

## Meeting of the Aristotelian Society, February 9, 2009

### Permissible Rescue Killings\*

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#### 1. Introduction

Let us remind ourselves of, and adapt, one of Judith Thomson's best known-scenarii:

*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.<sup>1</sup>

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. Indeed 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'.<sup>2</sup> 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 victim V particularly if A is a morally culpable attacker (CA), as is the case in our example.<sup>3</sup> In fact, many would probably also take the view, which I have defended elsewhere, that R is sometimes under a duty to kill CA in defence of V.<sup>4</sup>

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

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<sup>1</sup> J. J. Thomson, 'Self-Defence', *Philosophy and Public Affairs* 20 (1991): 283-310.

<sup>2</sup> Thomson, 'Self-Defence', at 306.

<sup>3</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, e.g., M. Otsuka, 'Killing the Innocent in Self-Defense', *Philosophy and Public Affairs* 23 (1994): 74-94.

<sup>4</sup> See my 'Mandatory Rescue Killing', *Journal of Political Philosophy*, 15 (2007): 363-84.

permitted to kill the threat, by virtue of that very same justification. Or the victim has an agent-relative (or agent-centred) justification for killing the threat – from which the rescuer’s own justification for intervening derives. 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 agent-centred justifications at best provide a (weak) justification for self-defensive killings and cannot support rescue killings.<sup>5</sup>

In this paper, I seek to show that agent-centred arguments have an important role to play in justifying rescue killings.<sup>6</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 other people’s similar goals. In section 2, I shall argue that partiality provides a victim-centred justification for the view that V is permitted, and has the right, to kill CA, *so long as* it is suitably constrained by impartial requirements to be set out presently. In section 3, I shall deploy that victim-centred justification in support of the view that R has the right to kill CA in defence of V.

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.<sup>7</sup> I shall revisit that assumption in section 2. Secondly, I focus on moral, rather than legal, rights. Thirdly, one must distinguish between being at liberty to do  $\phi$  and having the right to do  $\phi$ . For X to be at liberty to do  $\phi$  implies that X is not under a duty to do  $\phi$  which in turn implies that others lack a right that X not do  $\phi$ . By contrast, for X to have a right to do  $\phi$  implies that others are under a duty to let X do  $\phi$ . Now, it is true that, in general, if X is at liberty to do  $\phi$  then X also has the right to do it, and vice-versa. There are cases, however, where rights and liberties come apart, so that one can

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<sup>5</sup> See, e.g., J. McMahan, ‘Self-Defense and the Problem of the Innocent Attacker’, 270-271. McMahan 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. See also N. Davis’ important article, ‘Abortion and Self-Defence’, *Philosophy and Public Affairs* 13 (1984): 175-207, at 187-96; S. Uniacke, *Permissible Killing: The Self-Defence Justification of Homicide* (Cambridge University Press, 1994).

<sup>6</sup> In fact, partiality also supports the two-pronged view that R is permitted to kill IA in defence of V, *and* V in defence of IA, but lacks the right to do either. I defend that claim in a as yet unpublished paper ‘Killing Innocent Threats in Defence of Others’.

<sup>7</sup> See, e.g., M. Kramer, ‘Getting Rights Right’, in M. Kramer (ed.), *Rights, Wrongs, and Responsibilities* (Basingstoke, Palgrave, 2001); N. McCormick, ‘Rights in Legislation’, in P. M. S. Hacker (ed.) *Law, Morality and Society* (Oxford: Clarendon Press, 1977); J. Raz, *The Morality of Freedom* (Oxford: Clarendon Press, 1986).

(sometimes) have a right to do wrong, and one is sometimes permitted to do something which others are not under a duty to let us do.<sup>8</sup> Throughout this paper, claims of the form ‘V has the right to kill in self-defence’ or ‘R has the right to kill in defence of V’ must be taken to imply that V and R are permitted to kill. Claims of the form ‘V/R is permitted to kill’, by contrast, must be read as making no pronouncement on their *right* to do so.

Finally, I focus on one-to-one cases, where only one of either the victim or the attacker will die, and 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/employee. Nor is the rescuer a policeman or a soldier on duty. For my purposes here, R is a stranger who simply happens to be at the critical place, at the critical time. I also assume that, in one-to-one cases, intentionally killing bystanders (B), who are neither posing a material threat to someone else nor materially responsible for the fact that that person is in danger, is morally impermissible.<sup>9</sup>

## 2. Partiality and the right to kill in self-defence

### 2.A.

At the bar of partiality, it seems quite obvious that if anyone is permitted to kill a culpable attacker, it is his victim herself. 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, and so ask of V that she sacrifice her life for the sake of another surely is asking too much.<sup>10</sup>

Or is it? A standard objection to the partiality argument for self-defensive killing is that it unacceptably licences the self-defensive killing of innocent bystanders. For if a victim is permitted to kill her attacker

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<sup>8</sup> See, e.g., J. Waldron, ‘A Right to do Wrong’, *Ethics* 92 (1981): 21-39. For the opposite view, see J. Mackie, ‘Can There Be A Right-Based Moral Theory’, in J. Waldron (ed.), *Theories of Rights* (Oxford: Oxford University Press, 1984): 168-81.

<sup>9</sup> Some argue, in the context of war, that the deliberate killing of innocent bystanders is permissible if that is the only way to save millions of people from death and/or subjection to an evil regime. See, e.g., M. Walzer, *Just and Unjust Wars* (New York: Basic Books, 2006, 4<sup>th</sup> edition), and D. Statman, ‘Supreme Emergencies Revisited’, *Ethics* 117 (2006): 58-79, for devastating criticisms.

<sup>10</sup> See, e.g., H. Grotius, *The Rights of War and Peace*, book II, ch. I, section III. See also J. Quong, ‘Killing in Self-Defence’, *Ethics*, forthcoming. Quong believes, as I do, that the most promising strategy for justifying self-defensive killing consists in combining agent-relative and agent-neutral considerations.

intentionally on the grounds that she can give greater weight to the preservation of her own life than to the life of the latter, then (it is argued) she may kill an innocent bystander intentionally, on those very same grounds. Either one accepts that intentionally killing bystanders is permissible, 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.<sup>11</sup> In so far as we assume, at the outset, that one may not deliberately kill innocent bystanders in self-defence, the objection, if it is sound, strikes at the heart of the partiality justification.

Yet, I do not think that the objection succeeds. An agent has a right, you 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  $\phi$  is only a necessary, and not a sufficient, condition for an agent to have a liberty or a right in respect of  $\phi$ . 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 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

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<sup>11</sup> See, e.g., McMahan, 'Self-Defense and the Problem of the Innocent Attacker', 270-71. McMahan 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.

consideration we invoke to distinguish CA from B.<sup>12</sup> Such considerations typically take the following form: by culpably attacking V, CA 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 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.<sup>13</sup> We thus have a criterion for distinguishing CA from B – a criterion which partiality was unable to provide.

Now, I agree that partiality cannot, *on its own*, explain why V may kill CA 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. For a start, unlike the forfeiture view (and agent-neutral arguments in general) it captures what is at stake, for V, in her conflict with CA, to wit, *her* life. Put differently, partiality does not tell us why V may kill CA rather than B; but it does tell us why V may kill CA. Unlike agent-neutral justifications for self-defensive killing, it makes sense of the intuition that V stands in a special relationship to her attacker: he is threatening *her* life, and no one else's, and accordingly, she has a vested interest, which others (on the whole) lack, in his attack being thwarted.

Proponents of the forfeiture view are likely to rejoin that their account does show why V may kill CA, 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 CA 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.<sup>14</sup> By contrast – it is often said – victim-centred reasons cannot furnish R with a justification for killing CA.

I shall argue in section 3 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

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<sup>12</sup> See McMahan, 'Self-Defense and the Problem of the Innocent Attacker', 270-71. In a similar vein, opponents of the partiality view are likely to object that it cannot on its own explain why we may kill a morally innocent threat, but not a bystander. Appealing to rights forfeiture, as a constraint on partiality, will not do, because attackers, in the present case, are morally innocent, and therefore cannot plausibly be said to *forfeit* their right not to be killed. For interesting, alternative arguments aimed at distinguishing innocent attackers from innocent bystanders, see Uniacke, *Permissible Killing*, and Quong, 'Killing in Self-Defence'.

<sup>13</sup> See, e.g., J. J. Thomson, 'Self-Defence' and S. Uniacke's *Permissible Killing*.

<sup>14</sup> See, e.g., Thomson, 'Self-Defence'; S. Uniacke, *Permissible Killing*.

agent, may kill CA. 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 fact, 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 CA: if CA has forfeited his right not to be killed against anyone, then surely he has forfeited *against his victim*. Whether he has forfeited it against other parties requires further argument. Consider the following example. *V* is under threat from a serial killer (CA<sub>1</sub>), who is trying to kidnap her with a view to raping her and then torturing her to death. Suppose now that a second serial killer (CA<sub>2</sub>), who would like to keep *V* to himself and sees CA<sub>1</sub> as an obstacle, starts attacking him. That *V* may kill CA<sub>1</sub> in self-defence seems clear. Far less straightforward, however, is the claim that CA<sub>2</sub> may kill CA<sub>1</sub>: for although his move will protect *V* from the latter, it will expose her to a further threat, that posed by his own wish for a woman to rape and torture.

To recapitulate, then, an argument to the effect that *V*, *R* or both may kill CA in self-defence must provide a justification for two claims, each italicized as follows: to wit, (a) a justification for conferring that permission, specifically, *on V, R (or both)*, as well as (b) a justification for conferring (on them) the permission to kill, specifically, *CA*. Admittedly the partiality view 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 CA's being stopped. And it is at this juncture that partiality (constrained by impartial considerations directed to (a)) can step into the breach.

## 2.B.

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, CA himself is obviously under that duty. Return to the case of the villainous truck driver, whose victim will die unless she kills him first. The driver drives his truck at great speed towards V; V fires at him, and misses. She is about to fire again: is the driver permitted 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 act at  $t_2$  is an act of self-defence against V's self-defensive move at  $t_1$ , rather than an act of unjust aggression at  $t_0$ , 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 CA in self-defence on partiality grounds; 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>15</sup>

### 3. 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, CA'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 CA (*her* life is at stake) is also why they fail as a justification

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<sup>15</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. For an argument along those lines, see, e.g., J. McMahan, 'Innocence, Self-Defence and Killing in War', *Journal of Political Philosophy* 2 (1994): 193-221; D. Rodin, *War and Self-Defence* (Oxford: Oxford University Press: 2002), pp. 170-71.

for *R*'s permission to kill *CA* 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 may choose *V*'s life over *CA*'s, on grounds of partiality.<sup>16</sup> Yet, in this section, I shall argue that the constrained partiality view does support the claim that *R*, not merely is permitted, but also has the right, to kill *CA* in defence of *V* (3.A.) I shall then bring my argument to bear on, and thereby solve, some alleged paradoxes about rescue killings (3.B).

### 3.A.

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

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

Clearly, *R* may not opt for (2). As we have just seen, *CA* 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 a position to help *CA* 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 *CA* 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 *CA* 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 *CA*'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*

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<sup>16</sup> Recall that I focus on cases where the victim and the rescuer do not stand in a special relationship with each other such that the latter may have good reasons to give priority to the former's life over the life of the attacker (unlike a parent, for example, who would have a very strong justification for giving priority to the life of his child over the life of his child's attacker.)

of (*constrained*) *partiality*. In other words, R has the right to opt for (3), and therefore is not under a duty to opt for (1).<sup>17</sup>

Before I make my case to that effect, let me rehearse a move which might tempt opponents of partiality. As we saw in section 2, they could not simply say that CA has forfeited his right not to be killed against the world at large, by attacking V, since what needs to be shown is precisely that forfeiture of a right held *in rem* is forfeiture *in rem*. At this point, thus, they might want to say that there is a convincing agent-neutral reason for conferring on both V and R the permission to kill CA, to wit that given a choice between CA's and V's lives, the world is a better place for sacrificing the former, rather than the latter. This, however, would not justify the defensive killing of morally *innocent* attackers (at least not in one-to-one cases, where the attacker will only kill V.) 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. Moreover, it is not altogether clear to me why that would provide R with a reason for killing CA: that the world may become a better place if we do  $\phi$  is not a sufficient justification for the permissibility of  $\phi$ -ing when  $\phi$ -ing inflicts a harm on some party. One must justify inflicting that harm. To say, without further ado, that R is justified in killing CA on the grounds that the world would be a better place if CA, rather than V, were to die, is to presuppose that which must be shown, to wit that CA has forfeited his right not to be killed *against R*. As I shall now show, it is partly, but importantly, in virtue of the fact that, for reasons relative to V, he no longer has the right not to be killed by V, that he also no longer has the right not to be killed by R.

The constrained partiality justification for V's right to kill CA invokes the undisputed claim that, in a choice between her life and CA's, V cannot be expected to give priority to CA's. Put differently, V may kill CA, 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 CA 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, you recall, an agent has a right if an interest of his is important enough to hold some other person under some duty. As applied to permissions, or liberties, the theory holds that an agent is at liberty to do  $x$  if an interest of his is important enough to deem it (morally) permissible for him to do  $x$ . 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

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<sup>17</sup> In arguing for the duty to kill in defence of others, I claimed, in effect, that R *may not* opt for (1) (see 'Mandatory Rescue Killings').-

relationships by transferring to them one's 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 by giving them claims to those goods), or marrying and divorcing (since one's changes one's (legal) relationship to those individuals by giving them certain claims vis-à-vis one's estates, the posthumous disposal of one's bodies, etc.) On the interest theory, then, agents' interests in controlling material resources, as well as in having certain kinds of relationships, are not merely protected by claims and liberties: they are also protected by the power to transfer to others their rights and liberties over, respectively, those goods and various aspects of their intimate life. 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 pass on those rights to third parties.

Now, I submit that V's fundamental interest in surviving CA's attack is not merely protected by a right to kill CA: it should also be protected by a power to transfer that right to R. Consider the following two examples:

*Bodyguard* CA has been stalking V for months, sending her increasingly threatening messages, and is responsible (she has strong reasons to believe) for her dog's death. In the face of the police's inability to do anything, and believing herself unable to defend herself in the likely event of an attack, she hires a bodyguard.

*Intervention* Unable to defend itself from its own domestic genocidal government, minority V asks other countries for their military assistance, by way of equipment and soldiers (R) .

In both cases, the target has a right and is permitted to defend itself from an unjust and lethal attack. If its 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 CA's attack. Or, to put the point differently, the reasons which support the conferral on V of the right to kill CA herself surely also support granting her the power to authorize R to do so on her behalf by giving him her right.

There are important differences, of course, between those various *scenarii*. In *Bodyguard*, V and R stand in a contractual relationship with one another –such that R provides killing services to V in exchange for, inter alia, money. Contrastingly, the victims of the villainous truck driver and the genocidal tyrant have not explicitly contracted with R for his assistance. Yet,

notwithstanding those differences, the similarities between those three cases are striking. In all cases, in the absence of further information as to what CA might do to third parties if he is not stopped now, V's withholding consent to R's lethal steps would count as a *prima facie* reason for R to desist. Conversely, her consenting to such steps, whether explicitly, implicitly, or presumptively, if not necessary<sup>18</sup>, is nevertheless a weighty consideration in assessing whether or not R may help. In so consenting to R doing for her sake and on her behalf what she herself has the right to do, V is changing R's set of entitlements vis-à-vis CA.<sup>19</sup>

The foregoing considerations do not imply that V's asking for help is sufficient (in the absence of countervailing considerations as to, e.g., what CA might do if unchecked) to confer on R a permission and a right to kill CA. For on the interest theory of rights, R cannot have either the right or permission unless some interest of his is served by them. In all three cases, however, it is possible to identify such an interest. In both *Bodyguard* and *Intervention*, R has an interest in, e.g., freedom of occupational choice (which he exercises by working as a bodyguard or enlisting in the army); in all three cases, R has an interest in providing others with the assistance which they need.<sup>20</sup> It is the combination of R's aforementioned interests and of V's permission and right to

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<sup>18</sup> Thus, if there is reliable information that CA, if not stopped now, will carry on killing third parties, then V's refusal to have him killed would not carry weight. Some might insist that if CA would not kill other people after getting rid of V, then the latter's *explicit* consent is a necessary condition for R to kill CA. But that is too demanding, since there might be cases where V is unable to give such consent. Yet, we might need to allow for the possibility that V might have good reasons for refusing to have CA killed. I set those complications aside.

<sup>19</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  $\phi$  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, e.g., H.L.A. Hart, 'Are There Any Natural Rights?', *Philosophical Review* 64 (1955): 175-91, at 183; N. E. Simmonds, 'Rights at the Cutting Edge', in Kramer, Simmonds and Steiner *A Debate Over Rights*; Hillel Steiner, *An Essay on Rights* (Oxford: Blackwell, 1994.) My claim, rather, is that to confer on agents an interest-based right in respect of  $\phi$  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 capacity for deciding whether or not to exercise rights.

<sup>20</sup> For a longer argument along those lines, which I deploy in support of (limited) mercenarism, see my 'Justifying Mercenarism: War and the Market', unpublished ts. 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 recognised 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.

kill CA which provides the former with permission and a right to kill CA in defence of V.

To recapitulate, if V's interest in survival is important enough to confer on her the right (*in rem*) to kill CA in self-defence, then surely it ought to be important enough to confer on her the power to grant R that very same right. 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 dispel (in section 3.B) an alleged paradox about rescue killings, some loose ends need tying. First, it pays to note that the constrained partiality defence of rescue killings is compatible with the claim that R is sometimes under a duty to kill CA 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 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 her 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 CA, in which case she may still permit him to do so and would thus 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 CA, to change the former's set of entitlements.

Second, although V has the right to kill CA 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 CA is using a group of children as a shield, that if V were armed she would have a clear shot at him, but that R has no choice but to shoot through the children, killing several in the process. Some people might be tempted to argue that R may kill CA, on the grounds (for example) that the death of those children is an unintended though foreseen side-effect of his shooting at CA. I am assuming for the sake of argument, and not entirely implausibly, that 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 CA – if, for example, V would, but R would not, kill innocent bystanders in the process of shooting at CA. 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 CA, is tantamount to the claim that she lacks the right, *in that instance*, to kill CA in self-defence; 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 CA *under those circumstances*, she nevertheless retains the right to kill CA 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 attackers 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, there are constraints on the third parties to whom V has the power to transfer her right to kill CA. Suppose that, in *Bodyguard*, R is strong a psychopath who, if given by V the right to kill CA, would do so by torturing CA 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 him. The point is not that R may not exercise that right (as seen in the examples 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. Analogously, we may not delegate to psychopaths the task of fighting our wars, and thus killing, on our behalf.<sup>21</sup>

### 3.B.

In section 2, I argued that the claim ‘CA has forfeited his right not to be killed’ does not entail the claim ‘Anyone is permitted to kill CA’. Uncoupling those

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<sup>21</sup> I am grateful to 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 CA; does V nevertheless have the power to transfer to him her right to kill CA? That might be thought to be a rather tricky case. I am not convinced. You seem to think not, though tentatively so. Consider the following example: 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, I am assuming that 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 2 millions German 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.) 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.’

two statements enables us to rebut an alleged paradox about rescue killings.<sup>22</sup> On most account of self-defensive killings, an agent has a right not to be killed (or a right to life) if he does not pose a lethal, unjustified threat to some other person: conversely, an agent who poses a justified threat to someone else retains his right to life. Now imagine the following scenario, which involves three individuals, A, B and C: (a) at  $t_0$ , A poses an unjustified lethal threat to B, who has a right to life. In so doing, A loses his own right to life: both B and C have the right to kill him. (b) At  $t_2$ , B poses an unjustified lethal threat to C, who has a right to life. In so doing, B loses his own right to life: both A and CA have the right to kill him. (c) At  $t_4$ , C poses an unjustified lethal threat to A. It is at this juncture that the paradox allegedly arises. For if C's threat is impermissible, he has lost his right to life, and B's threat at  $t_2$  is permissible. If B's threat is permissible, then B has not lost his right to life; if B has not lost his right to life, then A's threat is impermissible. But if A's threat is impermissible, then A has lost his right to life. And if A has lost his right to life, then C's threat is permissible. Herein lies the (supposed) contradiction: at  $t_4$ , C's threat is both permissible and impermissible. (Note that the contradiction arises with an odd number of agents, who are threatening one another in a loop, rather than in a straight, finite line.)

In fact, there is no paradox. The claim that there is does not specify (and indeed neither do standard accounts of self-defence) against whom the right to life is held. This is understandable, for, as I noted, a right not to be killed is, typically, held *in rem*. However, once one sees that it can be held *in rem* and forfeited *in personam* (vis-à-vis those whom one has threatened, and those to whom they transfer their right to defend themselves) the contradiction disappears. Let us return to (a), (b) and (c): (a) at  $t_0$ , A poses an unjustified lethal threat to B, who has a right to life. In so doing, A loses his own right to life. Defenders of the view that rescue killings are paradoxical in the stated way assume that A loses his right to life against the world at large. Yet, it makes perfect sense to hold that he loses it only against B, and that absent arguments to the contrary, third parties, and, in particular C, are *still* under a duty not to kill him. If so, then at  $t_4$ , C may not threaten A. Consider now (b): at  $t_2$ , B poses an unjustified lethal threat to C, who has a right to life. In so doing, B clearly loses his own right to life against C. Yet, that is not enough to show that he loses his right to life against A. In fact, he does not lose that particular right (since he has not threatened A). Consequently, A's threat against B is indeed

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<sup>22</sup> See R. Christopher, 'Self-Defence and Defence of Others', *Philosophy and Public Affairs* 27 (1998): 123-41. See also E. Rivera-Lopez, 'Puzzles on Defending Others from Aggression', *Law and Philosophy* 25 (2006): 377-86.

impermissible. But in so far as A has threatened B, not C, he has lost his right to life against the former, and not the latter. C's against A is indeed impermissible, as per (c), and there is no paradox.

#### **4. Conclusion**

To conclude, I have argued that at the bar of partiality –the view that 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, victims-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.