

Quong, Jonathan. *The Morality of Defensive Force*.

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The Morality of Defensive Force is packed with forceful, novel arguments. It will no doubt become a cornerstone of work on the justifications and limits of defensive harm. It strikes a great balance between being accessible to those who want to pick it up for a particular topic—for example, those interested only in the necessity condition, the bearing of evidence on rights, or the means principle—while at the same time being a rewarding, well-integrated read.

A little about the claims made in the book. Chapter 2 focuses on liability to defensive harm. To say that an individual is liable to be harmed is to say that he has forfeited some of his rights against being harmed, and so harming him would not violate his rights nor would it wrong him. Quong introduces a new account of liability, *the moral status account*, according to which, ‘A is liable to defensive harm for Φ -ing when: (a) the evidence-relative permissibility of Φ -ing depends on the assumption that at least one person, B, lacks a moral right, but (b) B in fact possesses the relevant moral right, and thus (c) B faces a threat, or apparent threat, to her rights’ (38). Defending themselves against threateners who are liable to be harmed is one instance in which victims may permissibly defend themselves. But Quong does not think it is the only way. Chapter 3 defends that we have agent-relative prerogatives to harm non-liable parties. Threateners who are liable have no rights against being harmed, and so may not defend themselves in counter-defence. Threateners who are not liable to be harmed, but who may nonetheless be harmed because victims have an agent-relative prerogative, retain their rights against being harmed. As a result, they are wronged by victims’ permissible self-defence and may defend themselves against victims’ self-defence.

Whether a victim may defend herself depends on whether her self-defensive act is proportionate and necessary. Chapter 4 introduces a new account of proportionality, on which the

stringency of victims' threatened rights determines the amount of defensive harm that it is proportionate to inflict (112). On this view, the degree of culpability or moral responsibility for the threat posed by threateners is irrelevant for proportionality. Chapter 5 introduces a revisionary account of necessity, on which defensive harm is unnecessary if it is inconsistent with victims' duty to rescue others at reasonable cost to themselves (132).

Chapter 6 argues that rights against harm are determined by asking what we can reasonably demand of others, including the evidence that we can reasonably demand they possess (156-60). But the view is not evidence-relative all the way down—whether someone does not have a right against being harmed because they are liable or have consented to being harmed depends on what they have in fact done, and not on duty-bearers' evidence of what they have done (161-3). Finally, chapter 7 defends a version of the means principle, on which it is impermissible to harm people in ways that make use of things to which they have prior claims (including their bodies, property, or even the space they occupy), unless they are under a duty to suffer that harm or consent to being used in that way.

Let me offer an extended example of one of the ways the book makes for a well-integrated read, which forms the basis for the critical comments raised in the remainder of this review. In chapter 2, Quong rejects the dominant account of liability, *the moral responsibility account*, because it deems minimally responsible threateners liable to defensive harm (26-29). In the much-discussed *Conscientious Driver* example, a careful and conscientious driver finds herself unavoidably swerving off the road towards Pedestrian, whom she will kill. For reasons that do not concern us here, the moral responsibility account says that Driver is liable to be harmed by Pedestrian, and so has no right against Pedestrian using their trusty rocket launcher in self-defence. Quong thinks this is the wrong verdict. His moral status account says that Pedestrian is not liable: the evidence-relative permissibility of Driver's setting out on her drive does not depend on the assumption that anyone else does not have a right against being harmed.

One argument for why Driver *is* liable is that many find it plausible that Pedestrian may kill Driver in self-defence. And how else to explain this unless Driver is liable? Quong has an answer: as is the focus of chapter 3, Pedestrian has an agent-relative prerogative to prioritise herself, which includes killing other innocent people if necessary to save herself (58). Now, an initial problem with agent-relative prerogatives is that most think that we may not grab a bystander and use them as a protective shield against a lethal projectile, nor may we pull a bystander out of the only alcove either of us could use to avoid being hit by an oncoming trolley (81-85). But if we have agent-relative prerogatives to prioritise ourselves, why may we not prioritise ourselves in these ways? Without a convincing answer to this question, we ought to reject agent-relative prerogatives.

Recall now though, that *if* there are no agent-relative prerogatives, we have no explanation for why Pedestrian may defend herself in *Conscientious Driver*, at least if we endorse Quong's moral status account of liability. And *if* we think that Pedestrian may defend herself, we ought to reject Quong's moral status account of liability in favour of a view that accommodates this verdict (for example, the moral responsibility account). But Quong does have an answer for why, even if we have agent-relative prerogatives to prioritise ourselves, we may not grab a bystander and use them as a protective shield: as is the focus of chapter 7, the means principle says that we may not prioritise ourselves when doing so would use others' bodies or something else to which they have a prior claim, unless they are under a duty to suffer that harm or have consented to that harm.

In the remainder of this review, I examine some of the views featured in the preceding argument. Quong's moral status account says that Driver is not liable to be harmed in *Conscientious Driver* because the evidence-relative permissibility of Driver's setting out does not depend on the assumption that anyone else does not have their usual rights against being harmed. Compare this with *Mistaken Threatener* (23-24): suppose that the identical twin brother of a

notorious serial killer breaks down in a remote area. Unaware that his brother has recently escaped from prison, and is now on a killing spree, the innocent twin (call him Innocent) knocks on the door of the nearest house to ask for help with his car. The resident (call her Resident) justifiably believes that Innocent is the killer and has been warned that the killer will kill at their first opportunity. Because of this, Resident lunges at Innocent with a knife on opening the door. Quong thinks that Resident is liable to defensive harm. Rendering these verdicts consistent—that Resident, but not Driver, is liable—has proven difficult in the literature. For, we can stipulate that the risk of innocently shooting someone who appears to be liable, as in *Mistaken Threatener*, is the same as the risk of innocently harming someone while conscientious driving, as in *Conscientious Driver*. Why would one be liable in one case, but not the other?

Quong's moral status account finds a difference between these cases. Resident's action is evidence-relative permissible only because Resident's evidence supports that Innocent is liable to be harmed. Driver's action is not (evidence-relative) justified in this way. Rather, for Quong the expected benefits weighed against the expected costs of the practice of prudent driving make it that any action-token of the practice is permissible. And this is what matters when it comes to liability: 'whether you treat others *as if* they lack rights against the harms that you might impose' (5). He continues, '[w]hen you act in this way, you treat others as if they are not entitled to equal concern and respect all persons are normally owed, and so it's appropriate that you bear special liability for your actions'.

(The verdict that Driver is not liable to be harmed is overdetermined for Quong. First, the evidence-relative permissibility of Driver's action does not presuppose that someone else lacks a right that they ordinarily would possess. Second, Quong argues in chapter 6 that Pedestrian has no right against being harmed by Driver, due to the unforeseeability of the accident. But let us focus only on the liability side of things—there are only so many words in a review.)

While I think the distinction drawn between *Conscientious Driver* and *Mistaken Threatener* is a clever one, I am not won over. I am not sure, if there is a morally significant difference between these cases, Quong has found it. It is crucial on his account whether the evidence-relative permissibility of someone's act depends on that others lack rights people ordinarily possess—if so, one can be liable; if not, one cannot be liable. But why should that matter? Evidence about whether our actions will harm others and evidence about whether others have made themselves liable to be harmed is not so different. They place equal demands on one. They make our actions evidence-relative permissible in the same way.

To be fair to Quong, he tries a great deal to motivate the idea that the difference between the cases matters (34-39; 94-95; 163-6). For example, he says of paradigmatic culpable threateners that they 'cannot treat others as having diminished moral status while insisting others respect [their] moral status even at the cost of suffering serious harm'—this would be to fly in the face of equality and reciprocity (34). And this is supposedly how Resident treats Twin, as having diminished moral status. I am sceptical how much we can learn from this. Equality and reciprocity are morally loaded terms of art, and using them in our analysis often presupposes what we are trying to prove. For example, we could just as easily say, in support of the view that mistaken threateners *are not* liable to be harmed, that "Equality and reciprocity demand that we not hold others responsible for acting in ways in which we ourselves would act were we in similar situations." Or suppose we thought minimally responsible threateners *are* liable to be harmed—in support of this, "Equality and reciprocity requires that we bear responsibility for the harms we cause, regardless of whether we were evidence-relative justified in acting in these ways." What is more, while Resident does treat Twin as having diminished moral status, she is evidence-relative justified in treating her so; and to the extent that I think it is morally significant that paradigmatic culpable threateners treat others as having diminished moral status, it is only because they are neither belief- nor evidence-relative justified in doing so.

In addition, the focus the moral status account places on whether one treats others as if they lack rights ordinarily possessed by others leads to some peculiar verdicts about liability. Quong thinks that we can have lesser-evil justifications to harm non-labile parties, as when, for example, we turn a trolley from ten onto a side-track on which a bystander is trapped. When threateners have a lesser-evil justification to harm victims, while victims retain their rights against being harmed, their rights are permissibly overridden for the sake of averting the much greater evil. On this picture, which I find very plausible, rights and (directed) duties are pro tanto considerations—they carry genuine weight but can be outweighed. An implication of this is that when threateners act with a lesser-evil justification, they do not treat their victims as if lacking rights that people normally possess. Threateners can acknowledge that their victims have rights against being harmed but think those rights have been permissibly overridden. It follows that threateners are not liable to defensive harm when acting with a lesser-evil justification given the moral status account. This leads to a strange result. If a threatener is evidence-relative justified in harming their victim with a lesser-evil justification, but in fact has no lesser-evil justification, then she is not liable to defensive harm. Whereas, if she is evidence-relative justified in harming her victim because the evidence supports that the victim is liable, but in fact the victim is not liable, the threatener *is* liable to defensive harm.

There is some discussion of this problem as it relates to *Resident*, but I think its significance is not fully appreciated (94-95). Suppose that some soldiers are successfully fooled by a totalitarian regime into believing their regime is justified, and under repeated threats by their evil neighbours. Their neighbours are in fact a just regime. The soldiers are told there is a terrorist camp over the border. In fact, the “terrorist camp” is a village of innocent civilians. Here is where things get interesting. In a first iteration of our case, discussed in the book, suppose the soldiers are told the camp is made up of only enemy combatants, who are liable to be killed. Quong’s view implies that the duped soldiers are liable to be killed in defence of the

villagers, since the evidence-relative permissibility of their conduct depends on assuming that the enemy combatants have made themselves liable to be harmed (33-35). So far, so good. But now suppose, in a second iteration, the soldiers are told the camp has been vacated by the terrorists, and some civilians have (unknowingly) moved in. However, the terrorists could return, and enough good can be done by destroying the infrastructure of the camp that the soldiers have a lesser-evil justification to destroy it, while foreseeably harming some innocent civilians who have moved in. Quong's view implies the soldiers *are not* liable in this case since the evidence-relative permissibility of their conduct does not assume that their victims lack rights that people ordinarily possess. This is deeply counterintuitive. (We can imagine those of the soldiers who have read *The Morality of Defensive Force* thinking to themselves, "Thank God there aren't any liable parties in there: only some innocent civilians. Otherwise, we'd be liable if our evidence turns out to be faulty!")

Quong can try to soften the blow by reminding us that the villagers nonetheless have an agent-relative prerogative to harm the soldiers. But this does not get us very far for two reasons. First, Quong thinks it is only 'those with whom one stands in the right sort of relationship [that] can permissibly come to adopt, within limits, your agent-relative perspective as their own', and thus only those individuals who can, when authorised by one, act on the basis of one's agent-relative prerogatives (79). But this means a third-party peacekeeping force, watching things unfold, would not be permitted to intervene on the villagers' behalf. Second, agent-relative prerogatives are constrained by the means principle, whereas liability-based justifications are not. This means that the villagers may not defend themselves in ways that make use of things to which the soldiers have prior claims. For example, they may not defend themselves by using some of the soldiers as shields against threats posed by other soldiers. They may not even use the soldiers' property in defence of themselves.

In what remains, let us turn to the means principle. Recall that many doubt that we may prioritise ourselves by pulling an innocent person from the only alcove either of us could use to save ourselves from an oncoming trolley. Call this case *Alcove*. Quong thinks we can accommodate this verdict, even if we have agent-relative prerogatives to harm non-labile parties, by appeal to the means principle. His thinking is this: In order to save myself, I would need to make use of the alcove that Bystander occupies. Since Bystander has a claim over the space she occupies, this means I would make use of something to which she has a prior claim. It is because of this that killing Bystander is impermissible. Resultantly, we end up with the following version of the means principle: it is impermissible to harm someone in a way that uses something to which they have a prior claim, unless they are under a duty to suffer that harm or have consented to that harm (84).

Suppose a trolley is headed towards five whom it will kill unless diverted onto a side-track. Unfortunately, there is one person stranded on the side-track (call this person Victim). Quong thinks it is permissible to divert the trolley. Yet, suppose that one needs to make use of a wrench to turn the trolley. The only wrench to hand belongs to Victim. Quong's account implies it is impermissible for me to use the wrench since it is something to which Victim has a prior claim, whereas it would have been permissible were the wrench not owned by Victim. This looks implausible to me. I do not need either to enquire whose property the wrench is, or refrain from turning the trolley if I know the wrench is Victim's. And Quong would not be open to saying that the means principle does not apply in this case on the grounds that Victim would be under a duty to let you use their wrench, since Victim's doing so would lead to their death (195-6).

There are other counterintuitive implications to Quong's version of the means principle. Of those discussed in the book, we often find Quong accepting these implications, explaining why they are in fact plausible given the rationale behind the means principle (191-6). (For

example, in reply to a case from Helen Frowe, Quong accepts that (i) one may turn the trolley if one can fit the entirety of the trolley on the side-track before it hits Victim, yet (ii) one may not turn the trolley if one cannot fit the entirety of the trolley on the side-track before it hits Victim.) With a powerful rationale behind the means principle, I would be willing to accept some of these counterintuitive implications. Let us examine this rationale, then.

Quong says that rights give us ‘exclusive normative authority over a fair share of the world’s resources’ (184). These resources may often be useful for others. By having claim-rights over them, we block that fact—that non-consensually using our resources would be useful—from serving as reasons for others: ‘To allow [the resource’s] usefulness to serve as a reason to use [it] without [that person’s] consent is to give up on the idea that each person has a sphere of independence where her decisions are sovereign’ (184). Compare this to harming a victim in a way that does not make use of something over which she has a prior claim: there, one does not disregard the victim’s authority to decide whether one may use their resources. And this is supposed to explain why it is always impermissible to harm someone in a way that makes use of something to which they have a prior claim.

But this rationale for Quong’s version of the means principle seems to presuppose what it is trying to prove. While Quong is right to point out that, ‘[w]hen A merely harms B, the justification for the act need not involve any assumption that B lacks authority to decide how her fair share of the world will be used’ (184), it *does* involve the assumption that B lacks authority to decide how her fair share of the world will be affected. And why is that not equally important? Suppose for sake of argument that A’s Φ -ing is harmful, so B has a claim-right against A’s Φ -ing. If A’s Φ -ing harms B in a way that uses something to which B has a prior claim, B has control of whether A may use harming her as a reason to Φ . If A’s Φ -ing harms B in a way that does not use something to which B has a prior claim, B has control of whether A may disregard, as a reason for A not to Φ , that Φ -ing will harm B. Both rights endow B with control.

Appealing to control, and the independence it affords us, is alone not helpful in grounding the means principle.

Obviously there is a lot more to be said here. The point of this brief discussion is to highlight that the means principle has some counterintuitive implications. While this would be acceptable if the rationale for the principle was especially compelling, at the least more needs to be said to spell out *why* being harmed in a way that uses something to which one has a prior claim is especially morally significant. This means we ought to pause before endorsing the means principle. This in turn means we ought to pause before endorsing agent-relative prerogatives; without the means principle, agent-relative prerogatives are too permissive. And this means we ought to pause before endorsing the moral status account. Without the addition of agent-relative prerogatives, it is too restrictive an account of permissible defensive harming. I am going to be thinking about *The Morality of Defensive Force* for a while longer.¹

Joseph Bowen, Stockholm University

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