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Steinhoff and Self-Defense

MICHAEL S. MOORE*

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I. INTRODUCTION

Much of Uwe Steinhoff's discussion of the right of self-defense deals with situations where two or more parties are in a position to frustrate the other's ambitions to use force.¹ For example, George wants to shoot Henry before Henry can shoot him and vice-versa. These are situations of combat. But moralists' and lawyers' interest in such situations is not that of the

* © 2018 Michael S. Moore. Charles Walgreen University Chair, Center for Advanced Study Professor of Law and Philosophy, Co-Director of the Program in Law and Philosophy, University of Illinois. My thanks to the many who commented on this paper at its presentation in San Diego in November, 2016, and particularly to Peter Westen, Alec Walen, and Uwe Steinhoff who gave me the benefit of their separate written comments beforehand.

1. See Uwe Steinhoff, *Just War Theory: Self-Defense, Necessity, and the Ethics of Armed Conflicts* 4 (2016) [hereinafter *Just War Theory*] (unpublished manuscript) (on file with author).

military instructor, which is how to win in such situations of physical combat. It is rather to assess who wins morally in such situations, who is right and who is wrong in their use of force. If one's moral theories lead one to conclude that each party's moral success is achieved at the cost of another party's moral failure, then we have a situation which Heidi Hurd has dubbed, "moral combat."²

Steinhoff touts self-defense rights as being such as to permit or require moral combat between persons.³ This is in part due to his conceptualizing self-defense rights in Hohfeldian terms—for the Hohfeldian schema of rights in general is fundamentally oriented towards the allowance of moral combat, not just in self-defense situations, but generally.⁴ My main suggestion to Steinhoff in what follows is that he needs to be less Hohfeldian in his conceptualization of rights, the right to self-defense included.

I shall proceed as follows. I shall first describe what moral combat would be if it existed, separate it into distinct species, and say why it is so undesirable that one should be brought to acknowledge its existence only reluctantly and as a last resort. I will then detail two ways in which rights to do things—often called "action rights" or "active rights"⁵—such as the right to defend oneself, are integrated into standard deontic logic: (1) Hohfeld's way and (2) the older but still popular Kantian alternative that Hurd and I recently defended.⁶ The first of these is compatible with—indeed, inviting of—moral combat, whereas the second is not.⁷ Thirdly, I shall ask whether moral combat is an inevitable feature of our moral life, using various self-defense scenarios to argue that—contrary to Steinhoff's belief—it is not. This is taken to cut in favor of the older analysis of rights and against Hohfeld's analysis.

II. MORAL COMBAT

Kant famously proclaimed that a conflict of duties was "inconceivable."⁸ To be obligated both to do some action and not to do that same action, was outrageous, so outrageous that Kant thought that morality could not

2. HEIDI M. HURD, MORAL COMBAT 9–10 (1999).

3. See Just War Theory, *supra* note 1, at 4.

4. *Id.* at 22, 24, 159.

5. Leif Wenar, *Rights*, STAN. ENCYCLOPEDIA PHIL. (Sept. 9, 2015), <https://plato.stanford.edu/entries/rights/#1> [<https://perma.cc/U4Q4-D5KE>].

6. See generally HEIDI M. HURD & MICHAEL S. MOORE, THE HOHFELDIAN ANALYSIS OF RIGHTS (2018); MORAL COMBAT, *supra* note 2, at 280–81 (explaining Hurd's view of the interaction between Hohfeldian principles and deontological norms).

7. See HURD, *supra* note 2, at 281.

8. IMMANUEL KANT, THE METAPHYSICS OF MORALS 16 (Mary Gregor ed. & trans., 1996) (1797).

possibly be so constituted.⁹ Notice, however, that such conflict of obligations is not *inconceivable* in the sense that it would be contradictory to think that morality is so constituted.¹⁰ While it would be contradictory to think both that one is obligated to do A and that one is not obligated to do A—external contradiction—it is not contradictory to think that morality obligates us both to do, and not to do, one and the same action—internal contradiction only.¹¹ Still, it would be a wildly *unfair* morality for us to be moral losers no matter what we did. Some malevolent Greek god might foist such an unfair morality off onto the human race just for his own amusement in watching a struggle where the outcome was guaranteed to be moral failure no matter how pure the heart or strong the will, but it is hard for non-theists—or theists with a more benevolent god in mind—to imagine that morality gives us no chance to be good.

Suppose the malevolent Greek god takes this last lesson to heart and thus creates a morality that obeys one of the strictures of standard deontic logic: it is not the case that one can be obligated to do A if one is obligated not to do A and vice versa.¹² In other words, OB(A) and OB(not-A) are contraries of one another; both cannot be true although neither could be true. Still, the god likes his fun with the human race. So he arranges things so that *collectively*—rather than individually—human beings cannot morally succeed: one person's moral success necessarily comes at the cost of another person's moral failure.¹³ For example, each of two mothers, each of whom is obligated to save her own child, seeks both to place her child on a plank that can only support one and to prevent the other mother from doing the same.¹⁴ While both mothers can fail in their obligations—both children drown—at most only one can succeed in doing the two things she is obligated to do, which is to both save her child and prevent the other mother from saving hers.¹⁵ This second game is almost as enjoyable to the malevolent Greek god as the first, because *collective* success will elude the humans in this game as certainly as it eludes an individual in the case of conflicting obligations being owed by one and the same individual.

9. *Id.* at 16–17.

10. HURD, *supra* note 2, at 271–72.

11. *Id.*

12. *Id.*

13. *Id.* at xi.

14. *See id.* at 284, 288 (discussing Hurd's variation on Cicero's ancient two men on a plank hypothetical).

15. *Id.*

Hurd refers to the second scenario as a situation of moral combat.¹⁶ She argues that such situations would be undesirable because they make each of us act as “moral gladiators” against our fellow moral agents.¹⁷ It is as unfair to us collectively just as conflict of obligations is unfair to us individually.¹⁸ Morality demeans us in both cases by obligating us in a way that guarantees we cannot all win—even if each is pure of heart and strongly motivated to do what is right.¹⁹

There are various kinds of moral combat that one can imagine might exist. The scenario above is what Hurd and I call “strong moral combat.”²⁰ These are situations where at least one party is obligated to prevent another party from doing what would satisfy that other party’s obligation.²¹ Also seemingly possible is “weak moral combat,” where at least one party has a moral right to prevent what another party has a moral right to do.²² Given the two pure cases, one can also imagine the possibility of “mixed” cases of moral combat where at least one party is obligated to prevent what another party has a right to do, or where at least one party has a right to prevent what another party is obligated to do. For seeming examples, think of two variations of the two mothers and the plank above: one, Cicero’s original version of two men on a plank that can only support one—seemingly an instance of weak moral combat between rights to save oneself and to prevent the other from saving himself—and two, one adult seeking to exercise his *right* to preserve his own life on the plank—and thus his *right* to prevent a child from being placed on the plank—competing with another adult *obligated* to save her child by placing that child on the plank—one of the two kinds of mixed cases of moral combat.

16. *Id.* at 9–10.

17. *Id.* at 10.

18. *Id.* at 272–73.

19. *Id.* at xi.

20. HURD & MOORE, *supra* note 6, at 36.

21. HURD, *supra* note 2, at xi. Notice moral combat is *not* constituted by the fact that each mother is obligated to save her child; rather, strong moral combat would exist by virtue of each mother being obligated to prevent the other from doing her obligation to save her child. This renders irrelevant the common reaction that perhaps each mother is only obligated to *try*—that is, to use best efforts—to save her child, and thus, both could succeed in satisfying these obligations. Even if all obligations had as their content “tryings” rather than doings—which they do not, see Heidi M. Hurd, *What in the World is Wrong?*, 5 J. CONTEMP. LEGAL ISSUES 157, 190 (1994)—one mother’s obligation to *try* to prevent the other mother’s success in her obligation to *try* to save her child would constitute strong moral combat, even though the definition of moral combat would shift a bit. It would be as gladiatorial and as unfair to obligate the person to try to undo what another is obligated to try to do. Gladiators who are obligated to try to kill one another, and to try to prevent themselves from being killed, will fight just like gladiators who are obligated both to kill one another and to prevent themselves from being killed.

22. HURD & MOORE, *supra* note 6, at 36.

Weak and mixed moral combat is undesirable for the same reason strong moral combat is undesirable. When we do what we have a moral right to do, we are doing right action. Yet if weak or mixed cases of moral combat exist, then in those situations one person's ability to do what is right—that is, what she has a right to do—comes at the cost of guaranteeing that another cannot do what is right—right now in the senses either of being obligatory or having a right to do it.²³ We would still be moral gladiators pitted against one another, gladiators whose moral success in doing the right thing depends on others not enjoying a like success.

III. COMBATIVE AND NON-COMBATIVE ANALYSES OF RIGHTS

For present purposes we should simplify the deontic geography here by distinguishing just two analyses of what rights are. Best known is the Hohfeldian analysis.²⁴ Hohfeld, following Bentham, held there to be two kinds of rights: passive rights and active rights.²⁵ Such an analysis takes rights to be part of the action-guiding machinery of both law and morality. Accordingly, both active and passive rights take *actions* as their objects.²⁶ Passive rights take the action of someone other than the right-holder as their objects—thus the name, *passive rights* because the right-holder is passive.²⁷ Active rights, by contrast, take the action of the right-holder as its content—the right-holder is thus *active* and thus the name for his kind of right.²⁸ If I have the right to go downtown, I have an active right; if I have a right that you leave my land, I have a passive right.

Hohfeld gives active and passive rights his own distinctive labels. He calls passive rights “claim-rights” and active rights, “privileges”—or sometimes, “liberties.”²⁹ Hohfeld analyzes both sets of rights in terms of duties.³⁰ A passive right is the correlative of a duty on someone else's part to do the action that the right-holder had a right to. An active right is to be analyzed as the absence of a duty—on the part of a right-holder—not to do the action

23. See HURD, *supra* note 2, at xi.

24. See generally WESLEY NEWCOMB HOHFELD, *FUNDAMENTAL LEGAL CONCEPTIONS AS APPLIED IN JUDICIAL REASONING AND OTHER LEGAL ESSAYS* (Walter Wheeler Cook ed., 1919).

25. Wenar, *supra* note 5; see also HOHFELD, *supra* note 24, at 24, 83.

26. Wenar, *supra* note 5.

27. *Id.*

28. *Id.*

29. HOHFELD, *supra* note 24, at 37–39, 49.

30. *Id.* at 35.

that the right-holder was privileged—or at liberty—to do. To use the two examples above: if X has a right that another, Y, leave X's land, then X has a claim-right that Y leave X's land; if X has a right to go downtown, then X has a privilege to go downtown.

Hohfeld's analysis of rights is often accused of being a "deflationary analysis of rights."³¹ After all, the basic building block in the analysis is duty; claim-rights are just duties on someone else and privileges are just the absence of duties on oneself. Hurd and I have urged that this deflationary criticism of Hohfeld's analysis of passive rights is in error; but with respect to Hohfeld's analysis of active rights, the critique is right on target.³²

With respect to this last point, notice how thin is the protection afforded one whose active right to do some action (A) is analyzed in Hohfeldian terms as a mere privilege. X's right to do A means only that X has no duty not to do A and that others, such as Y, have no (passive) right that X not do A. But, consistently with these two absences of duty by X and passive right by Y, others—such as Y—are equally privileged to prevent X from doing A. Indeed, they may even be obligated to prevent X from doing what he is privileged to do, in Hohfeld's sense of *privilege*. Further, in cases where X is obligated to do A—and thus privileged to do A in the sense that X is not obligated not to do A—others such as Y may still be privileged and even obligated to prevent X from doing A.

Hohfeld's analysis of active rights—as mere privileges—thus obviously allows for there to be moral combat of all three kinds: (1) weak moral combat—where X has a privilege to do an act that Y is privileged to prevent; (2) mixed moral combat, where either X's or Y's privileges—but not both—stem from a duty on their part to do what they are privileged to do; and (3) strong moral combat, where the privileges of both X and Y stem from duties on their part to do what they are privileged to do.

To avoid this potential for moral combat, Hurd and I have proposed a different analysis of active rights.³³ On our alternative analysis, an active right is to be identified with what we call a *protected permission*. A protected permission is characterized by two sets of properties. First, it is, as the name suggests, a *permission*, as that term is understood in standard deontic logic. In this logic, permissions are of two kinds: unilateral permissions, where one is permitted to do only one of an act/omission pair; or bilateral permissions, where one is permitted to do either one of an act/omission

31. *E.g.*, HURD & MOORE, *supra* note 6, at 67.

32. *Id.*

33. *Id.* at 33–49. Our analysis owes much to Kant, but we systematize Kant's mostly casual set of suggestions.

pair.³⁴ If X has a unilateral permission to A, then X is obligated to do A and not obligated not to do A; if X has a bilateral permission to A, then X is neither obligated to do A nor obligated not to do A.

The second characteristic of a protected permission—the kind of permission with which we would identify active rights—has to do with other people’s correlative duties. Recall that on Hohfeld’s analysis, other people (Y) have no passive right that X not do what X has an active right—or *privilege*—to do; but others such as Y also have no duty not to prevent X from doing what X has a right to do. On our analysis, by contrast, others such as Y have a duty not to prevent X from doing whenever X has an active right to do.

Our analysis of active rights does what it was intended to do, namely, rule out the possibility of there being moral combat of any of the three kinds earlier distinguished. On our analysis of active rights as protected permissions, when X has a right to do some action, A, it cannot be the case that there is weak moral combat—that is, that others such as Y can equally have the right to prevent X from doing A. Likewise, when X has the right to do A, it cannot be the case that others such as Y are obligated to prevent X from doing A; nor that when X’s right to do A is based on a duty on his part to do A, that Y can have the right to prevent X from doing A—that is, no mixed moral combat. Nor can it be the case that Y is obligated to prevent what X is obligated to do—no strong moral combat.

We thus prefer our analyses of active rights to Hohfeld’s. Moral combat is undesirable and unfair for the reasons stated earlier; it is also not a regrettably inevitable feature of our moral experience, as we have argued elsewhere.³⁵ Because of this, active rights—such as the right to self-defense—should be analyzed as protected permissions and not as mere Hohfeldian privileges.

IV. SELF-DEFENSE

Is Steinhoff a Hohfeldian in his analysis of self-defense? He appears to think that he is, for he analyzes the right of self-defense as “a claim-right, a liberty-right, and an act-specific agent-relative prerogative.”³⁶ Yet what

34. The latter permissions are called “options” in deontic logic; the former are the kinds of permissions one has when one has an obligation to do what one has a permission to do. *Id.* at 20, 42.

35. *Id.* at 50.

36. Just War Theory, *supra* note 1, at 21.

Steinhoff refers to as a claim-right in this context is distinctively not Hohfeldian. As he puts it in an earlier paper, if a woman “has a claim-right towards B to do *x*, this means that B is under a duty toward her, A, not to interfere with her doing *x*.”³⁷ As we saw earlier, this is not how Hohfeld would analyze a claim-right to self-defense; there are no such active claim-rights for Hohfeld.³⁸ And while Hohfeld would allow that there be a claim-right to non-interference in the woman’s doing of X, this would be contingent and occasional, not an analytically necessary and universal accompaniment to the women’s privilege to do X.

Steinhoff thus looks more Hurdian than Hohfeldian. Steinhoff is, of course, entitled to be neither Hurdian nor Hohfeldian if he can work out his own analysis of action rights such as the right to defend oneself. The best way to see how such a project would fare for Steinhoff is to follow what he concludes about various particular cases of self-defense. Then we can see whether moral combat in situations of self-defense is a live option for Steinhoff and then adjust his logic to be whatever is needed to fit those facts, whatever they turn out to be.

A. *Classic Blameworthy Aggressor Self-Defense*

For no good reason Y comes at X with deadly force, intending to kill X;³⁹ X has the opportunity to use deadly force to prevent Y’s attack and such use is the only means by which X may save his life. This is a case of classic self-defense between a wrongful and culpable aggressor and an innocent defender.

Such self-defense scenarios present possibilities of moral combat at a variety of levels. To see this, ask a variety of moral questions:

1. Is Y obligated, nakedly at liberty—that is, a Hohfeldian privilege)—or have a right—that is, a protected permission)—to attack X with deadly force?
- 2a. Is X obligated, nakedly at liberty, or have a right, to defend himself through his own use of deadly force to kill Y?

37. Uwe Steinhoff, *Rights, Liability, and the Moral Equality of Combatants*, 16 J. ETHICS 339, 340 n.2 (2012) (first emphasis omitted).

38. See *supra* pp. 320–21.

39. We do not need to stipulate what X knows or has reason to know about the nature of Y’s attack. Unlike Just War Theory, *supra* note 1, at 44, my own long-defended view is that deontic relationships are exclusively a matter of right and wrong-doing, without regard to the culpability with which such acts are done. What one believes or should believe are matters going only to the culpability with which an action is done; they do not impact the deontic wrongness or rightness of the act itself. Notice that another party’s intention, such as Y’s in the hypothetical, matters but this comes as no surprise given such intention is but a circumstance in the context of X’s action.

- 2b. Is Y obligated, nakedly at liberty, or have a right, to resist X's self-defensive use of deadly force by killing X?
- 2c. Is X obligated, nakedly at liberty, or have a right, to use deadly force to prevent Y from preventing X's original use of deadly force in self-defense?
- 3a. Is Z, a third-party bystander, obligated, nakedly at liberty, or have a right, to use deadly force himself against Y—or to assist X in X's use of such force—if that is the only way to prevent Y's attack on X?
- 3b. Is Y obligated, nakedly at liberty, or have a right, to resist Z's use of deadly force—or to assist in the use of X's deadly force—by killing Z?
- 3c. Is Z obligated, nakedly at liberty, or have a right, to use deadly force to prevent Y from preventing Z's original use of deadly force against Y and in aid of X?
- 4a. Is Z obligated, nakedly at liberty, or have a right, to use deadly force himself against X—or to assist Y in Y's use of such force against X—if that is the only way to prevent X's self-defensive killing of Y?
- 4b. Is X obligated, nakedly at liberty, or have a right, to resist Z's use of deadly force—or to resist Z's assistance in Y's use of deadly force—by killing Z?
- 4c. Is Z obligated, nakedly at liberty, or have a right, to use deadly force to prevent X from preventing Z's original use of deadly force against X and in aid of Y?

I have made this list as long as it is so that one may have a template for the less central cases of self-defense that we shall discuss shortly. In the present case, the list is so easily answered that few would have asked most of these questions. I suspect there is well-nigh universal agreement—including Steinhoff—that:

- 1. By hypothesis, Y is obligated not to attack X—and thus by standard deontic logic it is not the case that Y is obligated, nakedly at liberty, or have a right, to attack X;
- 2a. X has a right and is nakedly at liberty to use deadly force in his own defense against Y; obligation is a different matter—only those thinking X is obligated not to suicide would think he is *obligated* to defend himself.

- 2b. Y is obligated not to resist X's use of deadly force in defense—and thus it is not the case that Y is obligated, nakedly at liberty, or has a right, to resist.
- 2c. X has a right and is at liberty to use deadly force to prevent Y from preventing X's original use of deadly force; whether X is obligated to use such force in these circumstances again depends on where one came out in 2a about X's obligation not to suicide.
- 3a. Z at least has a right and is nakedly at liberty to kill Y to defend X; whether Z is obligated to do so for many would depend both on Z's relationship to X and on the danger posed to Z if Z defends X.
- 3b. Y is obligated not to resist Z's use of force as much as he is obligated not to resist X's use of force in 2b, thus it is not the case that Y is obligated, nakedly at liberty, or has a right, to resist Z's use of force.
- 3c. Z has a right and is nakedly at liberty to use deadly force to prevent Y from preventing Z's original use of deadly force against Y and in aid of X; whether Z is obligated to use such force in these circumstances depends partly on the factors—relationship to X and degree of risk to Z—described in 3a above, and partly on whether Z's earlier aiding of X constitutes an undertaking to aid X that Z must now carry through.
- 4a. Z is obligated not to use deadly force against X—and is obligated not to aid Y in Y's use of deadly force against X; it is therefore not the case that Z has an obligation, a naked liberty, or a right to use such deadly force against X—or to aid Y in Y's use of deadly force against X.
- 4b. X has a right and a naked liberty to resist Z's use of deadly force—and to resist Z's aiding Y in Y's use of deadly force—by killing Z; whether X is obligated to use such force depends on X's obligation not to suicide as mentioned in 2a and 2c above.
- 4c. Z is obligated not to use deadly force to prevent X from preventing Z's original use of deadly force against X and in aid of Y; therefore, it is not the case that Z is obligated or nakedly at liberty, or has a right, to use deadly force in these circumstances.

If all of these actions occur, there will thus be no *moral* combat. There will be plenty of actual, physical combat, to be sure. But there is no clash of duties or of rights between the parties. X is right in all that he does, Y

is wrong in all that he does, and Z is right insofar as he aids X and wrong insofar as he aids Y, so this is a *morally* tranquil scenario.

Notice how intuitively compelling and exception-less is the question of Hurd's and my *no moral combat* injunction: the wrongness of Y's aggression (1) and the rightness of X's self-defense (2a) fully determine the moral status of all further actions and reactions down the chain, no matter how many parties are involved and no matter how many iterations one pursues. What is wrong for Y is wrong for X, Z, and everyone else; what is right for X is right for Y, Z, and everyone else.

I see no evidence that Steinhoff would disagree with any of these conclusions. Because, in such cases, he does not seek to justify moral combat, such cases do not test his Hurdian versus Hohfeldian credentials. Let us then press on to less standard cases of self-defense where Steinhoff's conclusions become more interesting for these purposes.

B. Non-Blameworthy Aggressor Cases of Self-Defense

Steinhoff divides innocent aggressor cases of self-defense into several subcategories.⁴⁰ There are cases where (1) Y is justified in making her attack on X by the good consequences of such an attack; (2) Y is justified in making her attack on X by a categorical duty Y has to do what she does—as when a mother is trying to save her child on a plank; (3) Y, the attacker, is innocent because of a status excuse—Y is too young or too mentally ill to rationally consider what wrong he is doing in attacking X, or where Y is innocent because ignorant, mistaken, or coerced with respect to what he is doing—Y does not realize that his action will kill X unless prevented, or X is threatened by another; or (4) Y is not even acting in posing his threat to X.⁴¹ I shall consider each of these non-blameworthy aggressor self-defense scenarios in turn, asking in each case, first, how Steinhoff proposes to resolve it, second, how such resolution squares with a Hurdian or a Hohfeldian analysis, and third, how I would resolve such cases.

1. Consequentially Justified Aggressor Self-Defense

Steinhoff chooses as his example one that is well-worn in the centuries-old debate about the Catholic Doctrine of Double Effect, namely, “the tactical bomber who is about to destroy an ammunition factory in a

40. Just War Theory, *supra* note 1, at 159–60.

41. *Id.* at 160.

proportionate, justified military attack, full well knowing that an innocent bystander will also be killed by his attack.”⁴² Steinhoff later adopts Jeff McMahan’s particular version of this old hypothetical:

There is a bomber crew of 5 people who have, in the context of a humanitarian intervention, the mission to bomb and destroy a military target. If they are successful, 100 innocent civilians in the state in which the intervention takes place will be saved, and there are no alternative means of saving them. However, 5 innocent villagers will be killed in this attack as a side effect.⁴³

I shall use in what follows the 1–4 template deployed earlier in regular cases of culpable aggressor self-defense.

1. The first on the list involves the moral status of the justified aggressor, namely, the bombers. We are to assume they are justified in doing the bombing that kills the five innocent villagers. Yet it is important for present purposes that one understand just *why* the bombers are justified. The law of war would say the bombers are justified because they are combatants and they aim at legitimate military targets—which includes enemy combatants—and they only foresee but do not intend the deaths of the five villagers.⁴⁴ The question of whether the war itself is justified is suspended; on this view the bombers are justified in their bombing irrespective of that larger question.

This is not the sense of *justified* we want here. We want to operate, as McMahan says, at the level of “basic morality,” that is, the morality free of the pragmatic considerations that may well justify the law of war’s separation of justifications for how a war is fought from justifications for fighting the war at all.⁴⁵ In basic morality, there is no pass given combatants who kill; their justification for killing, if they have one, must reach all the way down to the justness of the side for which they fight.⁴⁶ This viewpoint results, as Steinhoff sees, in rejecting the conclusion “that in *all* wars the combatants on both sides have the same liberty-right to kill enemy combatants, provided they abide in the traditional *jus in bello* restrictions.”⁴⁷

So, we are to assume in Tactical Bomber that the bombers are *justified* at the level of basic morality, not just by their role as combatants following the rules of how wars should be fought. We are thus to assume that the

42. *Id.*

43. *Id.* at 187.

44. Jeff McMahan, *The Morality of War and the Law of War*, in JUST AND UNJUST WARRIORS: THE MORAL AND LEGAL STATUS OF SOLDIERS 19, 35 (David Rodin & Henry Shue eds., 2008).

45. *Id.* at 20.

46. *See id.* at 20–21.

47. Steinhoff, *supra* note 37, at 340.

bombers are fighting a just war, and achieving a good outcome in that war morally justifies the loss of five civilians as foreseen side-effects.

On these assumptions, one would think the answer to the first question is easy: the bombers are at least permitted and at liberty to kill the civilians; indeed, they may be obligated to do this, depending on how one views their role and their obligations to win a just war.

I thus have little sympathy for Steinhoff when he says that the bombers “are at best justified, but that does not make them innocent in the relevant sense (namely in the sense of not wronging others).”⁴⁸ This is on its face a contradiction; if the bombers are justified—at the level of basic morality—then they are at least permitted to bomb; if they are permitted to bomb, it cannot be the case that they are obligated not to bomb; unless they are obligated not to bomb, they do no wrong when they do bomb.

2a. It is easy to see one reason why Steinhoff issues his peculiar conclusion in (1) that bombers are justified but wrong in their bombing:⁴⁹ it is because Steinhoff thinks the five villagers have a right—in some sense—to shoot down the bombers before they can unleash their bombs.⁵⁰ The villagers have a right of self-defense.⁵¹ Steinhoff thus sees moral combat between the right of the bombers to bomb and the right—or perhaps obligation—of the civilians to prevent the bombing by killing the bombers.⁵² Yet it only muddies things up to invent some Pickwickian sense of *wrong* with which one can so label the bombers’ actions; this is supposed to soften the oddness of giving civilians a right of self-defense here.

It does not help to tease out the nuances of this special sense of *wrong*, which Steinhoff does by saying the bombers “have *forced the choice* ‘My life, or his’ upon the civilians [and that] the civilians have not forced this choice on [the bombers].”⁵³ Come again? By hypothesis, the forcing of the choice was the right thing to do—that is, it was both justified and just; and if it was right for the bombers the forcing of the choice was right for the civilians and for everyone else. There is no useful sense of *wrong* or *unjust* here that does anything but confuse the issues. Because of this asymmetry of initiating the interaction, Steinhoff compounds the confusion by

48. *Id.* at 341.

49. *Id.* The other reason is so Steinhoff can base claims to compensation on the *wrongness* of such right actions. *Id.* at 365.

50. Just War Theory, *supra* note 1, at 192.

51. *Id.* at 165.

52. *Id.*

53. *Id.* at 165 (emphasis added).

characterizing *the bombers* as *unjust*: the bombers are among “those who initiate an unjust (albeit justified) attack.”⁵⁴ Huh?⁵⁵

2b. Steinhoff continues his willingness to countenance moral combat when (1) he concludes that, at least in one sense, “the tactical bomber *may still defend himself* against the civilians.”⁵⁶

2c. And (2) when Steinhoff grants to the civilians the right to prevent the bomber’s prevention of the civilians’ self-defensive use of deadly force.⁵⁷

Steinhoff eventually qualifies his conclusions in 2b and 2c. About 2b, he appears to conclude that the civilians are “*not liable*” to the tactical bombers defending themselves from the defensive force of the civilians,⁵⁸ yet the bombers, Steinhoff tells us, still have the right to defend themselves against the civilians’ use of defensive force.⁵⁹ Steinhoff assures us that “the claim that the bombers are *liable* to attack does *not* have the counter-intuitive implication that the bombers cannot *justifiably defend* themselves against the villagers.”⁶⁰

As one can see, it is not easy to get a handle on Steinhoff’s conclusion about 2b, the bombers right to defend against the villagers’ self-defense force. It looks like he comes out this way: the villagers’ *right* to use defensive force (2a) is only a naked, Hohfeldian liberty, not a protected permission—what Steinhoff idiosyncratically appears to call a “claim-right” to do something.⁶¹ Likewise, the bombers (2b) only have a naked liberty as well.⁶² So there is only a conflict of naked liberties, not of protected permissions (weak moral combat), of obligations (strong moral combat), or of obligation/protected permission pairs (mixed moral combat).

This structure of answers appears to be duplicated for Steinhoff once one considers third parties’ actions, either those aiding the bombers (4a, 4b, 4c) or those aiding the villagers (3a, 3b, 3c). Steinhoff’s view appears to be that third parties may aid the villagers in their defense against the bombers (3a), with the same naked liberty of the bombers to resist (3b) and be resisted in return (3c).⁶³ Likewise, that third parties may aid the bombers in their prevention of the villagers’ defensive effort (4a), with the

54. *Id.* at 178.

55. To be sure, Steinhoff is not the only philosopher who uses these peculiar locutions. Yet it does nothing to advance the argument—that those like the villagers have both a right of self-defense and a right to compensation if they are bombed—to say that rights-infringements are “*somewhat wrong*” and that only right-violations are “*really wrong*.”

56. Just War Theory, *supra* note 1, at 165.

57. *Id.*

58. *Id.* at 178.

59. *Id.* at 189.

60. *Id.*

61. *Id.* at 191.

62. *Id.*

63. *Id.* at 178.

same naked liberty of the villagers to resist (4b) and be resisted in turn (4c).⁶⁴

There is seemingly a lot of *moral* combat contemplated here by Steinhoff. For Steinhoff, no less than for Hohfeld, having a *privilege*—naked liberty—to do something is a moral status, a kind of active moral right to do that thing; and having such a status has the implication that others have no (passive) right that you not do it—that is, that you have no duty not to do it.⁶⁵ Each side of these situations of *actual*, physical combat between the bombers, the villagers, and their respective friends, is thus morally loaded for Steinhoff. In Hohfeld’s sense, they each are acting within their moral right, striving to do right even though only one of them can succeed in what they are trying to achieve.⁶⁶

If I shared Steinhoff’s sense about how these cases should come out, I would strip the analysis of any moral overtones: I would say no one has any moral right to do any of these actions, starting with the bombers. All any of them have is an absence of a duty to do or not to do any of the things they do, entailing that no one has a right that they not do what they want. They each thus have but naked liberties. So construed, there would be no *moral* combat in such a situation; only a moral state of nature in which all are free—nakedly at liberty—to compete for scarce goods—that is, life—that not all can have.

Yet such justified aggressor cases do not seem to be moral state of nature cases; not only is this because killing people does not seem as morally trivial as taking the last of the ice-cream in some first-come, first-serve buffet line, but also because the *justification* of the bombers’ bombing is more than an absence of a duty not to bomb. The bombers have a right to bomb—because of which it is right that they bomb—in senses stronger than that. And if this is so, then that rights-determined moral rightness should be carried all the way down the chain of action and reaction.

My view of these kind of cases is a very simple one, one that—like the moral state of nature interpretation—also does not admit the existence of moral combat. My view is as follows: (1) the bombers are “protectedly” permitted—and perhaps obligated—to bomb; (2a) the villagers are not permitted to resist and indeed are obligated not to resist; (2b) thus, should the villagers resist, the bombers are protectedly permitted to prevent it;

64. *Id.* at 178–79.

65. *Id.* at 33, 178.

66. *See supra* Section III.

and (2c) the villagers are obligated not to block the bomber's prevention in this regard. Further, (3a) those who would aid the villagers are obligated not to do so and (3b) may be resisted if they do, which (3c) resistance may itself not be resisted by those who would aid the villagers. Further, (4a) those who aid the bombers are protectedly permitted to do so, (4b) may not be resisted if they do, and (4c) do no wrong when they use force to overcome that resistance. In short, there is no combat here that is not wrongful for one of the sides who engages in it. There is thus no moral combat on this no more than the state of nature interpretation and either state of affairs is thus fully compatible with the Hurdian analysis of active-rights as protected permissions.⁶⁷

2. Agent-Relative Justified Aggressor Self-Defense

I have more sympathy for Steinhoff's *moral free-for-all* resolution of extended self-defense in cases where the aggressor is justified, not by the net good consequences of his action, but by what has come to be called the "reasons of autonomy" we each have to prefer both ourselves and those near and dear to us.⁶⁸ Hurd's already mentioned variation on Cicero's two men on a plank hypothetical will serve to illustrate this range of cases.⁶⁹

After a shipwreck, two mothers, X and Y, are struggling to keep their infant children alive in the open sea. There is but one plank available to save anybody. It is insufficient to support either adult mother; it is also insufficient to support both infants; it is sufficient to save one infant. Both mothers reach the plank at the same time; at t_1 both seek to place their infant on the plank. Simultaneously each seeks to prevent the other from succeeding in placing that other mother's child on the plank. Despite these efforts, both infants are on the plank anyway, and it is sinking. At t_2 , each mother seeks to throw the other's infant off the plank to its certain death. Simultaneously each seeks to prevent the other from doing this.

Moral combat? If I read Steinhoff correctly,⁷⁰ he will initially—that is, at t_1 —treat this case as another amoral free-for-all. At t_1 , X is nakedly at liberty to put her child— X_1 —on the plank, and at the same time, Y is nakedly at liberty to prevent this innocent threat to her own child (Y_1); and vice-versa when the parties are reversed. Further, still at t_1 , X is nakedly at liberty to prevent Y from preventing X from placing X_1 on the plank, Y is nakedly

67. See discussion *supra* pp. 317–19, 321; HURD, *supra* note 2, at 280 n.7.

68. THOMAS NAGEL, *THE VIEW FROM NOWHERE* 165 (1986).

69. See hypothetical *supra* pp. 317–19.

70. I take it that the intended payoff of Steinhoff adding "agent-specific agent-relative prerogative" to liberty-rights and claim-rights for a complete analysis of what it means to have an active right, is to give him the results he desires about the cases considered in the text. Just War Theory, *supra* note 1, at 31–32, 205.

at liberty to resist this preventative action by X, and vice-versa when the parties are reversed.

At t_2 , however, X is not at liberty or permitted to throw Y_1 from the plank so as to save X_1 ; rather, X is obligated not to kill Y_1 , by throwing Y_1 off the plank, Y is obligated to resist the killing of Y_1 by X should X seek to violate this obligation, and vice-versa when the parties are reversed. Further, still at t_2 , X is obligated not to prevent Y from preventing X from throwing Y_1 from the plank, Y is obligated to resist this preventative effort by X, and vice-versa when the parties are reversed. Finally, at both t_1 and t_2 , X's friends are nakedly at liberty to help her in each of X's efforts that do not violate her obligations, and Y's friends are nakedly at liberty to help her in each of Y's efforts that do not violate her obligations.

Already, in its very first assertion, this analysis runs into trouble. The reason Hurd made it a parent that is fighting for the plank is to bring in a—seemingly agent-relative—*obligation*:⁷¹ X and Y are each morally obligated to place their child on the plank and to prevent the other from preventing that.⁷² So neither mother is exercising a mere privilege when she places her child on the plank. This means that if each mother has a privilege to prevent the other from placing her child on the plank, then she is in (mixed) moral combat with the other mother—by being permitted to prevent what the other is obligated to do. Alternatively, the situation at t_1 could be a case of strong moral combat. X is obligated to place X_1 on the plank, and Y is obligated to prevent it, and vice-versa. But perhaps not at t_2 , where for Steinhoff, no such moral combat need exist: each mother is obligated *not* to throw the other's child off the plank, and each mother is obligated to prevent any such effort by the other if it should be made.⁷³

My own view is that the situation at t_1 should be treated similarly to the situation at t_2 : neither mother is at liberty or is permitted to thwart the placement of the other's child on the plank because each mother is obligated not to do that. Moral combat at t_1 disappears once this liberty-permission to thwart is eliminated. And at t_2 each mother is obligated not to throw the other child off the plank, so there is no moral combat there either. Unfortunately, these resolutions of the two mothers' dilemmas at t_1 and t_2 seemingly result in the death of both infants if each mother does what she is obligated to do; put more strongly, morality seemingly requires both infants to die. Benjamin

71. See HURD, *supra* note 2, at 285.

72. As Steinhoff acknowledges in Just War Theory, *supra* note 1, at 205.

73. HURD, *supra* note 2, at 272.

Cardozo recognized this unhappy consequence of obligating each person in a lifeboat not to throw anyone else overboard but comforted himself with the thought that perhaps some would voluntarily sacrifice themselves to save the rest.⁷⁴ No such comfort is available in the present situation; for each mother is obligated to save her child—that is, she is not permitted to volunteer that child for sacrifice.⁷⁵

Did we conclude too quickly that at t_1 each mother is obligated not to thwart the other mother's placement of her child on the plank and that at t_2 each mother is obligated not to throw the other mother's child off the sinking plank? After all, there is what I have called the "almost dead"—or mere "acceleration of death"—exception to our duties not to kill innocents.⁷⁶ When good consequences are in the offing, I have argued that one may (1) shoot down an airplane headed to the capital—because the occupants of the plane will die soon anyway even if the plane is not shot down; (2) separate Siamese twins and give the shared organs to one only—thus killing the other—when without the separation both will die soon anyway; (3) cut the rope on which another mountain climber's life depends, if otherwise the weight of the down-rope climbers will drag all down the cliff; and (4) kill and eat the weakest of a lifeboat filled with four persons, when the alternative of not eating the one is that he too will die along with the other three.⁷⁷

Given this exception, one might argue that each mother is not obligated not to prevent the saving of, and not to kill, the other's child. For if both infants stay on the plank, the non-saved or killed child is dead anyway, just a little bit later. Yet notice this is not true in this version of the plank case: neither child is *almost dead* because the other might be the one to die.⁷⁸ There is, in other words, no inevitability in the victim's death as there is in the earlier described versions of the plane, Siamese twins, mountain climber, and lifeboat cases—for in these latter cases the passengers on the plane are dead no matter what, the twin who dies could not survive even with separation and transfer of shared organs to it, the down-rope climbers

74. BENJAMIN N. CARDOZO, *LAW AND LITERATURE AND OTHER ESSAYS* 113 (4th prtg. 1938) ("There is no rule of human jettison. Men there will often be who, when told that their going will be the salvation of the remnant, will choose the nobler part and make the plunge into the waters. In that supreme moment, the darkness for them will be illumined by the thought that those behind will ride to safety. If none of such mold are to be found aboard the boat, or too few to save the others, the human freight must be left to meet the chances of the waters.")

75. HURD, *supra* note 2, at 285.

76. MICHAEL S. MOORE, *CAUSATION AND RESPONSIBILITY: AN ESSAY IN LAW, MORALS, AND METAPHYSICS* 65–68 (2009).

77. *See id.* at 66.

78. HURD, *supra* note 2, at 284.

are dead no matter what, and the cabin boy who is killed and eaten was too weak to survive even if another were killed to save him. The plank case is more like the choice given the mother of two children by the Nazi officer in the film, *Sophie's Choice*: neither child is inevitably dead—the tragedy of the film is that it depends on Sophie's choice.⁷⁹

My own view is that the *almost dead* exception does apply to these last, *Sophie's Choice*, variations of the *almost dead* exception. In which case each mother is obligated not to thwart the other's attempts to place her child on the plank and each is obligated not to throw the other's child off the plank only so long as it is not clear the other mother will not yield and both children will sink. When both children are about to drown (t_3), each mother's obligations—to save and to thwart—cease and they are nakedly at liberty at t_3 to throw off the other child, throw off their own child, and to prevent the other from throwing off either child. To be sure, such a moral state of nature may result in both infants' deaths—if the two mothers cannot work out some accommodation—but at least morality does not require that no such accommodation be reached, and that both infants must therefore die.

Notice that at t_3 there is no moral combat—at least no more than at t_1 and t_2 —and Hurd's alternative logic of rights—ruling it out—is secure in such cases. And if there is a t_4 where one child is truly *almost dead*—that is, gets to such weakened condition as not to survive even if placed upon the plank—then the other mother is both protectedly permitted and obligated to throw it off,⁸⁰ and the weakened child's mother is obligated to let the first mother do so.⁸⁰ So still no moral combat.

3. Self-Defense Against Excused Threats

Steinhoff only glancingly considers these cases so I too will be brief about them. Given that there are three major categories of excuse,⁸¹ there are three kinds of cases here. First, are the status excuse cases—often called “exemption” cases—that Steinhoff treats as classic innocent aggressor cases: the aggressor is too young, too intoxicated, too mentally ill, to realize the

79. MOORE, *supra* note 76, at 66. Analogous cases are the lifeboat case where no one is already too weak to survive and the Siamese twin's case, where either twin—but only one—could be saved by the use of the organs of the other.

80. *See id.*

81. MICHAEL MOORE, PLACING BLAME: A GENERAL THEORY OF THE CRIMINAL LAW 483–85 (1997).

threat that he is posing.⁸² Second, the ignorance-mistake cases: the aggressor reasonably but mistakenly believes that the person he is about to shoot means to shoot him.⁸³ Third, the coercion-compulsion cases: the aggressor is threatening another because he himself is threatened with some consequence that he finds very hard to contemplate—for example, being enclosed in a small space—even though avoiding that consequence does not justify his action.⁸⁴

Notice that unlike either of the kinds of justified aggressors that we have considered, aggressors who are not blameworthy because they are excused—rather than justified—do wrong in attacking; they are wrongful aggressors even if they are not culpable aggressors. They thus do not present much of a problem for self-defense; of course, X is protectedly permitted to kill such aggressors in self-defense, and they are obligated not to prevent it.⁸⁵ To be sure, such excused aggressors may not *know* they are obligated not to resist X's self-defensive efforts, because they do not know the relevant facts or because they lack capacity to draw the right moral conclusions from those facts. But those subjective features are neither here nor there for a deontic logic of obligations, permissions, and/or liberties. And sticking to the relevant, objective features here, there is no moral combat to be found: one does no wrong in killing a wrongful aggressor, and he compounds the original wrong of his very aggression by seeking to prevent such self-defense.⁸⁶

4. *Self-Defense Against Innocent Threats*

There are more cases we could consider: “innocent shield” cases—where the shield poses no threat other than his shielding of a culpable aggressor; “innocent side-effect” cases—where the victim of self-defensive force is behind rather than in front of a culpable aggressor; et cetera.⁸⁷ In the interest of brevity, I shall peruse but one final example that has come to be known in the literature as the “innocent threat” case.⁸⁸

Nozick's falling fat-man is the classic example: X is lying at the bottom of a well unable to escape; a fat-man (Y) has been pushed into the well through no fault of his own and will kill X if his fall is unimpeded; but the fall will

82. *Id.* at 485.

83. *Id.* at 483–84. Steinhoff's example here is the mistaken resident scenario: Mistaken resident starts to shoot the twin of a well-known serial killer who has the misfortune to look just like his twin, and the question is whether the innocent twin may prevent this by shooting first. *Just War Theory*, *supra* note 1, at 219.

84. MOORE, *supra* note 81, at 484.

85. See MODEL PENAL CODE § 3.04 note on use of force in self-protection (AM. LAW INST., Proposed Official Draft 1962).

86. HURD, *supra* note 2, at 278–79.

87. HURD & MOORE, *supra* note 6, at 58.

88. *E.g.*, *id.* at 59–60.

not kill Y—no inevitable death of Y here so no argument can be made that this can be treated as an acceleration case; X has a ray gun and can vaporize Y, preventing X's death; Y has a counter-ray gun that can disable X's ray gun if Y chooses to use it; Z, a bystander, has a third ray gun that can disable X's or Y's ray guns if he, Z, chooses to use it.⁸⁹

These are not innocent shield or innocent side-effect cases—because Y is a threat, albeit an innocent one. These also are not innocent aggressors or minimally responsible threat cases—because Y has not acted in any way to make himself a threat. He is just falling with gravity making him into an innocent threat to X's life.

Using the template of questions earlier devised,⁹⁰ I understand Steinhoff to defend the following conclusions about the innocent threat cases:

1. By hypothesis, Y is fully innocent in his falling toward X. Because Y's falling is not an action by Y, his deontic status is not an issue.
- 2a. X has a liberty-right to vaporize Y with X's ray gun.
- 2b. Y has a liberty-right to prevent Y from using his ray gun to vaporize X.
- 2c. X has a liberty-right to prevent Y from preventing X in the use of X's ray gun to vaporize Y.
- 3a. Z, if he is a friend of X's, has a liberty-right to use his ray gun either to vaporize Y or to aid X in doing so.
- 3b. Y has a liberty-right to prevent Z's assistance of X.
- 3c. Z has a liberty-right to prevent Y's prevention of Z's assistance of X.
- 4a. Z, if he is a friend of Y's, has a liberty-right to use his ray gun to disable X's ray gun or to assist Y in doing so.
- 4b. X has a liberty-right to prevent Z's assistance of Y.
- 4c. Z has a liberty-right to prevent X's prevention of Z's assistance of Y.⁹¹

Admittedly, I feel the tug of the intuitions behind Steinhoff's view of these cases.⁹² If I were to adopt Steinhoff's conclusions, however, I would

89. See ROBERT NOZICK, *ANARCHY, STATE, AND UTOPIA* 34–35 (1999).

90. See *supra* pp. 322–24.

91. See *Just War Theory*, *supra* note 1, at 164–84.

92. See Michael S. Moore, *Responses and Appreciations*, in *LEGAL, MORAL, AND METAPHYSICAL TRUTHS: THE PHILOSOPHY OF MICHAEL S. MOORE* 343, 388–90 (Kimberly Kessler Ferzan & Stephen J. Morse eds., 2016).

strip them of any *moral* dimensions. I would do this by not stating those conclusions in terms of rights or *permissions*, but in terms of naked liberties, which is what he may think anyway. So construed, Steinhoff's conclusions then are that in no sense do X, Y, or Z have *moral rights to* do what they are at liberty to do.⁹³ True enough, they have no moral duty *not* to do these things nor does anyone have a right that they not do these things—but they have no moral duty not to rub their eyes, clear their throats, or think whatever thoughts they like, nor does anyone have a right they not do these things, either. An absence of duty and an absence of its correlative claim-right do not make for a kind of moral thing, no more than putting positive sounding labels on absent elephants—calling those of them which would belong to me, *no-elephants*, and calling others that would belong to you, *smeliphants*—would transform such absences into kinds of elephants.

It may well be that Steinhoff in some sense agrees with this conclusion of amorality—at least in these cases—despite his explicit talk of “liberty-rights.”⁹⁴ For Steinhoff denies that his preferred solution to the innocent threat cases is a matter of “deep and eternal truths about self-defense.”⁹⁵ There is thus not “‘one right answer’ to the problem of the non-responsible threat.”⁹⁶ It all depends, Steinhoff tells us, on what people think in each society, and if they think differently in their society than we do in ours, then the answers given earlier will be different and will be *right* for that society.⁹⁷

My perhaps overly charitable reading of this is not to take at face value the moral relativism that Steinhoff here expresses.⁹⁸ Rather, I prefer to construe him to sense that on his own analysis there is no morally right action for X, Y, or Z. There is only a moral state of nature where X, Y, and Z may do as they please, because morality—*true morality*—does not speak to such situations.⁹⁹

93. See Just War Theory, *supra* note 1, at 164.

94. *Id.* at 22, 163–64, 191.

95. *Id.* at 185.

96. *Id.* at 186.

97. *Id.* at 105, 124.

98. See *id.* at 161. The reason for charity here is because relativism is such a hopeless metaethics. On this, see, for example, Hurd's takedown of relativism, HURD, *supra* note 2, at 27–61.

99. Bernard Williams once urged—seconded by Tom Nagel—that in situations beyond the threshold of awful consequences contemplated by a threshold deontology, morality loses its voice. Williams' famous example of this was his “Captain Pedro,” who forces upon you the choice of executing one innocent villager else he will execute the entire village. J.J. C. SMART & BERNARD WILLIAMS, UTILITARIANISM: FOR AND AGAINST 98–99 (1973). I express some reservations about so construing threshold deontology in MOORE, *supra* note 81, at 719–724.

In any case, my own resolution of the innocent threat cases is different. I liken them to the innocent shield cases, where X, the innocent shield, seeks to defend himself from Y shooting through X to kill Z, a culpable aggressor against Y. My conclusion in those cases is that Y is not permitted or at liberty to shoot through X; Y is obligated not to do so even though that means that Z—the culpable aggressor—will kill him (Y). Similarly, X in the falling fat-man case is obligated not to vaporize Y, the innocent threat—meaning that if X does so, Y may prevent it and so may Z—and meaning that X is obligated not to prevent the preventative efforts of Y and Z in this regard. For the only differences between the shield and the falling fat-man are: (1) the motion of the threat but not of the shield and (2) the need—for defense of X—for the absence of the threat’s body as compared to the indifference to the presence or absence of the shield’s body. These do not recommend themselves as morally freighted differences.¹⁰⁰

On the solution recommended here, there will never be an amoral, state-of-nature free-for-all in the innocent threat case. Rather, X is obligated not to vaporize Y, Y is protectedly permitted to prevent X’s vaporizing of Y, and X is obligated not to prevent Y’s prevention in this regard. Further, Z is protectedly permitted to aid Y in Y’s prevention of X’s self-defensive efforts, Z is obligated not to aid X in X’s self-defensive efforts, X is obligated not to prevent Z’s efforts in this regard, and Z is protectedly permitted to prevent any such preventative effort by X. On this solution, too, there is no moral combat.

V. CONCLUSION

I conclude that no moral combat exists in cases of self-defense, not in the classic blameworthy aggressor self-defense scenarios where Steinhoff agrees that there is no moral combat, but also, in the extended self-defense cases where the aggressor is in some way not blameworthy—because that aggressor’s aggressive action is justified, excused, or not even an action. In the subclass of those latter cases where there is an amoral free-for-all of mere naked liberties, there would be no *moral* combat because nothing moral depends on who wins the actual combat taking place in such scenarios. Thus, Steinhoff has no need to identify the *right* to self-defense that we each possess as a mere “liberty-right”—a naked permission or a naked liberty.¹⁰¹

100. I recognize that those drawn to various *using* versions of deontological ethics may balk at these assertions.

101. Just War Theory, *supra* note 1, at 21–22.

It can and should rather be seen as a protected permission to defend oneself, a permission—whose correlative duty of non-prevention by others—rules out the possibility of moral combat. Because this is what morality should be like, it is nice it is like that. Moral combat is not an inevitable feature of our moral life that we just have to put up with, and the malevolent Greek god imagined earlier will just have to find other amusements.