

‘The Duty to Save and the Duty to Minimise Harm’

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1. Introduction

This paper defends the *Limited Use View* of our duties to save. This view holds that a claim to be saved is a claim to make use of another person (and her resources) for one’s own sake. But we have only limited claims to make use of others and their resources. We are not entitled to make use of others when doing so is either unreasonably costly for them or conflicts with their duties to others. Hence, our claims to be saved are limited. By the same token, our duties to save are also limited. We need not save when doing so is unreasonably costly for us or conflicts with our duties to others, since others have no claim to make use of us when doing so is unreasonably costly for us or conflicts with our duties to others.

One upshot of the Limited Use View is that it can sometimes be permissible to defensively harm for one’s own sake, or for the sake of special others, even though it would be impermissible to do so for the sake of a stranger. This difference in defensive permissions reflects the scope of the duty to minimise harm when saving.¹ Defensive harming, whether of oneself or others, is a type of saving. As I shall argue, other-defence is typically subject to the

¹ For defence of the duty to minimise harm when aiding, see Theron Pummer, (2017) ‘Whether and Where to Give’, *Philosophy and Public Affairs*, 44/1: 77 – 88; William MacAskill, *Doing Good Better: Effective Altruism and a Radical New Way to Make a Difference*, (London: Faber & Faber, 2015); Victor Tadros, (2016) ‘Unjust Wars Worth Fighting For’, *Journal of Practical Ethics*, 4/1: 52 – 80; Kieran Oberman, (2017) ‘War and Poverty’, *Philosophical Studies* 176, 1, (2019): 197 – 217. See also Iason Gabriel, (2016) ‘Effective Altruism and Its Critics’, *Journal of Applied Philosophy*, DOI 10.1111/japp.12176. Of course, the claim that there is a duty to minimise harm when rescuing pre-dates Effective Altruism. See, e.g., Shelly Kagan, *The Limits of Morality*, (Oxford: Clarendon Press, 1989), p. 16; Derek Parfit, *On What Matters* (Oxford: OUP, 2011): 225. And, not everyone endorses this view (see e.g. John Taurek, (1977) ‘Should the Numbers Count?’, *Philosophy and Public Affairs*, 6, 4:293 – 316).

duty to minimise harm; self-defence and the defence of special others is not. Hence, there can be harms that I may inflict on my own behalf, or on behalf of special others, that it would be impermissible to inflict in defence of strangers.

This result has implications for, amongst other things, the permissibility of violent civil resistance, giving us novel grounds to care about the extent to which rebel groups are supported by the citizens of their country. The extent of support will determine whether the harmful actions of rebels are most plausibly understood as coordinated self-defence of the rebels and their co-citizens, and thus exempt from the duty to minimize harm, or as the rebels' other-defence of their co-citizens, and thus subject to the duty to minimize harm.

In Section Two, I develop the *Limited Use View* of our duties to save. In Section Three, I explore the moral significance of the distinction between failing to save and depriving others of the means of saving themselves, and consider the implications of this distinction for the Limited Use View. Section Four considers how ownership of resources bears on the permissibility of failing to save. I argue that one may use one's resources to secure one's basic needs even when doing so does not minimise harm. However, when one is using one's resources to assist others, one ought, ordinarily, to prevent the most harm one can.

Section Five explores a prominent rival to the Limited Use View, which holds that our duties to rescue are limited by an agent-relative prerogative to weight our own interests, and the interest of special others, more heavily than the interests of others. Several proponents of this view argue that these prerogatives also bear on our duties not to harm (call this the *Broad Scope Analysis* of agent-relative prerogatives).² I argue that augmenting one's own interests in

² For defence of the view that agent-relative prerogatives bear on justifications for harming in this way, see Jonathan Quong, 'Killing in Self-Defence', *Ethics* (2009), 119, 3: 507 – 537; Quong, 'Agent-Relative Prerogatives to Do Harm', *Criminal Law and Philosophy* (2016), 10: 815 – 829; Nancy A. Davis, 'Abortion and Self-Defence', *Philosophy and Public Affairs*, (1984), 13, 3: 175 – 207; Saba Bazargan, *Complicity in War* (Unpublished manuscript), Ch. 7, Section 1.2, 2.; Cécile Fabre, *Cosmopolitan War*, (Oxford: OUP, 2012), pp. 61.

this way seems neither necessary nor sufficient to ground a permission to fail to save, and thus prerogatives do not plausibly explain the limit on the duty to rescue. I grant the conditional claim of the Broad Scope Analysis: if agent-relative prerogatives explain the limit on our duties to rescue, then these prerogatives also bear on our duties not to harm. However, as I argue, the arguments put forward by proponents of the Broad Scope Analysis do not show that agent-relative prerogatives bear on our duties not to harm. This gives us further grounds to doubt that they bear on duties to rescue. In Section Six, I consider a possible reply that proponents of the Broad Scope Analysis might make that purports to show that prerogatives must bear on harming in at least some cases. In Section Seven, I argue that the Limited Use View gives rise to different defensive permissions when one acts in self-defence compared to acting in defence of strangers. I then outline some implications of this difference for the permissibility of violent resistance and rebellion.

2. *The scope of the duty to save*

2.1 *The Limited Use View*

Non-consequentialist moral theories typically hold that we have duties to rescue others from harm, but that these duties are limited. The limit is grounded in the cost to the prospective rescuer. According to these theories, one may ordinarily let a harm befall someone else in order to avoid not only a greater or equal harm to oneself, but also to avoid a somewhat lesser harm to oneself.³ Consider *Self-Help Sharks*:

³ I assume throughout that all the prospective victims and rescuers are innocent in the relevant sense – that is, nobody is culpable, morally responsible or negligent with respect to what threatens the prospective victims.

Things might be different, of course, if the rescuer wrongly endangered the victim.

Self-Help Sharks: Aziz is being chased by Small Shark, who will bite off one of Aziz's legs if she catches him. Ben is being chased by Big Shark, who will bite off both of Ben's legs if she catches him. Aziz can either climb aboard a nearby boat, saving himself, or help Ben climb aboard, saving Ben.

It seems plausible that Aziz may save himself – that is, Aziz may deliberately fail to prevent a greater harm to Ben in order to prevent a smaller harm to himself. And yet many non-consequentialists also subscribe to the view that, ordinarily, we ought, to minimise harm when rescuing.⁴ Consider *Rescue Sharks*:

Rescue Sharks: Aziz is being chased by Small Shark, who will bite off one of Aziz's legs if she catches him. Ben is being chased by Big Shark, who will bite off both of Ben's legs if she catches him. At no cost to herself, Cathy (who is a stranger to Aziz and Ben) can help either Aziz or Ben onto her boat, but she cannot save both.

Let's assume that since she can prevent serious harm at no cost to herself, Cathy is under a duty to rescue in *Rescue Sharks*.⁵ Plausibly, she cannot discharge this duty by saving Aziz, since Ben will suffer a greater harm. One cannot satisfy the duty to rescue simply by preventing some harm to someone, even if one thereby prevents a serious harm that would ordinarily give rise to a duty to rescue.⁶ After all, the duty to rescue *just is* a duty to prevent harm. It's hard to see how one might satisfy this duty by deliberately preventing less harm when

⁴ Of course, consequentialists believe this too.

⁵ The discussion in this section draws on Frowe, 'If You'll Be My Bodyguard: Agreements to Save and the Duty to Minimise Harm', *Ethics* (2019) 129 / 2

⁶ There might be some mild harms that I need not prevent even if I can easily do so – that is, that don't trigger duties to rescue at all.

preventing more harm is no costlier. Cathy is thus under a duty to rescue Ben, and Ben has a corresponding claim that Cathy save him, since he will otherwise suffer the greater harm. Saving Aziz thus conflicts with Cathy's duty to save Ben, and Aziz therefore has no claim to make use of Cathy for his own sake.

If Aziz and Ben face threats of equal harm, Cathy ought to toss a coin to decide who to save, thereby giving each a fair chance of rescue. Even if both are strangers to Cathy, we have enough evidence about people's biases – implicit or otherwise – to want her to engage in a fair decision-making procedure if she can.

I suggest that the permissibility of Aziz's preventing a lesser harm befalling himself, despite the impermissibility of Cathy's doing so, is explained by the fact that we have only limited claims to make use of other people and their legitimate resources. This limit is grounded in respect for persons, which involves recognizing that we are not tools to be used for the general good. To demand that a person rescue is to demand that the victim be allowed to make use of the rescuer in some way: for example, that Cathy devote herself to pulling Ben out of the water. A victim's claim to make use of another person is limited by the costs that she would thereby impose on the prospective rescuer, or force her to incur, and by the rescuer's other duties. For example, if Cathy can reach Ben only by lethally mowing down a third person, David, with her boat, her duty not to cause harm to David defeats Ben's claim to be saved.

The fact that agents have only limited claims to make use of others explains, in turn, why each of us has only limited duties to rescue. When making herself available for rescue passes a certain degree of cost to a prospective rescuer, the imperiled person typically lacks a claim that the prospective rescuer save her. The claim that our duties to rescue are cost-sensitive in this way, such that victims simply lack claims to be rescued when saving them is

very costly, is widely endorsed.⁷ However, what usually gets overlooked is that the cost matters specifically because the victim will be making use of the rescuer.⁸ We typically have no claim to make use of others when doing so will impose significant or disparate costs on them. Cathy need not save Ben from the loss of his legs at the cost of her own leg, nor save Ben from a broken wrist at the cost of breaking her own leg. Of course, one might be required to rescue even at very significant cost if the alternative is allowing a very grave harm. Perhaps one must throw oneself in front of a trolley to prevent a hundred or a thousand deaths. But the fact that requiring a person to make very costly use of herself for the sake of others is justified only when the stakes are so high reflects the significance that we attach to harmful using compared to, say, harming as a foreseen side-effect.

2.2 *Special others*

The Limited Use View holds that one may sometimes save from a lesser harm not only oneself, but also certain ‘special others’. Consider *Parental Shark*:

Parental Shark: Aziz is being chased by Small Shark, who will bite off one of Aziz’s legs if she catches him. Ben is being chased by Big Shark, who will bite off both of Ben’s legs if he catches him. Mother, Aziz’s parent, but a stranger to Ben, can save either Aziz or Ben at no physical cost to herself, but she cannot save both.

⁷ See e.g., Joanna M. Firth and Jonathan Quong, ‘Necessity, Moral Liability and Defensive Harm’, *Law and Philosophy* (2012) 31: 673 – 701, p. 695; Jonathan Quong, ‘Rights Against Harm’, *Proceedings of the Aristotelian Society: Supplementary Volume*, 89: 249 – 266, 252).

⁸ For example, Jonathan Quong points to the fact that our claims to be rescued are limited by the cost to the rescuer to support the view that our claims not to be harmed obtain only when one can ‘reasonably demand’ that others fulfil them (Quong, ‘Rights Against Harm’, p. 253). Yet, as I argue below, this does not follow, since refraining from harming someone does not require allowing her to make use of oneself.

It seems permissible for Mother to save Aziz, even though she thereby fails to minimise harm and saving Ben would be no physically costlier for her. We would also likely grant that one may fail to minimise harm if the person facing the lesser harm is one's spouse, parent, sibling, or close friend.

It is tempting, since the subject of each of these permissions counts as a special other, to suppose that the permissions share the same ground. But there is reason to doubt this. Some permissions to save special others are plausibly grounded in the cost to the rescuer of failing to save, just like the permission to save ourselves when doing so does not minimise harm. If Aziz is Cathy's brother or close friend, for example, we can imagine that failing to save him would be very costly for Cathy. But whilst this explains Cathy's permission to save Aziz from a lesser harm, it does not plausibly ground a duty for her to do so. After all, one can opt to bear very high costs for the sake of others – Cathy could simply decide to bear the cost of seeing Aziz suffer and perhaps the resultant damage to their relationship, in order to prevent the greater harm to Ben.

It seems to me that Cathy may indeed save Ben: the cost to Cathy of failing to save Aziz, if Aziz is her sibling or friend, grounds a mere permission for her to save Aziz, making saving Ben supererogatory. In contrast, Mother is plausibly under a duty to save Aziz rather than Ben, at least if Aziz is her non-adult child.⁹ And if she has a duty to save Aziz, this duty cannot be grounded in the cost to Mother of failing to save Aziz. Permissions grounded in

⁹ One plausibly owes duties to one's non-adult children that one does not owe to one's adult children. One is, for example, obliged to feed, clothe and house one's non-adult children, but it is less clear that one is obliged to meet these needs in one's adult children, at least insofar as they are not especially vulnerable or medically dependent.

costs to oneself can be waived: one can elect to suffer the cost rather than exercise the permission. But if Mother has a duty to save Aziz, she may not elect to save Ben instead of Aziz. Nor would an indifferent parent be required to minimise harm rather than save their own child, on the grounds that failing to save their own child is not costly to them. They plausibly owe it to their child to save them even if they do not care about them. Of course, failing to save one's child will typically be sufficiently costly that one would be permitted to save her even if one did not have a duty to save her. Even if one has no duty to save one's adult child, one would be permitted to do so by the terms of the Limited Use View. But we should not infer from this that the permission to save one's child from a lesser harm is generally grounded in the cost to the rescuer of failing to save their child.

I leave it open here which relationships ground duties, rather than permissions, of suboptimal rescue. Where there are such duties, these limit the claims that others have to make use of us, as per the Limited Use View. Ben lacks a claim to make use of Mother when Mother has a duty to save Aziz (just as Ben lacks a claim to make use of Cathy if she can reach him only by mowing down David).

3. Depriving others of life-saving resources

Consider *Equal Canoe*:

Equal Canoe: Aziz is being chased by a shark who will bite off one of his legs. Ben is being chased by a shark who will bite off one of his legs. There is an abandoned one-person canoe nearby. Whoever reaches the canoe first will avoid his shark and suffer no harm. The other person will be bitten by his shark.

We might assume that if Aziz is permitted to save himself in *Self-Help Sharks*, where he climbs aboard the nearby boat rather than assisting Ben, then he must also be so permitted in *Equal Canoe*. After all, if Aziz may save himself from a lesser harm rather than Ben from a greater harm, he may surely save himself from a harm equal to that facing Ben rather than save Ben, as in *Equal Canoe*.

But I think this assumption is mistaken. *Self-Help Sharks* is a case of failing to save. By climbing aboard the boat, rather than assisting Ben, Aziz does not make Ben any worse off than Ben would have been in Aziz's absence. Aziz merely denies Ben the opportunity to benefit from his presence. Another way of putting this is that in *Self-Help Sharks*, Ben needs to make use of Aziz in order to be saved. But Ben lacks a claim to make use of Aziz when this will be very costly for Aziz. Thus, if Aziz refuses to save Ben in *Self-Help Sharks*, Aziz does not thereby deprive Ben of a resource to which Ben has a claim.

But in *Equal Canoe*, whoever uses the canoe thereby deprives the other of a resource that he could have used to save himself, without making use of anyone else. This is more than failing to save: if he takes the canoe, Aziz thereby prevents Ben from saving himself, and vice versa.

Aziz and Ben plausibly have equal claims to make use of the canoe. Since only one can make use of the canoe, their claims here amount to a claim to an equal chance of using the canoe. It seems plausible that, just as Cathy ought to toss a coin to determine whom to rescue when Aziz and Ben face equal threats, Aziz and Ben should, ideally, toss a coin to see who may use the canoe. We should not simply grant that whoever reaches it first (and, perhaps, can fend off the other victim) is entitled to use the canoe. As Victor Tadros argues, we should avoid permitting the morally irrelevant fact of someone's greater physical prowess to determine who gets to use harming-preventing resources.¹⁰ The fact that Aziz is stronger

¹⁰ Tadros, *The Ends of Harm: The Moral Foundations of Criminal Law*, 208

than Ben, and can reach the canoe more quickly and then fight Ben off, does not give Aziz a permission to take the canoe.

Now consider *Unequal Canoe*:

Unequal Canoe: Aziz is being chased by Small Shark, who will bite off one of his legs. Ben is being chased by Big Shark, who will bite off both his legs. There is an abandoned one-person canoe nearby. Whoever reaches the canoe first will avoid his shark and suffer no harm. The other person will be bitten by his shark.

The relationship between Aziz and Ben is the same as in *Equal Canoe*. Neither need make use of the other to survive, but, in taking the canoe, each will deprive the other of a resource that they could have used to save themselves. And yet in this case Ben will suffer a greater harm than Aziz. I argued in *Rescue Sharks* case that facing the greater harm gives Ben a claim to be saved by Cathy. We might think that changing the means of rescue from Cathy to a canoe cannot effect any change in Ben's claims. If Ben has a claim to be saved by Cathy in virtue of facing the greater harm, he also has a claim to save himself using the canoe.

But this is too quick. It matters that in *Rescue Sharks*, Aziz and Ben can avoid harm only by making use of another agent, Cathy. Since Cathy ought to minimise harm, she has a duty to save Ben. Aziz has no claim to make use of Cathy when doing so conflicts with her duty to prevent a greater harm by saving Ben. But in *Unequal Canoe*, Aziz's survival does not depend on his making use of another agent on whose assistance he has no claim. He needs only to make use of himself and the canoe. In this respect, *Unequal Canoe* is akin to *Self-Help Sharks*, in which Aziz may climb aboard the boat rather than assisting Ben, even though Ben will suffer a greater harm.

Since in *Self-Help Sharks* Aziz does not, by saving himself, deprive Ben of a resource to which Ben has an equal claim, Aziz need not even toss a coin before saving himself. He may simply climb aboard the boat. But taking the canoe in *Unequal Canoe* does involve depriving Ben of a resource to which Ben also has a claim. Thus, whilst Aziz need not simply cede the canoe to Ben, he may not simply take it either. Rather, as in *Equal Canoe*, Aziz and Ben should toss a coin to see who gets to use the canoe. Ben's facing the greater harm does not entitle him to simply take the canoe. By depriving Aziz of a fair chance to use this life-saving resource, Ben would wrongly force Aziz to bear a cost for his sake that Aziz is not required to bear rather than save himself.

What should we say about *Speedy Shark*?

Speedy Shark: Aziz and Ben are being chased by a shark. The shark will bite only the first person it reaches; the other will make it to shore. Aziz is tall, and so the shark will bite off only one of his legs. Ben is short, and so the shark, who is hungry, will bite off both his legs. Aziz is a faster swimmer than Ben. He can keep ahead of Ben, making it safely to shore.

It seems permissible for Aziz to swim faster than Ben. But, again, this isn't a straightforward case of failing to save: rather, Aziz requires that Ben be bitten in order to avoid being bitten himself. *Shark* thus involves Aziz's making harmful use of Ben, rather than merely failing to rescue him.

However, this instance of harmful using is plausibly justified in light of the fact that Aziz and Ben are symmetrically situated with respect to harmfully using each other – that is, Aziz can escape only if Ben is bitten, and vice versa. When there is no way to avoid someone's being harmfully used, such using lacks its typical moral significance. Allowing the faster

swimmer to take the canoe in *Equal Canoe* or *Unequal Canoe* is objectionable because it allows that swimmer to unfairly obtain a life-saving resource (the canoe) to which each threatened person has an equal claim. But in *Speedy Shark*, Aziz is not using his own resources (his swimming ability) to deprive Ben of a life-saving resource to which Ben has an equal claim. The only resource of which either will deprive the other in *Speedy Shark* is his own body, which, given the cost involved, the other has no claim to make use of. Thus, Aziz need not toss a coin to see whether he may swim faster than Ben.¹¹

4. Control of Resources

Of course, we plausibly have claims to make use of resources other than our own bodies. I suggest that Aziz may also save himself without giving Ben an equal chance in *Own Canoe*:

Own Canoe: As in *Unequal Canoe*, except that the canoe belongs to Aziz, who brought it along because he is aware of shark attacks in the area, and wanted to minimise his chances of being bitten.

¹¹ To be clear: my claim is not that, provided that one is not making use of a person, or that using is unavoidable, one is permitted to harm them in order to save oneself. It is, for example, impermissible for Aziz to defend his life against an attacker, Villain, if doing so will kill innocent Ben as a side-effect. It is also impermissible for Aziz to try to impede Ben's attempt to out-swim the shark by e.g. throwing bits of driftwood at Ben. Both harming and failing to save are subject to proportionality constraints, and the proportionality constraint on harming is more stringent than that on failing to save. One must be securing considerably more good that one inflicts in order to justify harming a non-labile person, even when one does not make use of that person. The exception in *Speedy Shark* arises only because useful harming is reciprocal and unavoidable.

The Limited Use View holds that agents have only limited claims to make use of others and their legitimate resources. On the assumption that Aziz legitimately acquired the canoe (by whatever standard of legitimate acquisition we prefer), the Limited Use View holds that he is entitled to use it for his own sake, even if its use by Ben would prevent somewhat more harm. Thus, using the canoe does not deprive Ben of access to a resource to which he has an equal claim. Rather, Ben can save himself only by making use of something to which Aziz has a claim. Since allowing Ben to use the canoe would be very costly for Aziz, Ben has no claim to make use of it.

Our claims to our resources are plausibly weaker than our claims to ourselves. Intuitions regarding the strength of our claims to our resources are no doubt influenced by background thoughts about the generally unfair distribution of goods between individuals. But insofar as non-consequentialists are committed to granting agents some space to pursue their own ends rather than maximise the good, they seem committed to the claim that there are some resources that one may use for one's own sake, even when doing so does not maximise the good. Since we are permitted to use some of our resources to pursue comparatively trivial ends – such as buying theatre tickets, and collecting records – rather than preventing harm to others, we must also be permitted to use them to prevent harm to ourselves rather than preventing (even greater) harm to others.

This seems especially plausible when we have deployed our resources in ways that are specifically intended to enable us to avoid harm to ourselves.¹² Compare the following two cases:

¹² Frowe, 'If You'll Be My Bodyguard', p. 224

Vaccine: Amir, fearful of a life-threatening illness sweeping his local area, buys some vaccine. Given his physiology, Amir needs all of his vaccine to immunize himself. The same amount could immunize three other people.

Paint: Bella buys some specialist paint for her art project. By sheer coincidence, it turns out that this paint is also a vaccine against a life-threatening illness sweeping her local area. Given her physiology, Bella needs all her paint to immunize herself. The same amount could immunize three other people.

It seems to me very plausible that Amir may use his vaccine to save himself, and that it would be impermissible to take it from him. Insofar as non-consequentialists grant space for individuals to pursue their own ends and shape their lives as a way of respecting their autonomy, we have good reason to respect Amir's claim to the vaccine, which he bought in order to protect himself from the illness.

My intuition is that taking Bella's paint is significantly less bad than taking Amir's vaccine. Taking the paint does not thwart a plan that Bella has for avoiding a serious illness; she has not bought the paint as a means of shaping her life to this end. Of course, Bella bought the paint as part of pursuing her end of making art. But it seems much easier to justify disrupting someone's art-related plans compared to disrupting their life-saving plans. This is not to say that Bella does not have the end of saving her own life, just as Amir does, and that she would not come to regard the paint as valuable for promoting this end once she recognises its medicinal powers. But the fact that its ability to serve this end results from pure luck, rather than from design, seems to make her claim to its use less stringent. The paint *qua* vaccine is less enmeshed in Bellas's life plans than Amir's vaccine is in his plans.

These issues are complex. Luckily, we need not settle them here.¹³ The important point here is simply that insofar as we have claims to at least some resources (aside from ourselves), and may use them in sub-optimal ways, others have only limited claims to make use of those resources, as per the Limited Use View. This point is not undermined by the fact that the boundaries of our claims to resources, and their underpinnings, are contested. Note that the permission to make sub-optimal use of resources cannot obtain only when there are no serious harms at stake. It's always true, given the state of the world, that one could save lives with the money one spends on theatre tickets.¹⁴ As above, if one may nevertheless use one's resources to pursue these comparatively trivial ends, one may surely use them to secure one's basic interests, as Aziz will do in *Own Canoe*.

Given this, since Aziz has brought along his own canoe in order to avoid being bitten by a shark, he need not toss a coin in order to give Ben a fair chance of using his canoe, even though Ben will suffer the greater harm. We can grant this even if we think that Aziz has a much weaker claim if he brought along his canoe with the intention of, say, photographing it in a picturesque setting, and not as part of a plan to limit his exposure to sharks.

5. *Failing to save as an agent-relative prerogative*

That we have limited claims to make use of others and their resources does the explanatory work that some accounts of the duty to rescue assign to *agent-relative prerogatives*. As Jonathan Quong, a prominent defender of agent-relative prerogatives, puts it, each person has “a powerful agent-relative permission to avoid sacrificing or significantly risking their own life

¹³ One question, of course, will be whether using one's resources to avoid threat *y* strengthens one's claim to those resources with respect to avoiding threat *z*.

¹⁴ See also Frowe, 'If You'll Be My Bodyguard', p. 221

the sake of others”.¹⁵ According to these accounts, we each have a prerogative to weight our own interests, and the interests of special others, more heavily than the interests of strangers.¹⁶ Aziz may save himself rather than Ben, even though Ben will suffer a greater harm, because Aziz may care more about harms to himself than about harms to Ben.

Of course, one may not assign one’s own interests infinitely more weight than the interests of strangers – Aziz may not save himself from a broken finger at the cost of failing to save Ben’s life. But Aziz may accord his own interests substantially more weight, such that he may allow Ben to suffer the loss of two legs in order to prevent his suffering the loss of one.

5.1 Prerogatives as augmenting interests

The claim that the scope of the duty to rescue is constrained by a prerogative to weight one’s own interests more heavily than the interests of strangers faces several difficulties. While it gets the intuitively right result in a range of cases, it is not obviously plausible as an explanation of the limit on our duties to rescue more generally. When we spell out what it means to say that Aziz may care more about his own interests, such that he may let Ben suffer the greater harm, we seem to be committed to the claim that Aziz may treat the loss of his one leg as being at least as morally significant as the loss of both Ben’s legs. In effect, we seem to be saying that agent-relative prerogatives affect what counts as the lesser evil.

Lesser-evil justifications are typically invoked to explain the permissibility of harming non-labile people, in light of the greater good that one can thereby achieve. These are not straightforward consequentialist justifications: although they are sensitive to outcomes, they

¹⁵ Quong, ‘Killing in Self-Defence’, 516 – 517. See also Davis, ‘Abortion and Self-Defence’; Bazargan, *Complicity in War*, Ch. 7, Section 1.2, 2.; Fabre, *Cosmopolitan War*, p. 61.

¹⁶ There is disagreement about how special relationships have to be to generate agent-relative prerogatives. I take no stance on that debate here.

are also sensitive to deontological considerations.¹⁷ As I suggested in Section Two, one might be justified in foreseeably but unintentionally killing one for the sake of five, but one would not be justified in usefully killing one for the sake of five.

Lesser-evil justifications are usually thought to weigh goods and harms impartially, providing objective justifications for harming on which anyone may act.¹⁸ But some writers argue these justifications are also sensitive to the subjective status of harms, such that a prospective victim may treat harms to herself as especially weighty compared to harms to others. For example, Cécile Fabre argues that even if a third party would not be permitted to harm a non-liable bystander for a victim's sake, the victim might have "greater latitude" to do so, given her special stake in her own survival.¹⁹ If one's special stake in one's own interests warrants giving those interests extra weight when it comes to harming others, it presumably also does so when it comes to failing to save others. Thus, once we duly augment Aziz's interest in retaining his leg, Aziz may treat the loss of his one leg as an equal or greater evil than the loss of Ben's two legs, whilst a stranger must regard the loss of Ben's two legs as the greater evil.

This not only seems like a rather strange act of self-deception on Aziz's part. It also struggles to explain the plausible, widely-held view that Aziz may fail to save not only Ben's legs, but also Ben's life – indeed, several people's lives – in order to avoid the loss of his own leg. It is implausible that one might sensibly regard the loss of one of one's legs as being as bad as, or perhaps worse than, say, the death of four people. The more plausible position

¹⁷ See Frowe, (2018) 'Why We're Required to Turn the Trolley: On Lesser-Evil Justifications for Harming', *The Philosophical Quarterly* 68/272: 460 – 480; David Rodin, 'Justifying Harm', *Ethics* 112: 74-110

¹⁸ See e.g. McMahan, 'Debate: Justification and Liability in War', *Journal of Political Philosophy*, 16: 227–44; McMahan, 'Self-Defence Against Justified Threateners', in H. Frowe and G. Lang (eds) *How We Fight: Ethics in War*, 104–37 (Oxford: OUP); Frowe, 'Lesser-Evil Justifications for Harming'

¹⁹ Fabre, *Cosmopolitan War*, p. 63. I return to the idea of prerogatives as justifying harming below.

seems to be that one may sometimes fail to save *even though* this is not the lesser evil – considered either impersonally, or from one’s own perspective.²⁰ After all, Aziz’s permission to fail to save in such a case doesn’t seem to depend on his sincerely regarding the loss of his leg as worse than the loss of four lives.²¹ As described above, our duties to rescue are limited because individuals enjoy protection against being used as tools for the sake of others precisely when this would maximise the good (or minimise evil).

Of course, it is plausibly worse *for Aziz* if he suffers the loss of one leg rather than allowing Ben to suffer the loss of two, or the four to suffer death. But the worseness of the outcome from Aziz’s perspective does not seem to determine whether he is permitted to fail to save. Whenever rescuing imposes any cost on the rescuer that she would not otherwise bear, it will be worse for the rescuer to rescue rather than refrain, at least when she is rescuing strangers. It is worse for Aziz if he suffers the loss of a finger or a broken arm rather than failing to rescue, since the death of four strangers will impose no cost on him at all. But he is nonetheless required to suffer these costs for the sake of the four.

Notice that denying that prerogatives augment harms in lesser-evil or proportionality calculations is compatible with the idea that harms can be morally weighted for the purposes of proportionality calculations. We might, for example, believe that harms to a culpable attacker count for more than harms to her innocent victim, or to a bystander. But this moral weighting reflects that idea that the attacker’s moral responsibility for an unjust threat decreases the significance of harms to her. It is much less plausible that such weighing can take place with respect to harms to non-liable people, such that harms to Aziz increase in

²⁰ As above, there may be some amount of harm that Aziz is required to prevent even at the cost of losing his leg.

²¹ See also Jonathan Quong, ‘Killing in Self-Defense’, p. 517

significance in proportionality calculations, simply in virtue of being harms to Aziz, compared to harms to other innocent people.

The role of these augmented interests, and their bearing on lesser-evil and proportionality calculations, is thus unclear. The loss of one leg rather than two is not the lesser evil from an impersonal perspective. And whether one may refrain from saving does not turn on whether one regards failing to save as the lesser evil, nor on whether saving is worse for the rescuer than failing to save. Rather, the degree of cost one can be required to bear for the sake of saving strangers – whatever that cost is – seems to be fixed impersonally. It's true that some failures to save might *also* be the lesser evil. If Cathy can save Ben from a broken finger only by suffering a broken arm, failing to save is the lesser evil. But what makes Ben lack a claim to be saved is that he has no claim to make costly use of Cathy in order to avoid a smaller cost to himself. We should not infer from the fact that failing to save is the lesser evil in such cases that failing to save is justified only when it is the lesser evil.

5.2 *The scope of agent-relative prerogatives*

A further worry with using prerogatives to explain the limit on our duties to rescue is that we might thereby commit ourselves to an overly permissive stance regarding our duties not to harm. The historically orthodox view of prerogatives holds that while they bear on the permissibility of failing to save, they do not bear on the permissibility of harming.²² But if an agent-relative prerogative is a permission to weight some people's interests more heavily than others, it's not clear why that permission would be limited to failing to save other people, and not extend to harming other people. After all, I care more in general about my own interests,

²² See, e.g. Samuel Scheffler, *Boundaries and Allegiances: Problems of Justice and Responsibility in Liberal Thought*, (Oxford: OUP, 2002); Jeff McMahan, 'The Limits of National Partiality', Robert McKim and Jeff McMahan, *The Morality of Nationalism*, (OUP, 1997): 107–138, pp. 132-133; Thomas Pogge, 'Cosmopolitanism: A Defense', *Critical Review of International Social and Political Philosophy* (2010) 5, 3: 86-91.

and those of my nearest and dearest; I do not have a special concern that applies only in cases in which I have a prima facie duty to aid others.

Of course, the moral worseness of causing, rather than allowing, harm makes it harder to justify harming an innocent person in order to avoid harm to myself compared to failing to save an innocent person in order to avoid harm to myself. But this should generate only a difference in degree regarding how much harm I may impose for my own sake, compared to how much harm I may allow for my own sake. It does not support the view that prerogatives are relevant to failing to aid, but irrelevant to harming. If my interests count for more, this should be reflected in the degree of harm I may inflict on both liable and non-liable people for my own sake, compared to that which I may inflict for the sake of strangers.

Jonathan Quong is the most prominent defender of the Broad Scope Analysis of agent-relative prerogatives – that is, the view that prerogatives justify both failing to save and harming.²³ Quong argues that our agent-relative prerogatives can permit us to cause harm in the absence of either a lesser-evil or liability-based justification for doing so.²⁴ Prerogatives are thus an independent type of justification for non-consensual harming, in addition to liability and lesser-evil justifications.

I think it's true that if agent-relative prerogatives underpin our permissions to fail to save, then they must also bear on our permissions to do harm. Thus, by showing that prerogatives do not plausibly bear on our permissions to do harm, we thereby undermine the view that they bear on our permissions to fail to save. In what follows, I argue that we have good reason to reject Quong's arguments for the view that prerogatives can justify harming.

5.2.1 Prerogatives as independent justifications for harming

²³ See Quong, Quong, 'Killing in Self-Defence'; Quong, 'Agent-Relative Prerogatives to Do Harm'.

²⁴ Quong, 'Agent-Relative Prerogatives to Do Harm',

Quong has recently proposed two arguments in defence of the Broad Scope Analysis.²⁵ The first argues that one has an agent-relative permission to kill innocent threateners who will make use of one's body; the second argues that one has an agent-relative permission to kill innocent threateners who will not make use of one's body.

The argument in defence of killing innocent threateners who will make use of one's body draws on Judith Jarvis Thomson's well-known case, *Violinist*.²⁶

Violinist: A famous musician, Violinist, is dying from a kidney ailment. Victim alone has a particular blood type that can cure him, if Violinist is connected to her body in a way that enables him to use her circulatory system for nine months. The Society of Music Lovers kidnap Victim and Violinist while they are both unconscious, and connect his body to hers.

Quong argues that it is permissible for Victim to unplug herself from Violinist, knowing that this will cause Violinist's death. And yet, Violinist, being unconscious, is not responsible for being connected to Victim, and therefore not liable to be killed. There is also no lesser-evil justification for killing Violinist, since, impersonally considered, Violinist's death is a worse harm than the harm facing Victim. The only possible explanation of the permissibility of Victim's unplugging herself is that she has an agent-relative prerogative to do so. Hence, agent-relative prerogatives can justify harming. Violinist has a right not to be killed by Victim, but this right is permissibly infringed by Victim.

²⁵ Jonathan Quong, 'Killing in Self-Defence'; Quong, 'Agent-relative Prerogatives to Do Harm',

²⁶ The original case is in Judith Jarvis Thomson, 'A Defense of Abortion' *Philosophy and Public Affairs*

An upshot of this argument is that whilst Victim may unplug herself, other people may not unplug her even if she is explicitly refusing her consent to being used by Violinist in this way.²⁷ From an agent-neutral perspective, Quong argues, nothing could justify bringing about Violinist's death to "save another from nine months in a hospital bed."²⁸

Quong observes, though, that this argument might generate defensive rights of only fairly limited scope. Violinist is a particular type of innocent threatener – namely, one who must make use of Victim's body to survive. Since being made use of is morally significant, we might think that this at least partly explains why Victim may kill Violinist. And yet Quong thinks that our prerogatives are broader in scope than this. We may also kill people who do not need to make use of us, as in *Defensive Trolley*:

Defensive Trolley: A runaway trolley is heading to where it will kill five people. Frank, a bystander, diverts the trolley to where Erica is trapped. Erica can prevent herself from being killed by the trolley by throwing a grenade that destroys the trolley and kills

Frank

as a side-effect.

Quong argues that Erica may kill Frank. If Frank is permitted to kill Erica in the course of saving the five, "how can it be impermissible for Erica to change the result so that it is Frank, rather than her, who dies so long as the five will be saved either way?" Yet, he says, Frank is not liable to be killed – because he acts with objective justification – and Erica has no lesser-

²⁷ Quong briefly considers the idea that, at best, special others, e.g. Victim's spouse, may be permitted to unplug Victim, but does not offer a full defence of that claim. Since I don't think the permission to unplug is agent-relative, I need not engage with that claim here. But for rebuttal of Quong's suggestion that one can transfer one's agent-relative prerogatives, see Frowe, 'If You'll Be My Bodyguard'.

²⁸ Quong, p. 823

evil justification for killing him. Only an agent-relative prerogative can explain the permissibility of Erica's throwing the grenade that will kill Frank.

5.3 *Duties and using*

I think that Quong is correct about the permissibility of disconnecting in *Violinist*, but wrong about what explains that permissibility. I think he is incorrect about the permissibility of killing Frank in *Trolley*.

It's true that, as things stand in *Violinist*, if Victim does nothing, Violinist will be saved. In a standard rescue case, it is only if the rescuer acts that the victim is saved. But this difference does not mean that Victim is not saving Violinist: clearly, she *is* saving him, for as long as she allows him to make use of her body. The relevant question is whether Violinist has a claim to be saved by Victim at the cost to Victim of having someone make use of her body for nine months. And it seems uncontroversial that Violinist has no such claim, because this is, of course, why it is uncontroversial that the members of the Society of Music Lovers act wrongly in forcibly connecting Victim to Violinist in the first place.²⁹

We can also see that Violinist lacks a claim to be connected to Victim by thinking about versions of the case in which Violinist is not unconscious throughout. If he is conscious when he is kidnapped, he ought not to agree to the plan – indeed, he ought to do his best to thwart it. Victim is under no duty to save Violinist at the cost of nine month's use of her body, and thus he should try to prevent her being forced to save him. Note that Violinist should do this even foreseeing the lethal cost to himself. I may fail to save someone to avoid a lethal cost to myself; I may not force someone else to save me to avoid a lethal cost to myself when doing so imposes on her a cost that she is not required to bear.

²⁹ As Quong grants on p. 823

If Violinist wakes up after he has been connected to Victim, he has a duty to disconnect himself if Victim asks him to do so, or if Victim is unconscious and cannot give or refuse consent. Violinist cannot simply presume consent: at best, we allow hypothetical consent with respect to actions that are intended to benefit the person whose consent is presumed.³⁰ If Violinist cannot disconnect himself, he must ask someone else to do it. And Quong agrees with this: for him, Violinist's being unconscious is essential precisely because, if he were awake, he ought to disconnect himself. *Intentionally* remaining connected to Victim would be a violation of her right not to be used, rendering Violinist liable to defensive harm.³¹

But if one lacks a right to use a person's body intentionally, one cannot acquire such a right by using it unconsciously. If Victim has a right that a conscious Violinist disconnect himself, or have himself disconnected by others, she may disconnect him or have him disconnected by others irrespective of whether he is conscious. Note that none of this requires us to take a stance on the relationship between agency and violating rights, nor the relationship between violating rights and liability. It requires only the very plausible thought that Violinist lacks a right to make use of Victim's body – which, as above, explains why the members of the Society of Music Lovers act wrongly in connecting Violinist to Victim. If Violinist had such a right, the Society would not act wrongly in connecting them. Given the extent of the wrongful usage – nine continuous months – it seems to me that it is proportionate to lethally prevent the use of Victim's body by Violinist. Violinist does not have a claim to make such extensive use of Victim even to save his own life. The fact that the

³⁰ Or, perhaps, to benefit someone with whom she has a special relationship, but is under no duty to rescue. For example, we might think that it is permissible to use an unconscious person's rare blood type to save her brother's life, even if she has no duty to save him, if we reasonably believe she would consent if she could.

³¹ Quong, 'Agent-Relative Prerogatives to do Harm', p. 822

wrongful actions of others mean that Victim must now stop Violinist from using her, rather than merely fail to save him, cannot make it impermissible for Victim to disconnect herself.³²

Quong's claim that it would be impermissible for a third party to disconnect Victim, even if she is conscious and explicitly refusing consent to be used, strikes me as especially implausible. His description of the third party as merely choosing whether to kill one person or save another from nine months in a hospital bed is inapt.³³ That might appropriately describe a case in which, for example, a doctor is deciding whether to offer the last of some drug to either a patient whose life it will save, or a patient for whom it will avoid the need for nine months' bed rest. But it does not capture a case in which a doctor is deciding whether one patient should be allowed, for nine months, to make non-consensual use of another patient's body to benefit himself. So put, it is deeply counter-intuitive that the doctor may not prevent the non-consensual use of one patient by another.

To see this even more plainly, imagine that being connected to Violinist will wear out Victim's kidneys, so that at the end of the nine months Violinist will be restored to health and Victim will die. But, Violinist is unconscious, so his killing of Victim is unintentional (call this case *Lethal Violinist*). If Quong is correct that there is no morally relevant difference between Victim and Violinist, it seems that the doctor must let Violinist kill Victim, rather than disconnect him. After all, in terms of the outcome, it's no better that Victim live than

³² The Limited Use View thus secures defensive permissions against at least non-labile threateners who will otherwise make costly use of one's body, since defence in such cases is justified by the limits on our duties to rescue. It does not follow from this that one has defensive permissions against non-labile threateners *only* when they will otherwise make use of one's body. Although I reject (in the next section, and elsewhere) Quong's view that one may defend oneself against objectively justified threateners, I remain neutral here on the question of defence against non-labile, objectively unjustified threateners (such as a toddler with a gun, or person in the grip of schizophrenic episode).

³³ Quong, p. 823

Violinist. And given the moral significance of the distinction between doing and allowing, Quong's view implies that the doctor ought to allow Violinist to kill Victim, rather than kill Violinist to save Victim. But that cannot be right. They are both innocent, in that neither is morally responsible for an unjust threat to the other. But it surely matters that Violinist is lethally and non-consensually making use of Victim's body. The fact that Quong's agent-relative account cannot accommodate fact this should make us deeply suspicious that agent-relativity explains Victim's permission to disconnect. Anyone may and should prevent the wrongful, non-consensual use of Victim's body on her behalf (and we know it *is* wrongful, since we know that the Society act wrongly in connecting her, and Violinist would act wrongly in failing to disconnect himself). We do not need to invoke agent-relative prerogatives to explain Victim's permission to disconnect, and such prerogatives cannot explain the very plausible view that others have duties to disconnect her.

5.4 Defence against non-using threateners

Quong argues that agent-relative prerogatives also support a permission to kill non-liable people who will not otherwise make use of one's body, such as Frank in *Defensive Trolley*. Quong argues that there is no reason for the cost of saving the five to fall on Erica rather than Frank. Erica may therefore switch the trolley towards Frank even though there is no lesser-evil justification for doing so, and Frank is not liable to be killed. Notice that nothing in Quong's argument limits Erica's prerogative to killing Frank: rather, it licences Erica's killing any bystander as a consequence of saving her own life. Neither Frank nor a bystander violate Erica's right not to be killed; neither Frank nor a bystander is liable to be killed to save Erica.

Quong suggests that Frank and Erica are on a moral par.³⁴ But this seems false. Granted, both are morally innocent. But, as we saw in *Lethal Violinist*, this does not entail

³⁴ Quong, 'Agent-Relative Prerogatives to Do Harm', 827

across-the-board moral parity. It is permissible to lethally disconnect Violinist to save Victim even though Violinist is morally innocent with respect to the threat he poses. Given this, merely pointing to the equal innocence of Frank and Erica will not show them to be on a moral par. Not all innocent people have equal rights to kill. Frank poses an objectively justified threat that he is under no duty not to pose.³⁵ By using force against him, then, Erica is not forcing Frank to comply with a duty that he has not to harm her. She is simply killing one person to avoid letting herself die, even though the person who will otherwise kill her is objectively permitted to kill her. Since, as I have argued, Victim's permission to disconnect in *Violinist* does not rest on agent-relative prerogatives – indeed, the worrying result regarding third party duties gives us positive reason not to adopt such an explanation – Quong cannot rely on *Violinist* to support the relevance of prerogatives in *Defensive Trolley*. Since Erica is not being forced to save the five or Frank – Frank's demand is only that she not kill him – refraining from killing Frank is not to allow Frank to make use of Erica for the sake of the five. It is thus impermissible for Erica to kill Frank.

The foregoing arguments give us reason to reject the idea that agent-relative prerogatives justify harming. And yet, if these prerogatives bear on our justifications for failing to save, by permitting us to care more about our own interests, they *ought* to bear on justifications for harming as well. Since they do not, we have further reason to doubt their relevance to our duties to rescue.

5.2.3 Agent-relative duties and lesser-evil justifications for harming

³⁵ I argue elsewhere that Frank is required to turn the trolley. If so, the idea that he could be an appropriate target of force in virtue of doing what morality requires looks even more implausible. See Frowe, 'Lesser-Evil Justifications for Harming: Why We're Required to Turn the Trolley'.

Seth Lazar argues that agent-relative duties (rather than prerogatives) bear on our duties not to harm. His argument for this view holds that our relationships to special others, such as our children, bear on lesser-evil justifications. I have granted that where a rescuer has a duty to save a special other, this limits the claims that others have to make use of her, thereby limiting their claim to be saved by her. I do not think we should infer from this that our duties to save special others limit other's claims not to be harmed by us.

Lazar defends his claim regarding lesser-evil justifications by way of the following three cases:

Meteor: A single meteor is heading towards the earth. If Alice does nothing, it will kill five innocent people. Alice can use a missile launcher to divert the meteor away from the five towards another innocent person, Clare.

Lazar claims that in *Meteor* Alice ought to save the five rather than refrain from killing Clare. This tells us that saving the five is at least as important as not killing Clare. Now consider,

Two Meteors: Two meteors are heading towards the earth. One is heading towards five innocent people. One is heading towards Alice's daughter, Bethany. Alice can divert only one meteor, which will then land harmlessly in a field. The other meteor will kill whoever is in its path.

Lazar claims that in *Two Meteors* Alice ought to save Bethany rather than save the five. This tells us that saving Bethany is at least as important as saving the five. But of course, this importance must be explained by the fact that Bethany is Alice's daughter – a stranger, with

no agent-relative interests at stake, would not be even permitted to save Bethany instead of five other people, let alone required to do so.

Finally, consider *Diversion*:

Diversion: A single meteor is heading towards Alice's daughter, Bethany. Alice can divert the meteor to where it will kill Clare.³⁶

Lazar claims that in *Diversion* Alice ought to lethally divert the meteor away from Bethany and towards Clare. After all, we've seen that saving Bethany is at least as important as saving the five. And Alice is required to kill Clare as a side-effect of saving the five. Alice must therefore be required to kill Clare as a side-effect of saving Bethany. Hence, agent-relative duties can justify killing.

Lazar recognizes that most non-consequentialist accounts of agent-relative interests hold that such interests cannot justify harming. But he argues that such accounts are overly sensitive to the distinction between doing and allowing, and insufficiently sensitive to different types of harming. He suggests that while agent-relative interests cannot justify intentional, opportunistic harming, they can justify foreseeable, eliminative harming. He argues that Alice's killing of Clare in *Diversion* is an instance of foreseeable eliminative harming.³⁷

Thinking of claims to be saved as limited claims to make use of others, as I have proposed, gives us a different analysis of Alice's permissions in these cases. Alice ought to kill Clare as a side-effect of saving the five in *Meteor* because she has a lesser-evil justification for

³⁶ Lazar, 'Associative Duties and the Ethics of Killing in War', 19 - 20

³⁷ Lazar's understanding of eliminative harming is at odds with other accounts in the literature, most of which describe killing Clare as a foreseen side-effect, rather than an eliminative, killing. This need not detain us here.

doing so, grounded in the fact that the death of five people is substantially worse than the death of one person, impartially considered.³⁸ And, she ought to fail to save the five in *Two Meteors* because it is a case of failing to aid, in which the five need to make use of Alice in order to survive. The five have no claim to make use of Alice when doing so is either very costly for her, or conflicts with her other duties, including her duty to save her child. Thus, Alice is permitted to save Bethany rather than save the five. But Clare does not need to make use of Alice to survive in *Diversion*. She merely needs Alice to refrain from killing her. Thus, Alice cannot appeal to the limited claims that others have to make use of her to justify killing Clare. Since there is no lesser-evil justification for killing Clare in *Diversion*, killing Clare is impermissible.

The success of Lazar's rival argument depends on the claim that we may fail to save only when doing so is the lesser evil. Lazar says that his contention is "simply that our deep personal relationships can affect how much harm can be inflicted as the lesser evil."³⁹ But his argument needs more than this: it goes through only if the amount of harm that Alice may fail to prevent is also determined by what is the lesser evil. Only then could the fact that Alice ought to fail to save the five in order to save Bethany in *Two Meteors* show that her agent-relative duties bear on lesser-evil justifications. And this is the crucial move: once we grant that agent-relative duties bear on lesser-evil justifications, and we agree that lesser evil justifications can justify harming, we have strong support for Lazar's conclusion that one may harm on the basis of agent-relative duties.

But, as we saw above, the scope of our duties to rescue cannot be plausibly explained by lesser-evil considerations. Aziz may fail to save even when doing so is clearly not the lesser

³⁸ I defend the view that acting on lesser-evil justifications for harming is required in 'Lesser-Evil Justifications for Harming'.

³⁹ Lazar, 'Associative Duties and the Ethics of Killing in War', p. 18

evil, and can be required to save even when doing so is clearly worse for him. If lesser-evil justifications are not what explains why Alice ought to fail to save the five in *Two Meteors*, we have no reason to grant Lazar's view that agent-relative duties bear on lesser-evil justifications. Hence, there's no reason to grant that Alice may kill Clare in *Diversion*.

If, as I have argued, claims to be saved are limited claims to make use of others, where the limit is set by the cost to the rescuer and the duties they owe to others, the fact that Ben lacks a claim to be rescued by – that is, make use of – Aziz does not imply that Ben might also lack a claim not to be harmed by Aziz. Consider *Defensive Shark*:

Defensive Shark: Aziz is being chased by Small Shark, who will bite off both of Aziz's legs if she catches him. Ben is on a boat. Aziz can use a grenade to kill Small Shark, but the blast will also blow off one of Ben's legs.

If we require Aziz to refrain from throwing the grenade because doing so will harm Ben, we do not thereby require Aziz to let Ben make use of him or his resources. Given this, the fact that refraining from harming Ben will force Aziz to bear a serious cost lacks the purchase it has in rescue cases in which Ben's survival depends on his making use of Aziz. Of course, one may sometimes harm others for one's own sake, and for the sake of others. But such harming must be justified as the lesser evil, and, as I have argued, lesser-evil justifications track impersonal goods and harms.⁴⁰ As I argue in Section Seven, whether one acts in self-defence or other-defence bears on whether one is permitted to use defensive force. But when one is so

⁴⁰ See also Jeff McMahan, 'Proportionality and Necessity in *Jus in Bello*', Lazar and Frowe (eds.) *Oxford Handbook of the Ethics of War* (New York: OUP, 2015), p. 9; Jeff McMahan (2014) 'Self-Defence Against Justified Threateners' in Frowe and Lang *How We Fight: Ethics in War* (Oxford: OUP, 2014), p. 109

permitted, there is no difference in the degree of force one may employ in the course of defending oneself compared to defending a stranger.

6. *Choosing between deaths*

Before moving on, it is worth addressing a challenge that proponents of the Broad Scope Analysis might level against the Limited Use View. Consider *Busy Trolley*:

Busy Trolley: A runaway trolley is lethally heading towards five people. Bystander can lethally divert the trolley towards herself, or towards innocent Workman, who is trapped on a side-track.

Most people believe that Bystander need not divert the trolley towards herself, but that it is permissible for her to divert it towards Workman.⁴¹ If this is correct, it looks as if agent-relative prerogatives might justify harming after all. This would explain why Bystander may kill Workman rather than herself.

But the Limited Use View can also explain the permissibility of Bystander's killing Workman. In order to be saved, the five need Bystander to make use of herself for their sake: they need her to divert the trolley. Since making use of herself in this way will impose a lethal cost on Bystander, she may refrain from using herself for the sake of the five.⁴² They have no

⁴¹ The case is Thomson's ('Turning the Trolley'). Thomson argues that since it would be supererogatory for Bystander to divert towards herself, she may not divert towards Workman. But few people seem persuaded by this. See, for example, William FitzPatrick 'Thomson's Turn on the Trolley', *Analysis*; Walen and Wasserman, 'Agents, Impartiality and the Priority of Claims Over Duties: Diagnosing Why Thomson Still Gets the Trolley Problem Wrong by Appeal to the "Mechanics of Claims"', *Journal of Moral Philosophy* 9 (2012): 545–571; Tadros, *The Ends of Harm*, p. 120

⁴² Tadros suggests this in *The Ends of Harm*. p. 120

claim to be saved when doing so imposes this cost on the prospective rescuer. But, as we noted in *Defensive Trolley* in the previous section, diverting towards Workman does not involve making use of Workman. Thus, even though the five have no claim to make use of Workman if doing so will force him to bear a lethal cost, they do have a claim that Bystander save them by diverting towards Workman, since Bystander does not thereby use Workman as a means of saving the five. The five are being rescued by Bystander, not by Workman.

It's morally significant, then, that Bystander's options are either harming Workman or making harmful use of herself. Contrast *Busy Trolley* with *Busy Trolley Two*:

Busy Trolley Two: A runaway trolley is lethally heading towards Victim. She can divert the trolley down a side-track to where it will kill five innocent people, divert it down a different side-track to where it will kill Engineer, or let herself be killed by the trolley.

Victim has a choice between letting herself die, and killing either Engineer or the five. Killing the five to save herself is clearly impermissible. But so too is killing Engineer. Such a killing cannot be justified as a side-effect of saving the five, since the five are not presently threatened. And Victim is not saving either the five or Engineer by refraining from diverting towards them. This is not a case of imposing a harm that is justified on lesser-evil grounds, but rather a case in which one must either kill a non-liable person or persons, or let oneself die. Since there is no lesser-evil justification that can overcome Engineer's right not to be killed, Victim must refrain from diverting the trolley.

Similar reasoning applies in *Busy Trolley Three*:

Busy Trolley Three: A runaway trolley is lethally heading towards five people. Victim can divert it away from the five down a sidetrack, on which Victim is standing. The

sidetrack has a branch, down which the trolley can again be diverted before it hits Victim. Controller is standing on this branch. Whoever is hit by the trolley will be killed.⁴³

One might think that since Victim is permitted to divert the trolley away from the five towards Workman in *Busy Trolley*, she may divert away from the five and then divert again towards Controller in *Busy Trolley Three*. But this would be a mistake. In *Busy Trolley Three*, killing Controller cannot be justified as a side-effect of saving the five: they are saved when the trolley is first diverted. If Victim subsequently diverts down the branch towards Controller, she is saving only herself, which is disproportionate and hence impermissible. In *Busy Trolley Three*, then, Victim may refrain from saving the five, since they have no claim to make lethal use of her, and she can permissibly save them only in a way that involves making lethal use of herself. But if she chooses to save the five, she may not then divert the trolley towards Controller. Killing Controller is not the lesser evil and, as a killing, cannot be justified on the grounds that Controller has only a limited claim to make use of Victim.

7. Defence and the duty to minimise harm

7.1 Self-defence, coordinated self-defence, and other-defence

The Limited Use View holds that others have only limited claims to make use of us even when doing so would minimise overall harm. This means that one may sometimes avoid harm to oneself rather than prevent greater harm to others – in other words, one is not under a duty to minimise harm rather than secure one's own basic needs. This includes defending oneself against a threatener even if defending others would do more good, as in *Rope*:

⁴³ Thanks to Krister Bykvist for this case.

Rope: Aziz can use his rope to strangle Attacker, saving his own life, or to strangle Villain, preventing Villain from murdering three other people.

Since saving the three from Villain will come at the cost of his life, the three have no claim to make use of Aziz (or his rope). But compare *Rope* with *Rope II*:

Rope II: Aziz can use his rope to strangle Attacker, saving Ben, or to strangle Villain, preventing Villain from murdering three other people.

It is permissible for Aziz to kill Attacker to save his own life. But it is impermissible for Aziz to kill Attacker to save Ben's life, even though, were he to do so, Aziz would kill one, save one, and allow three to die in each case. The duty to minimise harm enjoins Aziz to save the three in *Rope II*. This does not entail, at least in my view, that Attacker is not liable to be killed for Ben's sake – whether by Ben, or by a third party who lacks a morally superior alternative. Killing Attacker would not wrong him. But if Aziz uses his resources to kill Attacker instead of Villain, Aziz will thereby wrong the three people whom he ought to have saved instead of saving Ben.

The Limited Use View, and what it tells us about the scope of the duty to minimise harm, thus suggests a novel way in which the fact that one is defending oneself, rather than someone else, can bear on the permissibility of defensive harm. The thought is not that there are different grounds for the rights of self- and other-defence. The facts that make it permissible for Ben to kill Attacker (that Attacker is morally responsible for an unjust threat to Ben's life) are also what would make it permissible for Aziz to kill Attacker for Ben's sake, were it not for the duty to minimise harm. Nor is it that Aziz may do more to Attacker for his own sake than he could for Ben's. The prevention of each death weighs equally against

causing Attacker's death. Rather, the claim is that morality prohibits Aziz's defending Ben because of the available alternatives, but permits Aziz's defending himself *despite* the available alternatives.

Thus, whether one acts in self-defence or other-defence can settle whether one is subject to a duty to minimise harm, and thus whether defence is permissible. But self-defence need not cover only cases in which an individual defends only herself from harm. It can also cover what I will call *coordinated self-defence*, in which a number of people work together to defend themselves. Coordinated self-defence is distinct from other-defence in that it requires all the relevant actors to be averting threats to themselves as well as to others. Consider

Kidnap:

Kidnap: Adam and Bryan have both been kidnapped by Villain, who plans to imprison them for a year. They concoct and then enact a plan in which Adam distracts Villain so that Bryan can knock Villain unconscious, enabling them both to escape.

Adam and Bryan coordinate their actions, acting together to defend themselves against the threat that each faces from Villain. They are thus plausibly described as acting in coordinated self-defence. Contrast this with *Rope II*, in which Aziz faces no threat, and can defend either Ben or three others. Whoever he defends, Aziz acts in other-defence, not in coordinated self-defence, since he is not defending himself.

Insofar as Adam and Bryan cannot defend themselves without the other, or each increases his chance of successful defence by acting with the other, it seems permissible for them to act together to save themselves this even if they have an alternative that would minimise harm overall. For example, Adam and Ben may act to defend themselves rather than to rescue Chris and Daniel, whom Villain has imprisoned in the next room and

imprison for two years. However, if Adam can neutralize Villain by himself, my account holds that it is impermissible for Adam to simply elect to save Ben rather than Chris and Daniel (if, for example, Adam has time to either drag injured Ben to safety, or break Chris and Daniel out of the next room). Saving Ben would be other-defence, rather than coordinated self-defence. Note that this cannot be altered by Ben's asking or consenting to be saved by Adam: Ben cannot undermine Chris and David's claims to be saved from the greater harm by agreeing to Adam's saving him instead.⁴⁴

It also seems permissible for groups of individuals to use their collectively-owned resources to defend themselves against unjust attack even if those resources could prevent more harm if used in other ways. And, it seems permissible for a defender to use resources belonging to members of a threatened group in order to defend them even if the defender is not a member of the group (so the act is one of other-defence, not collective self-defence). Indeed, this is plausibly required in at least some cases. Consider *Help*:

Help: Zara is hiding from Attacker. She has one bullet left in her gun. Rick has a much better shot at Attacker than Zara. Zara asks Rick to shoot Attacker for her. He agrees, taking her gun. Rick can either kill Attacker, saving Zara, or kill Villain, saving three other people. If Rick kills Villain, Zara will have no means of defending herself against Attacker.

It seems impermissible for Rick to use Zara's resources to minimise harm rather than to defend Zara. When Zara has provided Rick with her resources on the condition that he use them for her sake, Rick will wrong Zara if he uses them to save other people, even if he thereby prevents more harm. Doing so would be morally akin to simply stealing Zara's resources in order to save the three, foreseeing that Zara will then be killed. When the life-

⁴⁴ See Frowe, 'If You'll Be My Bodyguard'.

saving resources belong to Zara, and Rick knows that she needs them to defend her own life, Rick may not use them for the sake of the three without Zara's explicit consent. Correlatively, Richard does not wrong the three strangers if he fails to save them, since the three have no claim to make use of Zara's resources for their own sake when doing so is so costly for Zara. It is not merely permissible, then, for an authorized delegate to fail to minimise harm when he uses one victim's resources as the means of defence; it is plausibly required that he do so. (Of course, if Zara faces a smaller harm, such as a broken arm, the three might have a claim that she suffer that harm for their sake, and thus a claim that her resources are used for their sake in that case.)

7.2 Defence and rebel movements

If, as I have argued, other-defence is subject to the duty to minimise harm when aiding, this has implications for the role that other-defence can play in justifying large-scale defensive actions, such as internal violent resistance or rebellion.⁴⁵

As Tadros and Kieran Oberman have independently argued, the duty to minimise harm when aiding plausibly renders interventionists wars impermissible – or, at the very least, shows that such wars cannot be justified on the grounds that we have duties to rescue.⁴⁶

Waging, or even assisting, war is unlikely to be the most efficient way of saving lives compared to, say, eradicating diseases or alleviating famine. Even if preventing violent deaths is somewhat more important than preventing deaths arising from disease and famine, violent deaths are not sufficiently morally worse to justify preventing violent deaths at the expense of failing to prevent a much greater number of deaths from disease and famine. I should not

⁴⁵ I take resistance to aim at changing certain aspects an existing regime, and rebellion to aim at replacing an existing regime. The British suffragists, for example, engaged in resistance, but not rebellion, on this view.

⁴⁶ Tadros, 'Unjust Wars Worth Fighting For'; Oberman, 'War and Poverty'

save one person from a murderer rather than two people from being killed by a falling tree. This is even more plausible if saving the one from the murderer, but not the two from the tree, requires collaterally harming innocent people, and if the harms arising from disease and famine are plausibly rights violations, even if they are not violent.⁴⁷

Thus, it appears that our duties to rescue nearly always require that we alleviate disease and famine rather than engage in military intervention. At the very least, we cannot appeal to our duties to aid to justify engaging in military interventions, since such interventions do not plausibly satisfy our duties to aid. And if we cannot invoke preventing harm as a justification for the harms we inflict in war, such harms are unlikely to be justified.⁴⁸

It is similarly unlikely that internal resistance against an unjust regime minimizes harm compared to alleviating poverty.⁴⁹ If other-defence, but not self-defence, is subject to a duty to minimise harm, this gives us new grounds to care about the extent to which the actions of rebel groups are supported by the citizens of their country.

⁴⁷ For defence of the view that many harms arising from poverty are rights violations, see Thomas Pogge, XXX, . That interventions involve harming in the course of rescuing points us to a third possible reason why enacting or assisting military intervention is not exempt from the duty to minimise harm. [Question: does the fact that e.g. acting on an agreement to save a person will involve causing otherwise proportionate harm defeat the agreement, if one can save someone else (from an equal or a greater harm) without causing any harm? Not with respect to proportionate harm to liable people, I suspect. But perhaps (probably?) with respect to harms to non-liable people.]

⁴⁸ The challenge I identify here also seems to apply to wars of national-defence – the extent to which the citizens support the defensive war will bear on whether the war is collective self-defence or other defence. But, at least prima facie, the challenge will be more easily met in these cases, at least in democratic states in which we have reason to think that elected political authorities are authorised by their citizens. This is not, of course, to say that all such wars are justified.

⁴⁹ See Tadros, ‘Unjust Wars Worth Fighting For’; Oberman, ‘War and Poverty’

The claim that some form of support or consent bears on the permissibility of using force has been widely discussed in the literature on interventionist wars. For example, whether a populace welcomes an intervention might bear on whether that intervention violates their claim to self-determination.⁵⁰ Jonathan Parry argues that consent determines the range of goods that may be weighed in a proportionality calculation: roughly, if I refuse consent to be saved by you, you may not include the good of rescuing me in your deliberations about the harms you may impose on others.⁵¹ Lionel McPherson argues that the distinctive wrong of terrorism lies in terrorists' typical lack of representative authority with respect to the people on whose behalf they claim to act.⁵²

My suggestion is that the degree of voluntary support that a rebel group enjoys determines whether an act of rebellion is most plausibly understood as coordinated self-defence, and therefore exempt from the duty to minimize harm, or as other-defence, and therefore subject to the duty to minimise harm. Such support includes providing material support, such as weapons, money, food, or medical supplies, the concealment of persons or materials, and providing intelligence. We can be fairly neutral here about what counts as sufficient support to constitute coordinated self-defence. The important point here is simply that some rebel movements will count as coordinated self-defence, and some will not. When

⁵⁰ See, for example, Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (4th edn.), (New York, Basic Books, 2007):88; James Pattison, *Humanitarian Intervention and the Responsibility to Protect* (Oxford: OUP, 2010); Jeff McMahan, 'Humanitarian Intervention, Consent, and Proportionality', in N. Ann Davis, Richard Keshen and Jeff McMahan (eds.) *Ethics and Humanity: Themes from the Philosophy of Jonathan Glover* (OUP, 2010), p. 49; Massimo Renzo, 'Revolution and Intervention', *Nous* (2019) <https://doi.org/10.1111/nous.12272>. For criticism of the importance of consent, see Allen Buchanan, 'Self-Determination, Revolution, and Intervention', *Ethics* 126 (2016): 447 – 473.

⁵¹ Jonathan Parry, 'Defensive Harm, Consent, and Intervention', *Philosophy and Public Affairs* 45/4 (2017): 356 – 396.

⁵² McPherson, 'Is Terrorism Distinctively Wrong?' *Ethics* 117 (007): 524 - 546

such support is lacking, the rebels may act in other-defence of their co-citizens, but they cannot claim to be acting in coordinated self-defence with them.

One advantage of this understanding of support, compared to consent or authorization, is that we can often be confident that a rebel movement could not enjoy certain levels of success without substantial support of this sort from the civilian population. Given this, the degree of success of a rebel group might itself be evidence that they are acting in coordinated self-defence with their citizens. But a deeper advantage is that the pooling of resources makes it that the citizens are acting together in coordinate self-defence in a way that mere consent does not. Recall the version of *Kidnap* in which Adam can disarm Villain on his own, and can then save either Ben from one year's imprisonment, or Chris and Daniel from two years' imprisonment. The mere fact that Ben asks Adam to save him from the lesser harm does not plausibly exempt Adam from his duty to minimise harm. Likewise, the mere fact that citizens agree to rebels defending them instead of using their resources to minimise harm does not exempt the rebels from their duty to minimise harm.

I have argued elsewhere that mere co-citizenship does not suffice to make one a 'special other',⁵³ and thus I doubt that defence of co-citizens is generally exempt from the duty to minimise harm. But even if one believes that co-citizenship is a special relationship of this sort, it is implausible that defence of special others is exempt from the duty to minimise harm when the beneficiary of the defensive action does not support that action. As Parry argues, those who refuse consent to be rescued plausibly remove their interests from the 'pot' of goods that weigh against defensive harms the proportionality calculation. Similarly, when one does not enjoy the support of one's co-citizens, one cannot plausibly invoke the duty to rescue as a ground for using one's resources in their defence. The duty to rescue, including rescuing via other-defence, enjoins the rebels to minimise harm, which they will not do by

⁵³ Frowe, 'Can Reductive Individualists Allow Defense Against Political Aggression?' p. 185

waging civil war. And if the citizens do materially support the rebels, the rebels actions are exempt from the duty to minimise harm in virtue of being coordinate self-defence, not in virtue of some special relationship.

Lazar has noted that authorisation can affect the permissibility of using shared resources.⁵⁴ But his claim is that taking shared resources without authorisation wrongs the other citizens, who are equally entitled to decide how those resources are used. My claim is that the use of those resources in other-defence of one's co-citizens defend those citizens (also) wrongs the people whom one thereby fails to save. It also vitiates the duty to rescue as a justificatory ground of rebellion. This will likely make a significant difference to the permissibility of violent resistance: in the absence of widespread authorisation by the citizenry, since such resistance will very often be unjustified at the bar of the duty to minimise harm.

Thinking about this kind of material support as the basis of the distinction between coordinated self-defence and other-defence helps to explain why wars of national-defence are less likely to be prohibited at the bar of the duty to minimise harm when saving, provided that the war seeks to defend or secure its citizens' basic interests.⁵⁵ In a typical case of national defence, defensive actions are coordinated across, and enabled by, the citizens as a whole: the armed forces are funded by collective resources, with supporting roles spread across the civilian infrastructure.⁵⁶ Insofar as these wars are therefore plausibly instances of coordinated self-defence, using collectively-owned resources, they will not violate the duty to minimise harm even though those resources would probably prevent more harm if used in other ways.

⁵⁴ Lazar, 'Authorization and the Morality of War', p. 3

⁵⁵ Of course, this does not entail that all such wars are justified, nor that a war that is wrongly construed as national-defence is likely to have the support of (some sufficient proportion of) the citizenry.

⁵⁶ For discussion of how the military is embedded in states in this way, see Victor Tadros, 'Orwell's Battle With Brittain: Vicarious Liability for Unjust Aggression', *Philosophy and Public Affairs* 42/1: 42-77

Note, then, that the idea is not that there is a difference in kind between coordinated defence enacted by a state, and coordinated defence enacted by rebel groups. It is rather that there is a contingent difference in how likely it is that rebels' actions *are* coordinated self-defence, compared to the actions of (at least some) states.

7. Conclusion

The Limited Use View conceives of our claims to be rescued as limited claims to make use of others for our own sake. We have no claim to make use of others when doing so is unreasonably costly for them, or conflicts with their other duties. Correlatively, we need not make ourselves available for use by others when doing so is unreasonably costly or conflicts with our other duties. That we have only limited claims to make use of others is an upshot of the claim that individuals are not tools to be used for the greater good. Allowing individuals the space to pursue their autonomously-chosen projects requires that we limit the claims that others can make on individuals and their resources. Within this space, one need not minimise harm.

I have argued that the Limited Use View gives us a more plausible analysis of the duty to rescue than is provided by agent-relative prerogatives. But the Limited Use View is grounded in the non-consequentialist claim that we each have a sphere in which we may fail to minimise harm. Since other-defence typically falls outside this sphere, there are differences in the harms one may cause for one's own sake and the harms one may cause for the sake of others.

That other-defence is typically subject to a duty to minimise harm has significant implications for the permissibility of, amongst other things, violent resistance and rebellion. It challenges the extent to which resisters can invoke their duties to rescue their fellow citizens as part of their justification for using force. If their defensive actions are not supported by

those citizens, then their defence is likely to violate the duty to minimise harm, and thus be impermissible.