



## Shooting to Kill: The Ethics of Police and Military Use of Lethal Force

Seumas Miller

Print publication date: 2016

Print ISBN-13: 9780190626136

Published to Oxford Scholarship Online: November 2016

DOI: 10.1093/acprof:oso/9780190626136.001.0001

# Morally Permissible Use of Lethal Force

## A Taxonomy

Seumas Miller

DOI:10.1093/acprof:oso/9780190626136.003.0002

## Abstract and Keywords

In this chapter a taxonomy is provided of the morally permissible use of lethal force across two main dimensions: (1) individual and joint action (and joint omissions) and (2) negative and positive moral rights. The claim that it is morally permissible to use lethal force to enforce some negative rights, notably the right to self-defense in the service of the right not to be killed, is relatively uncontroversial. However, it is argued that it may well be morally permissible to use lethal force to enforce some positive rights, notably the right to preserve the life of others. In cases of multiple attackers/refrainers and multiple defenders/enforcers, the use of lethal force typically involves joint actions. Therefore, an analysis of such joint actions is provided. Note that philosophical analyses of the moral permissibility of the use of lethal force are typically unhelpfully framed in terms of individual, as opposed to joint, actions, albeit the “individuals” in question are sometimes collective entities, such as military forces.

*Keywords:* negative rights, positive rights, joint action, lethal force, collective entities, moral permissibility, self-defense, joint omissions

IN THIS CHAPTER the focus is on the morality of the use of lethal force by and against single individuals, or members of small groups, in the state of nature; that is, the focus is on natural, i.e. non-institutional, actors. It is an assumption of this work that institutions presuppose natural (i.e. non-institutional) moral principles, rights and obligations governing the behaviour of non-institutional

actors, but also further specify these principles, rights and obligations in order to render them fit for purpose in particular institutional settings.

It is widely accepted that the use of lethal force is morally justified, or at the very least morally permissible, in individual self-defense and by third parties to protect human life. These are the two fundamental moral justifications for the use of lethal force. In due course, however we shall complicate the picture. Here, as elsewhere in this book, I assume moral permissibility is a weaker notion than moral justification. If an action (or intentional omission), *x*, is morally justified, then there are good and decisive, or at least sufficient, moral reasons to perform it. By contrast, an action, *x*, might be morally permissible even though there are no good, let alone decisive, moral reasons to perform it; rather, there are merely no good or decisive moral reasons *not* to perform *x*. I also assume that there is a distinction between moral responsibility and blameworthiness; blameworthiness entails moral responsibility but moral responsibility does not entail moral blameworthiness (or praiseworthiness).<sup>1</sup> An agent might be morally responsible for **(p.16)** some morally wrong (avoidable) action but not morally blameworthy since, for example, the agent had a valid excuse for performing the action. I refer to agents who are blameworthy for performing morally wrong actions as morally culpable.

It is argued by many that the protection of human rights—including, but not restricted to, the right to life—justifies the use of lethal force or, at the very least, renders it morally permissible. In this view, if a moral entitlement is a human *right*, then it is a very strong entitlement indeed. As Ronald Dworkin says, “Rights are trumps”<sup>2</sup> and held to be enforceable. So, other things being equal, coercion may be, and perhaps ought to be, used to ensure that such rights are respected. But it is not obvious from this that the use of, or the threat of the use of, *lethal* force is always morally permissible in relation to human rights protection, even in situations in which other lesser forms of coercion are unavailable or ineffective.

In this book I adopt a broadly rights-based approach.<sup>3</sup> In relation to the question of the conceptual underpinning of rights, I favor a pluralist approach over monist conceptions, such as interest-, needs-, or agency-based approaches.<sup>4</sup> Let me begin my making some distinctions with respect to moral rights that are germane to my purposes.

Human rights are to be distinguished from institutional rights, and negative rights from positive rights. Human rights, as opposed to institutional rights, are rights possessed by virtue of properties one has qua individual human being. Thus the right to life is a human right. By contrast, the moral (and legal) right a police officer might have to arrest an offender is an institutional right. I return to the matter of institutional rights, and, in particular, to institutional rights that are also moral rights, **(p.17)** in later chapters. Here I note that the primary

notion contrasted with institutional rights is that of natural rights; natural rights are noninstitutional rights. Human rights are also noninstitutional rights; they are a species of natural rights. However, natural rights are not necessarily human rights, as I am using these terms, since some natural rights are not possessed *merely* by virtue of properties that their possessors have qua *individual* human beings. For example, human persons have a natural right to have sex with one another and to form friendships. But these are not moral rights an individual person can possess on his or her own; sex and friendship both require another person who is agreeable to having sex or to forming a friendship. In such cases I suggest that the individuals in question have a jointly held *natural* right not to be prevented from their joint activities by others.<sup>5</sup>

Negative rights are rights one has not to be interfered with by others. So the rights not to be killed or not to have one's freedom restricted are negative rights. By contrast, the right to have sufficient food to keep one alive is a positive right; it is a right to assistance from others, if such assistance is required and they are able to provide it at a relatively small cost to themselves.

As is well known, both of these sets of distinctions are problematic in various ways. Indeed, the very notion of a moral right is problematic. Nevertheless, for my purposes here, I am going to assume that there are natural rights of which human rights are a species, and that these rights include at least some of the ones typically referred to as positive rights. In particular, I am going to assume that natural rights are, or at least include, some or all of those rights that Henry Shue refers to as basic rights.<sup>6</sup> Basic rights include the right to physical security and the right to a subsistence level of food.

Moreover, I am also assuming certain properties of natural rights. First, many natural rights generate concomitant moral obligations on others. So A's right to life generates an obligation on the part of B not to kill A. Second, natural rights are justifiably enforceable.<sup>7</sup> So A has a right not **(p.18)** to be killed by B, and if B unjustifiably attempts to kill A, then (other things being equal) C is morally justified in using lethal force to prevent B from killing A (if no other means of prevention are available). Note that C might in fact be A, in which case it is an instance of justifiable killing in self-defense, as opposed to killing in defense of another person.

My task in this chapter is to map the conceptual terrain of interest to us in our discussion of the morally justified or morally permissible use of lethal force, and thereby pave the way for the more detailed discussions of particular institutional and noninstitutional (typically, natural) cases of the use of lethal force. Institutional cases are ones in which the lethal force in question is deployed by institutional actors in their capacity as institutional actors; noninstitutional cases are ones in which lethal force is used by ordinary human beings in their noninstitutional (typically, natural) capacities. The paradigmatic cases of

institutional actors who deploy lethal force are police officers and military combatants, and it is these that will receive detailed treatment in Chapters 3–10.

The paradigm cases of noninstitutional use of lethal force are ones in which one person, B, mounts an unjustified lethal attack against another person A, and A responds by killing B in self-defense; or, alternatively, person B attacks A and a third person, C, responds by killing B in defense of A. These are essentially cases in which A's negative rights, particularly A's right not to be killed, are being violated. Notice that in these paradigm cases, the threat to A posed by B is an *imminent* threat; so A's (or C's) lethal response is not a preemptive attack on B. Moreover, it is *necessary* for A (or C) to kill B if A's life is to be preserved. Finally, the killing of B is not a *disproportionate* response; after all, it is A's life that has been deliberately and unjustifiably put at risk by B.

These three principles—imminence, necessity, and proportionality—are in part constitutive of justifiable use of lethal force in our paradigmatic noninstitutional cases. However, as we shall see below in this chapter, and in the chapters following this one, the nature or, at least, application of these principles can vary greatly depending on the institutional or noninstitutional context. For example, the principle of military necessity applicable to the use of lethal force by military combatants in a theater of war is quite different from the notion of necessity applicable in noninstitutional cases of personal self-defense in peacetime settings. There is a fourth salient principle; namely, the principle of discrimination. Roughly speaking, this principle captures the fundamental moral intuition that it is only those that are morally responsible for an unjustified lethal attack (**p.19**) that can be justifiably killed by the person attacked or by some third party. However, there are important complications arising from the application of this principle in war and other settings. I discuss these in detail in Chapter 7.

In many of the paradigm cases of noninstitutional justifiable use of lethal force, the agents involved, whether they be defenders or attackers, are acting on their own as single individuals. However, I want to complicate matters in two main ways. First, I introduce cases in which although B does not attack A, A nevertheless has some positive right to assistance from B. For example, A might have a moral right that B provide A with food and water to enable A's survival. If so, then A may well have an enforcement right against B. Moreover, in such a scenario involving a third person, C, A's positive right to assistance from B may well be enforceable by C. Note that although such positive rights are, at least in principle, enforceable, it does not follow that enforcement by means of *lethal* force is morally justified or permissible; perhaps only the use of a lesser form of force is justified or permissible. The reason for this might be that positive rights are, other things being equal, less morally weighty than negative rights. I return to this issue below.

The second complication is the introduction of cases of *joint* action, as opposed to cases of single action. I offer a more detailed account of joint action below.<sup>8</sup> However, joint action is action in which two or more agents each perform an individual action in the service of some shared or common end, such as an end that each has but which neither could readily achieve by acting alone. (I refer to such ends as collective ends.) Imagine, for example, that agents B1 and B2 want to kill A, but neither can achieve this acting alone. However, acting together, for instance by B1 restraining A while B2 stabs A, they can kill A. If B1 and B2 act in this manner, then they will have jointly brought about A's death, notwithstanding that each acting on his own would not have done so.

In the discussion of joint action scenarios involving violations of negative rights, for the most part I assume that in any given scenario there are multiple attackers, multiple defenders, and multiple third-party enforcers (in cases involving defense of the rights of others), and, in particular, that **(p.20)** there is a joint attack and a joint defense (either by the defenders themselves or by third-party enforcers). Similarly, in the case of joint action scenarios involving violations of positive rights, for the most part I assume that there are multiple persons deliberately refraining from discharging their positive obligations (multiple *refrainers*, so to speak), multiple persons whose positive rights are being violated (defenders), and multiple third-party enforcers (in cases involving defense of the rights of others), and, in particular, that there is a joint omission (by the refrainers) and a joint defense of positive rights (either by the defenders themselves or by third-party enforcers).

In section 1.1, I discuss single action scenarios, or scenarios in which there is a single rights violator (either an attacker or, in the case of positive rights violations, a refrainer), a single defender, and a single enforcer (albeit the defender might be the enforcer). In subsection 1.1.1, I consider the use of lethal force in the defense of so-called negative human rights. In subsection 1.1.2, I turn to a consideration of the use of lethal force in order to enforce positive human rights.

In section 1.2, I consider multiple action scenarios, or scenarios in which there are multiple rights violators (whether attackers or refrainers), multiple defenders, and/or multiple rights enforcers, and in which the violators and/or enforcers are acting jointly. For example, a defender's life might be unjustifiably threatened by a number of attackers who are acting jointly—perhaps because none of them could kill the defender if acting alone. Again, a number of persons intervening to protect a defender from an unjustified attack might act jointly, and they might do so because none of them could hope to protect the defender's life if they acted alone. In subsection 1.2.1, I consider joint action cases in which the use of lethal force is in the defense of negative human rights. In subsection

1.2.2, I turn to a consideration of joint action cases in which the use of lethal force is in order to enforce positive human rights.

### 1.1 Morally Justified/Permissible Use of Lethal Force: Single Action Scenarios

#### 1.1.1 Use of Deadly Force in the Defense of Negative Human Rights

There is a human right to life, and killing another person can only be morally justified or, at the very least, rendered morally permissible in extreme **(p.21)** circumstances. The basic such circumstance is that of self-defense. I am morally entitled to kill another person if that person is trying to kill me and will succeed if I do not kill him or her first. However, self-defense is not the only justification for taking the life of another person. It is widely accepted that each of us also has the right to kill in defense of the lives of others. I am morally entitled to kill someone attempting to kill my wife or husband if this is the only means of prevention. Notice that in such cases of other-person defense, it is widely believed not only that it is morally permissible<sup>9</sup> for a third party to use lethal force, but also that such use of lethal force is a moral obligation, supposing the third party can intervene without incurring any serious cost to him or herself. Accordingly, there is a good and decisive moral reason to use lethal force, and so killing the attacker is the morally preferable alternative.

Killing in order to defend one's own life or the life of another is morally justified on the grounds that each of us has a right to life or, more specifically in the context of a discussion of negative rights, a right not to be killed.<sup>10</sup> Speaking generally, we are entitled to defend the right not to be killed by an attacker posing an imminent threat, and to do so by killing our attacker under three conditions (I provide a more detailed and nuanced account of justifiable killing in self-defense in Chapter 2). First, the (single) attacker is deliberately trying to kill someone—either oneself or another person—and will succeed if we do not intervene. We are not entitled to shoot dead an attacker whom we know is threatening us only with (say) a replica of a gun. Second, we have no way of preserving our own or the other person's life other than by killing the attacker (the above-mentioned necessity condition). The defender may be unable to flee to safety, for example. Third, and more problematically, our attacker does not have a justificatory moral reason for deliberately trying to kill. If all these conditions are met, then the attacker poses a morally culpable unjustified threat to life, and therefore a lethal response is not disproportionate.

**(p.22)** Having outlined the standard account of killing in self-defense or in defense of the life of others, let me now consider a somewhat different, or at least an expanded kind of, moral justification for killing in defense of a self; namely, killing in defense of moral rights to properties constitutive of selfhood other than life. Note that I am here concerned with violations of negative rights, so my focus is on unjustifiable *attacks* on rights to properties constitutive of

selfhood. I discuss the corresponding violations of positive rights in subsection 1.1.2.

In speaking of killing in defense of rights other than the right not to be killed, one would obviously not want to include *all* negative moral rights, or at least not all violations of all negative moral rights (let alone all violations of all positive rights). For example, property rights are arguably moral rights, but for someone to kill someone else to prevent them stealing a handbag, for example, would be morally unacceptable; indeed, it would not only be morally unjustifiable, it would also be morally impermissible.

So the first question is: Are there any negative moral rights, apart from the right not to be killed, the protection of which would justify the use of lethal force, or at the very least render it morally permissible? Candidates for such rights might include a right not to be assaulted or to have one's freedom curtailed. And in the light of my notion of properties constitutive of selfhood, the second (narrower) question is: Are there any negative moral rights to things constitutive of selfhood, other than life, the protection of which would justify the use of lethal force or render it morally permissible, such as the right not to be attacked by someone bent on inflicting severe brain damage?

What is this distinction between rights to things constitutive of an individual human being's selfhood and rights to things not so constitutive? More specifically, what are some of the rights to things which are not constitutive of the self? I suggest that they include many institutional rights, such as the right to property, and perhaps the right to a fair trial and the right to hold offices of various kinds. I further suggest that it is morally justifiable to use lethal force to protect rights to things constitutive of selfhood—where it is understood that such things include, but are not restricted to, life. In particular, there is a justification for killing in what is quite literally self-defense—the defense of the self—and for protecting the self of others. In later chapters I argue that in some circumstances the use of lethal force to protect certain other rights that are rights to things *not* constitutive of selfhood is morally permissible, if not morally justified. Before doing so, however, I want to briefly deal with the claim **(p.23)** that there is no acceptable distinction to be made between rights to things constitutive of the self and rights to things not constitutive of the self.

Surely some such distinction is necessary. For we need to be able to distinguish between, say, a right to life and a right to property. If I defend myself against someone trying to kill me, it is defense of the self, as it is literally the destruction of myself that is in question. Similarly, if I defend myself against someone trying to irreparably damage those parts of my brain by virtue of which I have the capacity to perform intellectual tasks, then it is defense of my selfhood. Such capacities are constitutive of selfhood. However, if I defend my property—say, my car, or an intrusion by an unarmed trespasser in my home—then I am not

necessarily defending myself. Neither my car nor my home are constitutive elements of my selfhood. If my car is wrecked, or I sell my house, *I* am nevertheless still intact.

Moreover, it is important not to assimilate the various rights to defend freedoms to the right to defend selfhood, since the various freedoms cut across the distinction between properties constitutive of selfhood and properties not so constitutive. Consider locking someone in a room. This is a violation of their freedom of movement. Yet we can distinguish between the capacity of the agent *in herself* to freely move and the existence of external impediments to the exercise of that capacity. The former, but not the latter, is constitutive (in part) of selfhood. To see this, consider, first, the resistance of a person, A, to an attempt by another person, B, to inject A with a drug that would permanently and irreversibly paralyze A. Here A's capacity to move is destroyed. Contrast this with the case where A is locked in a five-star hotel room for two days—with full room service! Here no constitutive element of A's selfhood is destroyed.

Finally, it is important to recognize that some rights to things not constitutive of selfhood have violation thresholds, such that at points beyond the threshold, violations threaten things that are constitutive of selfhood. For example, if someone is incarcerated and suffers severe and longstanding limitations of their freedom of expression, privacy, and freedom of movement, this may, over time, undermine that person's capacity to think and act independently. Such a loss of agency may come to constitute a partial destruction of selfhood. Likewise, an act of rape or assault may reach a threshold where it threatens to destroy aspects of selfhood, including the capacity to relate sexually or socially with other people.

I do not claim to have *precisely* drawn the distinction between elements of selfhood and other sorts of things to which one has rights. I do not **(p.24)** even claim that the distinction can be precisely drawn. I merely claim that it is evident that there is some such distinction to be drawn. This being so, we need to distinguish between killing in self-defense, or in the defense of other selves—understood as defense of the self—and what I am calling killing in defense of rights not constitutive of selfhood. I note that actions typically or colloquially regarded as actions of self-defense are not acts of self-defense in my (somewhat artificial) sense. For example, if A kills B in order to prevent B slapping A, this might be held colloquially to be an act of self-defense, whereas it would not be held so in my stipulated sense. Let us now turn to positive rights.

### 1.1.2 The Use of Deadly Force in the Protection of Positive Human Rights

Shue's basic moral rights include the right to security and the right to subsistence.<sup>11</sup> Shue argues that these basic rights generate rights to protection and assistance. Let us accept Shue's general line of argument here. Such basic moral rights are not restricted to negative rights; rather, they include some positive rights, such as the right to subsistence. Accordingly, lethal force might



be justified, or at least it might be morally permissible, in a situation in which someone is refusing to provide for the basic material needs of someone else. Let us consider a simple example to test our intuitions in favor of this theoretical claim: the case of a drowning man who could easily be saved by a bystander on an adjacent overwater walkway. The bystander simply needs to release the life jacket she is holding and it will drop down to the drowning man. However, she refuses to do so since he is a stranger and she dislikes the look of him. But the drowning man has a speargun and threatens to shoot her dead if she does not release the life jacket to him. She calls his bluff, perhaps doubting his ability to simultaneously tread water and fire an accurate shot. At any rate, the drowning man shoots her dead. As she falls from the narrow unfenced walkway into the water she automatically releases the life jacket thus enabling the drowning man to save himself.<sup>12</sup>

**(p.25)** In this scenario, we are assuming that the threat to the life of the drowning man is imminent; that is, he will drown if he is not rescued within a minute or two. Second, the bystander has a moral obligation to save the drowning man, since she can do so at virtually no cost to herself. Third, it is necessary for the drowning man to shoot the bystander dead if he is to save his own life; he has no other options. Finally, the drowning man's lethal response is not disproportionate, at least in the sense that he is taking one life to save his own life—and, indeed, the life of someone who is morally culpable by virtue of violating the drowning man's positive right to assistance. Accordingly, the scenario is analogous to the paradigm cases described above of killing in defense of one's negative right not to be killed.

Notwithstanding this analogy, the drowning man scenario is in an important respect morally different from the corresponding negative rights violations scenarios. Specifically, the bystander who is killed by the drowning man is not the (intentional or unintentional) cause of the life-threatening situation in which the drowning man finds himself; indeed, she is not responsible, causally or morally, for bringing about the life-threatening situation of the drowning man, albeit had he not acted she would have been morally responsible for failing to save him (and, to that extent, for his death). Accordingly, the justificatory moral reasons for the drowning man killing the bystander have less moral weight than the reasons that the defender (or the third-party enforcer) has for killing his attacker in our corresponding negative rights violation scenario.<sup>13</sup>

Notwithstanding the weaker moral case for the drowning man's lethal response, my intuition is that the drowning man's action is morally permissible.<sup>14</sup> The drowning man has a positive and enforceable right to be assisted, and the bystander is deliberately and unjustifiably refraining from carrying out her moral obligation to assist. Moreover, the assistance in question can be rendered

at a very small cost to the bystander. In addition, the three conditions of imminence, necessity, and proportionality obtain.

**(p.26)** It might be argued, contra what I have assumed, that positive rights to assistance are not enforceable, or at least that this one is not. This is implausible. Consider a variation in the scenario in which the drowning man could only shoot non-life-threatening, but nevertheless injurious, rubber bullets at the bystander. Surely he would be morally justified in doing so to save his life. This suggests an alternative qualified view and a corresponding more nuanced argument against the claim that positive rights are not enforceable. This alternative view holds that the positive right to assistance is enforceable, but it also maintains that it is, nevertheless, not enforceable by means of lethal force. Lethal force would be excessive in this second (qualified) view. Therefore, in this qualified view, it is morally impermissible for the drowning man to shoot the bystander dead. However, it is permissible for him to use nonlethal, injurious force, such as rubber bullets.

I do not find the qualified view compelling. Certainly it is incomplete. For surely it would be morally *excusable*, even if not morally justified, for the drowning man to kill the bystander in our scenario. Aside from the impartialist moral considerations detailed above, there is a partialist moral consideration in play. Arguably, the drowning man is entitled to give some additional weight to his own life over that of the bystander, given that the bystander is culpably failing to assist. I conclude that it is morally permissible or, at least, morally excusable for a person to use lethal force to enforce some of his or her positive rights under some circumstances.

In this subsection I have put forward an argument based on the enforceability of positive rights, along with the existence of intuitively appealing scenarios, to the conclusion that it is morally permissible for a person to use lethal force to enforce some of his or her natural positive rights. However, I accept that my arguments in this regard are not entirely compelling. Specifically, it might be claimed that although the positive rights in question are enforceable, the use of lethal force to enforce positive rights, while morally excusable in some cases, is not morally permissible, because it is too extreme a response. Presumably, this claim rests on the moral difference between culpable unjust killing and culpable unjust refraining from preserving life; the latter being a lesser evil than the former (other things being equal).

Thus far we have been discussing scenarios in which the person whose life is at risk is the one who is using or threatening to use lethal **(p.27)** force to enforce their positive right to assistance. But what should we now make of the moral obligation of third parties to enforce positive rights? Presumably, it is permissible, and perhaps obligatory, for a third party to enforce some positive rights to assistance under some circumstances. However, the question arises as

to whether it would be morally permissible for the third party to use, or to threaten to use, lethal force to ensure compliance. This is less certain. On the other hand, I have argued that one can justifiably, or at least excusably, use lethal force to enforce one's own positive rights, including (presumably) rights to subsistence. Moreover, it is generally agreed that both oneself and third parties can justifiably use lethal force to enforce one's negative rights. Nevertheless, it remains unclear whether it is morally justifiable, or at least excusable, for third parties to use lethal force to enforce positive rights. Let us pursue this matter further.

Consider the following version of our drowning scenario. A young boy is drowning, and a bystander is refusing to discharge her moral obligation to assist him, even though she could easily do so if she dropped down to him the life jacket that she is holding. Now assume that the boy's father—a crippled war veteran—is nearby but unable to help his son, since no life jacket is within his reach. Perhaps he is without his wheelchair. However, the father does have a handgun and—as in the drowning man scenario—he first threatens and then kills the bystander, thereby ensuring that his son is rescued. Surely the father's action is morally excusable, even if not morally justified. For as in the earlier version of this scenario, there is a partialist moral consideration in play, albeit a different one. Arguably, the boy's father is entitled to give some additional weight to the life of his son over that of the bystander, given that the bystander is culpably failing to assist.

I suggest that this scenario demonstrates that it is morally justifiable, or at least excusable, for *some* third parties to use lethal force to enforce positive rights to life (and perhaps rights to other properties constitutive of selfhood); namely, third parties with an especially strong and stringent moral obligation to protect the persons whose positive rights are being, or are about to be, violated, such as third parties who are parents of, or otherwise have special moral duties to, the persons in question. Let us now turn to the morally justifiable use of lethal force in joint action scenarios. We begin with an analysis of the concept of joint action.

### **(p.28)** 1.2 Morally Justified Use of Lethal Force: Joint Action Scenarios

Joint actions are actions involving a number of agents performing interdependent actions in order to realize some common goal. Examples of joint action include two people dancing together, a number of tradespeople building a house, and a group of robbers burgling a house. Joint action is to be distinguished from individual action, on the one hand, and from the "actions" of corporate bodies, on the other. Thus an individual walking down the road or shooting at a target are instances of individual action. A nation declaring war or a government taking legal action against a public company are instances of corporate action. Insofar as such corporate "actions" are genuine actions involving mental states, such as intentions and beliefs, they are, in my view,

reducible to the individual and joint actions of human beings. However, I am not going to press this point here, since I take it up in later chapters.

Over the last decade or two, a number of analyses of joint action have emerged. These analyses can be located on a spectrum, at one end of which there is so-called (by Frederick Schmitt) strict individualism, and at the other end of which there is so-called (again by Schmitt) supra-individualism.<sup>15</sup> A number of these theorists have developed and applied their favored basic accounts of joint action in order to account for a range of social phenomena, including conventions, social norms, and social institutions.<sup>16</sup> One such theory is my collective end theory (CET), which is elaborated elsewhere.<sup>17</sup> CET is a form of individualism, and I will use it throughout this book.<sup>18</sup>

**(p.29)** Individualism, as I see it, is committed to an analysis of joint action such that ultimately a joint action consists of (1) a number of singular actions, and (2) relations between these singular actions. Moreover, the constitutive attitudes involved in joint actions are individual attitudes; there are no *sui generis* we-intentions or we-attitudes. It is important to stress that individualism can be, and in the case of CET certainly is, a form of relationalism. So I will dub my account “relational individualism.” It is relational in two senses. First, as mentioned above, singular actions often stand in relations to one another (e.g., two partners dancing), and the joint action in part consists of singular actions, and in part consists of the relations between the singular actions. Second, the agents who perform joint actions can have intersubjective attitudes to one another, (e.g., they mutually recognize each other), and some (but not all) of these attitudes are *sui generis*. Specifically, some *cognitive* (but not *conative*) intersubjective attitudes may well be *sui generis* (e.g., mutual consciousness of one another’s consciousness).<sup>19</sup> In virtue of such intersubjective attitudes, they will also typically have interpersonal relations with one another. Intersubjectivity and interpersonal relations in this sense are not necessarily, or at least are not by definition, social or institutional. To suggest otherwise would be to beg the question against individualism (specifically, relational individualism) in any interesting sense of the term.

By contrast, according to supra-individualists, when a plurality of individual agents perform a joint action, the agents necessarily have the relevant propositional attitudes (beliefs, intentions, etc.) in an irreducible “we-form” which is *sui generis*, and as such not analyzable in terms of individual or I-attitudes. Moreover, the individual agents constitute a new entity, a supra-individual entity not reducible to the individual agents and the relations between them.

Basically, CET is the theory that joint actions are actions directed toward the realization of a collective end. However, this notion of a collective end is a construction out of the prior notion of an individual end. A collective end is an

individual end more than one agent has, and is such that, if it is realized, it is realized by all, or most, of the actions of the agents involved; the individual action of any given agent is only part of the **(p.30)** means by which the end is realized, and each individual action is interdependent of the others in the service of the collective end. Thus when one person dials the phone number of another person, and the second person picks up the receiver, each of them has performed an action in the service of a collective end—a collective end that each of them has: to communicate with each other.

On the basis of this individualist notion of a joint action, a number of related notions can be constructed, including the notion of a convention. A convention can be understood as being, in essence, a set of joint actions, each of which is performed in a recurring situation.<sup>20</sup> Thus, driving on the right-hand side of the road is a convention that each of us adheres to in order to realize the collective end of avoiding collisions. Accordingly, a convention is a construction out of the prior notions of a joint action and what I will refer to as a *procedure*. One has a procedure if one more or less automatically performs a given type of action in a recurring situation. So, for example, habits are procedures. Armed with the notion of a joint action, let us turn to the matter of the moral justifiability, or at least moral permissibility, of the use of lethal force in joint action scenarios, beginning with those involving the violations of negative rights.

### 1.2.1 Joint Action Scenarios: Negative Rights Violations

Consider the following collective action situation in which the outcome of the collective action is overdetermined by the actions of the agents involved. Suppose that each of five men inflicts a single stab wound on a sixth man, John Smith, intending to kill him. The stabbings are simultaneous, and Smith dies from his wounds.<sup>21</sup> However, three stab wounds would have been causally sufficient to kill him. That is, three stab wounds are individually causally necessary, and jointly causally sufficient, to kill Smith. Therefore, no single stab wound (of the five) is either causally **(p.31)** necessary or sufficient for Smith's death. So while each of the men performed an action (a stabbing) that was causally necessary and sufficient for *wounding* Smith, not one of the five men performed an action that was either causally necessary or causally sufficient for Smith's *death*. So each of the men is individually morally responsible for *wounding* Smith, but what about the moral responsibility for *killing* him? It might be thought that if a person has not performed an action that was either causally necessary or sufficient for a person's death, then that person cannot be held responsible for the person's death. In that case, none of the five men is responsible for Smith's death. But if none of the five is responsible, then presumably no one is responsible. For the cause of Smith's death was the stab wounds, and these were made by the five men.

Notwithstanding the above claimed lack of individual moral responsibility, it might be held that the five men were *collectively* morally responsible for Smith's death. But even this appears to be false, since only the actions of three of the men were necessary for Smith's death. So at best we are entitled to conclude that (an unspecified and perhaps unspecifiable) three of the five men were collectively responsible for Smith's death, but no individual was responsible. This conclusion is very unpalatable, indeed. For one thing, it sets up an unbridgeable gap between collective responsibility and individual responsibility; a collective can be morally responsible for an outcome, even though none of its members are.<sup>22</sup> For another, it licenses the commission of immoral acts, so long as they are collective actions involving overdetermination; individual perpetrators are thus not morally responsible for heinous crimes, so long as they commit those crimes collectively, and their actions overdetermine the outcome.

We first need an analysis of the kind of collective actions at issue. We have one at hand—the above-described account of joint actions. So we can conceive of such cases of collective action as actions directed to a collective end; in our example, the collective end is the death of Smith. Each of the five men has the collective end as an end. Moreover, each of the five performs the act of stabbing as a means to the collective end he has. Further, the actions of the five agents are *interdependent*. That is, each performs his contributory action if he believes the others will perform theirs, and each **(p.32)** does so only if he believes this. Why are the actions interdependent? They are interdependent by virtue of the existence of the collective end possessed by each of the five agents, and toward the realization of which each of the individual acts is directed. Indeed, there is also interdependence with respect to the shared end that each has, for each would not have as an end the death of Smith if the others did not, since none can realize that end on his own. So there is a shared and interdependent end (a collective end), and there is interdependence of action (i.e., each stabbed only on condition that the others stabbed). So the full set of five acts of stabbing can be regarded as *the means* by which the collective end was realized; and each act of stabbing was a *part of* that means. Moreover, in virtue of interdependence, each act of stabbing is an integral part of the means to the collective end. Since killing someone is significant, I conclude that all five agents are jointly—and therefore collectively—*morally* responsible for killing Smith.<sup>23</sup> For each performed an act of stabbing in the service of that (collective) end (Smith's death), and each of these acts of stabbing was an integral part of the means to that end. Moreover, each agent can be held *fully* morally responsible for Smith's death; the moral responsibility of each is not diminished by the fact that each of the others is also morally responsible. I am not, of course, suggesting that in *all* cases of morally significant joint actions, each participating agent is *fully* morally responsible for the aimed at outcome of the joint action, i.e. the realization of the collective end. In many cases, especially ones involving large-scale joint

actions, each participating agent may only be *partially* morally responsible for the realization of the collective end. (I return to this issue in Chapter 5.)

This example demonstrates that an individual's action need neither be a necessary nor a sufficient condition of an outcome for the individual to be fully morally responsible for that outcome. If an individual intentionally makes a causal contribution to an outcome, and does so in the service of a collective end to realize that outcome, then this may well be sufficient—other things being equal—for the individual to be fully morally responsible for that outcome. Or, at least, this is so in some cases of morally significant joint actions involving only a small number of participants.

Let us now assume that the victim of the stabbing attack has a gun and is able to defend himself by shooting his attackers. Bear in mind that he (the defender) does so only when the threat is imminent, so our first **(p.33)** principle of imminence is met. Moreover, we know from the example that the defender only needs to shoot three attackers in order to save his life. Therefore, he ought only to shoot three of the five on pain of breaching the necessity principle. So far, so good—but what of the proportionality principle? Would it not be disproportionate for the defender to take the lives of three attackers to save only one life (albeit his own life)? Presumably, it is not disproportionate, given that—as we saw above—each of the three attackers would be fully morally responsible for his murder, were he not to defend himself by shooting them. Naturally, matters might be different if each of the attackers was only partially responsible, i.e. each only had a share of the overall responsibility for the plurality of deaths. Joint action in which moral responsibility for the realization of the collective end is shared tends to involve large numbers of participants. Thus in a scenario involving a very large numbers of attackers, each with only a small share of the overall moral responsibility for the realisation of the collective end, matters become less morally clear cut. Consider, for example, a mass killing in which there are a 1000 attackers and a 1000 victims but in which each attacker only kills one victim, albeit each attacker does so in the service of the collective end of the deaths of the 1000 victims. I return to the discussion of the proportionality principle in the next chapter on self-defense and of collective responsibility for large-scale killing in Chapter 8.

I now want to discuss a variation of the above scenario—a variation in which there are five victims rather than one. Moreover, the attackers attack the five victims by shooting at them, and each attacker has a gun with three bullets in its chamber. Further, to be shot dead it is necessary for each of the victims to be hit with two or more bullets. So if the attackers are to kill all five victims, they will need to coordinate their shooting actions. Suppose, for example, each of the five attackers fires his three bullets at the same two victims as the other attackers do. This would have the consequence that three of the victims—those not shot—would escape with their lives. In this scenario, as in the original stabbing

scenario, it is obvious that each of the attackers is fully morally responsible for any harm he causes to any of the five victims he hits with one or more of the bullets he fires. But, assuming the attackers do coordinate their actions, is each of the five attackers fully morally responsible for the deaths of all five victims, notwithstanding that any given attacker has shot at most three of the five victims? In the light of the above argument concerning the stabbing scenario, each of the five attackers in this shooting scenario **(p.34)** is fully morally responsible for the outcome consisting of the five deaths. For that outcome was the jointly held collective end of each attacker, and each made his individual causal contribution interdependently with the others and as an integral part of the means to that collective end. This is consistent with an attacker who fires one bullet at a given victim being individually fully morally responsible for *wounding* that victim, since the attacker shot the victim having as an individual end to wound the victim. It is also consistent with an attacker who fires two bullets at a given victim being individually fully morally responsible for *killing* that victim, since two bullets is sufficient to kill the victim and the attacker shot the bullets at the victim having as an individual end to kill the victim. So the fact that one attacker, B1, is *individually* fully morally responsible for killing one victim, A1, does not exclude attacker B1 from being fully morally responsible (jointly with the other attackers) for all five deaths. Nor does it exclude each of the other attackers (B2, for example) being fully morally responsible (jointly with the other attackers, including B1) for all five deaths - including the death of A1.

Here it is important to note the following. First, the content of the collective end (the death of the five victims) is not the same as the content of any of the merely individual ends (e.g. the death of A1). This is to be expected since the collective end is the end of the joint action whereas merely individual ends are the ends of merely individual actions (albeit, the individual actions in question are also in part constitutive of the joint action).

Second, it is important to bear in mind the distinction between individual moral responsibility *tout court* and individual moral responsibility *held jointly with others* and, moreover, to ascribe moral responsibility in both senses to participants in morally significant joint actions. Each participant in a morally significant joint action has individual responsibility *tout court* for her own individual actions. However, each participant has individual responsibility jointly with the others, both for the realization of the collective end of the joint action and, via the interdependence of the individual contributing actions, for the plurality of the individual actions constitutive of the joint action. Thus at one level of description B1's individual action (of firing two bullets into victim A1) considered on its own was causally necessary and sufficient for A1's death and, since B1 deliberately intended his action, B1 was individually morally responsible *tout court* for A1's death. At this individual level of description of B1's action (B1's action qua merely individual action, so to speak), B1 is individually **(p.35)** morally responsible for A1's death, and this responsibility is



not possessed by B1 jointly with B2, B3 etc. Moreover, as we saw above, at another wider level of description (the collective level, let us say), B1 is individually morally responsible jointly with the others for the realization of the collective end, namely, the plurality of deaths (A1, A2 etc.). Further, via the interdependence of the individual actions constitutive of the joint action, another participant in the overall joint action, say B2, was also morally responsible for A1's death, notwithstanding that B2 did not (let us suppose) fire any bullets into A1. For in the joint action in question B1 and B2 (and B3 etc.) have as a collective end to kill all five victims and, as a consequence, B1's action is interdependent with B2's action (e.g. in relation to B2's shooting dead of another victim, say, A2). Accordingly, B1 would not have fired any bullets into A1, if B2 had not fired bullets into A2 (and B3 had not fired bullets into A3, and so on). So B2 aimed at A1's death (as part of the content of B2's collective end viz. the death of all five victims) and B2 contributed indirectly to A1's death by (directly) killing A2 in the context of the interdependence of this action with B1's direct killing of A1. Likewise, B2 would not have fired any bullets into A2, if B1 had not fired bullets into A1. So B1 aimed at A2's death (as part of the content of B1's collective end viz. the death of all five victims) and B1 contributed indirectly to A2's death via the interdependence of this action with B2's direct killing of A2. Accordingly, at this collective level of description<sup>24</sup>, B1 and B2 are jointly (with B3 etc.) morally responsible for the deaths of all five victims and, more specifically, B1 is individually morally responsible for A2's death *jointly with the others*. Likewise, B2 is individually morally responsible for A1's death *jointly with the others*.

Now let us assume, as we did in the case of the stabbing scenario, that the victims are armed with guns and able to defend themselves by shooting their attackers. However, in this shooting scenario, involving, as it does, multiple attackers and multiple defenders, the defenders (and not simply the attackers) need to coordinate their actions. For each defender **(p.36)** has only three bullets, and if, for example, each defender was to fire his three bullets at the same two attackers as the other defenders do, then the defenders' defense would not succeed; four would likely still be killed by the attackers. In addition, assume that the threat from the five attackers is imminent. In that case, the victims' compliance with the imminence requirement will be met if they respond immediately with lethal force. What of the necessity principle? Presumably, it is necessary to kill all five attackers, since if any one of them is not shot dead he may well kill one of the defenders. Moreover, unlike in the earlier scenario involving only one defender, there is evidently no question of a disproportionately large number of dead attackers. For although there are five dead attackers, it is also the case that there are five defenders' lives saved, and, crucially, the five dead attackers attacked without any moral justification whatsoever, whereas the five defenders had a good moral justification for their actions.

Notice that in this multiple attackers/multiple defenders scenario, any one shot fired by a defender considered on its own is not a necessary condition for saving anyone's life. Indeed, in some versions of the scenario it may well be that two, or even all three, shots fired by any given defender is not necessary to save anyone's life. To see this, consider the following version of the scenario. Assume that defender A1 fires one shot at each of attackers B1, B2, and B3; defender A2 fires one shot at each of attackers B2, B3, and B4; defender A3 fires one shot at each of attackers B3, B4, and B5; defender A4 fires one shot at each of attackers B4, B5, and B1; and defender A5 fires one shot at each of attackers B5, B1, and B2. Here, each attacker gets hit with three bullets, so one bullet is unnecessary for his death. Moreover, each defender only fires one bullet at any given attacker. Accordingly, no single shot of any defender is necessary to kill any attacker. Indeed, no shots of any single defender—whether these shots are taken singly or in aggregate—is necessary to kill any attacker. Therefore, no shots of any single defender—whether these shots are taken singly or in aggregate—is necessary to save any defender's life. Moreover, none of, for example, A1's shots (whether taken singly or in aggregate) is sufficient to kill any attacker, or, therefore, to save anyone's life. The same point holds for A2, A3, A4, and A5. On the other hand, each of A1's shots made a causal contribution; that is, a causal contribution to, respectively, the death of B1, B2, and B3, and, therefore, to saving at least one person's life—the life that would have been lost had B1, B2, and B3 fired their shots. For B1, B2, and B3, if they fired nine bullets between them must have killed at least one victim (with two bullets fired into him). Similarly, **(p.37)** each of A2's, A3's, A4's and A5's shots made a causal contribution to the death of three attackers, and, therefore, to saving at least one person's life.

The point to be stressed here is that it was common knowledge among the defenders that any given defender's set of actions (consisting of firing three bullets), considered on its own, was neither necessary nor sufficient to realize the collective end of the defenders—namely, the outcome of saving the lives of all the defenders.<sup>25</sup> So the principle of necessity is not operative at the individual level. We saw above that the principle of necessity is operative at the collective level in the sense that it is necessary for the defenders to kill all five attackers if they are to achieve their collective end of saving the lives of all the defenders. Let us pursue further this notion of the application of the principle of necessity at the collective level, and let us do so in the context of the assumption made in our scenario that the action of any one of the five defenders considered on its own was not causally necessary to the outcome—and therefore to the realization of the collective end—of saving all five defenders' lives.

Here we need to distinguish two separate propositions: (1) it is necessary for the defenders to kill all five attackers in order to achieve the outcome of saving the lives of all five defenders, and (2) the action (consisting of firing three bullets) of any one of the defenders is necessary to achieve this outcome. While proposition

---

2 is false, 1 is true. However, it is proposition 1 that instantiates the relevant principle of necessity. Moreover, the truth of proposition 1 is not undermined by the falsity of proposition 2. The joint action of the defenders consists in killing all five attackers, and when this is done, the defenders act in compliance with the principle of necessity at the collective level (the level of joint action). The fact that no single action of any of the defenders was a necessary condition for realizing the collective end of the joint action, and therefore for killing all five attackers, is irrelevant.

An analogous point can be made in relation to the principle of proportionality. To see this, consider yet another variation on our five attackers/five defenders scenarios. This time the five attackers do not have firearms or knives and are intent on merely giving the five defenders a severe beating with their fists, and want to stop well short of killing them or even seriously injuring them. Moreover, all this is a matter of common knowledge (**p.38**) between all the attackers and all the defenders. However, as in our earlier scenario, and unbeknown to the attackers, the defenders each have a gun with three bullets. In this new scenario, each defender fires his three bullets into three separate defenders, having as a proximate individual end to severely wound each of the three attackers in question, but having as an ultimate collective end—held jointly with the other five defenders—to kill all five of the attackers, and thereby save all five defenders from a severe beating. At the individual level, each defender has severely wounded three attackers, and this is not disproportionate, let us assume, to the adverse outcome each was seeking to prevent, which was the severe beating of all five defenders. However, at the collective level (the level of the joint action), the defenders have killed all five attackers, and, arguably at least, this is a disproportionate response to the threat of the five defenders being given a severe beating.

### 1.2.2 Joint Action Scenarios: Positive Rights Violations

Assume that there are multiple persons whose lives are at high risk, but that there are multiple bystanders who could, if they coordinated their efforts—by performing a joint action, for example—save these lives without significant cost to themselves.<sup>26</sup> The bystanders in such scenarios have a collective, or joint, moral responsibility to save those at risk by virtue of the (aggregate) positive rights of the latter. Accordingly, each bystander has an individually possessed moral obligation to perform his or her individual action as a contribution to the joint action, and thus to the realization of the collective end of saving the multiple lives at high risk. However, this obligation is possessed interdependently with the others; it is a joint moral obligation. So joint moral obligations can be derived from collective moral responsibilities to realize morally required collective ends. Roughly speaking, the realization of such a collective end calls for the performance of some salient joint action. The determination of this joint action, in turn, enables the specification of the contributory individual actions, and thereby the generation of the individual

moral obligations of the participants. Each participant has a moral obligation to perform a contributory action. However, just as the action of each participant is **(p.39)** performed interdependently with the actions of the others, so are the corresponding individual moral obligations interdependent. This is because each individual action is only part of the means to realize the collective end, and its performance would have no point if the others refrained from performing their contributory actions. Accordingly, the moral obligation of each to perform his or her contributory action would lapse if the others did not perform theirs; hence these moral obligations are joint moral obligations.

Let us now turn to the matter of the enforcement of such positive rights. Consider a scenario in which a boat at sea, Boat A, is sinking, and its five passengers are about to drown. Assume that there is a second boat, Boat B, with five crew on board who could cooperate with one another to rescue the passengers, but who are refusing to do so. Suppose further that the joint efforts of only three of the crew would be sufficient to prevent Boat A from sinking, and thereby save the lives of all five passengers. Clearly, the members of Boat A (A1, A2, etc.) have a positive right to be rescued, and the crew members of Boat B (B1, B2, etc.) have a joint moral obligation to rescue them; so each has a moral obligation to assist interdependently with the others. Suppose Boat A has a heavy machine gun on deck but it has broken off its mount. However, if A1, A2, etc. combine their efforts to hold the gun steady, sight it, and fire it, they can make it work. They proceed to combine their efforts in this manner, to perform the joint action in question, and now threaten to begin shooting the crew members of Boat B dead one by one if they do not assist. The crew members of Boat B are steadfast in their refusal. So the passengers on Boat A utilize the machine gun and fire a volley at Boat B, killing B1. The remaining Boat B crew members have second thoughts and immediately commence the rescue operation, which ultimately proves successful.

In this scenario, there is an imminent threat to the lives of the passengers, and the members of Boat B's crew have a joint moral obligation to assist them. Moreover, it is necessary for the passengers on Boat A to perform a joint lethal action against one of Boat B's crew members if their lives are not to be lost; that is, if they are to enforce their own positive rights. Accordingly, the passengers on Boat A have a joint right, if not a joint obligation, to use lethal force in the manner described. So each is individually possessed of a moral right (if not obligation) to perform the contributory action. However, this right—insofar as it is derived from the collective end of the joint action (i.e., the end of saving the lives of all the passengers), is possessed interdependently with the other enforcers; it is a joint moral **(p.40)** right. Thus joint moral rights can be derived from morally required collective ends in a manner analogous to the derivation of joint moral obligations discussed above in relation to the joint moral obligations of the members of the crew of Boat B.

Moreover, unlike in the analogous single-action positive-rights drowning scenario in subsection 1.1.2 above, the action of killing one person to save five self-evidently not only complies with the proportionality principle, it seems to be required by it (other things being equal).<sup>27</sup> For if the passengers had refrained from killing one crew member, there would have been a morally disproportionate outcome: one life would have been spared, but five would have been lost. However, there are other moral considerations in play. There is the matter of the moral stringency of positive versus negative rights. For the moral rights of the passengers to be rescued are positive rights whereas the (*pro tanto*) right of B1 not to be killed is a negative right, and, as noted above, violating a negative right is, other things being equal, morally worse than violating the corresponding positive right. Specifically, the members of the crew, and B1 in particular, are not the source of the threat to the lives of the passengers in the sinking boat; the crew members of Boat B are not violating the negative rights of the passengers. Accordingly, it might be argued—as it was in subsection 1.1.2 above—that notwithstanding the disproportionate loss of life, it is not morally permissible to use lethal—as opposed to merely injurious, nonlethal—force to enforce positive rights. Or, to put it another way, the negative right of B1 not to be killed by the passengers is not extinguished or overridden by B1’s refusal to respect the positive rights of the passengers to be rescued. On the other hand, it would surely be morally excusable for the passengers to kill B1 in order to save their lives.

Moreover, this line of reasoning could be maintained in relation to a third-party (members of Boat C) intervention of exactly the same kind (shooting B1 dead) to enforce the positive rights of the passengers in Boat A. Naturally, it could be argued that in the case of the third party, the moral obligation to rescue might be more stringent or stronger if, for example, the crew members of Boat C comprised the parents of, or otherwise had special moral duties to, the passengers in Boat A. However, as we saw with the single action drowning scenario in 1.1.2, this might not be sufficient to move those whose intuitions tell them that it is not morally permissible to use lethal force to enforce *positive* rights even if it is morally **(p.41)** permissible to do so to enforce (some) negative rights. Yet again, it would surely be morally excusable for the crew members of Boat C to use lethal force to save the lives of their children in Boat A.

Moral intuitions may well vary one way or the other if adjustments are made to our boating scenario. On the one hand, the scenario could be adjusted so that it was necessary to kill all five crew members of Boat B to save all five passengers’ lives. This adjustment might serve to strengthen the initial intuition among some that the passengers’ use of lethal force to enforce their positive rights was not morally permissible.<sup>28</sup> Suppose, for example, that the two possible outcomes were the following: [1] the crew members of Boat B towing Boat A to safety, or [2] the passengers killing all of the crew of Boat B by means of a single cluster

bomb and then commandeering Boat B as the means to preserve their own lives. On the other hand, the scenario could be adjusted in the opposite direction by stipulating that the number of passengers on Boat A is one hundred, and that the equation therefore involved saving one hundred lives versus killing one person. This might generate the intuition that killing a single crew member would be morally permissible. If not, let us ramp up the numbers even further to (say) one thousand saved versus killing one culpable wrongdoer. Surely it is morally permissible to kill the one culpable wrongdoer in these circumstances.

As with our joint action scenarios in 1.2.1, there is a distinction to be made between the application of principles at a collective level and at the individual level. The relevant principle of necessity operates at a collective level rather than at the individual level. In this case, the collective level in question is that of the joint action of the passengers. That is, passengers A1, A2, etc. *jointly* killed B1, and their killing B1 was necessary to save their lives. This is so, notwithstanding that a number of their single contributory actions might not have been necessary for this outcome (e.g., the actions of only two of the passengers might have been sufficient to mount the gun and hold it steady, even though three did so). An analogous point holds for the application of the proportionality principle. In a variation on the above cluster-bomb boating scenario, let us assume that there are five passengers on Boat A and ten crew members on Boat B. Assume further that firing the cluster bomb at Boat B will kill all ten crew members, albeit this is the only means for the five passengers to save **(p.42)** themselves (given the refusal of these crew members to rescue them). In this version of the boating scenario the (joint) action of firing the cluster bomb and killing ten crew members is, let us assume, disproportionate to the outcome of saving five lives. This might be so, notwithstanding that it might reasonably be maintained that at the individual level some actions were not disproportionate. For example, it might be held that the single action—considered on its own—of one of the three passengers who assisted in the mounting of the launcher by holding it steady was not morally disproportionate.

### 1.3 Conclusion

In this chapter I have developed a taxonomy of the morally permissible use of lethal force across two main dimensions: individual and joint action, on the one hand, and negative and positive moral rights, on the other. The claim that it is morally permissible to use lethal force to enforce some negative rights, notably the right not to be killed, is relatively uncontroversial. However, I have argued that it may well be morally justifiable, or at the very least morally excusable, to use lethal force to enforce some positive rights, notably the right to preserve one's life. Moreover, if there is a large number of persons whose positive rights are being violated, and the number of positive rights violators to be killed to bring about a cessation of these rights violations is small, then the use of lethal force may well be morally justifiable and not merely excusable.

In cases of multiple attackers/refrainers and multiple defenders/enforcers, the use of lethal force typically involves joint actions. Therefore, I have provided an analysis of such joint actions. I note that philosophical analyses of the moral permissibility of the use of lethal force are typically framed in terms of individual, as opposed to joint, actions,<sup>29</sup> albeit the “individuals” in question are sometimes collective entities, such as military forces.<sup>30</sup>

**(p.43)** In light of my analysis of joint actions, an individual whose action is a causal contribution to, and is performed in the service of, some morally significant collective end can be held morally responsible—jointly with others—for the realization of that end, notwithstanding that the action considered on its own was neither necessary nor sufficient for the realization of the end. In addition, of course, the individual can be held morally responsible tout court for the performance of his or her individual action (considered on its own), and for any benefit or harm that it may have directly and exclusively caused. It is also evident that the contributory action of an individual participating in the joint enforcement of negative or positive rights often makes a causal contribution to the enforcement outcome (a collective end) without in itself being either necessary or sufficient for that outcome. Nevertheless, such an individual can be held morally responsible (jointly with others) for the outcome—a cessation of the rights violations in question—and should be praised accordingly.

Further, the members of a group of bystanders confronting members of another group with positive rights to assistance are possessed of a collective (i.e., joint) moral responsibility to provide assistance by performing a joint action, should this be necessary. In such scenarios, each bystander has a moral obligation to perform a contributory action. However, this obligation is possessed interdependently with the other bystanders; it is a joint moral obligation. So joint moral obligations can be derived from collective moral responsibilities to realize morally required collective ends. Importantly, each member of a group of third-party enforcers who are possessed of a collective (i.e., joint), moral responsibility to intervene by performing a joint (lethal) action to bring about the cessation of some positive or negative rights violation is individually possessed of a moral obligation to perform a contributory action. As just mentioned, this individual obligation is a jointly held moral obligation, and as such it is derived from, in this case, the collective moral responsibility to bring about the cessation of rights violations.

Finally, my analysis of lethal joint actions, and their associated joint moral rights and obligations, enables the distinction between necessity at the level of the individual action considered on its own and necessity at the wider level of the joint action (at a collective level) to come into view. The moral principle of necessity, in respect of lethal joint actions, is frequently applicable at this collective level rather than at the individual level.

### Notes:

- (1.) Seumas Miller "Against the Moral Autonomy Thesis" *Journal of Social Philosophy* vol.38 no.3 2007 pp.389-391
- (2.) Ronald Dworkin, *Taking Rights Seriously* (Cambridge, Mass.: Harvard University Press, 1977).
- (3.) There is a voluminous literature on rights. See James Nickel, *Making Sense of Human Rights* (Oxford: Blackwell, 2007), for a useful introduction. This literature covers, among other things, the logical categorization (so to speak) of rights (e.g. so-called claim rights, liberty rights, privileges and immunities). While not denying its importance, in this work, as far as is possible, I sidestep this level of analysis; to do otherwise would divert me from my central concerns. For a useful discussion of rights in the context of war see Rodin *War and Self-Defense*, Chapter 1.
- (4.) See Joseph Raz, *The Morality of Freedom* (Oxford: Oxford University Press, 1979), for an interest-based approach; David Wiggins, *Needs, Values and Truth* (Oxford: Oxford University Press, 1987), for a needs-based one; and James Griffin, *On Human Rights* (Oxford: Oxford University Press, 2008), for an agency-based conception.
- (5.) An alternative to this might be to define such joint rights as joint human rights, in which case the notion of a human right and that of a natural right would be more or less interchangeable.
- (6.) Henry Shue, *Basic Rights: Subsistence, Affluence, and US Foreign Policy* (Princeton, N.J.: Princeton University Press, 1996).
- (7.) Miller, *Moral Foundations of Social Institutions*, 202–209; Miller, "Civilian Immunity," 113–135.
- (8.) Miller, "Joint Action"; Miller, *Social Action*, Chapter 2; Miller, *Moral Foundations of Social Institutions*, Chapter 1. See also Seumas Miller, "Joint Action: The Individual Strikes Back," in S. L. Tsohatzidis, ed., *Intentional Acts and Institutional Facts: Essays on John Searle's Social Ontology* (Dordrecht, The Netherlands: Springer, 2007), 73–92.
- (9.) Note that the use of lethal force might, at least in theory, be morally permissible even though there was a morally equivalent alternative.
- (10.) For a range of accounts of the moral justification for killing in self-defense, see Thomson, "Self-Defense"; Montague, "Self-Defence and Choosing between Lives"; Jenny Teichman, "Self-Defence," in *Pacifism and the Just War* (Oxford: Blackwell, 1986); Seumas Miller, "Killing in Self-Defence," *Public Affairs Quarterly* 7, no. 4 (1993): 325–340; Suzanne Uniacke, *Permissible Killing*



(Cambridge: Cambridge University Press, 1995); Jeff McMahan, "The Basis of Moral Liability to Defensive Killing," *Philosophical Issues* 15 (2005): 386-405.

(11.) Shue, *Basic Rights*.

(12.) Naturally, the mere *threat* of lethal force might be sufficient. The bystander might deliberately drop the life jacket when threatened so as to save her own life.

(13.) There is a large philosophical literature on these issues of the stringency of positive versus negative rights, of the morality of doing versus allowing, and of acting versus refraining. Suffice it to say here that my claims here are disputable. See, for example, Bruce Russell, "On the Relative Strictness of Negative and Positive Duties," *American Philosophical Quarterly* 14, no. 2 (1977): 87-97.

(14.) I have argued for this in Miller, "Civilian Immunity," 116-119. See also Miller, *Moral Foundations of Social Institutions*, 202-209.

(15.) Frederick Schmitt, *Socializing Metaphysics: The Nature of Social Reality* (Lanham, Md.: Rowman & Littlefield, 2003), Chapter 1.

(16.) John R. Searle, "Collective Intentions and Actions," in Philip R. Cohen, Jerry L. Moran, and Martha E. Pollack, eds., *Intentions in Communication* (Cambridge, Mass.: MIT Press, 1990) 401-415; Margaret Gilbert, *Joint Commitment: How We Make the Social World* (Oxford: Oxford University Press, 2014); Michael Bratman, "Shared Cooperative Activity," *Philosophical Review* 101 (1992): 327-341. A fourth relevant influential theorist is Raimo Tuomela. However, Tuomela's view oscillates between the views of the other three. See Raimo Tuomela, *Social Ontology: Collective Intentionality and Group Agents* (Oxford: Oxford University Press, 2013). For criticisms of these theorists, see Seumas Miller, "Intentions, Ends and Joint Action," *Philosophical Papers* 24, no.1 (1995): 51-67.

(17.) Miller, "Joint Action"; Miller, *Social Action*, Chapter 2; Miller, *Moral Foundations of Social Institutions*, Chapter 1.

(18.) Of the related individualist accounts, Bratman's is the most salient. However, it is not serviceable in later chapters since it does not generalize to social institutions. See his *Shared Agency: A Planning Theory of Acting Together* (Oxford: Oxford University Press, 2014).

(19.) C. D. Broad, in *The Mind and its Place in Nature* (London: Kegan Paul, 1928), appeared to have this kind of notion in mind when he spoke of "extraspection." See also Naomi Eilan, Christoph Hoerl, Teresa McCormack, and Johannes Roessler, eds., *Joint Attention: Communication and Other Minds* (Oxford: Oxford University Press, 2005), Chapter 14.

(20.) Miller, *Social Action*, Chapter 3; and Seumas Miller, "On Conventions," *Australasian Journal of Philosophy* 70, no. 4 (December 1992): 435–445. Conventions are to be distinguished from social norms. The latter, but not necessarily the former, have a moral dimension. See Seumas Miller "Social Norms" in (ed.) G. Holmstrom-Hintikka and R Tuomela *Contemporary Action Theory (Volume 2: Social Action)* (Dordrecht: Kluwer - Synthese Library Series, 1997) pp.211-229

(21.) Miller, "Collective Moral Responsibility." See also Seumas Miller, "Collective Responsibility," *Public Affairs Quarterly* 15, no. 1 (2001): 65–82; Miller, *Social Action*, Chapter 8; and Miller, *Moral Foundations of Social Institutions*, Chapter 4.

(22.) Some theorists, however, such as Russell Hardin, in *Morality within the Limits of Reason* (Chicago: University of Chicago Press, 1988), are prepared to bite the bullet. For criticisms, see Seumas Miller and Pekka Makela, "The Collectivist Approach to Collective Moral Responsibility," *Metaphilosophy* 36, no. 5 (2005): 634–651.

(23.) Miller, "Collective Moral Responsibility."

(24.) There are, of course, various different collective levels and structures of interdependence, even in simple joint action scenarios. Regarding interdependence, each might perform her contributory action if and only if a sufficient number (but not necessarily all) of the others performed theirs, i.e. a number sufficient in total to realise the collective end. Regarding collective levels, one might refer to the collective level as the level of the aggregate of individual actions, each of which is constitutive of the joint action. Typically, some such aggregate is causally sufficient to realise the collective end in question. If not stipulated, context should make it clear what structure of interdependence of action or sense of collective level I have in mind on any given occasion.

(25.) I note that in the five defenders/five attackers' version of the scenario, no single defender and no single attacker can make a causal contribution to the deaths of all five attackers or to the deaths of all five defenders, respectively.

(26.) Seumas Miller, "Collective Responsibility and Omissions," *Business and Professional Ethics Journal* 20, no. 1 (2001): 5–24; Miller, "Civilian Immunity," 113–135; Miller *Moral Foundations of Social Institutions*, 133–139, 202–209.

(27.) Considered merely in terms of the outcomes of the available options.

(28.) Or it might generate this intuition among some of those who did not originally have this intuition in the version of the scenario in which only one crew member is killed.

(29.) Jeff McMahan, "War as Self-Defense," *Ethics and International Affairs* 18, no. 1 (2004): 75.

(30.) Some theorists argue that such collective entities are irreducibly collective agents; see, for example Margaret Gilbert, *On Social Facts* (Princeton, N.J.: Princeton University Press, 1992); and Christian List and Philip Pettit, *Group Agency: The Possibility, Design, and Status of Corporate Agents* (Oxford: Oxford University Press, 2011). For an individualist response, see Seumas Miller, "Against the Moral Autonomy Thesis," *Journal of Social Philosophy* 38, no. 3 (2007): 389–409. I have argued in a number of publications, commencing in 1992, that there are multilayered structures of joint action; see, for example, Miller, "Joint Action", *Social Action* Chapter 3, and Miller, *Moral Foundations of Social Institutions*, Chapter 1. For a detailed discussion, see Chapter 3 of this work.

Access brought to you by: