? All directed duties are Hohfeldian ones. The relevant ones here are correlates of claim-rights which constrain the permissibility of exercising Hohfeldian liberty-rights to wage defensive war vis-à-vis unjust aggressors. Directed duties owed to third parties are external constraints on such liberty-rights because the latter, I have suggested, exclusively depict a normative relation between Victim and Attacker. As external constraints, they do not delineate the content of Hohfeldian liberty-rights; rather, they circumscribe its permissible exercise. While Finland presumably had no duty *to* the Soviet Union to abstain from armed resistance – the Soviets being *ex hypothesi* liable to such force – they may nonetheless have had directed duties to surrender promptly *to other parties*. Another example might clarify this. Suppose that the US has a just cause for armed humanitarian intervention in North Korea. A threat to international order and systematic human-rights abuser, North Korea has made itself liable to humanitarian invasion. While the US has no duty to the North Korean regime not to invade, it arguably has a duty to South Korea not to attack. War on the Korean peninsula would indisputably greatly endanger that country, likely causing many thousands South Korean casualties. Were the US to attack regardless, then doing so would violate rights of South Koreans not to be gravely imperilled.

It does not follow that armed humanitarian intervention in North Korea is therefore impermissible. As argued above, directed duties are always defeasible. While they sometimes give conclusive reason for action, it is always conceptually open to ask: ought I in this case fulfil *these* directed duties? After all, we may have conflicting directed duties. The wrong done by violating directed duties can also be justified as a lesser evil or outweighed by moral goods thus achieved. Directed duties thus pose a different kind of moral constraint on rights to wage defensive war than the wide proportionality and success conditions. The latter two requirements impose nondirected duties, placing deontological constrains on permissible defensive force. These duties are generally regarded as nonoverridable, in part because their prescriptive content varies by context. Directed duties not to imperil innocent bystanders can be justifiably overridden, however, although the 19blige remains answerable for it to correlate right-holders and may owe compensation. It seems to me inescapable that bellicose resistance against unjust aggressors will critically endanger non-

liable bystanders. If so, then the claim-rights of bystanders not to be critically endangered must be capable of being justifiably overridden for defensive war ever to be permissible.

How serious we should deem violation of directed duties of care will depend on whether the defensive war will directly benefit corresponding right-holders, or only indirectly. Non-belligerent third parties also threatened by the aggressor will directly profit if the attack is successfully averted. Other parties only benefit indirectly, e.g. insofar as armed defence upholds the international order and deters future aggression. That I might benefit from defensive war, should it prove successful, does not however annul my right not to be critically endangered. Had the Syrian rebels succeeded in toppling Assad's atrocious regime, then non-combatant Syrian civilians would in the main have benefited greatly. Yet rebels still wronged their fellow-citizens by waging defensive war without their consent. Initiating hostilities, or escalating violence by armed resistance, imposes great harms on citizens: it is a terrible thing to have to live through war. Non-consensual imposition of such harm is *pro tanto* morally wrong even if the battle is fought in defence of civilian rights. Syrian citizens may, however, permit rebels to critically endanger them through armed resistance against Assad. If these suggestions are sound, then further work needs to be done to spell out what counts as consenting to be endangered.

I have so far been arguing that the concepts of directed vs. nondirected duties and permissions help clarify the structure of ethical theories of war. I will conclude by suggesting that it might also affect moral argument. Some may think that moral judgments about the permissibility of defensive warfare are unaffected by whether or not morally significant interests of third parties are described in terms of directed duties owed to them. The effects warfare will have on third parties, such reasoning holds, is already theoretically accounted for through the wide proportionality principle: causing collateral harm is permissible only insofar as it is appropriately outweighed by the moral goods achieved by war. I maintain to the contrary that recognition that belligerent parties have defeasible directed duties to non-liable third parties (e.g. not to kill them collaterally) raises the threshold of permissible warfare. For a start, it doubles the potential 'wrongs'. Careless resort to arms might both violate nondirected duties (such as the general obligation not to gravely endanger innocent bystanders for slight reason) *and* wrong non-liable third parties. Moreover, an action that wrongs another person is typically graver than the self-same action that merely is wrong. For instance, whimsically destroying a precious painting is worse if one thereby also wrongs the owner. Indeed, the special moral standing claim-rights express is indicative of that special moral gravity. Even in just defensive wars, harmed innocent third parties can hold answerable just belligerents for the justified rights-infringements they are responsible for, and may demand compensation or recognition. If so, then infringed directed duties owed to

innocent bystanders partly determine what *jus post bellum* requires of belligerents. To be clear, I have not denied that the wide proportionality requirement can, and must, take into account that initiating defensive war will violate directed duties owed to innocents; all I have claimed is that practical judgments about wide proportionality will differ depending on whether we recognize such directed duties.

With respect to *ad bellum* permissibility – the primary focus of this paper – we can conclude the following. Directed duties owed to innocent bystanders differ logically from the wide proportionality requirement even if, implausibly, the only morally significant interests at stake when calculating wide proportionality are expressed by these directed duties. These duties figure in the content of the wide proportionality principle. Their violations count as evils that must be outweighed by the moral goods achieved by fighting for war to be all-things-considered permissible. Yet what belligerents owe to non-liable third parties is not itself reducible to considerations of wide proportionality. They are distinct moral questions.

CONCLUSION

Introducing the novel language of directed and nondirected duties and permissions into ethical theories of war allows us to formulate more sophisticated moral judgments. It helps reconcile apparently conflicting moral evaluations of conflicts such as the 1939 Winter War. We can agree that the Finns had a (Hohfeldian) liberty-right vis-à-vis the Soviets to violently resist their unjust invasion, while insisting that Finland lacked a (deontological) liberty-right to do so. Having a just cause for war – such as national defence against an unjust aggressor – does not amount to an all-things-considered moral permission to initiate war. For armed national defence might fall short of requirements of wide proportionality and reasonable prospect of success. The directed liberty-right to violently avert unjust invasions is further constrained by directed duties owed to third parties, critically endangered in the process. Defensive violence is thus not justified once we have established that the aggressor is not wronged by its infliction.

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