

# Is it permissible to kill a non-responsible threat?

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## **Abstract**

It is generally agreed that one may not save their own life by sacrificing the life of an innocent bystander. Otsuka argues that the killing of a non-responsible threat - defined by McMahan as a person who without justification threatens to harm someone in a way to which she is not liable, but who is in no way morally responsible for doing so - is morally equivalent to the killing of an innocent bystander and hence should not be permitted even in cases of self-defence. I argue that it is permissible to kill a non-responsible threat even though it is not permissible to kill an innocent bystander and point to the unjustified threat posed to one's life as the differentiating factor. I argue that moral responsibility is only a consideration in terms of punishment and desert but not in the neutralisation of a threat.

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## **Section 1: Introduction**

A non-responsible threat (hereafter NRT) is defined by McMahan as a person who without justification threatens to harm someone in a way to which she is not liable, but who is in no way morally responsible for doing so.<sup>1</sup> Examples of an NRT could include a drugged truck driver speeding towards another or a fat man pushed off a roof threatening to crush those below. This paper attempts to identify how, if at all, the permissibility of killing an NRT in self-defence may differ from the permissibility of killing an innocent bystander. To this end, this paper will focus on cases of self-defence against civilian threats without considering the setting of a war zone. Broader discussions of the ethical ramifications of entering a war zone and its consequences upon the permissibility of killing lie outside the scope of this paper. I also follow Quong<sup>2</sup> in limiting my discussion to cases of:

- i. Self-defence from lethal rather than non-lethal threats
- ii. Full knowledge rather than mistaken beliefs regarding matters of fact
- iii. One life rather than multiple lives is at stake

The paper can perhaps best be thought of as being framed by the suggestion of Otsuka that there is a moral equivalence between the killing of an innocent bystander and an NRT due to the lack of moral responsibility attached to the agent in each case. This claim will serve as a point of reference which I not only seek to undermine in the paper but also to highlight where exactly the flaw rests. The paper thus commences with a robust analysis of Otsuka's argument which also serves to familiarise the reader with the background to the issue. My own threat thesis is then introduced in Section 3 where I argue that a moral distinction should be drawn between an NRT and an innocent bystander. In Section 4 I anticipate a possible response from Otsuka and attempt to defend my thesis against such a counter argument. Finally, in Section 5, I consider the place of my argument amongst those found in the existing literature and illustrate how I address their shortcomings. Thus, I conclude that any threat

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<sup>1</sup> McMahan, J. 'Killing in war.' OUP Oxford: Clarendon, 2009. p.168

<sup>2</sup> Quong, J. 'Killing in Self-Defense.' *Ethics*, 119(3), 2009, p.509

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to the life of a person can be neutralised even if it involves the taking of the life of the threat.

## **Section 2: The moral equivalence thesis**

Otsuka<sup>3</sup> presents the following argument:

P1: It is not permitted to kill an innocent bystander to prevent oneself being killed.

P2: The moral permissibility of killing an innocent bystander to prevent oneself being killed is on par with killing an NRT to prevent oneself being killed.

Conclusion: Therefore, it is not permitted to kill an NRT to prevent oneself being killed.

The argument is clearly valid, but is it sound? Without appealing to moral intuitions<sup>4</sup>, it is not immediately simple to provide an argument for P1. For the purposes of this essay I will accept P1 and focus my attentions upon P2 - the moral equivalence thesis. In particular, I will attempt to demonstrate that it is morally permissible to kill an NRT even if it is not permissible to kill a bystander.

The difficulty with such a position is its apparent inconsistency; if the act is viewed as killing then it is not clear what makes the killing of an NRT permissible and if the act is viewed as saving a life then it is not clear what makes the killing of an innocent bystander impermissible. Conceptually, there are three possible approaches:

a) The regular prohibition against killing is completely waived when it comes to self-defence but there is some reason why this does not extend to an innocent

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<sup>3</sup> Otsuka, M. 'Killing the innocent in self-defense.' *Philosophy & Public Affairs*, 23(1), 1994, p.76

<sup>4</sup> The use of moral intuition in deontological ethics is widespread but is not without its drawbacks. For an analysis of the methodology see Singer, 2005. (Singer, P. 'Ethics and intuitions'. *The Journal of Ethics*, 9(3-4), 2005, p.331-352.

bystander.

b) The regular prohibition against killing is not waived at all when it comes to self-defence but there is some reason why it is still permissible to kill an NRT.

c) The categories of innocent bystander and NRT are qualitatively distinct such that what applies to one in terms of killing needs not apply to the other.

Note that these three directions split into two groups. According to a) and b), our argument must proceed in two stages - first to explain whether it is generally permissible to kill in cases of defence and then to examine the scope of our decision and the agents to which it will apply. According to c), however, we first differentiate between the two categories of agents and then work backwards to explain how this impacts upon the permissibility of the act of killing. The first two directions warrant a much broader discussion as to why it is ethically wrong to kill at all which is outside the scope of this paper.<sup>5</sup> I thus proceed with c).

### **Section 3: The ‘threat’ thesis**

#### **3.1 - A normative distinction**

To differentiate an innocent bystander from an NRT we need but notice a very simple difference between a pair of cases.

Trolley Case: A trolley is rolling down the track towards you. If you do not move you will be squashed to death. The only way to save your life in the time remaining is to push someone else in front of you and kill her.

Fat Man Case: A fat man is pushed from a height through no fault from his own and falls towards you. If you do not move you will be squashed to death. The only way to save your life in the time remaining is to deflect him onto the road below and kill him.<sup>6</sup>

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<sup>5</sup> Young, 1979 follows this methodology. (Young, R. ‘What is so wrong with killing people?’ *Philosophy*, 54(210), 1979, p.515-528)

<sup>6</sup> Cases introduced by Thompson. (Thomson, J. J. ‘Self-defense.’ *Philosophy & Public Affairs*, 1991, p.287-289)

In both of these cases, it seems that there is an agent devoid of moral responsibility threatening the life of another and thus Otsuka regards them as equivalent. I would, however, point to the following distinction - the innocent bystander in the trolley case poses no direct threat to my life whereas the NRT in the fat man case does. The innocent bystander is not causally involved in the formation of the threat of the runaway trolley itself and only offers a potential protection from it, namely by blocking its progress towards me. Thus, if the bystander were to be removed from the situation, the threat (of the trolley) would continue to exist in exactly the same way that it existed before. The NRT however, is both causally involved in the formation of the threat and if removed from the situation would also constitute the disappearance of that specific threat of the fat man crushing me.

If my analysis thus far is correct, I have shown that an innocent bystander and an NRT are distinct categories where the NRT is involved in the causal chain of the threat<sup>7</sup> whilst the innocent bystander only offers a potential protection from it.<sup>8</sup> I am still to explain however why this descriptive distinction is of moral significance. Why is it permissible to eliminate a direct threat at the cost of a life but not to protect myself from that threat at the cost of the same life?

### 3.2 - Neutralisation of a threat

It seems that if an unjust threat is posed against the life of X then any third party P can act to neutralise that threat.<sup>9</sup> Of course, this act of defence must be both proportional and a last resort - I cannot kill a drunk who is merely abusing me but if there is a direct threat to my life and the only way to neutralise the threat is to kill him then I may. Hence, I can save my life by killing an NRT

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<sup>7</sup> The counterfactual definition of causation, originating with Hume (1748) and now associated with Lewis (1973), may be helpful here. If the fat man falling were not to occur then the specific threat to my life would not occur but if the innocent bystander were not to occur then the specific threat of the trolley would still occur. ( Hume, D. 'An Enquiry concerning Human Understanding', 1748), ( Lewis, D. Causation. *Journal of Philosophy*, 1973, 70: 55667.)

<sup>8</sup> This will prove to be important, for Otsuka argues that an NRT is really just another example of an innocent bystander.

<sup>9</sup> The justification for killing in defence based upon the formal status of the threat has roots in the Talmudic concept of a Rodef. See Sanhedrin, 73a. (Babylonian Talmud, Tractate Sanhedrin, 73a, trans. in Steinsaltz, A. 'The Talmud: [Talmud Bavli]: the Steinsaltz edition (Vol. 1)'. Random House (New York), 1989.)

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because they pose an unjust threat and the act of killing them as a last resort is a neutralisation of the threat. I cannot though save my life by sacrificing an innocent bystander because that bystander does not pose an unjust threat to my life and I would merely be protecting myself from rather than neutralising the threat. Indeed, if I did try and sacrifice an innocent bystander I would pose a direct threat to their life such that they would then be justified in killing me in self-defence. It is possible to summarise the above as follows:

I. It is morally permissible for X (or indeed any third party P) to kill Y if Y poses a direct threat T to X (where T is to be defined as a case in which the threat to X will disappear if Y is removed from the situation) and killing Y is the only proportional way to neutralise T.

There are, however, a few modifications which must be made to accommodate for various counterexamples. Thomson's<sup>10</sup> case of the villainous aggressor shows that I. represents a necessary but not sufficient condition for the permissibility of the killing. For example, imagine that X represents a terrorist on the run being chased by the police Y. Under the current formulation, the villainous aggressor is allowed to fight back in self-defence and kill the police since the police pose a direct threat to his life and killing the police is the only proportional way to neutralise that threat but we would, of course, think that the terrorist has forfeited his rights to self-defence. Hence, we must reformulate to account for such cases where Y is already in acting in defence as follows:

II. It is morally permissible for X (or indeed any third party P) to kill Y if Y poses a direct threat to X (where direct threat is to be defined as a case in which the threat to X disappears if Y is removed from the situation) and killing Y is the only way to neutralise T and Y is not acting in self or other defence.

#### **Section 4: Act or agent evaluation**

Otsuka nevertheless argues that the lack of moral responsibility of an NRT leaves them on a moral par with an innocent bystander. He further points out that an NRT should be morally, if not physically, considered a bystander "because that

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<sup>10</sup> Thomson, Self-defence, 303-4

which endangers another's life is neither an action of hers nor the consequence of any action of hers."<sup>11</sup> I must illustrate, therefore, why an NRT can be killed despite its lack of agency in causing the threat.

To this, I reply as follows. Self or other defence is not the administering of a punishment; I do not take the place of the court in killing the threat. Indeed, most current legal systems do not even use capital punishment for murder. Rather, self or other defence is a means to protect a life from an unjust threat. Were there to be another way to save that life then it should indeed be taken but, as in the fat man case, the only means to halt his plummet is to deflect him. Moral responsibility, I argue, is only a factor when it comes to questions of punishment (or desert in the words of McMahan) when it is important to question the moral nature of the act committed along with its motivations and intentions. But when it comes to protecting a life under threat then it is legitimate to neutralise the threat even if no immoral act has been committed because a life is still unjustly under threat. It is not that the threat deserves to be neutralised as a punishment for doing an immoral act but rather that the threat is liable to be neutralised due to the danger it poses to another. No moral blame is being attached to the fat man but it is not possible to separate between the agent Y and the threat T and thus the threat T is neutralised even if agent Y will be eliminated at the same time.<sup>12</sup> The difference between an NRT and an innocent bystander then is not a function of moral responsibility and hence Otsuka's argument is no longer compelling.

We can draw here upon Youngs<sup>13</sup> distinction between act evaluation and agent evaluation. Punishment looks at agent evaluation and hence questions of moral responsibility and intention become important. But the right of defence against an unjust threat is just about the act evaluation. It so happens to be that there is a person rather than a projectile hurtling towards me but for evaluative purposes

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<sup>11</sup> Otsuka, *Killing the innocent in self-defense*, 85

<sup>12</sup> I have avoided drawing upon the doctrine of double effect to say that the death of Y is merely an unintended consequence here as this leaves me open to the classic criticism of the doctrine such that if X did also intend to kill Y it would become morally impermissible. For questions of intention and the doctrine of double effect see Delaney, 2007. (Delaney, N. F. 'A note on intention and the doctrine of double effect'. *Philosophical studies*, 134(2), 2007, p.103-110.

<sup>13</sup> Young, R. 'What is so wrong with killing people?'. *Philosophy*, 54(210), 515-528, 1979, p.521.

both have the same formal status of a threat. In the same way that a foetus can put the pregnant mother in danger despite its lack of moral responsibility, so too can other cases of an NRT threaten another person without the moral responsibility of the agent. Otsuka's assessment that it is as if a human is trapped in a projectile is correct but I therefore think that an NRT can also be neutralised in the same way that a projectile can. Indeed, the flaw in Otsuka's argument becomes apparent once we clearly lay out its steps in logical sequence:

P1: The fat man hurtling towards me lacks moral responsibility.

P2: If the fat man hurtling towards me lacks moral responsibility then it can be considered a human projectile.

P3: If the fat man hurtling towards me is considered a human projectile then it cannot be eliminated.

Conclusion: Therefore, the fat man cannot be eliminated.

It should be clear however, that P3 is false. If the fat man is considered a human projectile then it can be eliminated in exactly the same way that a real projectile can! Otsuka does seem to be aware of this difficulty and attempts to argue that an NRT is an innocent human trapped inside a projectile. But Otsuka must then maintain that on the one hand it lacks moral responsibility and is comparable to a projectile but at the same time it is still a person and thus cannot be eliminated like a projectile. I would argue that either we must regard the composite whole as a projectile in which case it can be eliminated or as a person in which case there is an element of moral responsibility. Even if we were to grant Otsuka that we could somehow split the identity and view it as a person trapped inside a projectile, I have argued that the person is still regarded as a threat and can thus be neutralised despite the lack of moral responsibility.

## **Section 5: The place of the threat thesis amongst the existing literature**

My distinction between an innocent bystander and an NRT is not the first; several arguments have already been advanced in the literature. I will thus

bring my paper to a close by attempting to briefly illustrate how my argument addresses their various shortcomings.

### **5.1 - Agent relative value**

Quong<sup>14</sup> draws upon a notion of agent relative value - that your life is of particular moral importance for you as the foundation of the right to self-defence. He highlights the fact that morality cannot require one to sacrifice their own life for another when one justifiably possesses the means to save oneself, just as morality cannot require one to save another at the risk to one's own life. Quong himself notes that this account does not seem to offer a distinction between an innocent bystander and an NRT and dedicates Section III of his paper to deal with this difficulty. My argument, however, does not rest upon such a notion of agent relative value, for I argue that any third party P is permitted to kill Y in order to eliminate T to X and there is no reason to assume that the life of Y should hold any more value to P than the life of X does. It is the neutralisation of an objective threat which permits the killing rather than a subjective right to prioritise one's own life over others'.

### **5.2 - Violation of rights**

Thompsons<sup>15</sup> distinction between an innocent bystander and a NRT lies in the fact that an NRT has violated the rights of X and thus forfeits the right not to be killed as opposed to an innocent bystander who has not violated the right of X and therefore has not forfeited the natural right not to be killed. Otsuka<sup>16</sup> was quick to criticise this argument by demonstrating that an NRT in the form of a human projectile cannot be said to infringe rights because there is a need for moral responsibility in order to violate rights . My argument does not rest upon Y's infringement of the rights of X in order to avoid this criticism. The agent Y may not have violated the rights of X, but Y is (whether willingly or unwillingly) formally defined as a threat and thus liable to be neutralised.

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<sup>14</sup> Quong, Killing in Self-Defense, 516-9

<sup>15</sup> Thompson, Self-defense, VII

<sup>16</sup> Otsuka, Killing the innocent in self-defense, 79-82

## **Section 6: Concluding Remarks**

I have attempted to demonstrate that it is permissible to kill an NRT even if it is not permissible to kill an innocent bystander. I accept the assessment of Otsuka that an NRT lacks moral responsibility but argue that it is the threat caused by the NRT which permits its neutralisation. My account is not a rights-based account, be it the rights of the agent to self-defence as per Quong or the violation of rights by the NRT as per Thompson, and thus is not open to the criticisms levelled at their arguments.

## References

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