

In defense of no one

Joseph Bowen¹  | James Goodrich²

¹School of Philosophy, Religion, and
History of Science, University of Leeds,
Leeds, UK

²Department of Philosophy, University of
Wisconsin, Madison, Wisconsin, USA

Correspondence:

James Goodrich, University of Wisconsin,
Madison, Wisconsin, USA.

Email: jpgoodrich@wisc.edu

Abstract

According to the *Wrong Restriction*, we are liable to defensive harm only when we threaten to wrong others. While attractive on a first pass, we argue that plausible philosophical claims make the Wrong Restriction difficult to accept. In its place, we offer the *Impermissibility Restriction*, according to which one is liable to defensive harm only if one would act impermissibly, all things considered. Accepting the Impermissibility Restriction in place of the Wrong Restriction has significant implications for the ethics of self-defense.

We can harm others without wronging them. We do not, for example, wrong culpable aggressors whom we permissibly harm in self-defense. And this is because, in the philosophical parlance *du jour*, culpable aggressors are “liable” to the harm we cause them. A theory of liability to defensive harm must thus explain why and when we nonconsensually come to lack our normal rights against harm, and therefore why and when we are not wronged by defensive harm.^{1,2}

Given the special moral importance of our rights against being harmed, what could be so morally important that it can cause us to lose such a right? Many agree to the following:

¹ We remain agnostic about whether rights-forfeiture is a necessary condition of liability. For discussion, see Frowe (2014, p. 3), McMahan (2009, p. 10), and Tadros (2016, pp. 113–114).

² It is generally held that to wrong someone, one must infringe or violate their rights. Yet, some hold you can wrong someone without infringing their rights, when you infringe a duty owed to them that does not correlate with a right (Cruft, 2013, p. 209). Our claims are formulated in terms of wrongings rather than rights, so as to be agnostic on whether directed duties, whose infringement wrongs parties, necessarily correlate with claim-rights. Nevertheless, we invoke claims about right infringements because those are the paradigm instances of wrongings within the ethics of self-defense.

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The Wrong Restriction: *S* is liable to defensive harm in virtue of ϕ -ing only if *S*'s ϕ -ing would wrong someone.³

The Wrong Restriction is *prima facie* plausible. The protection of *other peoples' rights* is just the sort of thing with sufficient moral importance to explain why others might lose their rights. Nevertheless, we think the Wrong Restriction is false.

We think that plausible moral views make it difficult to accept the Wrong Restriction. Most generally, morality requires more of us than not violating others' rights. And failures to comply with these requirements can be important enough to ground liability to defensive harm. Our favourite example, and the focus of Section 1, is of "identity-affecting" actions—actions that affect who will and will not exist. However, our argument does not depend on such cases, for there are other things that are of importance beyond the protection of others' rights. Cases of identity-affecting actions simply point us towards a general recipe for cooking up claims that are in tension with the Wrong Restriction. We introduce additional examples in Section 2, and show how one can find further tensions with the Wrong Restriction among one's philosophical beliefs. In Section 3, we argue that the Wrong Restriction is less well supported than it first appears. It is thus the Wrong Restriction that must go.

Our argument relies on an alternative to the Wrong Restriction:

The Impermissibility Restriction: *S* is liable to defensive harm in virtue of ϕ -ing only if *S*'s ϕ -ing would be all-things-considered impermissible.⁴

Section 4 discusses the implications of accepting the Impermissibility Restriction in lieu of the Wrong Restriction for several debates within the ethics of self-defense. These implications concern other questions about the triggering and grounding conditions of liability, as well as whether necessity is internal or external to liability, whether justification defeats liability, and even whether a certain kind of argument found elsewhere in moral philosophy succeeds.

³ Adherents to Rights Enforcement View, on which liability is about the enforcement of others' rights, are committed to this. (We return to this in Section 3.) For example, Thomson (1991, p. 302) says: "In short, I suggest that what makes it permissible for you to kill the two drivers and the fat man is the fact that they will otherwise violate your rights that they not kill you, and therefore lack rights that you not kill them." Similar views, such as Jonathan Quong's Moral Status View, are also committed to the Wrong Restriction. For example, Quong (2020, pp. 10, 173) says: "What matters for liability, I argue, is whether you treat others at as if they lack rights against the harms that you might impose" and "To establish a person's liability to defensive force, we must ask whether that person threatens the moral rights of others by ϕ -ing." Others, such as Frowe (2014), are also committed: "When the threat she poses is unjust—when it threatens harm to a person who has a right not to suffer that harm—such moral responsibility renders the agent liable to defensive force," and "only those who are morally responsible for an unjust threat can be liable to defensive harm" (pp. 4, 10). Notable exceptions include Victor Tadros and Jeff McMahan (though cf. note 5 on McMahan). In Section 4, we discuss how deeply these authors are committed to the Wrong Restriction: for Thomson and Quong, the Wrong Restriction is indispensable; for Frowe and McMahan, the Wrong Restriction can be abandoned but their views will require substantive revision (and, ultimately, might be unworkable). And there are implications for Tadros's view as well.

⁴ We understand "impermissibility" in fact-relative terms, that is, what it would be impermissible for an agent who had full information. See Parfit (2011, pp. 150–164). However, nothing hinges on this, because we also understand "wrongs" in fact-relative terms. If one prefers to understand "impermissibility" and "wrongs" in evidence-relative or belief-relative terms, that is fine. Further, since the Impermissibility Restriction is only a necessary condition, it is compatible with thinking the harm one causes must be reasonably foreseeable, even if we have a fact-relative view of permissibility (as endorsed by McMahan (2005, p. 395)).

1 | DEFENDING THE FUTURE

In this section, we show that the Wrong Restriction is incompatible with two plausible claims about an example. Whatever one thinks about our example, these two claims suggest a recipe for constructing other potential counterexamples to the Wrong Restriction, which we draw out in Section 2. Our general recipe relies on there being *some* morally important factors in addition to the protection of others' rights which might warrant liability to defensive harm. This helps us complete our argument for our preferred view, the Impermissibility Restriction in Section 3.

1.1 | An identity-affecting case

An act is "identity-affecting" when it affects who will come into existence. To illustrate, suppose that a fertility doctor must choose whether to help one of two couples to have a child. Depending on which couple the fertility doctor helps, a different child will exist. Whichever option the fertility doctor chooses is thus an identity-affecting act. To keep things simple in what follows, we consider only "pure" identity-affecting acts. That is, we consider acts whose potential wrong-making features consist only in the effects on those who may or may not come into existence.

Impermissible identity-affecting acts seem as if they can ground liability.⁵ Consider:

Two Policies. Alma can *Deplete* or *Conserve*. If Alma *Depletes*, the quality of life over the next century will be slightly higher than it would be if she were instead to *Conserve*. However, the quality of life in several centuries will be much lower than it would be if Alma were to *Conserve*, though these lives will still be worth living. Those who would exist several centuries later in each outcome would be different people. Suppose Alma is obligated all-things-considered to *Conserve* but chooses to *Deplete*.⁶

It seems that Alma would not be wronged if we harmed her (to some degree) to prevent her from *Depleting* or to prevent her choice to *Deplete* from resulting in resource depletion. This suggests that she is liable to be harmed. (More on this below.) So we should accept:

Liability (Non-Identity): Alma is liable to harm in virtue of *Depleting*.

But we think the following claim is also true:

No Wrong (Non-Identity): *Depleting* wrongs no one.

It is unclear to us what the grounds would be for claiming that Alma has wronged someone. After all, no one has been harmed according to any plausible theory of harm. (More on this below.)

⁵ In a case different from ours, McMahan (2021, p. 233) claims it is intuitive that individuals can be liable to defensive harm for performing impermissible identity-affecting actions. McMahan thus tacitly rejects the Wrong Restriction. However, he does not defend his intuitive judgment in detail. Nor does he mention the Wrong Restriction and tease out the implications of rejecting it for his or other views of liability. In Sections 3 and 4, we tease out various implications for McMahan's other views about self-defense.

⁶ Adapted from Parfit (1984, pp. 361–362). Parfit does not assume, as we have, that Depletion is impermissible. We come to those who reject this assumption in due course.

Moreover, No Wrong (Non-Identity) is restricted in scope. We think some identity-affecting actions *may* wrong others. No Wrong (Non-Identity) implies only that *Two Policies* is a case in which no one is wronged.

The problem should be clear: The Wrong Restriction, Liability (Non-Identity), and No Wrong (Non-Identity) are inconsistent. If one must wrong someone to be liable and Alma does not wrong anyone, then Alma cannot be liable. But it seems to us obvious that Alma is liable to *some* harm. We have three plausible claims before us, but one must go. Which should it be?

1.2 | Liability

Why think Alma is liable? Why not reject Liability (Non-Identity)?

One might object that we are confusing Alma's being *liable* to be harmed with its merely being permissible to harm Alma. There is at least one widely endorsed kind of justification for nonconsensually harming others other than liability justifications: lesser-evil justifications (Frowe, 2018; Rodin, 2011). Lesser-evil justifications are a familiar part of nonconsequentialist ethics. For example, most hold that if the only way you can prevent a trolley from killing five people is to divert it onto a side-track, on which one person is trapped, it is permissible to do so. (If one disagrees, increase the number of people on the main track.) The person on the side-track is still wronged by being harmed, for she is not liable to be harmed. It is simply that her right is permissibly infringed in this case—overridden for the sake of saving the five.⁷ Perhaps we would be permitted to harm Alma on such grounds. Thus, even if Liability (Non-Identity) is false, it could still be permissible to harm Alma because doing so would bring about a much greater amount of well-being impersonally construed.⁸ Therefore, perhaps we have confused a lesser-evil justification with Alma's being liable.

We doubt that we are confused. If Alma is not liable to be harmed, this means we wrong her by harming her in *Two Policies*. This might be permissible if enough value is at stake, of course. But it remains counterintuitive that we would wrong her in the first place. Alma is morally culpable for performing an action that most of us would agree is seriously morally wrong! Why is that not enough to make harming her to avoid *Depletion* not wrong her?

Moreover, many philosophers accept a connection between liability and compensation.⁹ And this makes good sense. We still wrong others when we harm them with a lesser-evil justification. This wronging calls for redress. But if someone is liable to be harmed, they are not wronged when that harm is inflicted on them, and thus there is no wrong to redress. On the more trivial end, the nonliable whom we harm might be owed an explanation, apology, or other restitutive reactive attitudes that reflect that they have been wronged. Less trivially, significant material compensation might be owed, perhaps from the actor or perhaps from the beneficiaries of the permissible wronging. But would Alma be owed compensation if we harmed her (within reason) to prevent the effects of *Depletion*? Surely not.

⁷ Some do not like talk of permissibly infringing rights (Walen, 2019). Yet, such authors are going to want to distinguish what we have called lesser-evil justifications from liability justifications, and that is all our discussion relies on.

⁸ We use "impersonal value" inclusively to refer to impersonal or wide person-affecting value. For discussion, see Parfit (2017).

⁹ See, for example: Frowe (2014, pp. 115–116), Quong (2020, p. 19), and Tadros (2016, pp. 117–118). Cf. Quong's earlier view (2012, p. 45).

Here is a different objection to the claim that our justification for harming Alma is a lesser-evil justification rather than a liability justification. Suppose in *Two Policies* you could harm Alma to prevent her from *Depleting*, or you could harm Bea to an equal extent, which will startle Alma and prevent her from *Depleting*. If you merely had a lesser-evil justification for harming Alma, there would be no reason to harm Alma rather than Bea. But surely you ought to harm Alma rather than Bea. Furthermore, if you could harm Alma to a slightly lesser extent than Bea, it would not be morally permissible to harm Bea rather than Alma, since we must do the least amount of harm when acting on a lesser-evil justification. But that is even more implausible—again, you ought to harm Alma rather than Bea.

Perhaps one might reply that you ought to harm Alma rather than Bea because you would merely be *eliminating* the threat Alma poses, whereas you would be harming Bea *opportunisticall*y. And when other things are equal, it is harder to justify harming someone opportunistically than it is to justify harming someone eliminatively (Quinn, 1989). Yet, we can amend the case to eliminate this confound: Suppose you can throw a bomb that will prevent the consequences of Alma's *Depleting*. You can aim your throw so that the bomb either harms Alma or Bea as a side effect of preventing the bad effects. In this case, you cause Alma or Bea harm in the same way, and yet still it seems you should harm Alma.

This all suggests that it is a liability justification, and not a lesser-evil justification, that makes it permissible to harm Alma to prevent her from *Depleting*. We have appealed only to widely endorsed tests for distinguishing liability and lesser-evil justifications. So, unless our intuitions about whether we owe Alma compensation are idiosyncratic, we have good reason to accept Liability (Non-Identity).

1.3 | No Wrong

Why think Alma does not wrong anyone? Why not reject No Wrong (Non-Identity)?

Since Derek Parfit first discussed morally impermissible identity-affecting actions, there have been many attempts to reject claims like No Wrong (Non-Identity). It is fair to say that no such attempt has earned wide endorsement. This is unsurprising, we think, because cases like *Two Policies* just do not involve the features that typically constitute rights violations.

For example, most philosophers who endorse moral rights believe we have at least some moral rights against being harmed. If to be harmed is to be made worse-off than one otherwise would have been, or worse-off than one was at an earlier moment, then no one seems to be harmed in *Two Policies*. After all, if Alma chooses to *Deplete*, those who would exist were she to *Conserve* will not exist. And it is difficult to see how nonexistence could be worse for someone than existing. Some argue that harm can also occur when someone is put in an intrinsically bad state, even if their life is all-things-considered good and they would not otherwise have existed (Harman, 2004; Shiffrin, 1999; Woollard, 2012). This might be a perfectly reasonable sense of harm. And there may be moral rights that protect individuals against suffering such harm, though we are skeptical. Even so, *Two Policies* need not involve any such harm. It could be that those lives, if resources were depleted, would not contain much intrinsic good. But this need not imply that those lives involve some intrinsically bad states. Such harms thus need not be involved in this case. Perhaps some other conception of harm could be constructed. But at this stage, the burden of proof is on the defender of a rights-against-harm approach to rejecting No Wrong to offer a compelling account. Without

one, No Wrong is on firm enough ground that its rejection cannot be insisted upon simply because it would be nice to accept the Wrong Restriction.¹⁰

Perhaps there are wrongs that do not involve harm. The problem is many non-welfarist wrongs seem an ill-fit for the task at hand. For example, one may wrong others by disrespecting them. However, it is difficult to see how causing someone to exist with a life worth living when they otherwise would not exist constitutes an overriding of their autonomy or inviolability of the sort that constitutes disrespect. There may be other strategies still, of course.¹¹ But all rely on highly controversial commitments. Those who wish to avail themselves of such commitments are within their rights to do so. But they cannot insist that others follow them.

Perhaps one might think the preceding considerations in favour of No Wrong suggest that our stipulation is false: Alma does not act impermissibly in *Two Policies*.¹² If that is right, then Liability will be false even if either the Wrong Restriction or our Impermissibility Restriction is true. We have little to say in response, for it strikes us as perhaps the most revisionary and incredible way of resolving concerns raised by identity-affecting actions in moral philosophy. But this is not the place to solve the nonidentity problem. Our use of cases involving identity-affecting actions does rely on (i) it being impermissible to *Deplete* (ii) for reasons which are either impersonal or agent-focused in character. We think most will agree with (i) and (ii). And in the next section, we present further cases that put pressure on the Wrong Restriction. For most readers, we suspect there will be at least one convincing case. So, if you are worried about our argument for No Wrong because it involves an identity-affecting case, recall that it is only our favourite example. Yours may be different. The basic point is that things other than rights matter, and could ground liability. Different views are going to think different things matter. This explains why there might be disagreement about what example is best.

2 | OTHER CASES

In the previous section, we set out the inconsistency between the Wrong Restriction, Liability (Non-Identity), and No Wrong (Non-Identity). We argued that Liability (Non-Identity) and No Wrong (Non-Identity) are well supported, which puts pressure on the Wrong Restriction. In the next section, we argue that this pressure, in addition to the lack of independent justification for the Wrong Restriction, gives us good reason to reject the Wrong Restriction. In this section, we introduce a few further cases that put pressure on the Wrong Restriction. Our aim in doing so is to show that identity-affecting cases are not the only ones which make trouble for the Wrong Restriction and to illustrate our general recipe for generating counterexamples.

In *Two Policies*, Alma would act impermissibly if she depletes, yet she would not wrong anyone. There are other cases in which people would act impermissibly but would not wrong anyone. If we think people could be liable to some degree of harm in those cases, they will present a problem for the Wrong Restriction. This suggests a general recipe for cooking up problem cases for the

¹⁰ For further problems with rejecting No Wrong, see Boonin (2014).

¹¹ For example, Sufficiantarians and Scanlonian Contractualists offer proposals for identifying wrongs in cases like *Two Policies* (Finneron-Burns, 2024; Kumar, 2003). However, these views face objections of their own (Boonin 2019; Gibb 2016; Martin 2024; McMahan 2021). More importantly, they cannot offer a principled basis for rejecting No Wrong (Non-Identity) to the many of us who are attracted to neither Sufficiantarianism nor Scanlonian Contractualism.

¹² Boonin (2014) defends this claim on other grounds. For a powerful objection to Boonin's defense of this view, see Risberg (2023).

Wrong Restriction: We look for cases in which an individual seems liable to be harmed to be prevented from acting impermissibly, or to prevent the bad effects of her acting wrongly, but in which she wrongs no one. We are likely to find such cases wherever we think that an act can be seriously morally impermissible, but this fact is not best explained by the act's wronging anyone. This points to a variety of potential problem cases for the Wrong Restriction. We suspect most people will be able to construct at least one problem case for the Wrong Restriction based on their own philosophical commitments. We consider two problem cases in depth in this section, before sketching some further problem cases.

2.1 | Consent to harm

Here is our second favourite case in which someone is liable, but has wronged no one:

Consent to Harm. Consenter, an empathic former sufferer of migraines, consents to being killed by Killer as a side effect of preventing Bystander from suffering 10 hours of a migraine. Consenter would otherwise continue to have a life that is well worth living. Killer is about to kill Consenter. Enforcer can prevent Killer from killing Consenter.

Intuitively, there is some harm Enforcer could impose on Killer to prevent him from killing Consenter that would not wrong Killer. This suggests that:

Liability (Consent): Killer is liable in virtue of his choice to kill Consenter.

Liability (Consent) poses a problem for the Wrong Restriction if the following claim is also true:

No Wrong (Consent): Killer's choice to kill Consenter wrongs no one.

We think No Wrong (Consent) is true because we think that Consenter's consent to Killer's killing him is valid. And because it is valid, Consenter has waived his right against being harmed by Killer. Therefore, Consenter has no right to be violated or infringed, and thus is not wronged.

But why believe that Consenter's consent is valid? Here are three reasons.

First, a dialectical reason: We can explain why it is impermissible for Killer to kill Consenter even if Consenter's consent is valid. If we are right about this, there is less pressure to think that Consenter's consent is invalid. We need not think that his consent is invalid to explain why Killer has acted impermissibly. Here is why it is impermissible for Killer to kill Consenter even if Consenter's consent is valid: By consenting, Consenter has removed Killer's rights-based reason not to kill him. But Consenter's consenting does not *give* Killer reason to kill Consenter. Now, Killer does have a weak reason to kill Consenter—by so doing, he will spare Bystander 10 hours of a migraine. However, by stipulation, Consenter's life contains *much* value. We think that the impersonal value of Consenter's life outweighs the weak reason Killer has to kill Consenter, and thus makes it impermissible for Killer to kill Consenter.

Second, there are cases in which it is clear that someone can validly consent to be killed, and it is not obvious to us what morally relevant difference there is between these cases and *Consent to Harm*. For example, suppose a trolley is headed toward one person, whom it will paralyze if the trolley is not diverted onto a side track. Bystander is trapped on the side-track. If the trolley

is diverted, it will kill Bystander. Bystander consents to Diverter turning the trolley towards her to save the person on the main track from being paralyzed. We think both that Diverter would act permissibly and not wrong Bystander by diverting the trolley toward her in this case. Notice, this seems true even though (we stipulate) Bystander's death would be impersonally worse than someone else's being paralyzed. Bystander's consent might be imprudent, but we do not think that undermines its validity. But if Bystander *can* validly consent to Diverter's killing her in this case, why cannot Consenter consent in *Consent to Harm*? After all, everything that normally seems procedurally relevant to the validity of consent seems equal between the cases. Consenter and Bystander (we can suppose) have full information, reason similarly, are not acting under duress, are not under the influence of mind-altering substances, have valuable alternative options, and so on. What is more, the death of both Consenter and Bystander would make things impersonally worse.¹³ It is thus not obvious what grounds there would be for thinking consent is valid in one case, but not the other. The most natural thought, therefore, is that Consenter's consent is valid.

One might object that our explanation of the impermissibility of Killer's killing Consenter undermines our defense of No Wrong (Consent).¹⁴ Can we not just appeal to the very facts that make Killer's action impermissible to explain why Consenter's consent is invalid? We think not. First, our account of why Killer's killing Consenter is impermissible implies that there is some part of others' reasons vis-à-vis harming us that we are incapable of controlling: While Consenter can control the claims they have on Killer, Consenter cannot control Killer's reasons of impersonal beneficence. Such reasons belong to no one and thus do not seem to ground a wronging. Second, this objection is implausible if Killer is liable to some harm, but not lethal harm. This is the basis of our third reason to think that Consenter's Consent is valid, which we turn to now.

Our third reason to think Consenter's consent is valid is that we believe Killer is not liable to lethal harm. Suppose that Enforcer can prevent Consenter from being killed *only* by killing Killer.¹⁵ We believe that it would be impermissible for Enforcer to kill Killer. But if Consenter's consent was invalid, Consenter retains his right not to be killed by Killer. Killer would thus violate Consenter's right not to be killed. Usually, people make themselves liable to be killed when they would otherwise violate others' rights not to be killed. But if that is right, then Killer would be liable to lethal harm in *Consent to Harm*. And as we just said, we do not find that plausible. In response, we think the most natural step to reject in the preceding reasoning is that Consenter's consent is invalid.

Obviously, we think Killer is liable to *some* harm (that is the point of this subsection!). This is because, as we said above, we think Killer would act impermissibly by killing Consenter. However, because we are claiming Consenter's consent is valid, Killer would not wrong Consenter. And other things being equal, it is more seriously wrong to kill someone who retains their right against being killed than it is to kill someone who lacks such a right. Therefore, Killer's impermissible action is less wrong than more typical cases of impermissible killing. The fact that Killer's killing is less wrong can explain why Killer is not liable to lethal harm when others who kill impermissibly are liable.

¹³ One might be tempted to think that the difference in impersonal value between a migraine and paralysis makes for a difference of substantive rationality between Consenter and Bystander. But we are worried this is awfully close to begging the question. It is unclear why a difference in magnitude of impersonal value should make for a difference in the validity of consent if what is being consented to in each case is impersonally worse.

¹⁴ Thanks to Gerald Lang.

¹⁵ Thanks to Helen Frowe for raising this in a different context.

Here is an objection to our third reason to think that Consenter's consent is valid: We can fill out the details of *Consent to Harm* so that Killer does not seem very culpable. We could imagine Killer checking that Consenter is of sound mind, that Consenter really understands what he is consenting to, that he gives Consenter a cooling-off period before killing Consenter, and so on. Next, suppose that one holds that it is a necessary condition on liability to be harmed that one is *culpable* for threatening to wrong others. It is thus Killer's lack of culpability that explains why he is not liable to be killed (and not, as we have suggested, that Consenter's consent was valid).

In reply, we do not think that culpability (by itself) is a *necessary* condition of liability. And we are not in the minority for thinking this. But a full defense of this claim is beyond the scope of this paper.¹⁶ Let us note that if culpability is a necessary condition on liability, then people harming others under duress could never be liable, nor could people acting on the basis of non-culpable ignorance, nor would people who permissibly take risks which end up harming others. One might be willing to accept all these verdicts, but we do not think many will. This suggests that one cannot resist our third argument for the validity of Consenter's consent without taking on highly controversial commitments.¹⁷

We have now given our three reasons to think that Consenter's consent is valid. Together, they provide strong support for No Wrong (Consent). But is this support conclusive? Not quite.¹⁸ We need an additional premise: Consenter lacks any unwaivable right that is (1) relevant to defensive liability and (2) would be violated or infringed if Killer killed Consenter. We think this premise is very plausible. However, if Consenter possesses such a right, then even if his consent is valid and *some* of his rights are thereby waived, Consenter would still be wronged by Killer killing him. So why doubt that Consenter has such an unwaivable right?

This question is difficult to answer in the abstract, because we are unsure what, exactly, the content of this unwaivable right would be.¹⁹ And we would like to see some evidence for thinking such

¹⁶ The claim that culpability is necessary for liability is defended by Ferzan (2012); however, Ferzan does not argue positively for this claim, but instead argues against other views of liability and then responds to objections to her claim. For arguments against the claim that culpability is necessary for liability, see: McMahan (2005) and Tadros (2016). Finally, it is worth noting that many defenders of the Wrong Restriction do not think that culpability is a necessary condition on liability: Frowe (2014), Quong (2020), and Thomson (1991).

¹⁷ Here is another objection: If Enforcer intervened, he would kill Killer who does not want to be killed. Were Enforcer not to intervene, he would allow Consenter to be killed, who is fine with being killed for the sake of preventing Bystander 10 hours of a migraine. So, one might press, Enforcer's killing Killer is impermissible because it is disproportionate. Our reply: Consenter's willingness to be killed to prevent Bystander suffering 10 hours of a migraine does not mean that his being killed is not bad for him. In fact, we think such a subjectivist view of the badness of being killed is very implausible. After all, it would imply it is better for Consenter to be killed than for Bystander to suffer 10 hours of a migraine. And that is hard to accept. Since Consenter's being killed would be very bad for him, it is not obvious killing Killer to prevent Consenter being killed would be disproportionate on these suggested grounds. For discussion, see Bradley (2007), Lin (2017), and Kelley (2021).

¹⁸ Thanks to an anonymous referee for suggesting we consider this kind of move.

¹⁹ An anonymous referee suggests that Consenter may possess an unwaivable right to have the value of their life respected. We are unsure of the details of such a right. First, we believe most would feel similarly to *Consent to Harm* as they do to a variant in which Killer would impose paralysis or some other intense, but nonlethal harm on Consenter. If that is correct, then the defender of an unwaivable "value of life" right would need to explain why intense, but nonlethal harms also fall under this right. Second, if (dis)respect is essentially an attitude, then it is not the sort of thing that could ground liability in this case. To be liable, one must be responsible for something that can be prevented. If Killer already has a disrespectful attitude, Consenter's right has already been violated, and thus cannot be prevented from being violated. This is similar to how someone who violated someone else's rights a year ago are not liable to be defensively harmed here and now. If the right to have the value of one's life respected is not a right to someone else's attitude, or similarly to due consideration in others' practical reasoning, we are unsure what exactly it is.

a right exists.²⁰ Even then, at least three further features of such a right would need explaining and we are skeptical that any account would succeed. First, why would Consenter have control over whether Killer wrongs him by violating his right against being killed (after all, we are assuming he can waive that right), but not have control over whether Killer wrongs him by violating this other right? Second, why would Diverter also not wrong Bystander by violating this unwaivable right in our trolley variant of *Consent to Harm*, when Bystander consents to being killed to save someone being paralyzed on the main track? After all, surely Bystander would also hold this unwaivable right. Third, since this unwaivable right is not a right against being harmed per se, why should defenders of the Wrong Restriction take violating or infringing it to be a necessary condition on liability to defensive harm? Things are clearer on this front when the Wrong Restriction is concerned with liable parties that have wronged others by violating their rights against being harmed.²¹

This concludes our defense of No Wrong (Consent). If No Wrong (Consent) is true and Liability (Consent) is intuitively plausible, this creates a problem for the Wrong Restriction. If to be liable one needs to wrong someone and Killer wrongs no one, then it follows that Killer cannot be liable. But we think Killer is liable to *some* harm. If, as we think, No Wrong (Consent) and Liability (Consent) are quite plausible, this puts pressure on the Wrong Restriction. We recognize that people's intuitions about cases like *Consent to Harm* vary. But there is a more general and potentially forceful point underlying our discussion—if the Wrong Restriction is correct, then when someone validly consents to a self-regarding action and other directed duties do not apply, the consent-receiver could never be liable to be prevented from performing the action consented to. That strikes us as an implausibly strong claim.

2.2 | Kantianism for people, utilitarianism for animals

We have now offered two cases in which it seems that someone is liable to be harmed and yet they wrong no one. Here is a third. Assume for the purpose of argument that Nozick (1974) is correct that a system of rights best expresses how we should treat human persons, but that utilitarianism best accounts for how we ought to treat nonhuman animals (pp. 35–42).²²

If this Nozickean assumption is correct, then animals can still suffer harm. And we should not harm them in many cases. For example, Sid should not torture his cat for fun. This would be deeply wrong according to utilitarianism. However, given the Nozickean assumption, Sid does not wrong his cat by torturing it for fun. Thus,

No Wrong (Animals): Sid's choice to torture his cat wrongs no one.

²⁰ Perhaps it seems Consenter has a special entitlement to resent Killer if Killer attempted to kill Consenter. If that is right, and special entitlements to resent others are grounded in wrongs to the possessor of that entitlement, Consenter is wronged despite the validity of his consent to be harmed. We do not share this intuition. It seems to us that if Consenter is an empathetic former migraine sufferer who validly consents, it is bizarre to think Consenter has a special entitlement to resent Killer.

²¹ We note, further, that the best examples of liability-inducing rights violations that do not involve rights against harm seem waivable. For example, in cases of so-called “pure” or harmless rapes (if they indeed are harmless), a right against bodily trespass is violated. The violator of such a right will plausibly be liable to defensive harm. However, this sort of right seems waivable. After all, if it was not waivable, then all sex would be rape.

²² Thanks to Helen Frowe for suggesting this case to us.

Nonetheless, it seems to us that Sid is liable to some harm to prevent him from torturing his cat. Surely, one would not wrong him by stomping vigorously on his foot if that would stop him from torturing his cat. So:

Liability (Animals): Sid is liable in virtue of his choice to torture his cat.

As before, if No Wrong (Animals) and Liability (Animals) are true, that would entail that the Wrong Restriction is false. And this raises a question: What is more plausible: the conjunction of No Wrong (Animals) and Liability (Animals) or the Wrong Restriction?

To be clear: This is not our favourite case. We in fact doubt that No Wrong (Animals) is true, because we doubt the Nozickean view that all animals lack rights not to be harmed. However, many disagree with us about this. (The two of us disagree about whether *all* animals, of whom it could be wrong to cause to suffer, hold rights against being made to suffer.) And those who do, we believe, have some reason to doubt the Wrong Restriction to the extent that they find No Wrong (Animals) and Liability (Animals) plausible.

Moreover, this version of the problem illustrates an important point about the kinds of beliefs that make trouble for the Wrong Restriction. When discussing *Consent to Harm*, we appealed to impersonal value to explain why Killer's choice to kill was impermissible. We also conceded that the best way to explain why Alma's choice to *Deplete* is impermissible *might* require an appeal to impersonal value. So, one might wonder whether all our examples require an appeal to impersonal value. The case of Sid shows that impersonal value is not required to generate puzzling cases for the Wrong Restriction. After all, a Nozickean might accept a narrow person-affecting version of utilitarianism for animals. According to this view, an outcome can be better or worse only if it is better or worse for some welfare subject.²³ To adapt the famous slogan: We should make cats happy, not make happy cats. Sid's cat would certainly be made worse-off. This makes Sid's act impermissible. And it does not require the claim, for example, that it is good to create more happy cats. It is thus not an essential feature of our problem cases for the Wrong Restriction that they require an appeal to impersonal value.

2.3 | The recipe for other cases

To recap our recipe for cooking up problem cases for the Wrong Restriction, we begin by looking for cases in which an individual seems liable but has wronged no one. We are likely to find such cases wherever we think that an act can be seriously morally impermissible, but this fact is not best explained by the act's wronging anyone. Our two favourite examples, *Two Policies* and *Consent to Harm*, might require an appeal to impersonal value, but such an appeal is not necessary given some views about morality, such as Nozick's view about animals.

By using other philosophical commitments as ingredients, our recipe allows us to cook up other problem cases for the Wrong Restriction. Here are some possible examples:

The Grand Canyon: Alice chooses to destroy the Grand Canyon.²⁴

²³ This condition actually appears to be satisfied for *Consent to Harm*: It is better for Consenter if he is prevented from being killed by Killer; it is just its being better for him is not protected by a right.

²⁴ This is a favourite example of Scanlon (1998, pp. 218–223).

Extinction: Carol chooses to cause the extinction of humanity.²⁵

Non-Identity Injustice: Daphne chooses to create a human population on a distant planet who will only exist if they will live in conditions of grave distributive inequality.²⁶

Many will think that at least one of these choices causes a massive loss of impersonal value or exemplifies a terrible vice and is thus impermissible. If one accepts this for at least one of the cases, it is a short step to imagine no one is wronged. And we predict that there is *some* amount of harm one will think we are intuitively permitted to impose on Alice, Beth, Carol, or Daphne to prevent their acts. Moreover, we predict that, if one accepts the preceding, one will find it intuitive that the relevant agent is not wronged by the harm permissibly imposed upon them. And if that is right, we have further problem cases for the Wrong Restriction.

We suspect most people will be able to construct at least one problem case for the Wrong Restriction based on their own philosophical commitments. We thus think most of us should reconsider our commitment to the Wrong Restriction. We consider the motivations for holding onto the Wrong Restriction in light of our problem cases in the next section.²⁷ Once again, it is up for debate what other things beyond the protection of people's rights are morally important and important enough to ground liability. This is why we have offered a few potential ways of going. What we find difficult to believe is that there is *nothing* to morality beyond rights.

3 | THE WRONG RESTRICTION

Why believe that the Wrong Restriction is false? Here is one argument. If Liability and No Wrong are both true of at least one case, then the Wrong Restriction is false. Most of us should accept that Liability and No Wrong are true of at least one case. (*Two Policies* is our favourite.) Therefore, most of us should accept that the Wrong Restriction is false.

This argument is fine so far as it goes, but it ignores a crucial point: Might there be good reasons to accept the Wrong Restriction? The many who have endorsed it have presumably done so for a reason after all. To claim victory over the Wrong Restriction at this stage is thus premature. If we had offered reasons to accept Liability and the Wrong Restriction first, we might have then inferred that Alma *must* have wronged someone! So, just as we should think this inference is ill supported, we should think that the argument of the previous paragraph is ill supported. What, then, must we add to the argument?

²⁵ See Parfit (1984, pp. 252–253).

²⁶ See Temkin (1996) for an argument that egalitarian justice is of impersonal rather than person-affecting value. Thanks to Andrew Williams for suggesting this case.

²⁷ Some problem cases for the Wrong Restriction fall outside the scope of our recipe. For example, some argue that we can be liable in virtue of our relationships to other wrongdoers. We may be liable, for example, when we are complicit in the wrongdoing of others. While such cases count against the letter of the Wrong Restriction, they do not necessarily count against its spirit. We could think, for example, that an individual is only liable to bear harm in complicity cases if that individual is complicit in wronging someone. So, wronging is still part of the picture. Our cases, therefore, more clearly count against the Wrong Restriction.

Recall the justification for the Wrong Restriction we offered in our introductory remarks. To be liable is, among other things, to nonconsensually lack a right one would normally have. Rights are the moral bulwark of our vital interests against the actions of others. So, to lack a right one would normally have is serious. What could explain why this happens? What could matter so much that it magically makes the bulwark disappear? The fact that the liable party has wronged someone by violating their rights seems like the right kind of answer. It appeals to something appropriately serious: someone else's rights. Thus, it is natural to think that it takes a right to defeat a right.

This is where the Impermissibility Restriction comes in. Recall:

The Impermissibility Restriction: *S* is liable to defensive harm in virtue of φ -ing only if *S*'s φ -ing is all-things-considered impermissible.

We propose it as an alternative to the Wrong Restriction because we believe that: (1) in many cases, the two restrictions deliver the same judgments about who is liable; (2) in those cases in which they differ, the Impermissibility Restriction implies the more plausible judgments; (3) the Impermissibility Restriction is compatible with Liability, No Wrong, and their justifications; and, finally, (4) the Impermissibility Restriction does acceptably well in justifying the intuitions that account for the appeal of the Wrong Restriction. (1) and (3) are readily apparent. (2) will seem correct about at least some cases if you agree with us about *Two Policies* or any example generated by our general recipe book. A bit more will be said about (2) when we discuss (4). (4) is the least obvious point and most crucial given our understanding of the dialectic.

Claim (4) is supported by the fact that *Depletion* is morally impermissible. The weighty moral reasons that make *Depletion* impermissible, which Alma is morally responsible for disregarding, seem to disable Alma's right not to be harmed. Moreover, the view that it is the weightiness of reasons itself that provides an answer to how someone can lose a right can also explain why the Wrong Restriction seemed like a plausible answer in the first place. Wronging someone by violating their rights *just is* something we usually have weighty reasons not to do. The Impermissibility Restriction simply accepts that there are weighty moral reasons *other than* the reasons grounded in our moral rights.

Given this way of putting things, one might worry that the Impermissibility Restriction over-generates liability. After all, surely there are actions which are morally impermissible, but only barely so. Perhaps this is because such actions are disfavoured by the balance of our moral reasons, but the moral reasons for and against the action are weak or the reasons disavowing the action barely win out. Could someone really be liable to defensive harm in such a case?

In reply, we must remember that the Impermissibility Restriction is only a necessary condition on defensive liability. It is not a sufficient condition. Thus, the Impermissibility Restriction does not entail that in any case in which someone would otherwise act all-things-considered impermissibly, they are liable to preventive harm. Of course, this response is incomplete until we say more about other conditions of defensive liability that might rule out liability in these trivial cases. But the important point is that one need not rely on a restriction as strong as the Wrong Restriction. For example, we might suppose that there is a threshold for how weighty our reasons have to be in absolute or comparative terms for a person to become liable; this would rule out cases where our reasons are weak in absolute terms or only barely win out against competing reasons in comparative terms.

But we think we need not even reach for bespoke conditions on liability; there already exists another necessary condition of liability that helps out with these cases. But before we say what that is, note that this should not be surprising. It should not be surprising because just as we might

act impermissibly in somewhat trivial ways, and thus intuitively should not be liable, we might wrong others in somewhat trivial ways. For example, we each have rights that others not flick us in the ear, or steal our pens. Others wrong us by flicking us in the ear or stealing our pens. Do we want to say they are liable in these cases? The Wrong Restriction does not rule out others being liable when they would wrong us in these cases.

Here is the existing feature of defensive liability that helps out with these problem cases (problem cases for both the Wrong Restriction and the Impermissibility Restriction): proportionality is internal to liability. What this means is that one is liable to some harm only if the infliction of that harm would be proportionate in relation to one's moral transgression. Killing Jack to prevent him from kicking Jill's shin, for example, would not be a proportionate response, even if it was the only response available to Jill. Thus, while Jack may be liable to have both his shins kicked if that is necessary to defend Jill, he is not liable to be killed.

What this means is that we must not confuse nonliability to a severe harm and nonliability to a less severe harm. And if that is right, then the Impermissibility Restriction does not obviously over-generate cases of liability. It could be, for example, that *all* impermissible actions (for which one was responsible) ground liability to *some* harm. In most low-stakes cases, that harm will be small, perhaps the harm of making someone feel a little guilty about their actions. And in some such cases, the harm that they were liable to may be so small that harming the liable person to only that small extent is not an available option. The liable party may, for example, take any attempt to guilt them so seriously that it is far more harmful than what they are liable to. This would be *narrowly* disproportionate. And in other cases, we may have other reasons not to harm the liable party in those ways. Perhaps contributing to a culture in which we guilt each other constantly for minor moral transgressions leads to more harm to which no one is liable. This would be a case in which an individual is liable to be guilted, but in which making them feel guilty would be disproportionate in the wide sense. It is thus not obvious that the Impermissibility Restriction's wider scope entails anything absurd about liability.

Before moving on, we should mention another possible justification for the Wrong Restriction. The fundamental nature of liability is disputed. According to McMahan (2005) and others, "we may think of liability to defensive action as a matter of preventive justice, or justice in the distribution of harm *ex ante*" (p. 395).²⁸ Call this the *Distributive Justice View* of liability. Some object to the Distributive Justice View because it is overly inclusive, due to its failure to emphasize rights. Representing this tradition, Burri (2022) writes that "liability to defensive harm is a distinctly localised affair, whereas determinations of distributive justice are sensitive to wider societal considerations. This incongruity is removed once we regard liability as a matter of rights enforcement" (p. 540).²⁹ Call this the *Rights Enforcement View* of liability. It seems to support the Wrong Restriction, for if liability is all about enforcing people's rights, then when there are no rights to enforce—as in *Two Policies*—no one can be liable. The Rights Enforcement view thus seems wedded to the Wrong Restriction. Insofar as the Rights Enforcement View is independently motivated, we thus have principled grounds for rejecting either Liability (Non-Identity) or No Wrong (Non-Identity) instead of the Wrong Restriction.

The putative advantage for the Rights Enforcement View is that it can illuminate the sense in which liability involves "a localized comparison between persons in a situation of conflict" for which "values outside that relationship are irrelevant" (Rodin, 2011, p. 99).³⁰ The point of saying

²⁸ For further defense, see: Frowe (2014) and Gordon-Solmon (2018).

²⁹ Quong (2020, pp. 7–8, 26) raises a similar objection.

³⁰ See also McMahan (2005, pp. 389–394).

that liability is “local” to a situation is to rule out certain sort of factors from the grounds of liability. One such background factor is inequalities for which the beneficiary is not responsible and could do little to prevent. The better-off person simply does not seem liable in virtue of such facts alone.

Two points. First, it is not clear why harming Alma to prevent *Depletion* would involve a non-local moral factor. We are not appealing to some past or future action or to background social injustices when we claim that her impermissible action right here and now makes her liable. In other words, it is not clear why the Impermissibility Restriction violates the “locality” constraint and thus prompts these authors to introduce the Wrong Restriction in order to satisfy the constraint. Second, one of us has elsewhere argued that rights do not obviously explain why or in what sense liability is “local” to a situation, unless we assume a substantive conception of rights that makes them essentially “local” in just the right way.³¹ But if that is correct, we are assuming what needs to be explained—that the Rights Enforcement View does a better job than other views at explaining *why* liability involves a “local” relation.

This concludes our basic case against the Wrong Restriction. Our case involved two steps. The first, which we considered in Sections 1 and 2, showed that the Wrong Restriction is in tension with a range of plausible philosophical commitments about defensive liability. The second step, which we considered in this section, was to argue that the Wrong Restriction did not have an advantage over the Impermissibility Restriction on explanatory grounds. The Impermissibility Restriction is thus at least as well supported and is consistent with a wider range of philosophical commitments than the Wrong Restriction. Therefore, those of us who have such commitments should reject the Wrong Restriction in favour of the Impermissibility Restriction.

4 | IMPLICATIONS

One might think that little depends on whether we are right about the Wrong Restriction. If the Wrong Restriction and Impermissibility Restriction come apart only in the kinds of cases we have been discussing, how could that make much of a difference? In this section, we show our thesis makes a difference to at least five important issues in the ethics of self-defense.

4.1 | The grounds of liability

Recall our discussion of the Rights Enforcement View of liability. Roughly, this view holds that facts about who is liable to defensive harm are grounded in facts about who is an appropriate target of a rights enforcement (Burri, 2022; Quong, 2020; Thomson, 1991). Insofar as our argument makes trouble for the Wrong Restriction, it also seems to make trouble for the Rights Enforcement View. After all, in our various cases there is no right to enforce. Of course, by itself this does not entail that we should join McMahan and others in thinking that facts about liability are grounded in facts about the just or fair distribution of harm *ex ante*. Instead, it suggests that those who wish to resist the Distributive Justice View of liability need to distance themselves from views like the Rights Enforcement View that entail the Wrong Restriction.

The Distributive Justice View, however, faces worries as well. First, if we are right about *Two Policies*, it will not be the just distribution of *harm* that matters for liability, for no one is harmed in that case. Instead, it will be the just distribution of wellbeing. The same is true, *mutatis mutandis*,

³¹ See Goodrich (n.d.).

of proportionality and necessity. However, this will require that we devise ways of comparing the fairness of harming particular individuals (like Alma) with impersonal distributions of welfare. This is at least *prima facie* puzzling. Second, McMahan motivates the Distributive Justice View by claiming defensive liability is the *ex ante* analogue of *ex post* liability to compensate. However, this analogy breaks down in cases like *Two Policies*. It is usually thought that compensation is owed directly to someone who has been wronged. But to whom would Alma owe compensation in *Two Policies* were she to successfully deplete resources? After all, she has not wronged anyone. Therefore, if there is something like a Wrong Restriction for *ex post* liability to compensate, then McMahan's analogy seems ill-suited to illuminate the nature of the grounds of liability to defensive harm. To be clear: We do not think the worries that arise from the Impermissibility Restriction present as strong of a problem for the Distributive Justice View of liability as the Rights Enforcement View. However, there are clearly details that the defender of the Distributive Justice View must work out.

4.2 | The duty view of liability

Victor Tadros has defended:

Duty View: *S*'s being liable to defensive harm, *h*, consists in her being under an enforceable duty to bear *h* (Tadros, 2011, 2012).

One might worry that the Duty View is not very illuminating unless we know what distinguishes an *enforceable* from a *unenforceable* duty. Why are some duties of one type, and others not? If we are correct about the Wrong Restriction, a *prima facie* plausible way of answering this question is off the table: Enforceable duties are those duties that correlate with rights.³² This answer is ruled out if we are right that one can be liable without violating anyone's rights. Now, obviously this does not sink the Duty View. But it does mean that those attracted to this view must find some other account of what makes a duty enforceable, or else leave the distinction between enforceable and unenforceable duties unexplained.³³

4.3 | Justification defeats liability

We can have lesser-evil justifications for wronging others. For example, if many people will be killed by a runaway trolley, Harold may be justified in switching the trolley onto a side-track where it will kill one person instead. Harold wrongs the person on the side-track. But if he would thereby save enough lives, Harold would be justified in doing so. Is he liable? Many think not (Frowe, 2018, p. 476; McMahan, 2005, p. 399; Quong, 2016, p. 826). Adherence to the Wrong Restriction has led to

³² This is a popular claim in the literature (Cruft, 2019, pp. 80–83; Wenar, 2013, p. 214).

³³ Some think one can be liable without having *done* anything; in fact, that is part of the appeal of the Duty View (Tadros, 2012, 2016). Our view states a necessary condition of making oneself liable by *acting* in certain ways. To accommodate the broader view, we could say *S* is liable to defensive harm, *h*, only if *S* would act all-things-considered impermissibly were she to fail to bear harm *h* for the defensive end. The question then becomes (1) ought we to prefer our broader view over the Impermissibility View as stated in the text and, if so, (2) ought we go with our broader view rather than the Duty View, thus dispensing with the notion of enforceable duties?

complex explanations of why justified wrongdoing does not ground liability. But the Impermissibility View offers a straightforward explanation: Harold's act is permissible because it is justified. Agents like Harold thus are not exceptions. They do not meet a necessary condition of liability in the first place.³⁴

4.4 | Internalism versus externalism about necessity

According to the Necessity Constraint on defensive harming, roughly, defensive harm is permissible only if it is the least harmful of the agent's means of defending herself. There are many ways things get more complicated, but they need not concern us here (McMahan, 2016; Oberman, 2020). What concerns us is the debate between those who are *Internalists* and those who are *Externalists* about necessity.³⁵ According to Internalism, one is liable to harms only if they satisfy the Necessity Constraint. According to Externalism, the Necessity Constraint constrains permissible self-defense, but is not itself a constraint on who is liable. To illustrate, consider:

Stand Your Ground: Threatener will culpably kill Victim unless Victim takes some preventive action. She has two options, both of which she knows will be effective. She can (1) retreat from the confrontation without risk or cost and alert the police, who will then be able to subdue Threatener without harming him, or (2) stand her ground and kill Threatener in self-defense.

According to Internalism, Threatener is not liable to defensive harm, because Victim can retreat. According to Externalism, Threatener *is* liable to be killed by Victim, since it is proportionate and is sufficiently likely to be effective, but it would be impermissible for Victim to kill Threatener nonetheless. Which view should we prefer?

Here is an objection to Internalism: Internalism implies that if Victim stood her ground, she would wrong Threatener. This is because she would impose harm on Threatener to which he was not liable. This, in turn, would imply that Victim makes herself liable to harm. Threatener would thus not wrong Victim by using necessary and proportionate means. This implication will strike many as absurd, and is thus a reason to reject Internalism.

However, if the Impermissibility Restriction is correct, then Externalism seems to face the very same objection. Why? Victim acts all-things-considered impermissibly if she stands her ground. According to the Impermissibility View, the fact that someone acts impermissibly plays a role in grounding liability to defensive harm. Of course, again it is important to stress that the Impermissibility Restriction is only a necessary condition on defensive liability. It is open to the Externalist to exploit this fact. They may point to some further condition that must be added to block the implication that Victim may be liable to defensive harm. But note that, if they come up with some such condition, the Internalist may be able to avail themselves of the same or a similar condition. It thus seems to us that the Impermissibility Restriction robs an otherwise powerful objection to Internalism of much of its force.

³⁴ This is not to say that we think the one person who will be killed must do nothing. For example, our view is consistent with Quong's (2016, p. 827) suggestion that the one person who will be killed may kill Harold due to an agent-relative prerogative to prioritize herself, provided it does not prevent the saving of the five.

³⁵ For internalism, see McMahan (2016). For Externalism, see Frowe (2014, pp. 88–120).

Moreover, we think the Impermissibility View might help move the debate forward by refocusing it. We can now ask, “Why would someone who acts impermissibly in harming someone else *not* be liable to the harm necessary to prevent them inflicting that impermissible harm?” Here’s a natural suggestion: Perhaps we are permitted to prevent a victim unnecessarily harming a threatener if and when the cost is low enough to the victim, and we can also prevent the threatener harming the victim.

4.5 | The militancy objection

The four implications discussed so far concern foundational debates for theories of liability to defensive harm. We close this section by showing that the Impermissibility Restriction has at least one implication beyond the ethics of self-defense: It can defang an objection to the claim that non-human animals have weighty moral rights.

Consider:

Zookeeper: Nour is a 17-year-old working a summer job at the Toledo Zoo. To reduce the costs of caring for the zoo’s perfectly healthy pigs, half will be killed and fed to the other half. Nour is tasked with killing the pigs tonight, but on the same night animal activists sneak into the zoo to save the pigs from slaughter. If Nour sees the activists, she will call the police and the activists’ purpose will be foiled (that is, half the animals will be killed). The activists know this. The only way the activists can save the animals is by surprising Nour and slitting her throat (Hereth, 2021, p. 4056).

Most find it intuitive that Nour is *not* liable to be killed. However, some argue that this is difficult to explain if the healthy pigs have moral rights against being killed. After all, if they have such rights, then they are wronged by being killed. And wronging is what grounds liability. The best explanation for why Nour is not liable to be killed is thus thought to be that the pigs do not have rights of comparable weight to the rights of humans, that is to say, the sort of rights that if threatened could trigger the liability of humans. This is the Militancy Objection.

If we are correct that the Wrong Restriction must go, the Militancy Objection loses its force. According to the Impermissibility Restriction, Nour can be liable even if nonhuman animals lack rights. If, first, Nour satisfies the other necessary conditions of liability (e.g., we might think liable parties need to be morally responsible for contributing to an unjust threat to someone) and, second, her act is seriously morally wrong, this suggests she may be liable. If we accept the Nozickean line on utilitarianism for animals and accept that pigs can have a high level of well-being, it will be seriously wrong for Nour to kill the pigs. Our point is not that this is the intuitive result. It is rather that, insofar as this is counterintuitive, similar results are likely if the Impermissibility Restriction is true and we wish to countenance harms to animals in moral theory at all. Therefore, to the degree that this is a compelling argument against animal rights, it should be a compelling argument against giving animals serious moral consideration at all. But this is beyond the pale. Torturing your cat for fun is seriously morally wrong. So, we think it is better to give up on the Militancy Objection.

5 | CONCLUSION

If we are right, then many of us should reject the Wrong Restriction. It conflicts with many of our other moral beliefs, and we lacked a sufficient justification for accepting it in the first place. Most fundamentally, it conflicts with the simple, intuitive thought that there is more to morality of grave importance than other people's rights. Moreover, without the Wrong Restriction, many debates over the ethics of self-defense look different. This suggests the Wrong Restriction was far from an innocuous assumption.

But what if we are wrong? What if we should not reject the Wrong Restriction? In that case, many of us will have to give up our beliefs about what it takes to wrong others and/or which agents are liable. This also suggests that the Wrong Restriction is far from innocuous. For most of us, it comes with serious costs.

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ORCID

Joseph Bowen  <https://orcid.org/0000-0002-5328-6036>

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