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## **War and self-defense : a critique and a proposal**

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## WAR AND SELF-DEFENCE: A CRITIQUE AND A PROPOSAL

- Phillip Montague -

A view commonly assumed to be true in discussions of the ethics of war is that the principles in virtue of which individual defense is justifiable are also applicable to defensive wars. David Rodin has recently disputed this view, however, and has proposed an entirely different approach to analyzing the morality of defensive warfare<sup>1</sup>. There is much to admire in Rodin's discussions of this topic. Examining these discussions reveals, however, that key components of the elaborate theoretical framework within which Rodin argues for his position are seriously flawed.

Certain of these flaws will be pointed out here. One of Rodin's theoretical presuppositions is especially important since, if it were true, then Rodin could use it to establish the negative part of position without the aid of other components of his theoretical framework. This presupposition is false, however. And, as will be explained below, it has an alternative that accommodate justifications of defensive warfare on the basis of principles in virtue of which individual defense is justifiable.

### 1. THE RELATIONALITY OF NORMATIVE CONCEPTS

Rodin's theory of self-defense is "rights-based," and centers on various claims about the conditions under which rights such as the right to not to be killed can be forfeited. In presenting his account of forfeiture, Rodin appeals to the idea that moral rights are relations; and, in explaining the relationality of moral rights, he refers repeatedly to Wesley Newcomb Hohfeld's discussion of "fundamental legal conceptions." Rodin maintains that, although Hohfeld's

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<sup>1</sup> Rodin [2002], [2004] pp. 63-68. Rodin, states his purpose in this way: "I develop an argument to show that the right of national self-defense cannot be explained in terms of personal self-defense", Rodin [2002] p. 5. I have used different wording in order to avoid referring to a right of national self-defense – a notion whose problematic character is explained below. In any case, the reworded version of Rodin's statement of purpose has no significant implications for my discussion of his views.

analysis is developed in the context of legal rights, his framework is, in many respects, relevant to moral rights and will provide a useful starting point for the moral analysis of self-defense.<sup>2</sup>

Rodin introduces a number of Hohfeldian concepts, and devotes considerable attention to describing the complex ways that Hohfeld claims they are interrelated.

Taking Hohfeld's remarks about legal rights as a point of departure for explaining moral rights isn't at all uncommon, and writers who adopt this approach typically assume without argument that it is a sensible and promising way in which to proceed. In fact, however, this sort of unquestioned faith in the relevance of Hohfeld's legal analysis to explanations of moral rights is entirely unjustified. A rationale is required for making this move from the juridical to the moral – just as one would be required for relying on an explanation of causation in the law when developing a metaphysical theory of causality.<sup>3</sup> Without such a rationale, Rodin's account can reasonably be regarded as nothing more than a possible explanation of the legality of self-defense, formulated in Hohfeldian terms. Yet Rodin refers to moral rights and other moral concepts throughout his discussions, and the account of self-defense that rests on these discussions is claimed by him to be a moral theory.<sup>4</sup>

Rodin's dubious methodology is doubtless responsible for his failure clearly to separate what might be true of legal concepts and their interrelations on

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<sup>2</sup> Rodin [2002] p. 17.

<sup>3</sup> As an exception to the general rule, L.W. Sumner argues in support of a Hohfeldian approach to theorizing about moral rights. Central to Sumner's argument (presented in his excellent book *The Moral Foundation of Rights*, Sumner [1987]) is his claim that all rights – including moral rights – are conventional in nature. If Sumner were right about this, then examining a well-developed account of legal rights would make good sense when attempting to explain moral rights.

Regardless of whether Sumner's argument succeeds, he clearly recognizes the inappropriateness of uncritically assuming that Hohfeld's legal theory is relevant to explaining the nature of moral rights.

<sup>4</sup> Rodin refers to Hohfeld as a "pioneer in the theory of rights," who showed that "right" is multiply ambiguous for under that heading trade a number of quite distinct yet related deontic conceptions, Rodin [2002] p. 17.

But there is little if any reason to regard Hohfeld as having attempted to formulate a theory of rights – not even a theory of legal rights. And Hohfeld most certainly didn't claim that "right" (or "legal right") is multiply ambiguous, or even that there are various types of (legal) rights. He identified rights with claims because he believed that rights are claims; and he emphasized the importance of distinguishing legal rights from legal privileges, powers, and immunities.

Rodin himself suggests that Hohfeld's identification of legal rights with legal claims is "a plea for terminological clarity rather than an attempt to provide a comprehensive analysis" of the concept of a right, *ibidem*, p. 22. What Rodin fails to recognize, however, is that increasing terminological clarity was Hohfeld's primary goal, and that "right" was just one of several legal terms whose usage he wished to clarify.

the one hand, from what is true of moral concepts and their interrelations on the other. Rodin's remarks about *claims* provide good examples of his tendency to conflate the moral with the legal. He employs the concept of a claim throughout his discussion of rights, implying that it is more "primitive" than the concept of a right, and evidently assuming that it is easily understandable. Regardless of how clear the notion of a *legal* claim might be, however, that of a *moral* claim is extremely puzzling. It is certainly more puzzling than the concept of a moral right, and too puzzling to be regarded as more primitive than the latter concept. Hence, references to moral claims are of little or no value when attempting to explain what moral rights are.<sup>5</sup>

Even assuming that Rodin could justify his reliance on Hohfeld's legal analysis, however, the Hohfeldian idea that he emphasizes most heavily - namely, that rights and other normative concepts are relations - is of questionable value to him. Rodin actually explains the relationality of normative concepts in three distinct ways. Only one of these corresponds to Hohfeld's interpretation, and it plays only a very minor role in Rodin's explanation of the claim - so crucial to his theory of self-defense - that rights can be forfeited.

One of Rodin's explanations of the relational character of rights and obligations is implicit in this passage:

An important reason for treating the fundamental normative conceptions as relational . . . is that it enables us to articulate very fine-grained normative positions. For example, it is only with a relational notion of duty that one can express the fact that I may have a duty to you to perform a certain action, but have no duty towards some other person for the performance of that very same action. The wider case of universal duty or one with an unspecified object can be generated quite

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<sup>5</sup> Rodin's account does depart from Hohfeld's in a number of respects. For example, he rejects Hohfeld's identification of rights with claims, maintaining that some rights are more than mere claims, while others are entirely unrelated to claims. Rodin includes the right of self-defense in this latter category, equating it with a liberty to act.

But the moral liberty to perform some action is simply the absence of an obligation to refrain from performing that action, and the mere absence of one person's obligation to act implies no obligations of noninterference in others. So how could a moral liberty to perform an action count as a genuine moral right to perform that action? According to Rodin [2002] p. 31, some liberties can "function as a justification . . . They act as established exceptions to prohibitions . . ." Rodin's argument for this position is extremely obscure and, to the extent that it is comprehensible, it is probably fallacious. He really doesn't explain how - within morality - "established exceptions to prohibitions" against acting differ from the mere absence of obligations to refrain. He therefore doesn't explain how moral liberties can have justificatory force. Moreover, even if some moral liberties can indeed be shown to have justificatory force, their possessing this feature by no means precludes them from implying moral obligations on the part of others.

easily by simply iterating the relational duty over the set of all moral or legal agents.<sup>6</sup>

The implication here is that rights and obligations have what might be called “particularity.” That is, expressions like “x has an obligation to do y” and “x has a right to be treated y-ly” are abbreviations, respectively, for “x has an obligation *to z* to do y” and “x has a right *against z* to be treated y-ly.” Rodin evidently has third-party beneficiary cases in mind when he offers this rationale for interpreting rights and obligations as relational in this sense.

Elsewhere in his discussions, however, Rodin makes some very different claims about relationality. In an especially informative passage, he states that his account is based on

a particular view of the nature of moral rights. First, rights such as the right not to be killed are most fundamentally normative relations between two people. This is true in the strictly logical sense: A’s right not to be killed by B is the logical correlate of B’s duty not to kill A. Correspondingly, A’s right to kill B in self-defense is the logical correlate of B’s failure to possess the right that A not kill him. But beyond its purely logical form, I believe that the right not to be killed is *grounded* in an interpersonal normative relationship. Thus rights against being killed are dependent on a relationship of reciprocity: one has the duty not to kill or harm others just so long as they adhere to the same duty toward you.<sup>7</sup>

So we have the “interpersonal” relation of reciprocity, and the “logical” relation of correlativity. As Rodin explains the latter notion, its general form has two parts. One relates rights to obligations, and has this form: Necessarily, x has a right to not be treated y-ly by z if and only if z is obligated to not treat x y-ly. The other part of correlativity has this form: Necessarily, x has a right to treat z y-ly if and only if z lacks a right to not be treated y-ly by x.<sup>8</sup>

As Rodin himself acknowledges, correlativity and reciprocity differ significantly from each other. But each of these interpretations of relationality also differs significantly from particularity. While the differences between reciprocity and par-

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<sup>6</sup> *Ibidem*, p. 18.

<sup>7</sup> *Ibidem*, p. 65. Rodin expands his explanation of correlativity in this passage: “the aggressor’s loss of the right to life, and the defender’s possession of the right to kill are . . . the same normative fact described from two different perspectives”, *ibidem*, p. 75.

<sup>8</sup> The second half of correlativity in its general form is almost certainly false. Thus, suppose that x parks in the public space in front of y’s house, thereby preventing y from parking there. Neither x nor y has a right to park there (even if both are permitted to do so); and hence even though x lacks a right to not be prevented from parking in front of his house, y doesn’t have a right to park there.

ticularity are clear enough, those between particularity and correlativity are less obvious, even though equally important. Thus, it might be true that  $x$  has a right to not be treated  $y$ -ly by  $z$  if and only if  $z$  is obligated to not treat  $x$   $y$ -ly, and yet it might well be false that “ $z$  is obligated to not treat  $x$   $y$ -ly” is an abbreviation for “ $z$  is obligated to  $x$  (or to  $u$ , or to  $v$ , or to . . .) to not treat  $x$   $y$ -ly.” In fact, while there might be good reasons for interpreting certain rights and obligations – namely, *in personam* or “special” rights and obligations – as possessing particularity, there appears to be no good reason for attributing particularity to *in rem* or “general” rights and obligations.<sup>9</sup>

While Rodin discusses all three of his interpretations of relationality in developing his account of forfeiture, only reciprocity (which is entirely unrelated to Hohfeld’s analysis) plays a central role in this account. Rodin does appeal to a version of correlativity, but for the sole purpose of answering what he calls the “incoherence objection” to forfeiture theories. The idea that rights and obligations possess particularity is also peripheral to Rodin’s account of forfeiture. He appeals to it only in attempting to justify his claim that, when rights are forfeited, they are forfeited to specific individuals (a point that will be examined below).

## 2. FORFEITURE

According to Rodin, if an intended victim of another’s aggression has a right to kill the aggressor in self-defense, then this is because the aggressor has performed an action by which he has forfeited his right to not be killed. An absolutely essential task facing anyone espousing this sort of position is that of providing a principled basis on which to identify the types of actions whose performance results in forfeiture of the right to not be killed. Rodin actually presents two distinct characterizations of these actions. One doesn’t seem to follow from any principle; the other might presuppose a principle, but not one having anything to do with self-defense.

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<sup>9</sup> For an illuminating discussion of the difference between special and general rights and obligations, see Simmons [1979]. Simmons explains that only special rights and obligations possess particularity, because only special obligations are incurred by the performance of actions that confer special rights on others. In providing this explanation, Simmons undermines Rodin’s claim that “The wider case of universal duty or one with an unspecified object can be generated quite easily by simply iterating the relational duty over the set of all moral or legal agents.”

It is worth noting that, although Hohfeld regarded his account as applicable to “practically every legal problem,” he focused on “trusts, options, escrows, ‘future interests,’ corporate interests, etc.”, Hohfeld [1919] p. 34. These “complex legal interests,” as Hohfeld refers to them are, broadly speaking, contractual arrangements, and the rights associated with these arrangements are most plausibly interpreted as special rather than general. This preoccupation with special legal rights would explain Hohfeld’s emphasis on relationality.

Rodin states that

when a defender justifiably kills a homicidal aggressor in self-defense, the aggressor no longer has the right not to be killed, and the reason for this is that the aggressor is morally at fault for the attack, while the defender is innocent.<sup>10</sup>

Rodin also claims that

It is the breakdown in this relationship of reciprocal respect constituted by the act of aggression that explains why aggressors fail to have the right not to be killed by their victims, and why defenders possess the right to kill in the course of self-defense.<sup>11</sup>

So aggressors lose their rights to not be killed by culpably attacking others (under certain conditions, presumably).

Rodin provides no principled basis for this position, however, and there are surely alternative candidates for the actions that result in forfeiture of the right to not be killed. Indeed, defenders of capital punishment commonly (and more plausibly) claim that the right to not be killed is forfeited by those who commit especially heinous murders. Moreover, the right to not be killed cannot reasonably be viewed as the only right that is open to forfeiture. Hence, Rodin needs a principle that provides a basis for identifying the actions whose performance results in forfeiture of other rights. If, for example, property rights are subject to forfeiture as Rodin seems to suggest, then he needs a principle according to which rights can be forfeited by actions other than culpable attacks. In the absence of an appropriate principle, Rodin's identification of culpable attacks as those by which rights to not be killed are forfeited is objectionably *ad hoc*.

A principle does seem to lie behind Rodin's second characterization of the actions whose performance results in forfeiture of the right to not be killed. The principle is implicit in Rodin's claims about reciprocity that were discussed above. To reiterate, he maintains that

rights against being killed are dependent on a relationship of reciprocity: one has the duty not to kill or harm others just so long as they adhere to the same duty toward you.<sup>12</sup>

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<sup>10</sup> Rodin [2002] p. 64.

<sup>11</sup> *Ibidem*, p. 65.

<sup>12</sup> *Ibidem*.

The principle at work here appears to go something like this: If  $x$  acts contrary to his duty to refrain from treating  $y$  z-ly, then  $y$  has no duty to refrain from treating  $x$  z-ly; if  $y$  has no duty to refrain from treating  $x$  z-ly, then  $x$  has no right to not be treated z-ly by  $y$ .

This principle has the bizarre implication that, if  $x$  kills  $y$  in violation of  $y$ 's right to life, then  $x$  forfeits her right to not be killed by  $y$  – who, of course, would be dead by then. The principle also implies that one doesn't forfeit his right to not be killed by merely culpably attacking someone, even if the attacker will kill his intended victim if she doesn't kill him first. Rather, the principle implies that one forfeits his right to not be killed by actually killing someone in violation of that person's right to life.

This result, which clearly fails to yield a right of self-defense, is reinforced by Rodin's claim that what deprives an aggressor of his right to life is

an act for which he has moral responsibility. . . . to say that a man has the right to life is to say that he has an interest in his living which cannot be overridden except on the basis of . . . his own choosing, willing, or acting. He can waive his right to life, or forfeit it (for instance, by violating certain laws or obligations) ...<sup>13</sup>

The relevant “obligations” to which this passage refers are evidently implied by the right to life, and are therefore obligations to refrain from killing other people. Hence, Rodin's remarks imply that people forfeit their rights to life by killing others. But for Rodin's account to produce a right of self-defense (as opposed, say, to a forfeiture-based justification of capital punishment), the aggressive acts by which people forfeit their rights to life must obviously fall short of homicide.

These issues also arise in connection with the question of whether and (if so) how forfeited rights are regained.

Let us assume that Rodin does regard certain types of culpable attacks (rather than actual killings) as the actions by which rights to not be killed are forfeited. Suppose now that  $x$  culpably attacks  $y$  in a manner that results in forfeiture of his right to not be killed. If  $x$  breaks off the attack, or if  $y$  manages to escape, or if the attack fails for any other reason, then – if  $x$  is no longer culpably attacking  $y$  – he presumably regains his forfeited right. But what if  $x$  succeeds in killing  $y$ ? Then the previous line of reasoning would seem to imply that, after killing  $y$ ,  $x$  regains his right to not be killed. We therefore have this odd result: in culpably attacking  $y$ ,  $x$  forfeits his right to not be killed even if the attack will not actu-

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<sup>13</sup> *Ibidem*, p. 89.

ally succeed; but if  $x$  does kill  $y$ , then  $x$  regains his right to not be killed. Hence, with respect to  $x$ 's regaining his forfeited right, there is no difference between  $x$ 's changing his mind about killing  $y$  and  $x$ 's actually killing  $y$ .

Rodin claims, moreover, that rights are forfeited to specific individuals: in culpably attacking  $y$ ,  $x$  only forfeits his right to not be killed by  $y$ . Hence,  $x$  regains the right to not be killed by  $y$  after he does kill  $y$ . But Rodin's view of the relation between rights and obligations implies that  $x$ 's right to not be killed by  $y$  is equivalent to  $y$ 's obligation to not kill  $x$  – an obligation that  $y$  has even though  $y$  is dead. This result, while perhaps not seriously objectionable, would certainly compound the oddity of Rodin's position on the reacquisition of forfeited rights.

Rodin's claim that a culpable aggressor's right to not be killed is forfeited only to his intended victim has an additional problematic implication.

Rodin introduces this topic by rejecting the idea that one who forfeits her right to life thereby becomes fair game for anyone in a position to kill her. This suggests that his concern is as much with *permissions* as it is with rights. That is, Rodin implicitly denies that anyone other than the intended victim of a culpable attack is permitted to kill the attacker. If this is indeed Rodin's position, then his forfeiture theory of self-defense implies nothing about the justifiability of "other-defense." Thus, suppose that  $x$  culpably attacks and will kill  $y$  unless  $x$  is killed first, and also that only  $z$  is in a position to defend  $y$ . Now, Rodin's account implies that  $x$  forfeits his right to life to  $y$ , and that  $y$  is therefore permitted to kill  $x$ . But nothing Rodin says implies that  $z$  is permitted to kill  $x$  in defense of  $y$ .

### 3. GENERAL PRINCIPLES AND INDIVIDUAL RIGHTS

Although Rodin doesn't attempt to answer any of the questions about his forfeiture theory that have been raised here, he does consider two objections to forfeiture theories in general. One of these – the incoherence objection – was alluded to earlier; the other is the "circularity objection."

Rodin points out that the circularity objection applies to two different explanations of why it is that people who launch potentially lethal attacks against others can lose their rights to life. One explanation appeals to forfeiture, the other to the idea that the right to life has a limited scope that is specifiable in either moral or factual terms. Rodin claims that, for all practical purposes at least, these two explanations are equivalent.

As Rodin points out, theories of both types imply that there is a general principle according to which people possess the right to life only if they satisfy certain conditions. Rodin suggests that the morally specified right to life would be

something like: People have a right to life only if they don't act in ways that pose deadly and unjust threats to others. According to factual specification, however,

The properly specified right to life would proceed something like this: "persons only have the right to not be killed when not engaged in an aggressive attack, but they retain the right in cases where their victim can escape without using lethal force, and/or where their victim's use of force would be disproportionate, and/or where the threat presented is not imminent, and/or where the victim's use of force does not arise from an intention to act in self-defence and so on . . . (the specification would here need to be completed with a large and probably open-ended number of factual criteria)".<sup>14</sup>

Rodin goes on to say that neither moral nor factual specification - nor their forfeiture-theory analogues - provides an *explanation* of why people who behave in the specified manners fail to possess a right to life. It is in this sense, Rodin claims, that the accounts are circular.

Rodin lays out the circularity objection quite nicely, and he attempts to avoid it by appealing to the concept of fault. Perhaps proponents of forfeiture and specification theories of self-defense could indeed avoid circularity in the manner suggested by Rodin. In presenting and developing his answer to the circularity objection, however, Rodin opens the door to an additional area within which both forfeiture and specification theories are vulnerable to criticism.

Rodin's own position appears to be a combination of moral and factual specification. He insists on the relevance of fault - which is a amoral concept. Yet references to fault alone would incompletely specify the conditions that lead to forfeiture of the right to life. Rodin's view therefore seems to imply that "the specification would . . . need to be completed with a large and probably open-ended number of" factual criteria. His insistence on the relevance of fault simply adds a moral criterion to this open-ended list. Note, moreover, that the resulting principle only provides necessary conditions for possessing the right to life. Hence, while the principle could be used to determine when people lack the right to life, it couldn't be used as a basis for inferring that someone possesses this right. Yet principles of this latter sort are essential for reasoning to conclusions about individual rights.

A problem of central importance to inquiries into the nature of rights is that of determining the logical form of general principles affirming the existence of

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<sup>14</sup> *Ibidem*, p. 72.

rights. Making this determination is essential to providing adequate analyses of situations in which rights conflict, and in which they are permissibly infringed. As has just been pointed out, forfeiture theories don't generate these principles. They do, however, generate principles that evidently have the form of universalized conditionals specifying conditions necessary for the possession of specific rights. Now, a forfeiture theorist might claim that a complete list of the conditions necessary for the possession of rights constitutes a condition that is sufficient. As Rodin himself notes, however, this list is "probably open-ended." And an open-ended sufficient condition for the possession of a right is of little use when attempting to infer that some individual possesses that right.

The point here isn't that forfeiture theorists must provide complete lists of the conditions necessary for people to possess specific rights. It is rather that they must reconcile their position on the existence of these necessary conditions with a plausible view of the logical form and behavior of principles that validate conclusions about the possession of rights by individuals.<sup>15</sup>

#### 4. WARS ARE FOUGHT BY ...

In addition to espousing a (quasi-) Hohfeldian account of rights and a forfeiture theory of self-defense, Rodin operates with an assumption that is accepted with some frequency in discussions of the ethics of war. According to the "duality thesis" as this assumption will be referred to here, there are only two possible approaches to justifying defensive warfare: either by appealing to the rights of participants to perform individual defensive actions, or by attributing rights of self-defense to nations (states, political communities). The duality thesis presumably has the (typically unstated) corollary that the defensive actions of defensive wars are performed either by people individually or by nations. Together, the duality

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<sup>15</sup> Thus, consider the principle that people have a right of self-defense. Presumably, the truth of this principle can function as some sort of basis on which to conclude that a particular person has a right to defend herself in a specific situation.

Suppose now that the principle is interpreted to mean that, given any  $x$  and any  $y$ , if  $x$ 's doing  $y$  is an act of self-defense, then  $x$  has a right to do  $y$ . Then inferences from the principle to conclusions about the rights of particular individuals are deductive.

Suppose instead that the principle is interpreted to mean that people have a *prima facie* (presumptive, defeasible) right of self-defense. Then there are no conditions that are either necessary or sufficient for the possession of the right by individuals; and inferences from the principle to conclusions about the rights of particular individuals aren't deductive.

While forfeiture accounts are compatible with the first interpretation of the logical form and behavior of principles affirming the existence of rights, this interpretation generates contradictions in situations in which rights conflict. And forfeiture theories are incompatible with the second interpretation.

thesis and its corollary create serious difficulties for anyone wishing to explain the justifiability of defensive warfare.

Consider first the notion that, if a defensive war is justified, then this is because its individual participants are justifiably exercising their rights of self-defense. Rodin's discussion of the problems associated with this notion is both clear and thorough, and needn't be repeated here. One especially serious problem is worth mentioning, however. It arises partly from this widely accepted assumption: if  $x$  justifiably harms  $y$  in self-defense then  $x$ 's doing so is the only way that  $x$  can prevent  $y$  from violating  $x$ 's right to not be harmed. While situations satisfying this necessary condition can surely arise in defensive wars, they make up very small parts of the complex situations of which modern wars are composed. These individual justifications wouldn't add up to justifications of entire wars – not of actual wars, at any rate.

So what about the idea that defensive wars can be justified by appealing to rights of self-defense on the part of nations? Rodin believes – correctly – that this idea should be rejected, although his explanation of why this is so is extremely obscure. He also overlooks the most compelling reason for rejecting this idea, an explanation of which will require a brief excursion into metaphysics.

Conventional ontologies divide actually existing entities into the concrete and the abstract, and they treat these categories as exhaustive. As commonly used, the term "nation" refers to entities like China, Poland, and Peru. These entities are composed of various institutions, customs, and traditions – all of which are abstract. Moreover, nations are like sets, in that they contain people and other concrete objects as members; and they retain their identities as their contents vary over time. Hence, nations seem clearly to fall on the "abstract" side of the abstract/concrete divide. And abstract entities, by their very nature, cannot perform actions.

Statements that appear to ascribe actions to abstract entities are either false, or metaphorical, or are equivalent to statements about actions on the part of concrete entities that are somehow associated with the abstract entities. Hence, even if nations could literally possess rights of self-defense, they would be incapable of literally exercising their rights by fighting defensive wars.

Consequently, neither of the two approaches to justifying defensive warfare to which the duality thesis refers is viable. If, as the thesis assumes, these two approaches were exhaustive, then there would be very good reasons for agreeing with Rodin's conclusion regarding the possibility of justifying defensive warfare. Indeed, with these reasons in hand, Rodin wouldn't need his various claims about forfeiture and relationality. The duality thesis is false, however: the two possible

approaches to justifying defensive warfare to which it refers aren't exhaustive. What follows is the outline of an alternative approach – one that accommodates justifications of defensive warfare in terms of principles that also justify individual self-defense.

When examples are used in discussions of self-defense, they typically depict both defenders and attackers as acting by themselves. But, of course, people can perform actions – including defensive and aggressive actions - in concert with others. The latter will be referred to here as "joint actions," while "individual action" will refer to any action that a person performs by herself. It is important to recognize that the agents of joint actions are *people*. They are not abstract entities like groups or associations that contain people, or even concrete entities like mereological fusions that are composed of people, or any other entities that are distinct from people themselves.<sup>16</sup> If, for example, several doctors and nurses are participating in a heart transplant operation, then they are performing a joint action; and references to each of those doctors and nurses would be a complete list of the agents of that joint action.

Two features of joint actions are noteworthy in the present context. The first is that joint actions can have individual actions or other joint actions as components. If, in the preceding example, a doctor and nurse are operating a device that is essential to the surgery, then they are performing individual actions that are components of a joint action. And this joint action is in turn a component of the larger joint action that is being performed by all of the doctors and nurses. Note that, although this latter action can properly be described as a heart-transplant surgery, only some of its agents are performing actions that are, strictly speaking, surgical in nature.

The second noteworthy feature of joint actions is that they can possess moral properties such as being obligatory, prohibited, and permissible. They can also constitute the exercise of moral rights. When joint actions do possess moral properties, this is in virtue of their possessing the same nonmoral properties that determine the possession of moral properties by individual actions. If, for example, a joint action would harm innocent people, then it is (*prima facie*) morally prohibited.

Acting in concert requires joint agency, which in turn requires some commonality in the intentions, (purposes, plans, motives) with which the agents act.

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<sup>16</sup> Nothing that has been said here counts against the idea that fusions of people are capable of performing actions. There is no need to rely on the existence or possible agency on the part of fusions, however, since the idea that people perform joint actions is both simpler and evidently unproblematic.

Actions can be performed with multiple intentions, however, and the commonality of intentions that is present in joint actions doesn't mean that the agents of those actions act with identical intentions. Returning to our recent example, while every member of the surgical team is presumably acting with the intention of contributing to a successful transplant, one member might see success as helpful to his career, while another might act out of compassion for the patient's family. Diversity in the intentions with which joint actions are performed can also result from differences in the more specific intentions with which their component actions are performed.

People can obviously act jointly in self-defense, and such joint actions can be performed by soldiers in defending themselves against attacks by enemy soldiers. According to the corollary of the duality thesis, the defensive actions in defensive wars are performed either by people individually or by nations. This corollary can now be replaced by the proposition that defensive warfare is waged by people acting individually or jointly. As is the case with joint actions in general, joint defensive actions that are performed in wars have individual actions or other joint actions as components; and the nature of these components can vary widely. For example, each side of a battle can be a joint action, some components of which are skirmishes jointly fought by infantrymen, others of which are bombing runs carried out by members of the opposing air forces, and still others of which involve no fighting, but consist entirely in providing the fighters with medical supplies, ammunition, and so on.

References to joint actions can therefore reflect the complexities as well as the common purposes of battles in a manner that is impossible within the framework of the duality thesis. Battles can be joint acts of aggression even though some of their components aren't even acts of violence, much less individually aggressive. Similarly, components of battles that are joint acts of self-defense need not themselves be individually defensive. Those who are jointly fighting a defensive battle are justified in doing so under certain conditions, and these conditions are specified in principles that also justify individual defense.

Consider Rodin's principle, according to which a person *x* has a right to harm person *y* in self-defense if *y* forfeits his right to not be harmed by *x*. Rodin also claims that *y* forfeits his right to not be harmed by *x* only if *y* attacks *x*, and the harm inflicted by *x* is proportional to the harm that *y* would inflict on *x*, and *x* cannot avoid being harmed by *y* without harming *y*, and . . . These conditions can be satisfied by soldiers engaged in joint attacks, and by those who are jointly defending themselves against those attacks.

Like a number of other explanations of the right of self-defense, Rodin's incorporates a culpability condition that attackers must satisfy. Whether this condition is satisfied by those who are engaged in joint attacks depends on the nature of the common purposes in virtue of which the attacks manifest joint agency. One might wonder, however, whether the attackers in actual wars ever exhibit the kind of commonality of purpose that would justify defensive actions. For example, the Poles who fought against German invaders in 1939 were certainly waging a justified defensive war. Yet it is at least unclear whether the purposes with which the invaders acted rendered all of them culpable for their joint attack.

Responding to this concern requires attending to two distinctions. The first is between self-defense that is justified as a right, and self-defense that is justified as a permission. The second distinction is between culpable aggression, and wrongful but nonculpable aggression. Although one has a right of self-defense only against culpable attackers, one is permitted to defend oneself against a wrongful attack even if the attacker isn't culpable.<sup>17</sup> Hence, a joint defensive action against a joint attack can be justified if the attack is wrongful, even if the attackers aren't jointly culpable for their attack.

## 5. CONCLUDING REMARKS

The preceding discussion of joint actions points towards a solution to problems that arise from the duality thesis and its corollary. However, actually arriving at a solution to these problems would require certain additions to what has been proposed here. For example, an explanation would be needed of how the moral properties of joint actions are related to the moral properties of their components; and more needs to be said about the nature of joint agency. In view of the limited goals of this paper, no attempt will be made here to flesh out the proposed account in these ways.

Having indicated how to eliminate a certain obstacle to explaining the justifiability of defensive warfare, the next step would consist in applying an acceptable theory of self-defense to actions performed in wars. Doing so would require identifying conditions (if there are any) under which defensive actions that harm innocent bystanders are justified. The problem of innocent bystanders is the most vexing of all those associated with the morality of defensive actions of all sorts, but presents especially serious difficulties in the context of defensive warfare.

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<sup>17</sup> This position is developed in Montague [2000]. For a discussion of how blameworthiness and wrongdoing are related, see Montague [2004].

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