

# On the Success Condition for Legitimate Self-Defense\*

*Daniel Statman*

The purpose of this article is to explore a neglected condition for legitimate self-defense, namely, the Success Condition (S). According to S, otherwise immoral acts can be justified under the right to self-defense only if they are likely to achieve defense from the perceived threat. S is not listed among the standard conditions for self-defense, though, as I try to show, it is implied by them. It does, however, explicitly appear among the conditions for the justness of wars, for *jus ad bellum*.<sup>1</sup> According to this condition, waging war is legitimate only if it has “a reasonable hope of success,” or when success is “likely.” That S should apply only to wars, but not to individual self-defense, might sound odd, given that in just war theory, as well as in international law, the main justification for going to war is self-defense.<sup>2</sup> Whether, indeed, individual and collective self-defense differ in terms of S is a question that will be taken up later.

In any case, since S is expressly used only in the context of wars, I introduce it in that context in the first section of this article. I then demonstrate that it applies to individual self-defense too, and I explore its nature and its relation to the standard constraints on self-defense, namely, necessity and proportionality. I then point to a disturbing puzzle

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1. Hugo Grotius was probably the first to identify it explicitly as a principle of just war theory. See Nick Fotion and Bruno Coppieters, “Likelihood of Success,” in *Moral Constraints on War: Principles and Cases*, ed. Bruno Coppieters and Nick Fotion (Lanham, MD: Lexington, 2002), 79, and the reference to Grotius on 89 n. 1.

2. See, e.g., George Fletcher, *Romantics at War* (Princeton, NJ: Princeton University Press, 2002), 53 (“As religious wars, punitive wars, and wars of expansion have become unlawful, one clear category of legitimate warfare remains, and that is the inherent authority of states to invoke collective self-defense against aggression”).

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that is created by S, and I devote much of the article to an attempt to solve it. I conclude by using my solution to explain the difference between the application of S to individual self-defense and to wars.

#### I. THE NATURE OF S

Let me start by explaining the initial attraction of S. Wars are hell, as Walzer reminds us, even when the conventional rules governing the conduct of war—the rules of *jus in bello*—are observed.<sup>3</sup> When wars achieve their goal, they have some meaning. They are not pointless shedding of blood. When, however, wars fail to achieve their goal, then the cost in human suffering is terrible, with little or no redeeming compensation. And that is really hell. The basic idea of S is, then, that war should not be waged unless it is likely to succeed, lest many human lives be lost in vain. S is both a prudential and a moral constraint on the launching of wars. As a prudential constraint, it applies to just and unjust wars alike.<sup>4</sup> As a moral constraint, it applies to just wars because success in achieving an unjust cause is, of course, unhelpful in making the war just. But unjust wars are not necessarily fought for an intrinsically unjust cause, such as the extermination of a perceived inferior race; wars are also fought for a good cause that does not rise to the level of a just cause—such as the overthrow of an overtly and virulently racist regime that is not as yet aggressive. In these latter cases, while success cannot make the war just, it can mitigate its badness. My main concern will be on the moral, rather than the prudential, aspect of S and, regarding the moral aspect, my concern will be with S as a constraint on the justness of war, not with S as a provider only of moral comfort.

It seems obvious that a similar constraint should apply to individual self-defense. The stakes in individual self-defense are, of course, lower than those in war, but this should not affect the main point. According to S, the injury and killing involved in self-defensive acts are legitimate only if they are likely to block the threat in question.

It might be helpful to present S in a more formal manner. Assume that Aggressor is posing an illegitimate threat to Victim, say, a threat to Victim's life, body, property, and so forth, and that by carrying out some defensive action, A, which would otherwise be immoral, Victim can prevent Aggressor from carrying out the threat. According to the success condition, Victim is justified in carrying out A only if, by so doing, Victim is likely to stop Aggressor from realizing the threat. Because A is *prima facie* immoral, to carry it out would be morally justified only if it is likely to neutralize the illegitimate threat.

3. Michael Walzer, *Just and Unjust Wars* (New York: Basic, 1977), 30.

4. Thanks to Jeff McMahan for pointing out to me the way S might function as a prudential condition in unjust wars too.

In presenting S, I have been loyal to its traditional formulation in *jus ad bellum* as requiring likelihood of success, not actual success. But isn't actual success necessary to prove a war—retroactively, of course—morally justified? How can launching war be morally justified if, in the end, all the blood shed by doing so will be shown to have been in vain?

The answer to this question depends on a fundamental debate about self-defense, that is, whether it is grounded in objective or in subjective factors. According to objectivist theories, the justifiability of self-defense lies in objective facts which are independent of Victim's beliefs about these facts. Regarding the standard conditions of self-defense, this means that Victim has a right to act against Aggressor if it is the case that Aggressor unjustly threatens her, that there is no other way she can defend herself from the threat (more precisely, no other less harmful way of doing so), and that the defensive act is proportional to the harm prevented. When any one of these conditions is not met, then Victim's defensive act is, at best, excused, not justified.<sup>5</sup> According to subjectivist theories, defensive acts are justified if Victim has good reasons for carrying them out, namely, if she reasonably believes that the above conditions are satisfied even if, as a matter of fact, they are not.<sup>6</sup> Some theorists take a middle ground (a "hybrid" view), according to which the justification for self-defense requires both objective and subjective facts.<sup>7</sup> On Ferzan's account,<sup>8</sup> the objective condition that must be met if self-defense is to be justified is that Aggressor culpably creates an unjustifiable risk to Victim. Only if this condition is met will the other conditions come into play, this time as subjective ones.

The debate between "objectivists" and "subjectivists" seems to apply to all cases of self-defense, individual and national alike. Objectivists would argue that launching war is just only when the conditions for *jus ad bellum* are in fact met (a just cause really exists, the war is a last resort, etc.), while subjectivists would argue that a reasonable belief that these conditions are met is sufficient for the justness of a war.

On objectivist accounts, S would require actual success in order for

5. Speakers for the objectivist camp include Judith Thomson, "Self-Defense," *Philosophy & Public Affairs* 20 (1991): 283–310; Paul Robinson, *Structure and Function in Criminal Law* (New York: Clarendon, 1997), 101; and Heidi Hurd, *Moral Combat* (New York: Cambridge University Press, 1999), 7.

6. See, e.g., Kent Greenawalt, "The Perplexing Border of Justification and Excuse," *Columbia Law Review* 84 (1984): 1897–1927, 1903.

7. See George Fletcher, *Basic Concepts of Criminal Law* (New York: Oxford University Press, 1998), 103; and Kimberly Kessler Ferzan, "Justifying Self-Defense," *Law and Philosophy* 24 (2005): 711–49. Russell Christopher labels 'subjective' any theory that includes at least one subjective criterion ("Self-Defense and Defense of Others," *Philosophy & Public Affairs* 27 [1998]: 123–41, 124), which means that he would call hybrid theories subjective too.

8. Ferzan, "Justifying Self-Defense," 730–31.

the defensive act to be morally justified.<sup>9</sup> On subjectivist accounts, S would require that Victim be epistemically justified in believing that doing A can avert the threat imposed by Aggressor, even if this belief turns out to be mistaken. With regard to hybrid accounts, let me refer again to Ferzan. Although she says nothing about S, it seems that due to the connection between S and the necessity condition (N), which I explore in the next section, if she accepted S, she would include it in the subjective conditions rather than in the objective ones. S would require that Victim believe that the defensive act has a reasonable chance of succeeding, not that it actually succeed.

S, then, can be understood either objectively or subjectively, depending on one's overall view of justified self-defense. If the former, its rationale is straightforward: self-defensive acts can be morally justified only if they achieve their aim, that is, defense. If they don't, they cannot be justified under the right to self-defense. If the latter, S still makes good sense. Regardless of the real chances of thwarting the attack, known only to an omniscient observer, Victim must plausibly believe that, by carrying out A, she can prevent the attack against her; otherwise she cannot be said to act out of self-defense. Because of the proximity between S and the proportionality condition (P) (as well as N), about which I shall say more in the next section, and given that P and N are interpreted as subjective by most theories of self-defense (purely subjective and hybrid ones), I shall proceed with the assumption that S should also be interpreted subjectively. (Note that, if S is understood only as a guide to deliberation, it does not matter whether it is interpreted objectively or subjectively. During deliberation, agents cannot distinguish between whether defense will succeed or whether it is likely to succeed.) My conclusion will apply all the more so to an objectivist interpretation of S.

If all this is correct, then the standard formulation of the conditions for *jus ad bellum* is somewhat misleading because, while S is formulated in subjectivist terms ("reasonable hope of success"), N and P are formulated in objectivist ones ("the war should be a last resort," "the good achieved must be proportional to the harms produced"). At least with regard to these three conditions for self-defense; they rise and fall together, that is, either they are all objective or they are all subjective. I shall assume the latter.

Finally, note again that the requirement to refrain from wars which are viewed as unlikely to succeed is not a mere expression of risk aversion. As indicated above, the question we are discussing is not whether

9. One reader of this article suggested to me that objectivist accounts would not necessarily require actual success; if the world is indeterministic, they will employ objective probabilities. I shall ignore this complication in what follows.

it is prudent to put one's own life at risk in order to achieve some goal but whether it is permissible to put the lives of others at such risk. And the basic intuition behind S is that doing so is not permissible if the war or the individual defensive act is unlikely to succeed.

## II. S AND OTHER CONDITIONS FOR LEGITIMATE SELF-DEFENSE

I said earlier that S is listed only in the conditions for *jus ad bellum* and not in the conditions for individual self-defense. However, although it is not explicitly mentioned in legal and moral theories of individual self-defense, it is implied by the standard conditions for such defense mentioned above, namely, P and N.<sup>10</sup>

According to N, carrying out an otherwise immoral act A against Aggressor is justified only when doing so is necessary for Victim to defend herself from the threat posed by Aggressor. At times the necessity is a matter of all-or-nothing; either Victim does A or else the threat materializes. At other times, necessity is a matter of degree; Victim faces more than one perceived way to halt the attack against her, but all other ways are more destructive than A or significantly more costly to Victim. The matter-of-degree reading of N makes N quite close to, if not subsumed under, P because the relevant test for N turns then to be whether, given the gravity of the threat, A is more acceptable than other defensive actions, namely, whether A is a more proportionate response than other options.<sup>11</sup> Because of this proximity between N and P, for the sake of exploring the relation of both N and P to S, it might be more helpful to stick to the first, all-or-nothing, reading of N, though everything I say about N applies to the matter-of-degree reading too.

To my main point then. Not having anything else to do except A in order to achieve some goal already assumes that doing A can achieve that goal; otherwise this would be no argument for A. For some course of action to be a last resort, it must first be a resort, as it were. When people say things like "I had no choice but to do *x* (in order to achieve *y*)," they mean not just that *x* was the only means of achieving *y* but also that *x* was a means of achieving *y*. N, then, presupposes S, though not

10. I am disregarding the imminence condition, as I share Lawrence Alexander's view that it has "no independent relevance" in the limitation of the right to self-defense ("The Philosophy of Criminal Law," in *The Oxford Handbook of Jurisprudence and Philosophy of Law*, ed. Jules Coleman and Scott Shapiro [Oxford: Oxford University Press, 2002], chap. 20, 847).

11. For the idea that N, properly understood, can be incorporated into P, see Thomas Hurka, "Proportionality in the Morality of War," *Philosophy & Public Affairs* 33 (2005): 34–66, 37 ("The last resort condition is in effect a comparative version of the initial, simple proportionality condition").

the other way round (the success of a defensive action does not show that it was necessary).

Let me turn now to the relation between S and P. Here again the former seems to be assumed by the latter. If a war is unlikely to achieve its goal, namely, fails to protect the attacked nation from the threat that was the *casus belli*, then P can never be met, as there would be insufficient good outcomes to exceed the bad outcomes of war. So, while a war could be successful but disproportional,<sup>12</sup> it could not be proportional but unsuccessful.<sup>13</sup> If it passes the proportionality test, it passes the success test too.<sup>14</sup>

To conclude, although S is not explicitly mentioned in moral or legal theories of individual self-defense, it can be derived from the two central conditions for such defense, N and P. This means that the puzzle about S which will be presented in the next section can be also presented as a puzzle both about N or about P. Let's then turn to this puzzle.

### III. THE NORMATIVE PROBLEM WITH S

It is accepted in all Western countries that rape is such a grave evil that a potential rape victim is justified in shooting the rapist if that is the only way she can protect herself from the rape. But now assume that she is attacked by a group of five and has only two bullets in her gun. Assume further that her shooting is unlikely to frighten the other criminals or drive them away. If anything, it could make her situation worse, as they are likely to treat her even more cruelly. On S, we are to say that using her weapon in these grim circumstances would not only be unwise but morally forbidden, which is very hard to accept. Similarly with the following imaginary scenario in a Western: John Wayne is hunted by a bunch of bad guys who want to kill him. His shelter is surrounded by them, and he can expect no help from anyone. Only a miracle could make his defensive acts effective in protecting his life. On S, using his last bullets to kill some of those people could not be licensed on grounds of self-defense. In both cases (hereafter, "Rape" and "Wayne"), S demands submission to evil and passivity in the face of wickedness. If this is what some moral or legal theory demands of us, it seems like a *reductio* of the theory.

Things get even worse when we think of acts of collective defense.

12. This is a point acknowledged by Nick Fotion in the last paragraph of his chapter "Proportionality" in *Moral Constraints on War*, 91–100, 98.

13. If you add to this Jeff McMahan's claim that the failure of P on the level of *jus ad bellum* necessarily infects the justness of fighting on the level of *jus in bello* ("The Ethics of Killing in War," *Ethics* 114 [2004]: 693–733, sec. 5), what follows is that the failure of a war (or expected failure) morally contaminates the war at all its levels.

14. That's why S is often thought of as part of P. See, e.g., Anthony Joseph Coates, *The Ethics of War* (Manchester: Manchester University Press, 1997), 179.

Take, for instance, the Warsaw ghetto uprising. In July 1942, the Germans started to deport the Jews from the ghetto to Treblinka. Within two months, approximately 300,000 Jews were murdered. Those who remained in the ghetto realized that the next *Aktion* would be the end of the ghetto, and some of them, members of various underground movements, decided to take up arms and fight against the Germans. The uprising, which started in April 1943, was cruelly crushed by the Germans within a month, and the ghetto was completely destroyed. If ever there were a justified case of self-defense, the uprising in the Warsaw ghetto would be it. After all, the Jews of the ghetto were literally fighting for their lives.

Or were they? This expression could be understood in two ways: that a significant number of Jews were actually saved thanks to the uprising or that, in the minds of the rebels, the goal of the fighting was to save the lives of a number of Jews from certain death. But, on both these interpretations, the claim is false. The actual contribution of the uprising to the saving of Jewish lives was nil; the revolt was a total failure. Although a small number of Jews did survive the destruction of the ghetto, one could almost say that they survived in spite of the uprising, not because of it. They did not break their way out of the ghetto in combat but rather by sneaking under or over the ghetto fence, using escape routes that were, in most cases, prepared in advance. Many of those killed in the streets and in the bunkers during the uprising might have saved their lives had they escaped in one of these ways prior to the uprising instead of trying to fight against the Germans.

Moreover, the Jews taking part in the uprising had no illusions about their chances of its success. From their point of view, the purpose of the uprising was not to beat the Germans and not even to save their own lives. It was a struggle for “three lines in history,” as one of the leaders of the Jewish resistance famously put it. It was not their lives the rebels were fighting for but their honor.<sup>15</sup> They knew that they were almost 100 percent doomed. They wanted to die with a gun in their hands rather than in Treblinka or another death camp.<sup>16</sup>

The shocking upshot of these historical comments is that, according to S, because the Jews of the ghetto were not fighting for their lives, they were not morally justified in killing the Germans, at least not under the right of self-defense. The Warsaw ghetto is an extreme example

15. See Rachel L. Einwohner, “Opportunity, Honor, and Action in the Warsaw Ghetto Uprising of 1943,” *American Journal of Sociology* 109 (2003): 650–75, 666 (“The main goal of the resistance, therefore, was not necessarily to beat the SS troops and secure safe passage out of the ghetto. Instead, it was to act honorably”).

16. See Israel Gutman, *Struggles in Darkness: Studies in Holocaust and Resistance* [in Hebrew] (Jerusalem: Hebrew University, 1985), 251.

because of the magnitude of the crime committed against the Jews. But the fundamental problem with S is present in less extreme cases also, such as Rape and Wayne. The suggestion that, in all these cases, if the victims estimated that their use of force would not prevent the evil, they would be morally prohibited from using force, is unacceptable.

I believe that there is a real puzzle here.<sup>17</sup> If my argument so far is sound, then the conditions for justified self-defense lead to results that contradict our strongest convictions about self-defense. In the next section, I discuss possible solutions to the puzzle, and I offer my own. But, I must admit that I feel more certain about the existence of the puzzle than about my ability to offer a convincing solution to it. I would thus invite readers to make their own suggestions.

#### IV. POSSIBLE SOLUTIONS

One reaction to the counterexamples to S mentioned above would be that, although Wayne would not be justified in killing his pursuers on the basis of his right to self-defense (“fighting for his life”), he would be justified in doing so on other grounds; hence the absurd conclusion which was the focus of the previous section can be avoided. These other grounds are of two general kinds, utilitarian and nonutilitarian. The utilitarian grounds have to do with the social utility of people like Wayne or the rape victim putting up a fight before they are killed or raped. Such courageous behavior conveys a message to potential rapists and murderers that the perpetration of their crimes will never go smoothly, that they will always face costly resistance. This message presumably helps to deter potential criminals, who will think twice before they attack innocent people. At no point would they be safe from a gun, a knife, or a stone wielded by their victims.

A different version of the argument from social utility focuses on the possible effect of the resistance on future victims. By seeing an example of a victim rising up against evil and wrongdoing, other victims would be empowered to act thus themselves, thereby refusing to submit to domestic or other violence. The retaliation of some battered women against their abusive partners might indeed have had such an empowering effect on other women who were finally able to leave their partners or to take active steps in order to defend themselves. Thus, the deterring and the empowering aspects of resistance work together to reduce crime and violence.

17. Saul Smilansky, a fan of moral paradoxes, suggested a particularly paradoxical implication of S to me. In general, the more ruthless the aggressor, the more difficult it is to stop him from carrying out his threat. As a result, S is probably met less in ruthless aggressors than in more merciful ones. This implies that the more ruthless the aggressor, the less justified the victim would be in any attempt to kill him.

The empirical assumptions of these arguments are not as evident as they seem. For example, the aggressor who faces resistance might become even more aggressive, and this is true of future potential aggressors as well. But even if these assumptions are granted, they don't seem to offer an acceptable solution to our problem. The reason is that there could still be circumstances in which social utility would not be enhanced by killing or attacking the aggressor and in which the victim would, nonetheless, have full right to do so. The rape victim has full right to shoot her attackers, even if by so doing she would make no positive contribution to the overall utility and might even make a negative contribution. More generally, making the right to rise against an attacker contingent upon the utility that others would gain from it is not to take seriously the requirement to treat human beings as ends in themselves and as bearers of rights.

The nonutilitarian grounds for explaining how killing might be morally acceptable in spite of the fact that defense is not achieved are of two main kinds. The first is retribution. The bad guys who are chasing Wayne are evil; hence, they deserve to die. So, when Wayne shoots and kills several of them, he simply administers retributive justice, regardless of whether these actions are likely to save his life or not. The second ground is based on the idea that whoever commits (or is about to commit) an immoral act cannot complain when the same act is committed against him.<sup>18</sup> Thus, the murderers of Wayne cannot complain when they are shot at, even if the shooting is unlikely to save Wayne's life.

I cannot discuss here in detail the merits and weaknesses of these approaches. They both seem to imply an implausibly wide permission to use force against wrongdoers. If a given individual might be killed just because of his appalling moral record, then, in principle, any person is allowed to go around killing or injuring people with bad moral records. Of course, there might be pragmatic constraints on offering such a wide permission, but, nonetheless, the thought that, save these constraints, such permission would be morally valid is hard to accept. Similarly, if some criminal has committed murder in the past, then regardless of any present danger he poses, he might be killed (again, by anybody) because, by violating the right of others to life, he thereby lost his right to complain about the violation of his own right to life. Once the justification for action against some aggressor is detached from the wish to prevent a specific attack on a specific victim, and is instead based on the general moral features of the aggressor, the license to carry

18. The logic of moral complaint has recently been explicated by Saul Smilansky, "The Paradox of Moral Complaint," *Utilitas* 18 (2006): 284–90.

out such action becomes almost limitless. While S seems too restrictive, these last solutions seem too permissive.

The failure of these solutions suggests that we might do better going back to S and trying to show that, despite appearances, S is actually satisfied in the cases under discussion. It all depends on what counts as success, which, in turn, depends on what the goal of the defensive act is. If, as assumed so far, its goal is to prevent the death or the rape of the victim, then admittedly the goal is unlikely to be achieved; hence, the act cannot be justified in terms of self-defense. But, as already indicated in the case of the Warsaw ghetto uprising, sometimes the goal is not to defend the life (or property or whatever is directly threatened) of the victims but rather their honor. As noted by several writers, honor has both a subjective aspect and an objective one. It is "the value of a person in his own eyes, but also in the eyes of his society."<sup>19</sup> And the reason we care about the eyes of society is that we realize that in some real sense our worth depends on the judgment of others within that society. *Pace* Kant, hardly anyone really believes that his or her worth is completely independent of such judgment, and *pace* the Stoics, hardly anyone really believes in the autarky allegedly enjoyed by all human beings to constitute a successful and honorable life. We are pathetic creatures, always on guard against threats to our honor, which we sometimes see as threats to our very existence: "Take honor from me," says the Duke of Norfolk in Shakespeare's play, "and my life is done."<sup>20</sup> Whether this constant worry about honor is rational or not is a question I cannot address in the present context.<sup>21</sup>

Degrading or excluding messages that threaten our honor come in many forms. At times, the message is direct, as in a verbal assault or in an offensive gesture. At other times, it is indirect, or better put, it is parasitical on other threats. When we are attacked by people who want to kill us, rape us, or steal our possessions, we face two kinds of threat. One is the direct threat to our life, bodily integrity, property, or whatever else the villain desires; the other is the threat to our honor. We realize that, in the eyes of the aggressor, we are just items to be used, mere objects. Given the power of the aggressor and his ability to force his will upon us, we fear that by doing so he will quite literally degrade us. We feel we must protect not only our body or our property but our *selves*. To reaffirm our honor in the face of such threats, we need more

19. Julian Pitt-River, "Honor and Social Status," in *Honor and Shame*, ed. J. G. Peristiany (Chicago: University of Chicago Press, 1966), 3–44, 22, quoted by Frank Stewart, *Honor* (Chicago: University of Chicago Press, 1994), 13, together with citations from other writers making a similar distinction.

20. William Shakespeare, *Richard II*, 1.1.183.

21. For more on this, see sec. 3 of my "Hypocrisy and Self-Deception," *Philosophical Psychology* 10 (1997): 57–75.

than abstract thoughts such as “I’m proud to be who I am, and nobody can diminish my inner sense of worth.” Concrete acts of resistance are needed in order to communicate to the aggressor, to ourselves, and to an actual or potential audience that we are not just passive objects to be trodden upon. By carrying out such acts, we reaffirm, or protect, our honor. According to the proposed solution, such protection is Victim’s aim in Wayne, Rape, and the Warsaw ghetto cases. Let me call this solution “the Honor Solution” to the puzzle raised by S, or “HONOR” for short.<sup>22</sup>

Some readers might prefer to conceptualize this solution in terms of dignity, rather than in those of honor, suggesting that what is threatened in the above cases is Victim’s dignity. This is possible, though it seems to me potentially misleading. First, following Kant, people think of dignity as the supreme and inviolable property that inheres in each human being. To be a human being is to be blessed with dignity. However, as I explained elsewhere,<sup>23</sup> this idea of human dignity, supreme and inspiring as it is, seems incompatible with the possibility that human beings might “lose” their dignity,<sup>24</sup> or be “robbed” of it.<sup>25</sup> And, if we cannot lose our dignity, then threats to bring about such a loss are empty and there is no need for protective acts to counter them. Since such doubts about the vulnerability of dignity do not arise in connection with the vulnerability of honor, the latter notion seems to me to capture better the idea behind HONOR, namely, that Victim’s honor is threatened in a real manner and that acts of resistance against Aggressor might help to protect her from this threat.

Second, in the last section of this article, I examine whether nations, too, might be allowed, under HONOR, to fight in order to protect their honor. And while with individuals we could often say that their dignity was attacked instead of saying that their honor was attacked,<sup>26</sup> it sounds rather forced to do so with regard to nations.

22. The idea that self-defensive acts aim at blocking the degrading message sent by Aggressor is reminiscent of expressive theories of punishment, according to which punishment is justified in terms of correcting the false and demeaning proposition about the victim expressed by the criminal act (see, e.g., Joel Feinberg, “The Expressive Function of Punishment,” *Monist* 49 [1965]: 397–423). The comparison is worth pursuing, though I cannot undertake to do so here.

23. See my “Hypocrisy and Self-Deception.”

24. See, e.g., Avishai Margalit, *The Decent Society* (Cambridge, MA: Harvard University Press, 1996), 115.

25. Robin S. Dillon, ed., *Dignity, Character, and Self-Respect* (New York: Routledge, 1995), 1.

26. The two terms are frequently combined into one expression, ‘honor and dignity’. For one illustration out of many, see Catherine N. Niarchos, “Women, War, and Rape: Challenges Facing the International Tribunal for the Former Yugoslavia,” *Human Rights Quarterly* 17 (1995): 674–75, 672, who says that rape is “a crime against honor and dignity.”

The notion of honor, however, has its own shortcomings. In particular, it lacks internal resources to block abhorrent uses of it as, for instance, when a father is expected to kill his daughter in order to save his own honor and that of his family because her behavior has allegedly brought disgrace upon them. To block such uses, we must impose moral constraints on the kind of honor that carries moral weight and that, accordingly, might establish a right of self-defense. If the criteria for honor and dishonor contradict fundamental moral principles, then a subjective sense of being dishonored, sincere as it might be, is insufficient to ground a right of self-defense against the source of the perceived dishonor.

According to HONOR, since whenever Aggressor threatens Victim, he is thereby also threatening, secondarily, Victim's honor, Victim is permitted to carry out otherwise immoral measures against Aggressor even if, by so doing, Victim will not block the primary threat, provided that in this way Victim can reasonably hope to save her honor. HONOR allows us to retain our conviction that victims of aggression cannot be required to surrender passively to their attackers and just turn the other cheek, without having to give up any of the fundamental conditions for self-defense.

The Honor Solution seems close to the understanding of S suggested by Coates.<sup>27</sup> In his view, a war can be successful even though it ends, predictably, in defeat, provided that it is fought "to defend fundamental human values," or "as a vindication of values." Let's call this "the Vindication Solution" or "VINDICATION" for short. Like HONOR, VINDICATION purports to solve the puzzle of hopeless wars by showing how such wars are, in some central regard, successful. On HONOR, they are successful because they manage to defend Victim's honor. On VINDICATION, they are successful because they manage to vindicate, or reaffirm, fundamental moral values. Although Coates's focus is on wars, I see no reason why his proposal shouldn't apply to individual self-defense as well.

Let us take a closer look at VINDICATION. In what sense could a failed self-defensive act be regarded as vindicating moral values? Two possible understandings come to mind.<sup>28</sup> One is that such an act vindicates Victim's commitment to these values; the other is that such an act vindicates these values themselves, namely, that it reaffirms their impersonal truth. In light of what I said at the beginning of this section about the limited force of utilitarian considerations in the present context, I shall assume that on either of these interpretations of VINDICATION, the vindication referred to is not causal but symbolic. That is to

27. Coates, *The Ethics of War*, 182.

28. I thank Tom Hurka for suggesting this distinction to me.

say, vindication is not based on the idea that, by hopelessly acting against aggressors, some moral values will actually gain more attention among human beings or that some moral principles will be better observed. Nor is it based on the idea that such action will deepen Victim's own attachment to such values or principles.

Thus understood, the first understanding of vindication comes close to that of HONOR, both focusing on the self. It is Victim's concern with her honor that seems to drive her to act in the face of the aggressor in order to symbolize her attachment to certain values and principles. This is not the same as reaffirming honor, but it is not that far from it either.

The second understanding of VINDICATION is, of course, different. The difficulty it raises is how exactly to interpret the notion of symbolically vindicating values. Here is Wayne, alone in his shelter, outnumbered by a bunch of bad guys who are about to kill him. According to VINDICATION, Wayne would be justified in shooting them even if he doesn't believe that such shooting will save his life, because by shooting he would be reaffirming the moral importance of resisting aggression (and maybe also the moral repugnance of murder). But to whom (or for whom) would such reaffirmation be directed? If nobody would be causally affected by such vindication, what's the point? Proponents of VINDICATION might reply by saying that what is sought is not the vindication of values in the eyes of any particular moral agents but the vindication of the values "themselves," but what could be meant by that remains rather unclear. Symbolic acts can reaffirm, that is, causally strengthen commitment or attachment to values. They cannot reaffirm the values themselves.<sup>29</sup>

Coates suggests that hopeless wars (fought for a just cause, of course) might be a form of "moral witness."<sup>30</sup> The use of this expression is very telling because it tacitly associates the self-defensive acts under discussion to the acts of *martyrs* (the Greek term for 'witness'). Just as religious martyrs assumingly vindicate their respective religions when they refuse to give up their faith in face of threats of torture or death, so, too, do countries which refuse to surrender when faced with similar threats. If the idea of martyrdom makes sense within a religious context, why can't it make sense within a moral context too? Let me make two comments in response. First, the religious equivalent to the cases we are discussing here would be cases in which the believer's self-sacrifice would have no effect either on those who perpetrate evil against her or on the community of believers (who will probably never learn about her behavior). I suspect that, in such circumstances, the eyes sought by

29. In that sense, impersonal values, much like Kantian dignity, lack vulnerability.

30. Coates, *The Ethics of War*, 182.

the martyr would be those of her God to whom she'd be proving her total devotion. Yet this extra pair of eyes that assumingly grants meaning to martyrdom but which has no effect on any human being cannot be assumed in the moral realm as a way of endowing acts with meaning which otherwise seem pointless.

Second, the above association between the notion of moral witness and that of a martyr makes the use of the former sound rather odd (though not impossible) in the present context. The oddity has to do with the fact that martyrdom almost always has to do with self-sacrifice, while in the cases under discussion what needs to be justified is the killing, or sacrifice for this matter, of others.<sup>31</sup>

To conclude, then, the impersonal version of VINDICATION (vindicating the truth of fundamental moral principles) seems problematic, while the personal version of VINDICATION (vindicating Victim's attachment to these principles) seems close to (though not identical with) HONOR. Thus, I shall proceed with the assumption that HONOR is the best candidate for solving the puzzle under discussion. This does not mean that HONOR does not have its own difficulties. Here is the most troubling one: HONOR seems to contradict a central condition for justified self-defense, that is, the proportionality condition. Think, for example, of Wayne. Let's assume that he knew very well that he had no chance against his attackers and that, indeed, although he managed to kill several of them, he was killed in the ensuing fight. On HONOR, we'd have to say that Wayne's killing of his pursuers was justified because it was the only way for him to effectively save his honor and die a noble death (or, at least, avoid an undignified one). But the moral loss involved in the taking of a human life, certainly of several human lives, seems disproportional to the loss involved in an offense to honor. How could preventing such an offense, in itself, justify killing? (A similar problem applies to VINDICATION too, though this need not concern us any more.)

We seem to face an uneasy dilemma. We have a firm conviction that the victims in the examples of the previous section are morally permitted to take up arms and shoot their attackers. We often even regard them as moral heroes for doing so. But, strictly speaking, it is not their lives they would be defending but their honor, and if defense of honor justifies killing, then almost any unjust attack on myself, my beloved, or my property could be responded to by lethal measures, which seems a strict violation of the proportionality condition.

In response, one might suggest that the threat to Victim's honor

31. Interestingly—if my search engine can be trusted—the expression 'moral martyr' is hardly ever used. There is more use of 'moral witness' (see, e.g., Avishai Margalit, *The Ethics of Memory* [Cambridge, MA: Harvard University Press, 2002]), though not in the sense assumed by Coates.

is not constant in all cases of self-defense. The magnitude of the threat to honor depends on the magnitude of the primary threat to Victim, that is, the threat to life, bodily integrity, or property, which, in turn, indicates the depth of the intention to degrade her. The more serious the threat, the greater the disrespect expressed by it, the wider the permission granted to Victim to act in self-defense.<sup>32</sup> Hence, it is not the case that, if defense of honor justifies killing in cases such as murder and rape, then any unjust attack, even just on property, could justifiably be answered by lethal measures. Moreover, such a disproportionate answer might itself reveal a lack of self-respect in Victim, whose oversensitivity to threats to her honor makes her overreact.

I find this response helpful, although it falls short of solving the above dilemma, because victims would still be allowed to use severe measures against their aggressors, measures which are likely to do nothing other than defend Victim's honor. This seems dangerously close to the norms of the Wild West, or to those of other honor societies, in which direct or indirect offenses to honor justify the kind of violent reaction that seems disproportionate to most of us today. The tension between HONOR and the idea of proportionality in self-defense still seems disturbing.

Before turning to deal more extensively with this tension, let me mention another problem with honor. Unlike the defense of life, in which Victim must act before the threat materializes, acts to restore Victim's honor can take place afterward. Although the sooner the better, it might never be too late to get even (at least partially even; see Sec. V below) with an attacker. I am not sure how to solve this problem. To be sure, there are strong social reasons for setting a clear time limit for such defensive acts, and the most reasonable one is the time prior to the execution of the (primary) attack. But if we disregard such reasons and focus on the relation between Victim and Aggressor, I suspect that such limits would be hard to justify, with the result being quite permissive indeed.

## V. THE PROTECTION OF HONOR AND THE PROPORTIONALITY CONDITION

To overcome the proportionality problem, we might combine two separate moves; namely, we could inflate the importance of honor and diminish the importance of proportionality. The problem stems from the assumption that, although honor is important, it is not important

32. The degree of threat to honor depends also on the motivation behind it. If Aggressor wants to kill me in order to harvest my organs and save his friend's life, he is thereby treating me merely as an organ reservoir, which is, of course, humiliating. But it would be even worse if he chose me for this purpose because he regarded me as racially inferior.

enough to justify taking measures in its protection, measures that are otherwise seriously immoral, such as killing or badly injuring another. But maybe honor deserves, and often receives, a more central role in moral and legal reasoning.<sup>33</sup> A good starting point is the permission to use force to defend one's dwelling place. Such permission exists in many legal systems, although it seems inconsistent with the standard conditions of self-defense, because, in many societies, intruders may be killed even if there is no threat of death or grave bodily injury. This permission appears to contradict the condition of proportionality. How could it be morally acceptable to kill an intruder just because he breaks into (or threatens to break into) my premises?<sup>34</sup>

Several answers are offered to this question,<sup>35</sup> one of which is directly relevant to the present inquiry, namely, that what is threatened in cases of intrusion is not the defender's life, or property, but her honor.<sup>36</sup> When our bodies are invaded via unwanted human contact, our integrity and our honor are violated, and the same happens (though to a lesser degree) when our castle is invaded by an unwelcome and unwanted person.<sup>37</sup> This connection between our bodily and our "ter-

33. In emphasizing the centrality of honor in our lives, I am influenced by the writings of William I. Miller, esp. *Humiliation and Other Essays on Honor, Social Discomfort and Violence* (Ithaca, NY: Cornell University Press, 1993), *The Mystery of Courage* (Cambridge, MA: Harvard University Press, 2000), and *Eye for an Eye* (New York: Cambridge University Press, 2000). See also Dan M. Kahan and Martha C. Nussbaum, "Two Conceptions of Emotion in Criminal Law," *Columbia Law Review* 96 (1996): 269–374, esp. the section on self-defense. The connection between honor and the success condition developed here might be seen as a further substantiation of what they call "the evaluative view" of law.

34. Some go further to argue that one might use lethal force, if necessary, even to protect one's car from intrusion. See the recent "Shoot the Carjacker" law in Louisiana that justifies a homicide committed by a person inside a motor vehicle against one attempting to make an unlawful entry into the vehicle if the car owner reasonably believes that the use of deadly force is "necessary to prevent the entry or to compel the intruder to leave." See La. Rev. Stat. Ann. 14:20(3) (West 1997), referred to by Stuart P. Green, "Castles and Carjackers: Proportionality and the Use of Deadly Force in Defense of Dwellings and Vehicles," *University of Illinois Law Review* 1 (1999): 1–41, 13.

35. For a systematic and critical analysis of possible answers, see Green, "Castles and Carjackers." I think Green underestimates the results of his critical discussion when he says in conclusion that his attempt was "to articulate a more precise and comprehensive group of interests that might plausibly be at stake in such a context" and that all that remains to be done is "to determine exactly how these interests should be valued and what rules for conduct ultimately should prevail" (41). What he actually shows is that, on standard doctrines of self-defense, killing intruders cannot be justified as it violates the proportionality condition.

36. Green himself seems to regard honor as more or less equivalent to dignity and as "closely related" to privacy (*ibid.*, 36).

37. For a similar explanation of the right to self-defense in these circumstances, see Kahan and Nussbaum, "Two Conceptions of Emotion in Criminal Law," 330. In their view, these cases show that "the law (in some states) is prepared to endorse the valuation of dignity and honor expressed in a person's refusal to submit to certain wrongful acts that powerfully convey that person's subordination to the will of another" (*ibid.*).

ritorial” integrity helps to explain the enormous anxiety we have about break-ins, which seems a bit irrational, given that the vast majority of burglars are unarmed and do not use violence.<sup>38</sup> Apparently we are not anxious only about the results of the break-in but about the break-in itself, just as in physical intrusion. We dread being violated, being trodden upon, and being dishonored.<sup>39</sup>

Admittedly, the move from the threat to honor involved in rape to the threat involved in intrusion to premises is not trivial. But it is not so far-fetched either. The accepted right to kill a would-be rapist applies even when there is no threat of physical injury and even when the expected psychological harm is relatively bearable. The humiliating message involved in any attempt of forced sex is sufficient to trigger a woman’s right to self-defense. She is entitled to struggle, with all necessary means, against those who regard her as a mere tool for their sexual satisfaction.<sup>40</sup> She is entitled to put the protection of her honor above the interests of the rapist, even above his life. If so, maybe it is not as “implausible,” as Green contends,<sup>41</sup> that it should apply to the protection of premises too.<sup>42</sup>

Finally, note that the right to carry out otherwise immoral acts against one’s attacker is not contingent on the harm threatened being irreparable. I have a right to fight against a robber who tries to steal my car, even if the car is fully insured and, consequently, no loss would be incurred to me. Just as I am not required to withdraw from my home when an intruder enters, regardless of whether any harm is expected, I am not required to surrender my property either, even when no loss is expected. It is my honor I would be protecting, not my property.

Acknowledging the significance of honor is crucial for understanding how the defense of honor could be important enough to justify the use of otherwise seriously immoral measures against Aggressor. But this move is insufficient in itself to solve the puzzle raised above. In a sense, it even strengthens it: if honor is so important as to justify the use of

38. Green (“Castles and Carjackers,” 29) quotes the results of a recent study by Franklin Zimring and Gordon Hawkins, who argue that burglary “is the ‘safest’ crime in the law’s list of forcible felonies.”

39. Admittedly, at least part of the anxiety might result from an overestimation of the likelihood of being harmed by a burglar. But, first, such overestimation does not seem to be sufficient to account for the depth of this anxiety, and second, the overestimation might itself be the result of a displacement of people’s anxiety about break-ins.

40. This emphasis on the rapist’s intention, or message, as the basis for the victim’s right to self-defense implies that, in cases of negligent rape (typically having sex with a woman whom one negligently assumed to have consented), the woman’s right of self-defense would be more limited.

41. Green, “Castles and Carjackers,” 37.

42. For the connection between one’s space, possessions, self, and honor, see Miller, *Eye for an Eye*, chap. 9.

lethal measures across a variety of cases ranging from Wayne to the protection of one's premises from intrusion, why is it not permissible (assuming it is not) to use such measures in response to verbal insults or similar direct attacks on one's honor? Or, to put it the other way round: given that the protection of honor is not enough to justify lethal measures against insults and similar acts of humiliation, how is it that such measures are permissible in Wayne, Rape, and the new cases mentioned above although their only objective is to protect Victim's honor?

Here is one suggestion. Maybe the protection of honor in the cases under discussion yields only partial justification but this partial justification can be reinforced by other factors to gain full justification. For instance, maybe in the Warsaw ghetto case, the uprising was justified not only because of the defense of honor but also because it could be expected to encourage other victims to rise up against the Nazis, to deter the Nazis from further pursuing their genocidal campaigns, and to implement some measure of retributive justice. From the point of view of such a pluralist foundation of self-defense, the proportionality aimed at would be both between the harm wreaked upon the Nazis and the honor defended and between this harm and the above gains in terms of deterrence, justice, and so forth. Together, as far as the proportionality requirement is concerned, this assortment of gains would provide full justification for the self-defensive measures.

Since the goals of promoting deterrence or justice do not justify killing in self-defense, this solution seems to rely on the kind of understanding of P suggested by Thomas Hurka in the context of *jus ad bellum*. Hurka utilizes a distinction made by McMahan and McKim between sufficient just causes for war, causes that suffice in themselves to fulfill the just cause condition (mainly resisting aggression), and contributing just causes, which do not suffice in themselves to fulfill the just cause condition but that contribute to the justification of war once a sufficient just cause exists (e.g., deterring aggression).<sup>43</sup> With respect to proportionality, he suggests that "goals that would not by themselves justify war can contribute to a war's proportionality when joined with other weightier goals."<sup>44</sup> Applying this model to individual self-defense within the framework of HONOR yields the following conclusion: a threat to honor is a sufficient just cause for taking otherwise immoral self-defensive measures against the offender, but, when judging these measures in terms of proportionality, we are allowed to take into consideration contributing just causes, such as deterrence, retributive justice, and so forth. The threat to honor is sufficient to license acting against

43. Jeff McMahan and Robert McKim, "The Just War and the Gulf War," *Canadian Journal of Philosophy* 23 (1993): 501–41, 502–6.

44. Thomas Hurka, "Proportionality in the Morality of War," 42 n. 11.

Aggressor in the cases presented above by employing otherwise immoral measures, but, for the permission to kill him, other just causes are required.

This is an elegant solution to the puzzle. If we accept the basic idea of HONOR, namely, that protecting one's honor is a (sufficient) just cause for self-defense, then all we need to accept is that other factors, such as deterrence or retribution, are contributory causes, with the implication that the measures permitted are much harsher than those that would be allowed if the self-defensive act were viewed as connected only to the protection of honor.

Hurka's view raises important questions about self-defense, but for the present concern it is not necessary to discuss them.<sup>45</sup> The Warsaw ghetto uprising had no deterrent effects and arguably only low inspiring effects. More importantly, those who believe (most people, I suspect) that the Jews of the ghetto had a right to revolt against the Germans are not thinking of such effects when they do so. And this is precisely what needs to be explained, namely, how the Jews in the ghetto could have the right to self-defense when, from the outset, their acts were not expected to produce any desirable effects, either in terms of stopping the destruction of the ghetto or in terms of deterrence or inspiration.<sup>46</sup>

Is there any other way of solving the puzzle? Here is what I suggest. When the threat to Victim consists merely of an offense to her honor, for example, in verbal insults ("direct offenses"), then the measures that she is allowed to take to defend herself must be proportionate to this offense and would normally include symbolic counteractions which aim at denying the humiliating message and reaffirming Victim's honor. However, when the threat to Victim's honor is parasitical, so to say, on other threats—to her property, bodily integrity, or life ("parasitical offenses"), the measures she is allowed to take should be proportionate to the primary objects of harm rather than to the offense to honor implied by being subject to these threats. So, for example, since the

45. For critical discussions, see Jeff McMahan, "Just Cause for War," *Ethics and International Affairs* 19 (2005): 1–21, 18–19, who argues that "the only ends that can weigh against the bad effects of war in the proportionality condition are those specified by the just cause or causes for war"; and David Mellow, "Counterfactuals and the Proportionality Criterion," *Ethics and International Affairs* 20 (2006): 434–54, 448. In later work ("The Morality and Law of War," chap. 5, unpublished manuscript, Department of Philosophy, Rutgers University), McMahan has changed his mind, and he now thinks that, even if certain goods cannot permissibly be pursued by means of war (i.e., they are not just causes for war), they can still count in the proportionality calculation.

46. I would go further and say that the Warsaw ghetto uprising was justified even if the Jews who initiated it believed that it might discourage others from undertaking similar action against the Nazis. More generally, would-be victims have a right to defend themselves against their aggressors even if, by so doing, the situation of other victims of similar aggression would be worsened.

pursuers of John Wayne wished to kill him, the means he was allowed to use would have to be proportionate to the threat to kill, which would mean he would be fully justified in shooting them—in spite of the fact that the only reasonable hope he could have was to defend his honor, not to save his life. The following principle thus emerges:

If Aggressor threatens Victim with some illegitimate harm, Victim is permitted to carry out an otherwise immoral act, A, against him, if she reasonably believes that, by so doing, she will protect her honor, even if by doing A she will not halt the primary threat against her, provided that the evil done to Aggressor by act A is proportional to the evil entailed by Aggressor's threat.

I believe that this principle helps to shed light on the distinction between the measures permitted to defend honor in cases of direct offenses and those permitted in cases of parasitical offenses. Some oddity, however, remains. To protect herself from the lesser of two threats, regarding which Victim has a reasonable hope of success, she is permitted to take measures that would be proportionate to the other, greater threat, which she has no hope of averting. I'm not sure I can dispel this oddity altogether. It might help to reiterate that, in the cases under discussion, we don't have two separate threats that call for two separate acts, each fulfilling the conditions for legitimate self-defense, but two threats, one of which (the threat to honor) is parasitical on the other (e.g., the threat to life). By seeking to murder Wayne, the pursuers threaten both his life and his honor, and although Wayne cannot reasonably hope to save his life, he can reasonably hope to protect his honor. To achieve this goal, Wayne is entitled to use any measures to which his pursuers have made themselves liable by their primary or "original" attack.

I would like to suggest another way of solving the apparent conflict between HONOR and P. Maybe parasitical offenses to honor are in fact worse than direct ones and, consequently, license more severe measures in protection from them, even given that these measures are unlikely to block Attacker's primary attack. The basis for this suggestion is the following thought. Verbal insults, which I referred to earlier as the paradigm example of direct offenses, are often more a challenge to Victim's honor than an actual harm to it. By his offensive words, the insulter is testing Victim to see how she will react. It is as if he is saying to Victim, "I am superior to you, and if I wish, I could do to you whatever I like." If the challenge isn't appropriately met by Victim, the aggressor might move to the next stage and try to take advantage of his now-proven superiority by a real attack on Victim's body, property, or whatever. It is only at this stage that Victim's honor is really threatened, that she is treated as a mere object to be utilized by Attacker (and possibly by

others who might sense the smell of an easy prey and try to grab something for themselves). Thus understood, the threat to honor is much more serious in parasitical offenses than in direct offenses; hence, it licenses much harsher measures in self-defense.<sup>47</sup>

Note again that, to satisfy the success condition, the only successes that count are successes in blocking illegitimate threats from Attacker (be they direct or parasitical). More accurately, to satisfy S, Victim must plausibly believe that such successes are likely. Other side successes, like administering retribution or enhancing social utility, do not qualify and cannot turn an act which failed to meet S (or any other condition for self-defense) into a legitimate act.

HONOR was put forward in order to make S consistent with the intuition that victims of illegitimate attacks are allowed to fight back even if their counterattacks cannot reasonably be expected to protect the primary objects of threat. But doesn't the fundamental problem of S just reemerge now in a different guise? Just as Victim could be helpless vis-à-vis the primary threat, she could be helpless vis-à-vis the secondary threat too, that is, the threat to her honor. Her attempts to save her honor could fail. Is S committed to the position that, in such circumstances, Victim is not allowed to act (in ways that would otherwise be immoral) against her attacker? I believe the answer is no, because the actions under discussion are unlikely to fail in achieving their goal. Whenever victims of aggression are overwhelmed by an aggressor but, nonetheless, find the courage to rise against him through some form of determined resistance, however hopeless, they are thereby reaffirming their honor, or—to use a rather out-of-date expression—they show themselves to be men (or women) of honor. Hence, such actions necessarily succeed (at least partially; see below) in achieving their goal.

That Victim might be raped, injured, or murdered and nonetheless manage to protect her honor might seem bizarre, yet this possibility lies at the heart of HONOR. Although the threat to honor is parasitical on the primary threat, defense from the threat to honor is not parasitical on defense from the primary threat. Some people completely lose their honor in face of threats of the magnitude we are discussing (and of much lesser magnitude too), while others preserve it even in such trying

47. At this point, one might be tempted to suggest that what we ultimately wish to defend in cases of self-defense is nothing but our honor. In other words, we are concerned about attacks on our life, our bodily integrity, or our property only because such attacks deny our humanity and regard us as mere tools for the satisfaction of others, and only to the extent that such attacks express such a denial. One can immediately see the advantages of this suggestion in solving the apparent conflict between HONOR and P. However, if we cared about such attacks only because they expressed disrespect toward us, we would not care about them if they originated from innocent attackers—but we obviously do. (For more on HONOR and innocent attackers, see Sec. VI.)

circumstances. They might be literally trodden upon, but symbolically they are not. In their, albeit hopeless, acts of resistance, they reject the dehumanizing message of Aggressor.

I should not overstate the point. In the end, in all the cases under discussion, the victims are crushed by their aggressors—raped, wounded, killed—and their humanity is thus denied in a very clear and devastating manner. Since regaining honor has to do with getting even with one's aggressor, it could never be fully achieved in these cases. But that doesn't mean that nothing can be done by the victims to affirm their honor. They cannot get even, but, nonetheless, they can make their attackers pay, in various ways, for their aggression. Thus, the protection of honor in the kind of cases we are discussing is almost always only partial.

But is using force the only way Victim can protect her honor (or avoid an ignoble or humiliating death) in the cases under discussion? Gandhi would probably answer in the negative. In his view, it would probably be more honorable to confront the threat while refusing to use violence. If Gandhi is right, then the honor solution seems to violate the necessity condition, as taking arms in the above cases would no longer be a "last resort." However, I don't think that Gandhi (or the Stoics for that matter) would conceptualize nonviolence as a way of reaffirming honor. It is not the nonviolence itself that would protect a Gandhi from degradation but his prior overcoming of his concern about honor, which made him indifferent to all types of humiliation. In other words, what Gandhi offers us is not an alternative way of reaffirming honor in the cases under discussion but a way of immunizing ourselves so that we won't suffer any offense in the first place. Ultimately, this means that HONOR would have no appeal for Gandhi—but, well, the puzzle that gave rise to HONOR wouldn't have troubled him either. Gandhi would be against self-defensive acts in Wayne, Rape, and the ghetto, albeit not because of the failure to meet the success condition but because of his absolute opposition to killing.

In concluding this section, let me try to clarify the way that S and P function within the honor solution:

- a) If the defensive act achieves nothing, or, in the subjectivist terms to which I have committed myself, is (reasonably) believed by Victim to have a very low chance of succeeding, then it is illegitimate. This is a case in which S is not satisfied, and consequently P is not satisfied either.
- b) However, this is hardly ever the case. Defensive acts almost necessarily achieve some protection or reaffirmation of Victim's honor, and they are reasonably regarded as such by Victim. Hence, insofar as we focus on the protection of honor, S is almost always satisfied.
- c) That S is almost always satisfied leaves open the question of pro-

portionality, because a defensive act can reasonably be expected to succeed in halting the threat but still be disproportionate to the harm prevented.

- d) In direct offenses, the measures that Victim is allowed to use in self-defense are limited to those proportionate to the relevant offense, and usually these do not include measures such as badly injuring or killing Aggressor.
- e) In parasitic offenses, Victim might acknowledge that stopping the primary attack against her is very unlikely but believe that she can nevertheless partially save her honor by standing up against Aggressor. In these circumstances, the measures she is permitted to use in defense of her honor are those proportional to the primary threats.

## VI. HONOR AND HOPELESS WARS

We started our investigation by noting that, while success is considered a condition for collective self-defense, that is, for *jus ad bellum*, it is not considered a condition for individual self-defense. Most of the discussion so far has dealt with the relevance of S to individual self-defense. It is time to return to the problem of unsuccessful wars, in particular to the application of HONOR to such wars. Throughout history, many wars have been fought over issues of honor and today, too, as Fletcher reminds us, “we are more sensitive to national honor than we are inclined to admit.”<sup>48</sup> According to HONOR, countries would be morally allowed to wage war even if their only gain would be the defense of their honor, that is, in situations where they have no reasonable hope of success in protecting their territory or sovereignty. Contrary to Fotion and Coppieters’s view,<sup>49</sup> then, Luxemburg would have been justified in fighting against the Germans in 1940, even though such fighting was unlikely to defend Luxemburg’s sovereignty or to help defeat the Nazi forces in general. The success condition for *jus ad bellum* would have been satisfied in these circumstances because it applied not to the primary threat posed by the enemy (e.g., loss of sovereignty) but to the secondary threat it posed, that is, the threat to the honor of the attacked country. A powerful expression of the view that a hopeless war might be launched just to defend a country’s honor can be found in the words of de Broqueville, the prime minister of Belgium, in his response to Germany’s demand in 1914 for Belgium’s capitulation: “We have no other choice. Our submission would serve no end; if Germany is victorious,

48. Fletcher, *Romantics at War*, 13.

49. Fotion and Coppieters, “Likelihood of Success,” 80.

Belgium, whatever her attitude, will be annexed to the Reich. *If die we must, better death with honor.*<sup>50</sup>

However, this understanding of the application of S to wars might sound too permissive. While we would wholeheartedly grant Wayne ex ante permission to fight against his pursuers, even if he estimated that the chances of saving his life thereby were very low, we would be more hesitant in granting such permission to political leaders planning to take their nations to hopeless wars. Can this difference be justified? Why is it that, in the case of seemingly hopeless wars, we feel that going to war would be a terrible waste of human life, while we don't have such a feeling in cases such as Wayne or Rape?

The first response to these questions would be that the stakes are simply much higher in wars. Typical cases of individual self-defense involve at most several attackers, whose killing might be thought to be necessary to defend Victim, while wars involve many thousands of people whose lives are put in peril. That seems a good reason to be far more hesitant about launching wars than about initiating individual acts of self-defense. However, I think that the number of attackers who might be hurt by the defensive acts in the individual versus the collective cases is not the only reason for the above difference between them. A more important reason is that, while in Wayne, Rape, and similar cases the attackers are fully culpable, in wars most combatants are not. Soldiers fighting unjust wars are usually not entirely innocent, but neither are they fully culpable for their country's aggression. When enemy soldiers are killed, they are killed only qua agents of the enemy collective, and insofar as through such killing, the enemy might be defeated. There is nothing "personal" in the situation. Moreover, soldiers on both sides might feel a kind of solidarity between them as sharing the same miserable fate, having been sent by their governments to fight the war and required to pay the full price of doing so.<sup>51</sup>

But why should the degree of culpability make a difference for the application of HONOR? Because, as recently argued by Yitzhak Benbaji,<sup>52</sup> while innocent attackers threaten only my property, body, or life, culpable attackers also threaten my honor. When the threat is intentional

50. Quoted by Luigi Albertini, *The Origins of the War of 1914* (London: Oxford University Press, 1952), 3:458 (italics added). The case of Belgium, as a paradigmatic example of a hopeless war, is referred to by Joseph McKenna, "Ethics and War," 651; Douglas Lackey, *The Ethics of War and Peace* (Englewood Cliffs, NJ: Prentice-Hall, 1989), 41; and Coates, *The Ethics of War*, 181.

51. Recall the famous episode, commemorated in the poem "Christmas in the Trenches" by John McCutcheon, in which soldiers of both sides in World War I came out of the trenches to celebrate Christmas together.

52. Yitzhak Benbaji, "Culpable Bystanders, Innocent Threats and the Ethics of Self-Defense," *Canadian Journal of Philosophy* 35 (2005): 585–622.

and culpable, it sends a disturbing message to Victim that Aggressor does not consider her, that she is not a person with full human rights. If the threat is lethal, there is also the danger of an undignified death. Thus, the threat to honor is severe and acute in fully culpable attacks, while it becomes less disturbing the less culpable they are.<sup>53</sup> This explains why HONOR leads to a less definite result in the case of wars than in the case of Wayne (or in similar cases of individual culpable attacks).

I should add that modern wars almost necessarily involve not only the killing of less than fully culpable combatants but also the killing of noncombatants, many of whom are completely innocent in the relevant sense, such as young children and others only slightly responsible for the threat posed by their collective. According to just war theory, wars might be justified in spite of the unintentional killing of these noncombatants, but, again, such justification seems to depend on the expected success of these operations in defeating the enemy. This is all the more so in cases of intentionally targeting the innocent, such as the saturation bombing of a city or the planting of bombs in buses by terrorists. Even if such acts could be justified in extreme cases under the rubric of “supreme emergencies” (which I seriously doubt<sup>54</sup>), they would surely lose this moral justification if they could not reasonably be estimated in advance to be effective. Killing thousands of innocent people as a last resort for defense from an aggressive collective is bad enough even if such killing is predicted to achieve its goal. It is completely unacceptable if it is not. This deep concern about killing the innocent, either intentionally or as collateral damage, hardly ever arises in cases of individual self-defense, which further explains why the permission to kill under HONOR in wars is more restricted than the one granted under HONOR in individual self-defense.

The sensitivity of S to the culpable-innocent distinction accords well with the parallel sensitivity of P to this distinction. As McMahan shows, the proportionality restriction governing self-defense against an innocent attacker is stronger than that governing self-defense against a culpable aggressor.<sup>55</sup> Since many targets in war are more innocent than culpable, this means that the proportionality restriction is stronger in wars than in standard cases of individual self-defense. Given the tight connection between P and S alluded to earlier, this feature of P strengthens the point I am trying to make about S and hopeless wars. Because

53. Thus, even those who believe in a right of self-defense against innocent attackers would probably deny such a right if the success condition is not met.

54. See sec. 6 of my “Supreme Emergencies Revisited,” *Ethics* 117 (2006): 58–79.

55. Jeff McMahan, “Self-Defense and the Problem of the Innocent Attacker,” *Ethics* 104 (1994): 252–90, 265–66.

of the loss of so many innocent (and not fully culpable) people in such wars, the violation of both P and S is especially disturbing.

So far I have focused on the implications of waging war against the enemy, pointing out that the targets are often either in no way guilty for their country's aggression or are only minimally responsible for it. However, we should not ignore the implications of a decision to go to war for the members of one's own polity. In cases of individual self-defense, the individual victims are doomed to be harmed by the aggressor, and the problem is whether they are allowed to attack their aggressors even though it will not prevent this harm. In collective self-defense, the politicians who consider waging war are usually not risking their own lives but the lives of other men and women under their jurisdiction, combatants and noncombatants alike. Hence, we expect them to be extremely cautious in making this decision and to be particularly concerned about the likelihood of success.

What follows from these last points is that HONOR is typically more relevant to individuals defending themselves from intentional attacks than to collectives defending themselves in conventional wars. That is why in wars the success required is usually success in defending the primary objects of the enemy's threats (territory, sovereignty, etc.) rather than in protecting the attacked collective's honor. This—finally—might explain why S (referring to success in blocking the enemy's primary attacks) appears explicitly only as a condition for *jus ad bellum* and not as a condition for individual self-defense.

I say "usually" because I do not wish to rule out the possibility that wars against collectives might be justified even when there is no reasonable hope of success in thwarting the primary threats to the attacked collective. The more culpable the aggressor collective and the more severe and oppressive the threat it poses, the more probable it is that the attacked collective would enjoy moral permission to wage war under HONOR, in circumstances in which it has no reasonable hope of halting the primary threats against it. In other words, the defense of a country's honor can at times be a just cause for war,<sup>56</sup> as it was in the cases of Belgium in World War I or Luxemburg in World War II (and—needless to say—that of the Warsaw ghetto uprising). The basis for this conclusion is twofold. First, many soldiers are at least partially culpable for the threat against their enemy. Second, and more important, other people in their collective are fully culpable for the threat, namely, the political leaders and the people that support and back them. That the German troops who marched into Luxemburg were "just obeying orders" (if this was true) cannot hide the fact that, by sending these troops, the Germans were attacking Luxemburg's honor. Thus, though there might have

56. Thanks to Jeff McMahan for suggesting the formulation in the last sentence.

been nothing “personal” between the individual German and the Luxembourg soldiers, the former qua agents of Germany did threaten the honor of the latter qua citizens of Luxembourg.<sup>57</sup>

Note that, even if the defense of a nation’s honor might sometimes be a just cause for war, it is still an open question whether a political leader is (morally) permitted to coerce her people to participate in it. According to McMahan, she is not, because when people are coerced to engage in hopeless resistance, there is no real vindication of honor; coerced assertion of dignity is a contradiction in terms. But it all depends on whose honor is thought to be threatened or protected. If it is the honor of the individuals participating in a hopeless war, McMahan might be right. But, as indicated in the previous paragraph, in the context of nations fighting each other, it seems more plausible to interpret HONOR as applying to the honor of the (attacked) nation. And, insofar as it is the nation protecting its honor, it does not seem to me contradictory that honor could be reaffirmed through the coerced resistance of at least some of the nation’s individuals. The Russians were coerced by Stalin to defend Moscow from the German attack. Some did so enthusiastically and were wholeheartedly ready to sacrifice their lives for Mother Russia. Others did so out of sheer fear, knowing the fate that would befall them by Stalin’s security apparatus if they tried to escape. The battle over Moscow is nevertheless remembered as an honorable moment in Russian history.

I should reiterate that, in the context of launching war, as well as in the context of individual self-defense, HONOR might justify the use of self-defensive measures only when such measures are a response to unjust attacks. HONOR does not license resorting to violence whenever some individual or collective merely believes (or feels) that its honor is threatened. The explanation for this lies in Ferzan’s point mentioned in Section I above, according to which self-defense might be justified only if it is a response to an unjustifiable risk posed to Victim. Only then might Victim be justified in taking measures which would otherwise be immoral to protect herself from the secondary attack, namely, the attack on her honor.

As indicated above, by saying that Victim has a right to resist Ag-

57. There is a further, albeit controversial, reason to explain why P (and consequently S) is less troubling when one compares the potentially good results of the attacked nation’s response (the protection of honor) with the bad results (the killing of enemy soldiers). According to this explanation, the status of the attacking soldiers as soldiers accords less weight to their deaths. The boxing analogue is quite popular in advancing this line of argument: punching a boxer who voluntarily enters the boxing ring is not as bad as punching him outside the ring, and similarly—so the argument goes—killing soldiers in the battlefield is not as bad as killing noncombatants and hence counts for less in the proportionality calculus.

gressor in order to protect her honor, I leave open the question of whether it might be morally preferable for her to transcend honor and, in a Gandhi-like approach, refrain from exercising this right. Similarly, and in the opposite direction, I wish to leave open the question of whether one is under an obligation (of self-respect) to resist attackers on the individual or the collective level.<sup>58</sup> To maintain that Victim has a right to act against Aggressor in self-defense is compatible with a recommendation that she refrain from doing so, as well as with the view that she has an obligation to act in the defense of her honor.

Finally, while S applies to individual cases of self-defense and to *jus ad bellum*, it appears not to apply to *jus in bello*. Soldiers seem to be (morally) allowed to open fire at the enemy without first making sure that doing so is likely to be successful in advancing the objectives of war (or in defending themselves). Similarly, they are allowed to open fire without first making sure that doing so is necessary for the advancement of these objectives (which is not surprising given the connection between S and N alluded to in Sec. II). Whether this is justified or not is a question that will have to wait for some other occasion.<sup>59</sup>

58. See, e.g., Immanuel Kant, *The Doctrine of Virtue*, trans. Mary Gregor (New York: Harper & Row, 1964), 101–2.

59. Within the context of *jus in bello*, the notion of honor is usually used as a moral constraint; there are things that “men of honor” don’t do in war. By abiding by the rules of war, soldiers are thought to maintain—or elevate—their sense of self-worth in comparison to their perceived barbarian rivals, who assumingly have no honor (see Larry May, *War Crimes and Just War* [New York: Cambridge University Press, 2007], 30–35). But this concerns only inhumane acts committed in war, typically attacks on the innocent and not conventional acts of warfare against enemy combatants.