

The Demands of Necessity*

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Defensive harm is subject to both a proportionality and necessity constraint. In what follows I precisify, explain, and unify these two constraints. I argue that they express the very same moral demand, only at different levels of generality—specifically, the demand that an attacker not be made to bear more cost to avert their attack than they would be required to take on themselves.

I. INTRODUCTION

Moral philosophers have long recognized a *proportionality* constraint on defensive harm. Compare:

Fast and Furious. Reckless loses control of his car in an illegal road race, endangering an innocent pedestrian. Pedestrian can let the car hit her, in which case she will be permanently paralyzed from the neck down. Or she can redirect the car away from her, in which case Reckless will be permanently paralyzed.

Fast and Less Furious. As before, except the threat to Pedestrian is much smaller. If Pedestrian lets the car hit her, she will only suffer a small bruise.

Intuitively, Pedestrian is permitted to redirect the car in the first case but not the second. The relevant difference, it seems, concerns the severity of the threat averted. In the first case the defensive harm seems proportionate

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to the threat averted (paralysis vs. paralysis). In the second case the harm seems disproportionate; it seems “too great” relative to the severity of the threat averted (paralysis vs. a small bruise). As this pair of cases illustrates, there is a constraint that requires defensive harm to be proportionate to the threat averted. This idea is widely accepted by theorists and laypeople alike and is embedded in the law.¹

The proportionality constraint is standardly distinguished from another widely accepted constraint—the *necessity* constraint.² Consider:

Easy Defense. As in Fast and Furious, except that Pedestrian has two ways to redirect the car. If she redirects the car to her right, Reckless will be paralyzed. If she redirects the car to her left, Reckless will suffer a sprained toe. Pedestrian chooses to paralyze Reckless.

Pedestrian acts impermissibly. The problem, however, isn’t that it is disproportionate to paralyze an attacker to defend against paralysis. Rather, Pedestrian’s action is impermissible because she had available another defensive option that would have imposed much less cost on Reckless without imposing much (or in this case, any) extra cost on Pedestrian. Pedestrian didn’t need to paralyze Reckless to defend herself.³

Despite the long-standing and wide recognition of the proportionality and necessity constraints, there has been little discussion of their relationship to one another. This, I think, is because theorists have generally taken the two constraints to be explained by different moral considerations.⁴ In what follows I push back against this common approach. I develop and motivate a theory according to which “proportionality” and “necessity” are two faces of a common moral demand. While there is a difference in scope between the two constraints, disproportionate harm and

1. American Law Institute, *Model Penal Code* (Philadelphia: American Law Institute, 1985), §3.04–5.

2. What I am here calling the “proportionality constraint” is sometimes referred to in the literature as the “narrow proportionality constraint,” to be distinguished from the “wide proportionality constraint.” Despite the fact that both principles impose requirements of proportionality, they are importantly different from one another. The narrow proportionality constraint focuses on the attacker; it requires that the defensive harm imposed on the attacker be proportionate to his attack. The wide proportionality constraint, by contrast, focuses not (just) on the attacker but on innocent parties; it requires that aggregate “collateral damage” be proportionate to the unjust threat that is averted. See Jeff McMahan, *Killing in War* (Oxford: Oxford University Press, 2009), 22–24.

3. For a discussion of the necessity constraint in different legal systems, see George Fletcher, *Rethinking Criminal Law* (Oxford: Oxford University Press, 2000), 855–75. See also American Law Institute, *Model Penal Code*, §3.04.

4. See, e.g., David Rodin, *War and Self-Defense* (Oxford: Oxford University Press, 2002), 40–41; Helen Frowe, *Defensive Killing* (Oxford: Oxford University Press, 2014), 118–19; and Jonathan Quong, *The Morality of Defensive Force* (Oxford: Oxford University Press, 2020), 129–32.

unnecessary harm wrong an attacker in the same way—by making him bear more cost in service of some defensive goal than he would be required to take on himself in service of that goal.

The article proceeds as follows. Section II considers the two most prominent and developed accounts of the necessity constraint. I explain why these accounts are unsatisfying. Section III considers the nature of the proportionality constraint. I argue that this constraint is best explained by certain features of an attacker's duties, before showing in Section IV how this explanation can be generalized to account for the necessity constraint. The next two sections consider what follows from this account of necessity: Section V considers what follows for the relationship between responsibility and necessity, and Section VI considers what follows for cases involving multiple attackers. Section VII concludes.

II. EXISTING ACCOUNTS OF NECESSITY ARE UNSATISFYING

A. *The Discount Account*

There is a constraint against “unnecessary” defensive harm. But what is it for harm to be unnecessary in the relevant sense? Taking talk of “necessity” at face value, here's a natural answer: defensive harm is unnecessary just in case it is possible to get as much defensive gain without imposing as much harm on the attacker or other innocent persons.

Theorists such as Seth Lazar and Jeff McMahan have observed, however, that this natural gloss cannot be the right way to think about the necessity constraint.⁵ To see why, consider a variation on the Easy Defense case:

Easyish Defense. As in Easy Defense, except that Pedestrian will suffer a mild sprained toe of her own if she chooses to sprain Reckless's toe rather than paralyze him. Pedestrian chooses to paralyze Reckless.

In this case paralyzing Reckless offers more defensive gain than any other option; it is not possible for Pedestrian to just as well protect herself by other means. Thus, on the naive reading of “necessity” described above, Pedestrian does not violate the necessity constraint.

Many theorists find this an implausible result.⁶ We should treat like cases alike if we can, and intuitively the sort of wrong displayed in Easy

5. Seth Lazar, “Necessity in Self-Defense and War,” *Philosophy and Public Affairs* 40 (2012): 3–44, 2–23; Jeff McMahan, “The Limits of Self-Defense,” in *The Ethics of Self-Defense*, ed. Christian Coons and Michael Weber (Oxford: Oxford University Press, 2016), 185–210, 185–89.

6. For an exception, see Kai Draper, “Necessity and Proportionality in Defense,” in *The Ethics of Self-Defense*, ed. Christian Coons and Michael Weber (Oxford: Oxford University Press, 2016), 171–84, 180–81. Draper argues that whereas the problem with cases like Easy Defense is that the defensive harm is unnecessary, the problem with cases like Easyish Defense is that the defensive harm is disproportionate.

Defense is the same sort of wrong displayed in Easyish Defense. Roughly put, Pedestrian acts wrongfully in both cases in that she had another defensive option available to her that would have imposed much less cost on Reckless while imposing little or no extra cost on Pedestrian.

The question is how to make this rough diagnosis precise. Lazar and McMahan have each defended a precisification on which the necessity constraint is a special instance of a general moral requirement to minimize harm. McMahan states, "The morally best and therefore necessary defensive option is the one that, in comparison with other options . . . has the morally best trade-off between the harm prevented and the harm caused . . . taking into account the probability of success, the expected cost to the agent, the expected harm to others as a side effect, and the expected harm to the threatener."⁷ Of course, a defender is not required to minimize harm, full stop. Suppose a defender can keep an attacker from breaking her leg only by breaking his leg and one of his toes. By so defending herself, she would fail to minimize total harm. But she plainly does not violate the necessity constraint. According to Lazar, this is because, in cases of defensive harm, the interests of the attacker are *discounted* relative to the interests of innocent persons.⁸ What the necessity constraint requires is not that defenders minimize harm but that they minimize "morally weighted" harm.

Let's call the account defended by Lazar and McMahan:

Discount. The imposition of defensive harm on an attacker is unnecessary just in case there are other defensive options that impose less expected, aggregate, morally weighted harm.⁹

So long as the discounted interests of the attacker still count for something, the Discount theory explains why it is unnecessary to paralyze Reckless in Easy Defense. Pedestrian can paralyze Reckless or merely sprain his toe. Since both options do equally well at preventing harm to persons other than Reckless, Pedestrian would fail to minimize morally weighted harm by paralyzing Reckless.

7. Jeff McMahan, "Necessity and Proportionality in Morality and Law," in *Necessity and Proportionality in International Peace and Security Law*, ed. Claus Kres and Robert Lawless (New York: Oxford University Press, 2021), 3–38, 23; McMahan, "Limits of Self-Defense," 187–88.

8. Lazar, "Necessity," 6. McMahan is nowhere explicit about whether and how the interests of attackers are discounted. But his judgments about particular cases, together with his claims about the necessity constraint, clearly commit him to the idea that the interests of (responsible) attackers are discounted relative to the interests of innocent persons. See also David Rodin, "Justifying Harm," *Ethics* 122 (2011): 74–110, 99.

9. McMahan, "Limits of Self-Defense," 187–88; Lazar, "Necessity," 13. For heuristic purposes I am ignoring some of the complexities that concern probability trade-offs, since all of the cases that appear in this article involve equiprobable defensive options.

Likewise, the account has the resources to explain why Pedestrian may not paralyze Reckless in Easyish Defense (where refraining from paralyzing Reckless will cost Pedestrian a sprained toe). So long as the interests of attackers are not discounted too greatly, Reckless's discounted harm of paralysis will still be greater than the aggregate of a discounted sprained toe for Reckless plus a nondiscounted sprained toe for Pedestrian.

Discount has its virtues. It captures our intuitive verdicts in cases like Easy Defense and Easyish Defense. It also delivers a gain in theoretical unity as it ties together the necessity constraint and the so-called wide proportionality constraint, grounding both constraints in the plausible idea that we should minimize morally weighted, aggregate harm.¹⁰

But despite these virtues, I think we should reject Discount. The theory suffers two serious shortcomings. The first is that it offers implausible verdicts in certain cases. Consider:

Necessary Killing. Reckless loses control of his car, which will permanently paralyze Pedestrian from the waist down unless she redirects the car, killing Reckless.

Unnecessary Killing. As above, except that Pedestrian can defend herself either by killing Reckless or by merely spraining one of his fingers.

Unnecessary Killing (Bystanders). Again, Pedestrian can defend herself either by killing Reckless or by merely spraining one of his fingers. Killing Reckless involves redirecting his car into the path of an unrelated avalanche. The avalanche will kill Reckless, but his car will block the avalanche from killing two innocent bystanders.

In the first case—Necessary Killing—Pedestrian is plainly permitted to kill Reckless. Discount is consistent with this result so long as Reckless's interests are discounted. If his interests are discounted, then there is no failure to minimize total, morally weighted harm by killing him.

In the second case—Unnecessary Killing—Pedestrian is plainly not permitted to kill Reckless. Doing so would be a paradigm violation of the necessity constraint. And Discount offers an explanation why: killing Reckless would be unnecessary because it fails to minimize total, morally weighted harm (spraining the finger does better in this respect).

But if it is unnecessary to kill Reckless in the second case, then it is surely also unnecessary to kill Reckless in the third case. Discount predicts otherwise, however, since this third option does minimize total morally weighted harm. This is not to say that Discount is incompatible with the fact that it is wrong to kill Reckless in this case: perhaps there is

10. See n. 2 on the distinction between "wide" and "narrow" proportionality.

some other moral constraint that forbids Pedestrian from using Reckless to block the avalanche. But it is to say that Discount is incompatible with the fact that killing Reckless is *unnecessary*—which it surely is, and which it surely is for the same reasons that killing Reckless is unnecessary in the case where no bystanders are present.

This brings me to my more serious worry about Discount. The problem is not only that it delivers strange results in particular cases but also that it misidentifies the grounds of the wrongfulness of unnecessary harm. Paradigm cases of unnecessary defensive harm are wrongful (at least in part) because they wrong the person harmed. An account of the necessity constraint should identify this distinctive, directed wrong. But Discount does not identify any such directed wrong. On the contrary, it characterizes the wrongfulness of unnecessary harm as impersonal in nature.¹¹

Start with my claim that unnecessary harm involves a directed wrong. We can test this claim. To test whether the imposition of some defensive harm *H* wrongs its target, we ask whether the defender, by attempting to impose *H*, makes himself liable to counterdefensive harm from a third party.¹² If the defender does make himself liable to such counterdefensive force, this is good evidence that the imposition of *H* would wrong its target.¹³ This is because one does not make oneself liable to defensive harm simply by posing a threat of harm; one makes oneself liable to defensive harm only by posing a threat of rights-infringing harm. (Otherwise, every defender would make themselves liable to counterdefensive harm when they fight back against their attacker.)

Let's apply this test in the case of defensive harm that is plainly unnecessary. Consider a variant of Easy Defense.¹⁴ Pedestrian can paralyze Reckless or sprain his toe. She chooses to paralyze him. But this time there is a bystander, Blocker, who can intervene to protect Reckless from Pedestrian's unnecessary harm. If Blocker intervenes, Reckless and Pedestrian will each suffer just a sprained toe.

The question is whether Blocker would wrong Pedestrian by intervening. I find it intuitively obvious that she does not.¹⁵ Moreover, none of

11. See Quong, *Morality of Defensive Force*, 130.

12. I use the term 'liable' in the following way throughout the article: for *X* to be liable to the imposition of harm *H* by *Y* is for *X* to lack a right against *Y*'s imposition of *H* even if *X* does not consent to suffer *H*.

13. In some cases, a defender who uses unnecessary force may be liable even to counterdefense by her attacker. But it is easier for a defender to make herself liable to counterdefense by a third party than by her attacker; this is why I focus on the third-party case above.

14. A version of the following argument appears in Draper, "Necessity and Proportionality," 174–75.

15. I find this verdict even more obvious if we tweak the case such that Reckless poses a wrongful threat, but not one for which he is culpable. Perhaps he reasonably, but mistakenly, believes that he is racing on a designated racing course.

the usual evidential markers of a wrong are present: Pedestrian may not fight back against Blocker's intervention, and Pedestrian is not owed compensation if Blocker's intervention succeeds. There is both direct and indirect intuitive support for the judgment that Blocker's intervention does not wrong Pedestrian.

But if Blocker's intervention does not wrong Pedestrian, then it follows that Pedestrian made herself liable to Blocker's intervention. As we noted above, Pedestrian's liability is strong evidence that Pedestrian's attempt to impose unnecessary harm not only is impersonally wrongful but also threatened Reckless's rights.¹⁶ To generalize: unnecessary harm is wrongful (at least in large part) because it wrongs the person harmed.

Discount, however, goes no way toward identifying this wrong. Discount appeals to an impersonal duty to minimize total (morally weighted) harm, but the failure to minimize harm is no more a failure to respect the rights of one's attacker than a failure to respect the rights of any other person. Discount thus does not help us to identify the distinctive way in which unnecessary harm wrongs the person(s) harmed—which ought to be a central desideratum on an account of the necessity constraint.¹⁷

B. *The Rescue Account*

There is one account in the literature that makes it a point to explain the wrongfulness of unnecessary harm by appeal to a directed wrong: the "Rescue account," first presented by Joanna Firth and Jonathan Quong and later developed in greater detail by Quong.¹⁸ On this account, the necessity constraint is grounded in "Good Samaritan" duties of rescue that defenders owe to attackers.

The idea is this: All persons have a right to easy rescue—a right to be rescued from serious harm when the cost to the rescuer (and bystanders) is small. These rights are so basic to one's moral status as a human being that they are not forfeited even by unjust attackers; attackers maintain these rights even in the midst of their attack.¹⁹ One way to rescue a person is to refrain from imposing harm on them that you are otherwise at liberty to impose. Thus, if a defender can refrain from imposing severe harm on an attacker at small cost to herself and other innocent parties,

16. Perhaps surprisingly, McMahan himself has defended the claim that unnecessary harm wrongs its target. See McMahan, "Limits of Self-Defense," 195–97. There are some who object to the claim, however. Frowe, *Defensive Killing*, 88–119, is a notable example. For a response to (some of) Frowe's arguments, see McMahan, "Limits of Self-Defense," 195–206.

17. None of this is to say that considerations of harm minimization play no important function in the ethics of defensive harm. They surely do. I just don't think that the necessity constraint is a requirement of harm minimization, nor that considerations of aggregate harm minimization impose limits on an attacker's liability.

18. Joanna Mary Firth and Jonathan Quong, "Necessity, Moral Liability, and Defensive Harm," *Law and Philosophy* 31 (2012): 673–701; Quong, *Morality of Defensive Force*, 124–49.

19. Quong, *Morality of Defensive Force*, 131.

then the defender has a duty to do so. Imposing the severe harm would violate the unjust attacker's right to easy rescue. This, claims Quong, is why it is wrong for Pedestrian to paralyze Reckless regardless of whether this will require Defender to suffer a sprained toe.²⁰

Rescue. The imposition of defensive harm is unnecessary just in case it would infringe the attacker's right to easy rescue.

The account is preferable to Discount in the respect that it purports to explain why unnecessary harm wrongs the attacker. But Rescue, I think, appeals to the wrong sort of directed duty to get this result. The appeal to duties of easy rescue yields unwelcome results.

One challenge for the account concerns the fact that—as Quong himself acknowledges—duties of rescue seem to arise only when the harm the rescuer can avert is quite serious.²¹ Duties of rescue do not arise whenever there is simply a large enough ratio between the costs to be averted and the costs of rescue. A stranger has a right that you rescue them from serious harm when the cost to you is small. But a stranger does not have a right that you rescue them from small harm when the cost to you is very small. Suppose I trip on my way to class and drop my stack of papers. I instinctively reach down to catch it, which will cause me dozens of small paper cuts. You see that you can intervene: you can catch the papers before I do, in which case you will suffer just one small paper cut. Here it is plausible that you should intervene. But I don't have a right that you do this for me; you don't owe it to me to suffer the paper cut. This is evidenced by the fact that I don't have the standing to demand that you rescue me, nor the standing to criticize you if you choose not to rescue me. Things are very different when the stakes are raised: if you can rescue me from drowning at small cost, I do have the standing to demand your rescue and to criticize you if you choose to let me drown.

Here is why this makes trouble for Rescue. Because duties of rescue only arise when the threat is serious, Rescue fails to count small but entirely pointless defensive harms as unnecessary. Suppose I lose control of my car and it swerves toward you. You can equally well defend yourself by breaking my leg or by breaking my leg and spraining my big toe. The more harmful option is plainly impermissible and unnecessary. After all, spraining my toe would be entirely gratuitous. But if we do not have duties to rescue strangers from small harms, then Rescue does not deliver this result. The harm of a sprained toe is too small to impose on you a duty of rescue. Rescue thus offers no help in explaining what's wrong with small but entirely gratuitous defensive harm. It tells us that such harms are not, in fact, unnecessary.

20. Ibid., 132.

21. Ibid.

TABLE 1

A TRIAD OF DIFFERENCE CASES

	Threat	Mild Defensive Option	Harsh Defensive Option
Small Difference 1	One broken arm	No harm	Five sprained fingers
Small Difference 2	One broken arm	Five sprained fingers	Five sprained fingers
Large Difference	Two broken arms	No harm	Ten sprained fingers

Quong acknowledges this implication and is willing to accept it.²² But I don't think we should be so willing. This result is implausible in its own right. But it looks even more implausible when we consider a further implication of this result. To illustrate the problem, let's stipulate that duties of rescue only arise when the harm to be averted is at least as great as the harm of ten dislocated fingers. Now, consider the following triad of cases (see table 1):

Small Difference 1. Target can prevent Attacker from breaking her arm without harming him or by spraining five of his fingers.

Small Difference 2. Target can prevent Attacker from breaking her arm by dislocating five of his fingers or by dislocating ten of his fingers.

Large Difference. Target can prevent Attacker from breaking both of her arms without harming him or by spraining ten of his fingers.

Rescue tells us that the harsher defensive option in Large Difference is unnecessary. But it doesn't say the same of the harsher defensive options in the two Small Difference cases, since the harm of five sprained fingers falls below the duty-of-rescue "threshold." This means that Target is permitted to sprain ten of Attacker's fingers if he comes for one of her arms on one occasion and for the other arm on another occasion, but that Target is not permitted to sprain ten of Attacker's fingers if he comes for both her arms at once. Attacker can avoid a certain amount of liability simply by combining his attacks into a single dose! This is a bizarre implication.

The defender of Rescue thus faces a dilemma: they must either reject commonsense beliefs about when duties of rescue arise or reject commonsense beliefs about the wrongfulness of gratuitous defensive harm. Neither horn is attractive.

But even if we are willing to grab hold of one of these horns, there's a more serious problem for the account. According to Rescue, the duty to refrain from unnecessary harm is a special instance of the duty to rescue.

22. As clearly indicated by his comments in *ibid.*, 132–33.

We would expect, then, the duty to refrain from unnecessary harm to have the profile of a duty of rescue. But it doesn't. Consider, for instance:

Two Drivers. There are two reckless drivers, A and B. Both lose control of their cars. A's car crashes into a pond, where it is quickly sinking. B's car careens toward you. If you do nothing, you will be killed. You can protect yourself in one of three ways. First, you can disable B's car with an electromagnetic pulse, in which case B will be unharmed and you will save A from drowning. Second, you can jump out of the car's path, in which case B will be unharmed but you will be unable to save A. Third, you can throw a grenade at B's car, in which case B will be killed but you will save A from drowning.

You should plainly choose to use the electromagnetic pulse. But it is also plain that throwing the grenade is worse than jumping out of the car's path: you do a much greater wrong by killing B than by failing to rescue A. Rescue predicts otherwise, however, as it claims that the wrong of killing A just is the wrong of failing to rescue A.²³

III. LIABILITY, DUTY, AND THE DEMANDS OF PROPORTIONALITY

The Rescue account points us in the right direction: it appeals to directed duties to explain the necessity constraint. But it appeals to the wrong sorts of directed duties. It gets things backward. Where Rescue claims that the necessity constraint is grounded in duties of the defender, I claim that the constraint is grounded in duties of the attacker. The remainder of the article develops and defends this idea.

The account takes some time to build up to. We won't be able to get the full story in front of us until Section IV. We first need to unpack the theory of defensive liability and the theory of the proportionality constraint on which my account of necessity is predicated. That is the project of the remainder of this section.

A. *Defensive Liability by Duty*

In Section II we observed that unnecessary defensive harm wrongs its target. This suggests a starting place for a theory of the necessity constraint:

23. Now it might be replied that throwing the grenade is worse because it is a failure to rescue someone from harm for which you are responsible. But it is not true as a general matter that we have a special obligation to rescue people from harm for which we are responsible. Suppose A is trying to kill me and B is trying to kill you. We defend ourselves in the only way we can: we each inject our respective attackers with a nonlethal poison. Untreated, the poison will render them bedridden and in moderate discomfort for a month. You soon come into possession of a vial of antidote, but only enough to cure one or the other of A or B. Do you have an obligation to give the antidote to B rather than A, in virtue of the fact that you bear some responsibility for B's illness? Surely not.

investigating the mechanics of rights suspension. If we want to understand why an unjust attack only suspends the attacker's rights against necessary defensive harm, we should start by asking why an unjust attack suspends an attacker's rights at all.

I believe that the most explanatorily fruitful answer to this question is one that has been proposed by Victor Tadros.²⁴ According to Tadros, the usual way in which an unjust attack brings about the loss of rights is this: the attack puts the attacker under certain duties, and it is the presence of those duties that in turn explains the attacker's loss of rights. This claim is a specific application of a more general principle as to how a person's rights may be moderated by that person's duties: for some duties, the fact that *S* has a duty to see to it that *p* makes it the case that *S* loses certain rights against being harmed in service of *p*.²⁵

Applied to defensive harm specifically, the idea is this: When an attacker poses an unjust threat, he incurs certain duties—including the duty to avert his threat. He thereby loses certain rights against being harmed in service of that goal.

Defensive Liability by Duty (DLD). When an attacker has a duty to avert his threat (or would have such a duty were he able to avert his threat), the attacker loses certain rights against being harmed as a means or side effect of the aversion of his threat.²⁶

DLD nicely explains a number of puzzling phenomena regarding defensive harm.

First, it explains why unjust attackers “regain” many of their rights against harm once their attack concludes. Reckless loses control of his car. It hurtles toward you. If you can only defend yourself by breaking Reckless's leg, you are surely permitted to do so. While his car hurtles toward you, he lacks a right against this use of defensive harm. But suppose you aren't able to defend yourself. The car hits you, breaking your leg. Reckless stumbles out of the car, dazed and confused. You now have an opportunity to break his leg. May you do so? Plainly not. Although you may have broken Reckless's leg to defend yourself while his car hurtled

24. Victor Tadros, *The Ends of Harm: The Moral Foundations of Criminal Law* (Oxford: Oxford University Press, 2011), 129; Victor Tadros, “Duty and Liability,” *Utilitas* 24 (2012): 259–77.

25. The ‘some’ is significant here, as there are many duties that do not make their bearers liable to be harmed as a means of seeing to that duty's end. Many duties related to special relationships are like this. For example, many of the duties that arise between friends or spouses are plausibly nonenforceable.

26. For the sake of simplicity, I refer to “attackers” in this formulation. But strictly speaking, attackers are not the only people who can acquire duties that make them liable to defensive harm. For example, a person who willingly acts as a human shield for an unjust attacker may be liable to defensive harm. So too a person who could easily move aside to let you escape an attacker. See Frowe, *Defensive Killing*, 25; and McMahan, *Killing in War*, 172.

TABLE 2
INCIDENTAL DEFENSE

	Driver	Target	Bystander
Do nothing		Paralysis	Paralysis
Redirect right	Paralysis		Paralysis
Redirect left	Paralysis	Paralysis	

toward you, you may no longer do so. DLD explains why. What ultimately matters is not the time at which you break Reckless’s leg. What matters is whether imposing harm on Reckless serves an end he has a duty to see to. (Consider: even while his car is hurtling toward you, you may not break Reckless’s leg if doing so would in no way avert his threat.) While his car hurtles toward you, he has a duty to avert his threat; you may thus use defensive harm that serves to avert that threat. After his car has hit you, breaking Reckless’s leg does nothing to avert the threat he previously posed.

Second, and relatedly, DLD explains why unjust attackers do not make themselves liable to be harmed for just any valuable purpose. Consider:

Incidental Defense. Driver risks driving in a snowstorm and loses control: the car hurtles toward Target. Target can redirect the car to the left or right. If she redirects right, she will suffer no harm, but Driver will be paralyzed. If she redirects left, she and Driver will both be paralyzed, but the car will stop an unrelated avalanche from paralyzing Bystander (see table 2).

Intuitively, Target may not redirect Driver to the left. But this is puzzling. Why may Target not paralyze Driver in order to rescue Bystander when Target would be permitted to paralyze Driver in order to save herself? DLD gives us an answer. Driver poses an unjust threat to Target but not to Bystander. In virtue of this fact, Driver has a duty to avert the threat of paralysis facing Target but no duty to avert the threat of paralysis facing Bystander. Thus, Driver is liable to be harmed as a means of averting the threat to Target but not liable to be harmed as a means of averting the threat to Bystander.

B. The Proportionality Constraint

A third explanatory upshot of DLD is that it offers us a way of making sense of the proportionality constraint. The proportionality constraint requires (roughly) that the defensive harm imposed on an unjust attacker not be “too great” relative to the severity of the threat averted. The constraint takes the form of an upper limit on the severity of defensive harm such that (all else equal) the greater the severity of the threat averted, the greater this upper limit.

In the remainder of this section I'll argue that DLD explains both these features: it explains (i) why there is such an upper limit in the first place and (ii) why that upper limit slopes upward in relation to the severity of the threat averted. I'll also argue that DLD explains a third feature of our pretheoretic conception of the proportionality constraint: it explains (iii) why that upper limit often exceeds the severity of the threat averted—that is, why it is often proportionate to impose defensive harm that is more severe than the threat averted. Let's unpack these three explanatory upshots in turn.

Why there is an upper limit.—If we reflect on the structure of duties, we see that they do not just differ with respect to their bearers (i.e., who has the duty) and their ends (i.e., the actions or goals they assign the bearer). They also differ with respect to how demanding they are. Suppose my child falls into a pond in front of a stranger; my child will drown if the stranger does not rescue her. On a separate occasion my child again falls into the pond, this time in front of me; she will drown if I do not rescue her. On these two occasions the stranger and I acquire duties with similar ends—namely, to rescue my child from the pond. But our duties differ in how demanding they are. The stranger's duty may not require him to bear massive costs to rescue my child. If he can rescue my child only by sacrificing, say, both his legs, it may be permissible for him to abstain. Not so for me. Given my special relationship to my child, my duties toward her are a great deal more demanding than a stranger's.

The demandingness of a duty is the upper limit of cost the agent must bear in order to discharge that duty: if the agent can discharge the duty only by bearing greater cost than this, then it is permissible for her to not discharge the duty, and the person to whom that duty is owed cannot reasonably demand that the agent discharge the duty.²⁷ This is an important feature of a duty, distinct from its bearer and its end. When we describe a duty, we might use the following schema to capture all three features: "S has a duty, of demandingness d , to see to it that e ."

DLD tells us that an attacker who has a duty to avert his threat is thereby liable to defensive harm; he is liable to be harmed as a means or side effect of the aversion of his threat. These duties are like any other duty in having a certain level of demandingness: there is an upper limit, d , to the cost the attacker must bear to avert his threat. If the cost of averting the threat is greater than d , then it is permissible for the attacker to not avert his threat, and his target cannot demand that the attacker bear costs greater than d to avert his threat.

But if the defender cannot demand that the attacker incur costs greater than d , then surely the defender cannot *make* the attacker bear

27. Though, of course, they may still demand compensation. We sometimes owe compensation even for permissible rights infringements.

costs greater than d . Given DLD, then, it follows that the demandingness of the attacker's duty imposes an upper limit on how much cost he can be made to bear in service of that duty.²⁸

Notice that what we have arrived at is a constraint that has the upper-limit structure of the proportionality constraint. My claim is that this *is* the proportionality constraint.

The Demands of Proportionality. Defensive harm is narrowly disproportionate to the threat averted just in case the severity of the defensive harm exceeds the demandingness of the attacker's duty to avert that threat.²⁹

Why this upper limit slopes upward with severity of threat.—In addition to explaining why there is an upper limit on defensive harm, DLD also explains why that upper limit slopes upward in relation to the severity of the attacker's threat (all else equal). To see this, let's consider a case where someone is indisputably under a duty to avert a threat. We can then reflect on what is independently plausible about the demandingness of that person's duty.

Bottle Rocket. Prankster, as an ill-conceived joke, places a bottle rocket next to Victim while she sleeps. The bottle rocket is on a timer and will detonate in five minutes if Prankster does not disable it. If the rocket detonates, Victim will suffer harm of severity n .

Prankster has a duty to disable the bottle rocket. How demanding is this duty? It surely depends on the value of n . Compare two versions of the case. In the first version, Prankster knows that Victim will have both her legs severed if the rocket detonates. In the second version, Prankster knows that Victim will only suffer a minor sprain to her big toe. In the high-stakes version, it is clear that Prankster's duty would be very demanding. Even if disabling the rocket meant, for example, that Prankster would lose both his legs, he would still be required to disable the rocket.

Not so in the low-stakes version of the case. It is not plausible that Prankster would be required to disable the rocket if it meant losing both his legs. Morality would certainly require that Prankster compensate Victim

28. It need not be the case that there is only one duty that grounds someone's defensive liability. It may be that an attacker has multiple enforceable duties that can be enforced by imposing defensive harm on him. In such cases, I think that the upper limit of defensive harm that may be imposed on the attacker will be equivalent to an aggregate of the demandingness of those duties. But defending this claim in the present article would take us too far afield.

29. Comments from Tadros suggest that he endorses something along these lines; see Tadros, *Ends of Harm*, 347; and Victor Tadros, *Wrongs and Crimes* (Oxford: Oxford University Press, 2016), 172. It's not clear whether he would endorse the various claims to follow in this section, however.

for her sprained toe, but it would not require him to give up both his legs to prevent a sprained toe.

What these two cases illustrate is that—whatever we should think about the relationship between duty and defensive liability—the demandingness of an unjust attacker’s duty to avert his threat is partly a function of the severity of his threat. All else equal, the greater the threat, the more demanding his duty to avert that threat. If we combine this independently plausible thought with Demands of Proportionality, it follows that the proportionality limit “slopes upward”: all else equal, the greater the threat, the greater the range of defensive harm that counts as proportionate.

Why proportionate harm can be more severe than the threat.—As we noted, it isn’t plausible that Prankster would be morally required to lose two legs in order to prevent Victim from suffering a sprained toe; his duty would not be this demanding. But suppose Prankster could disable the rocket at the cost of, say, two sprained toes. It is intuitively plain that Prankster would be required to disable the rocket at such a cost, even though this cost is greater than the cost Victim would suffer if the rocket were to detonate (two toes vs. one). The upshot: whatever one thinks about the relationship between duty and defensive liability, it is plausible that the demandingness of our duties to avert our unjust threats is often greater than the severity of those threats. If we combine this independently plausible thought with Demands of Proportionality, it follows that defensive harm will often be proportionate even when it is more severe than the threat averted.³⁰

IV. THE DEMANDS OF NECESSITY

A. *The Positive Account*

Unjust attackers are liable to defensive harm because they have a duty to avert their threat (or would have such a duty were they able to avert their

30. I anticipate the worry, however, that Proportionality as Demandingness “undersells” the upper limit of defensive harm to which certain sorts of attackers are liable—in particular, minimally responsible attackers. Consider: an unforeseeable mechanical failure causes a careful driver to lose control of his car, threatening to kill a pedestrian (see McMahan, *Killing in War*, 165). It is widely believed that a defender would act permissibly and proportionately by killing the driver in defense of the pedestrian. But—some might wonder—would the driver really be required to redirect his car away from the pedestrian, and to his own death, were he able to do so?

Yes, I think he would be. When we’re dealing with an attacker’s duty of threat aversion, we’re not dealing with a generic duty of rescue. The duty to avert one’s attack is an extension of one’s more fundamental negative duty not to harm. And negative duties are quite demanding—so demanding that a duty not to kill can even demand one’s life. If a villain promises to kill me unless I kill an innocent stranger, this doesn’t make it permissible for me to kill the stranger. It doesn’t matter that my responsibility for the killing would be significantly mitigated by my own duress. I am required to discharge my duty not to kill even at the cost of my life. So too is the conscientious driver required to discharge his duty not to kill even at the cost of his life.

threat). And they are liable only to as much harm as they would be required to take on themselves to avert their threat. This, I argued in the previous section, is the basic idea expressed by the proportionality constraint. Defensive harm is disproportionate to the threat averted when the attacker would not be required to bear that amount of harm to avert that threat.

On this account, the proportionality of a defensive option involves a comparison between two variables. First, there is the variable of “defensive gain.” This is a measure of the harm averted to persons other than the attacker—the difference in how much harm they suffer on the defensive option as compared to the harm they suffer if no defense is mounted (the nondefensive option). Second, there is the variable of “defensive cost.” This is the difference in how much harm the attacker suffers on the defensive option as compared to the nondefensive option. To illustrate: Suppose Attacker will kill five people if Defender doesn’t act, but if Defender shoots and kills Attacker, no one else will be harmed. In this case, the defensive gain of shooting Attacker is the saved lives of his five targets. The defensive cost is the loss of Attacker’s life.

The proportionality constraint boils down to the following test of a defensive option: Would the attacker be required to suffer the defensive cost of that option to secure its defensive gain? If yes, the option is proportionate. If no, the option is disproportionate.

The proportionality constraint thus involves a comparison between a given defensive option and the nondefensive option. But there’s nothing morally privileged about the nondefensive option. A defender may have a number of options available to her, and if this sort of comparative test matters with respect to the nondefensive option, then it should also matter with respect to the defender’s other options. Suppose the defender is considering defensive option D_1 but has another option available to her, D_2 . If the attacker would not be morally required to bear the extra cost imposed on him by D_1 as compared to D_2 in order to secure the extra defensive gains of D_1 as compared to D_2 , then the attacker is not liable to the costs of D_1 . It makes no difference whether D_2 is the nondefensive option or some other defensive option.

This, I claim, is the idea at the heart of the necessity constraint. The necessity constraint is just like the proportionality constraint in the sort of comparative test it involves. But whereas the proportionality constraint tests a defensive option against a single alternative (the nondefensive option), the necessity constraint tests a defensive option against every alternative option available to the defender.

The Demands of Necessity. A defensive option is unnecessary just in case there is an alternative defensive option such that the attacker would not be required to bear the difference in defensive harm between the two options to secure the difference in defensive gain.

This principle (“Necessity” for short) delivers a symmetric explanation of both “pure” cases of unnecessary defense (like Easy Defense) and “marginal” cases (like Easyish Defense). Consider, first, the case of Easy Defense: Pedestrian can equally well defend herself by paralyzing Reckless or by spraining his toe. It is plainly wrongful to paralyze him. Here’s why, according to Necessity: Necessity tells us to make a pairwise comparison between the option to paralyze Reckless and every other available option. In this case, the option to paralyze Reckless fails the relevant test with respect to the option to sprain Reckless’s toe: Reckless would plainly not be required to bear the difference between paralysis and a sprained toe in order to bring about zero defensive gain. This is why Pedestrian would wrong Reckless by paralyzing him.

Likewise, consider Easyish Defense: Pedestrian will avoid harm entirely if she paralyzes Reckless, but she will suffer a sprained toe if she defends herself by spraining Reckless’s toe. Necessity directs us to ask whether Reckless would be required to bear the difference between paralysis and a sprained toe—a massive difference—in order to protect Pedestrian from the minor harm of a sprained toe. Plainly he would not be, as we can see if we imagine a case in which the initial threat from Reckless’s car is nothing more than a sprained toe. The very reason it would be disproportionate for Pedestrian to paralyze Reckless when the initial threat is so small is the same reason it would be unnecessary for Pedestrian to paralyze Reckless rather than sprain his toe in Easyish Defense: Reckless would not be required to bear the massive cost of “almost paralysis” in order to avert the small harm of a sprained toe.³¹

B. Advantages of the Account

This way of interpreting the necessity constraint has significant upsides. First, Necessity offers an improvement over the Rescue account. Whereas Rescue (I argued) prohibits only large amounts of gratuitous defensive harm, Necessity prohibits any amount. This is because the duties that render people liable to defensive harm are duties to avert some threat. Defensive harm that is gratuitous—that fails to avert any threat—is, of course, harm that fails to enforce any such duty. The upshot is not just

31. McMahan, “Limits of Self-Defense,” 189–91, claims that calculations of necessity can be transformed into calculations of wide proportionality. By contrast, the Necessity account claims that calculations of necessity can be transformed into a set of calculations of narrow proportionality (given the account of proportionality defended in Sec. III). If you want to know whether defensive option D_1 is necessary, run the following test for every alternative defensive option, D_n : imagine that Attacker’s initial threat is the difference between his threat in D_1 and his threat in D_n , and then ask yourself whether it would be proportionate to make him bear the difference in defensive harm between D_1 and D_n to avert that threat. If there is some option for which this proportionality test fails, D_1 is unnecessary.

that Necessity is a better fit with our intuitive judgments about particular instances of gratuitous harm but also that it avoids counterintuitive failures of harm additivity that are generated by the threshold feature of Rescue.

Necessity also offers an improvement over Discount. The biggest improvement is that it is consistent with the fact that (and explains why) unnecessary harm wrongs an attacker. But Necessity is also preferable in that it assigns a more plausible role to the presence of bystanders. Recall that Discount runs into trouble with the following pair of cases:

Unnecessary Killing. Reckless loses control of his car, which will permanently paralyze Pedestrian from the waist down unless she either kills Reckless or merely sprains one of his fingers.

Unnecessary Killing (Bystanders). As before, except that killing Reckless involves redirecting his car into the path of an unrelated avalanche. The avalanche will kill Reckless, but his car will block the avalanche from killing two innocent bystanders.

Killing Reckless in the first case is a paradigm violation of the necessity constraint. But it is surely wrong to kill Reckless in the second case for the very same reasons it is wrong to kill him in the first case. Discount, however, delivers an asymmetric verdict in these two cases. It tells us that killing Reckless is unnecessary in the first case but not in the second case. This is implausible.

The Necessity account does better here. This is because, in both cases, Reckless would not be required to let himself be killed (rather than suffering a sprained finger) in order to see to the defensive gain of his being killed. In the first case, there is nothing to be gained by killing Reckless. Reckless would plainly not be required to let himself be killed for nothing. In the second case, there is something to be gained by killing Reckless: two bystanders will be saved from death. But Reckless, unrelated as he is to the threat to the bystanders, has no special obligations to them. His duties toward the bystanders are the same duties of rescue that anyone else would have to them. And our duties of rescue are not so demanding as to require us to give up our lives to rescue two people from death. Reckless, accordingly, is not required to let himself be killed in order to see to it that two bystanders are saved. This is why the Necessity account declares it to be unnecessary to kill Reckless even in the second case.

This is not to say that Necessity treats bystanders as making no difference. Bystanders can affect whether defensive harm is necessary precisely because attackers can owe things to persons other than their intended victims. We see this clearly when we consider a case like:

Dodge the Boulder. Intending to break Target's leg, Attacker rolls a boulder toward her. But Target jumps out of the way, making it so

that the boulder now threatens to break Bystander's leg. Bystander can be saved only if Attacker throws himself in front of the boulder, at the cost of his own broken leg.

Attacker is intuitively required to suffer a broken leg in defense of Bystander—this despite the fact that he may not have intended or foreseen harm to Bystander, and despite the fact that Bystander is threatened in part because of a choice made by Target.

In the same way, defensive harm that would be unnecessary in the absence of bystanders can be made necessary by their presence. But this is precisely the role we should expect bystanders to play and is confirmed by reflection on cases. Consider, for example, a pair of variants of Dodge the Boulder:

Defensive Boulder 1. Attacker rolls a boulder toward Target in order to break her leg. Target can throw Attacker in front of the boulder, breaking his leg, or she can dodge the boulder without harm to anyone. Target chooses to throw Attacker in front of the boulder.

Defensive Boulder 2. As before, except that if Target dodges the boulder, it will break Bystander's leg. Target throws Attacker in front of the boulder.

Defensive Boulder 1 is a paradigm case of impermissible and unnecessary defensive harm. And yet the very same defensive harm—breaking Attacker's leg—is permissible and necessary in Defensive Boulder 2. The presence of Bystander changes the status of Target's action from unnecessary to necessary, from impermissible to permissible. Necessity explains why. The presence of Bystander makes it permissible for Target to throw Attacker in front of the boulder because the presence of Bystander means that there is something to be gained by doing so—a gain that Attacker would be obligated to bear the cost of (as we established in Dodge the Boulder). Necessity, then, does allow the presence of bystanders to make a difference as to whether defensive harm is unnecessary. But the role it assigns to bystanders is much more plausible than the role Discount assigns them.

Avoiding the shortcomings of competing accounts is one virtue of Necessity. But perhaps its greatest virtue is the unity it brings to the ethics of defensive harm. Necessity helps us to see that the so-called necessity and proportionality constraints are just two faces of a common moral demand. Both constraints demand of a defensive option, relative to certain alternative options, that the comparative costs to the attacker be ones he would be required to bear in order to see to the comparative defensive gains. The two traditional constraints differ only in the comparators involved. The proportionality constraint compares a defensive option with the nondefensive option; the necessity constraint compares a defensive

option with every alternative option available to the defender. The two constraints impose a common test, but the necessity constraint imposes the test more broadly. Disproportionate harm, it turns out, is just a special instance of unnecessary harm.

V. NECESSITY AS RESPONSIBILITY SENSITIVE

In the remainder of the article I consider what follows from Necessity. In this section I argue that the account has important implications for the relationship between responsibility and necessity. In the next section (Sec. VI) I take up the worry that the account has a troubling implication in cases involving multiple attackers.

Many theorists have claimed that an attacker's degree of responsibility for his threat affects what counts as proportionate defensive harm—that (all else equal) the greater the attacker's responsibility, the greater the degree of defensive harm it is proportionate to impose.³² One interesting and important implication of the package of claims I have defended in Sections III and IV is that an attacker's degree of responsibility (or culpability) affects both what counts as proportionate defensive harm and what counts as necessary defensive harm.³³ This is because it is independently plausible that, all else equal, the more responsible a person is for posing an unjustified threat, the more demanding his duty to avert that threat. Consider the following pair of cases:

Sleepy Conductor. Sam arrives to her job as a train conductor with very little sleep, having stayed up most of the night to binge her favorite show. Her lack of sleep causes her to fail to notice a worker who has been blown onto the tracks. Sam can only stop the train from breaking the worker's ankles by throwing herself in front of the train. This will result in *n*-much harm to Sam.

Vengeful Conductor. Sully is a disgruntled train conductor. To get back at the rail company for passing him over for promotion, he pushes a worker onto the tracks. Sully can only stop the train from breaking the worker's ankles by throwing himself in front of the train. This will result in *n*-much harm to Sully.

Sam and Sully each have a duty to avert the threats for which they are responsible. But it seems plain that Sully's duty is much more demanding

32. See, e.g., Saba Bazargan-Forward, "Killing Minimally Responsible Threats," *Ethics* 125 (2014): 114–36; Kai Draper, "Defense," *Philosophical Studies* 145 (2009): 69–88, 81; Rodin, "Justifying Harm," 80–84; Tadros, *Ends of Harm*, 332; and Suzanne Uniacke, "Proportionality and Self-Defense," *Law and Philosophy* 30 (2011): 253–72, 265.

33. My own view—which I do not have the space to defend here—is that responsibility and culpability make independent and distinct contributions to the demandingness of an attacker's duty. For simplicity, though, I will refer only to responsibility throughout this section.

than Sam's: the range of values of n such that Sully is morally required to throw himself in front of the train is much greater than the range of values of n such that Sam is morally required to throw herself in front of the train. This much is intuitively clear, even if our intuitions are hazy as to exactly what those two ranges are.

Sully's duty isn't more demanding because of a difference in the harmfulness of the threat; in both cases the threat to the worker is the same. Nor is Sully's duty more demanding because of a difference in the justification of the threat; in both cases the threat is unjustified. The relevant difference can only be Sam and Sully's comparative degrees of responsibility. Sully's duty is more demanding because he bears greater responsibility for the threat.

The general lesson is that a person's responsibility for an unjust threat is a contributing factor to the demandingness of their duty to avert that threat. All else equal, the greater your responsibility for an unjust threat, the greater your duty to avert that threat. Given Demands of Proportionality, this means that (all else equal) the greater an attacker's responsibility for an unjust threat, the greater the range of defensive harm that counts as proportionate. This seems right on reflection. Imagine that Sam and Sully both refuse to throw themselves in front of the train, but that a third party could push Sam and Sully in front of the train. It is very intuitive that Sully is liable to a greater range of harm from such a push than is Sam.

What is perhaps more surprising is that we get similar implications regarding necessity. If greater responsibility makes for more demanding duties, then it follows from Necessity that (all else equal) the greater an attacker's responsibility for an unjust threat, the more defensive options will count as necessary. We can see this with the following toy example. Suppose that the demandingness of Sam the Sleepy Conductor's duty to avert harm to the worker is identical to the severity of the harm she can avert, whereas the demandingness of Sully the Vengeful Conductor's duty is twice as great as the harm he can avert.

And now suppose Defender has the options listed in table 3 for how she might push Sam and Sully onto their respective tracks. Given our

TABLE 3
CONDUCTOR OPTIONS

	Sam/Sully	Worker
No defense		Two broken ankles
Gentle push	One broken ankle	One broken ankle
Hefty push	Two broken ankles + a broken toe	

stipulations, Necessity tells us that Sully is liable to a hefty push but that Sam is liable only to a gentle push. Sully would be required to bear the difference between a hefty push and a gentle push (one extra broken ankle and one broken toe) in order to save the worker from one broken ankle. Not so for Sam; she would not be required to bear more than one extra broken ankle to save the worker from one broken ankle.

The lesson isn't that my theory of proportionality and necessity should lead us to endorse the so-called Moral Responsibility Account of liability to defensive harm.³⁴ My account does not pressure us to endorse the claim that an attacker is liable to defensive harm only if he is responsible for the threat to be defended against.³⁵ But it does pressure us to endorse the claim that responsibility pushes outward on the limits of liability. Whether or not responsibility is needed to make us liable to defensive harm in the first place, it is something that can expand our liability.

VI. MULTIPLE ATTACKERS

The Necessity account may seem to have very troubling implications in cases involving multiple attackers. Consider:

Dual Threat. Alice and Bob each attempt to attack Defender. If Alice succeeds, she will break Defender's left leg. If Bob succeeds, he will break Defender's right leg. Defender has three ways to avert both these threats. She can defensively harm both Alice and Bob, breaking one leg each; she can harm just Alice, breaking one of Alice's legs and scaring off Bob unharmed; or she can harm just Bob, breaking one of Bob's legs and scaring off Alice unharmed.

It is of course unnecessary to harm both Alice and Bob, since harming just one of them will do the protective job. But what's worrisome for Necessity is that it seems to imply that it is also unnecessary to harm just Alice and unnecessary to harm just Bob. This is because Alice would not be required

34. Proponents of the claim that responsibility is necessary for defensive liability include Jeff McMahan, "The Basis of Moral Liability to Defensive Killing," *Philosophical Issues* 15 (2005): 386–405; McMahan, *Killing in War*, 155–202; Frowe, *Defensive Killing*, 72–87; Kerah Gordon-Solmon, "What Makes a Person Liable to Defensive Harm?," *Philosophy and Phenomenological Research* 97 (2018): 543–67; Michael Otsuka, "Killing the Innocent in Self-Defense," *Philosophy and Public Affairs* 23 (1994): 74–94; and Michael Otsuka, "The Moral Responsibility Account of Liability to Defensive Killing," in *The Ethics of Self-Defense*, ed. Christian Coons and Michael Weber (Oxford: Oxford University Press, 2016), 51–68.

35. On the contrary, my account pressures us to endorse the claim that responsibility is not necessary for liability to defensive harm. This is for the simple reason that we can acquire duties to avert threats for which we are not responsible. A person who positions themselves near an unjust attacker to deter a defender from shooting back may make themselves liable to defensive harm even if they do not contribute to the attacker's threat.

to bear the cost of a broken leg in order that Bob not suffer a broken leg (and vice versa). The option to harm just Alice and the option to harm just Bob thus seem to fail Necessity's comparative test with respect to one another. But this would mean that every defensive option available to Defender is unnecessary, and thus that he cannot defend himself without wronging one (or both) of his attackers. This is wildly implausible.³⁶

The good news for Necessity is that it does not, in fact, have this implication. To see why, let's start by noticing that our two attackers, Alice and Bob, have at least some obligations to one another. We can see this when we consider a variant of the case:

Divisible Dual Threat. As before, except Defender has yet another defensive option: he can shoot rubber bullets at Alice and Bob, in which case they will each suffer a harm exactly half as severe as a broken leg.

Intuitively, Defender should take this option. Rather than break one attacker's leg, he should distribute the defensive harm between both attackers. What's more, it seems that Alice and Bob would be required to split the costs in this way if they had the ability to do so themselves. Suppose Alice could avert the threats to Defender by either redirecting the full cost of a broken leg on Bob or seeing to it that she and Bob each suffer half this cost. Alice, I think, would be required to choose the latter option. The same applies, *mutatis mutandis*, for Bob.

But notice what this means. When we compare the "split the costs" option to the "shoot Bob" option, it turns out that Alice would be required to bear half a broken leg in order to save Bob from half a broken leg. The same applies, *mutatis mutandis*, for Bob.

Having established that Alice and Bob would owe each other at least this much, let's return to the original Dual Threat case. In the original case, the defensive harm of a broken leg is not divisible. But if Alice and Bob are obligated to divide the costs in the divisible case, then it seems they are obligated to do at least the following in the original case: they are obligated to accept the costs of a fair procedure on Defender's part for choosing whether to harm Alice or Bob. In the nondivisible case, this is as close as Alice and Bob can come to splitting the cost. Suppose

36. This worry is different from a more familiar problem involving multiple attackers. The more familiar worry takes the form of a puzzle: why does there seem to be an upper limit on the number of attackers it is permissible to kill in self-defense, even when each of those attackers seems to satisfy the conditions of liability to defensive harm? For discussion, see Bazargan-Forward, "Killing Minimally Responsible Threats," 133–35; Jeff McMahan, "Liability, Proportionality, and the Number of Aggressors," in *The Ethics of War*, ed. Saba Bazargan and Samuel Rickless (New York: Oxford University Press, 2017), 3–27; and Rodin, "Justifying Harm," 99–100.

Defender flipped a coin to choose between harming Alice and harming Bob, which directed her to harm Alice. Given what we've seen, it seems that Alice would then be required to accept this cost.

The upshot, then, is this: Necessity allows Defender to protect herself in Dual Threat, so long as her decision for choosing between harming Alice and harming Bob is a fair one. So long as her decision is not unfair, her target really does have a duty to accept the costs that fall on them. But if her decision is unfair, no such duty is present. If, for example, Defender chose to harm Alice rather than Bob simply because she prefers to harm women over men, Defender would wrong Alice. But this is a very plausible result. Defender doesn't owe it to Alice or Bob not to harm them, but she does owe it to them to give their interests equal consideration in her decision of whom to harm.

VII. CONCLUSION

The shape of an attacker's liability to suffer defensive harm is determined by the shape of his duties: what harm an attacker is liable to is a function of both the ends of his duties and how demanding those duties are. The ends of his duties determine that for which defensive harm must be a means or side effect. And the demandingness of the relevant duties tells us how much harm he is liable to suffer: an attacker is only liable to be made to bear as much cost in service of some end as he would be required to take on himself in service of that end.

I have claimed that we can understand the wrongfulness of both disproportionate and unnecessary harm in terms of this fact. To say that a defensive option is disproportionate is to say that, when we compare that option against the nondefensive option, the attacker would not be required to assume the comparative costs to see to the comparative gains. To say that a defensive option is unnecessary is to say that, when we compare that option against every alternative option, there is some alternative such that the attacker would not be required to assume the comparative costs to see to the comparative gains. Thus, while there is a difference in scope between the proportionality and necessity constraints,³⁷ there is no difference in the fundamental nature of the wrongfulness of disproportionate and unnecessary harm. Both forms of harm wrong an attacker in the same way: by making him to bear more cost in service of some defensive goal than he would be required to take on himself.

37. Because the difference between the two constraints is only a difference in scope, it turns out that, although it may be practically useful to maintain the tradition of distinguishing between "proportionality" and "necessity," we don't really need this distinction at the theoretical level. What Demands of Proportionality expresses in part Demands of Necessity expresses in full generality. We could, then, make do with just the latter in our theory of the ethics of defensive harm.