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Moral Obstacles: An Alternative to the Doctrine of Double Effect*

Gerhard Øverland

The constraint against harming people in order to save yourself and others seems stronger than the constraint against harming people as a consequence of saving yourself and others. The reduced constraint against acting in one type of case is often justified with reference to the intentions of the agent or to the fact that she does not use the people she harms as a means. In this article I offer a victim-centered account. I argue that the circumstances in which the people to be harmed find themselves are significant in distinguishing morally between two instances of harming.

Consider the following two scenarios. In the first you can defend yourself and nine others by killing an unjust aggressor, but you would thereby also kill an innocent nonthreatening person standing nearby. In the second, you need to kill an innocent nonthreatening person in order to make the aggressor's attack ineffective. Assuming that all the deaths caused are instantaneous, painless, and otherwise equally bad, it seems permissible to defend yourself and the others in the first scenario but not in the second.

A standard way of justifying the difference between cases of these types is to appeal to the doctrine of double effect. According to Judith Jarvis Thomson, the doctrine of double effect states that "we may do

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Ethics 124 (April 2014): 481–506

what will cause a bad outcome in order to cause a good outcome if and only if (I) the good is in appropriate proportion to the bad and (II) we do not intend the bad outcome as our means to the good outcome."[1] It is thought to be easier to justify bad outcomes when the killing of innocent people is not intended but is instead an unavoidable and proportionate side effect and when one does not intend to use the people who are killed as a means.[2]

The doctrine of double effect is puzzling in many ways.[3] For example, it is not clear why the constraint against killing innocent people should be affected by one's not intending their death, or by one's not using them as a means, when their deaths are a foreseeable side effect of one's actions. Why should what goes on in the mind of the agent be relevant for determining whether killing a person is permissible? And why is it worse to use a person's death as a means than to simply disregard it?

Quite a few contemporary moral philosophers have argued that the doctrine of double effect is mistaken. Some have been willing to accept the implications of rejecting the doctrine without trying to provide an alternative rationale for the intuitions which it has traditionally been used to support.[4] Others have attempted to provide an alternative way of supporting those intuitions. For instance, Warren Quinn, and more recently Jonathan Quong, have both suggested that we should distinguish between two types of harmful agency. In one type of harmful agency the agent is "deliberately involving [the victims] in something in order to

1. Judith Jarvis Thomson, "Self-Defense," *Philosophy and Public Affairs* 20 (1991): 283–310, 292. The doctrine of double effect is often appealed to in the ethics of war. According to Michael Walzer, e.g., it is never permissible to kill civilians with intention (supreme emergencies apart), but it might be permissible to kill them as a foreseen side effect. He understands the doctrine of double effect as a way of reconciling the absolute prohibition against attacking civilians with the legitimate conduct of military activity (see Michael Walzer, *Just and Unjust Wars* [New York: Basic, 1977], 151–53).

2. See Jeff McMahan, "Intention, Permissibility, Terrorism, and War," *Philosophical Perspectives* 23 (2009): 345–72, 345.

3. For criticisms of the doctrine, see Jonathan Bennett, *The Act Itself* (Oxford: Clarendon, 1996); John Harris, "The Doctrine of Triple Effect and Why a Rational Agent Need Not Intend the Means to His End," pt. 2, "The Moral Difference between Throwing a Trolley at a Person and Throwing a Person at a Trolley," *Aristotelian Society* 74 (2000): 41–57; Frances Kamm, "Justifications for Killing Noncombatants in War," *Midwest Studies in Philosophy* 24 (2000): 650–92, "The Doctrine of Triple Effect and Why a Rational Agent Need Not Intend the Means to His End," pt. 1, *Aristotelian Society* 74 (2000): 21–39, and "Toward the Essence of Nonconsequentialism," in *Fact and Value, Essays on Ethics and Metaphysics for Judith Jarvis Thomson*, ed. A. Byrne, R. Stalnaker, and R. Wedgwood (Cambridge, MA: MIT Press, 2001), 155–81; T. M. Scanlon, *Moral Dimensions: Permissibility, Meaning, Blame* (Cambridge, MA: Harvard University Press, 2008); Judith Jarvis Thomson, "The Trolley Problem," in *Rights, Restitution, and Risk* (Cambridge, MA: Harvard University Press, 1986), 94–116, "Self-Defense," and "Physician-Assisted Suicide: Two Moral Arguments," *Ethics* 109 (1999): 497–518.

4. Examples are Bennett, *The Act Itself*; and Harris, "Doctrine of Triple Effect."

further his purpose precisely by way of their being so involved." In the other type of harmful agency nothing is in that way intended. When we harm or kill the person in the first way our agency is "direct," whereas in the second, our agency is "indirect." Quinn argues that this difference in agency explains why it is easier to justify certain instances of harming or killing people.[5]

The views I have just described provide what might be called *agent-centered* explanations of the moral phenomena at issue. That is, their explanations of why it is sometimes permissible to harm others concentrate on facts about the agent doing the harm, such as her intentions, the means that she uses, or her type of agency more broadly. In this article I provide an alternative approach to explaining the same moral phenomena. I develop what might be called a *victim-centered* account.[6] That is, I focus on facts about the prospective victims of harm that can lessen the constraint against harming them.

I introduce a class of people that I call *moral obstacles*. Moral obstacles are people who come to be in circumstances—no matter how innocently and nonresponsibly—that will result in their being harmed by the defending party's defensive actions or the defending party being harmed by the initial threat if she abstains from using her defensive means in order not to harm them (means she otherwise could have used without harming anyone) or everyone being harmed in some measure when the defending party partly restrains her defensive actions. I argue that being a moral obstacle is typically relevant to determining whether they can be harmed permissibly because their presence typically *gives rise to cost*.

When I say that people give rise to cost by their presence, I mean to say that some people will be harmed as a consequence of their presence. Without trying to justify the widely accepted constraint against harming innocent bystanders, I am seeking to explain why the constraint against harming innocent people who give rise to cost should be reduced relative to it. The crux of my proposal is that fairness dictates that those under threat should not be the only ones required to bear cost as a conse-

5. See Warren Quinn, "Actions, Intentions, and Consequences: The Doctrine of Double Effect," *Philosophy and Public Affairs* 18 (1989): 334–51, 346–47; and Jonathan Quong, "Killing in Self-Defense," *Ethics* 119 (2009): 507–37. Quong endorses Quinn's view that the stringency of one's right not to be killed depends on the mode of agency that is exercised in the killing. According to Quong, one "has more stringent rights not to be killed in certain ways (e.g., when one's body or property is used as a means) than in other ways (when one's body or property is not used as a means)" ("Killing in Self-Defense," 521). For different attempts to provide an alternative defense of these intuitions, see, e.g., Frances Kamm, "Toward the Essence of Nonconsequentialist Constraints on Harming," in *Intricate Ethics* (Oxford: Oxford University Press, 2007); and Scanlon, *Moral Dimensions*.

6. For an independently developed account in the same spirit as mine, see Alec Walen, "Transcending the Means Principle," *Law and Philosophy* (forthcoming).

quence of the presence of moral obstacles; the moral obstacles themselves should also bear some cost.

The article proceeds as follows: Section I introduces the idea of moral obstacles and explores how it explains the reduced constraint against certain instances of harming others. Section II investigates the duties of moral obstacles to help protect people under threat. Section III compares moral obstacles with other instances of giving rise to cost like physical obstructors and passive threats and further discusses the rationale for thinking that giving rise to cost is morally relevant. Section IV addresses some objections and guards against certain misunderstandings. The last section concludes.

I. MORAL OBSTACLES

Consider this case:

> Flamethrower: Tom impermissibly attacks Mary and some people standing around her with lethal means. The only way Mary can save herself and those around her is by killing Tom with a flamethrower. Behind Tom is a house with people in it. If Mary uses her flamethrower she will kill the people in the house.[7]

That Mary has a flamethrower is good news for her; she now has the means to protect herself and those around her by killing Tom. The bad news is that she is unable to direct the flames precisely at Tom; she will have to burn down the house behind him. Would it be morally permissible for Mary to use the flamethrower?

This would depend on the number of people in the house and on the number of people who, standing along with Mary, are under threat from Tom. If the number of people in the house were similar to the number outside it, it seems impermissible to proceed. There must be some greater good achieved by the killing for it to become permissible.[8]

For the sake of argument, suppose it is permissible to kill one person in addition to Tom when this is necessary to save ten others. Conse-

7. The house could be a community house, or something of that sort, to avoid the issue of private property rights. It could also be of little value. Moreover, the situation could take place in a war, so that Mary's flamethrower had a plausible explanation. Tom would then be considered an unjust soldier, Mary a just soldier, and those together with Mary and the people in the house would be innocent civilians.

8. Some people contest this. Thomas Hurka has suggested that partiality can justify killing a higher number than the number you save, provided that those you protect stand in some special relationship to you. I find this implausible but cannot argue against it here. See Thomas Hurka, "Proportionality in the Morality of War," *Philosophy and Public Affairs* 33 (2005): 34–66, 60–62.

quently, if Mary stands outside with nineteen others, while there are only two people in the house Mary would be permitted to proceed (I am supposing that Tom, who is fully culpable, does not count in this proportionality consideration). By contrast, in other cases it seems impermissible to kill one person in order to save ten people and perhaps not even to save many hundreds of people. Here is such a case:

> Rifle: Tom impermissibly attacks Mary and some people standing around her with lethal means. There is a house to the left of Tom. On the roof of this building is a person—Frank. Mary has a rifle, with which she can shoot Frank. Frank would fall and make Tom's attack ineffective. Since Tom is hiding behind some trees, Mary cannot shoot him with the rifle.

It seems impermissible to shoot and kill Frank even if Mary would save herself and the nineteen others. If these views are correct, there must be something that weakens the constraint against killing people in cases such as Flamethrower. The question is what, exactly, this could be.

It is widely accepted that *bystanders* have strong protection against being harmed for the benefit of others. The constraint against harming bystanders is not easily overridden. Thomson suggests this description of a bystander: "A person is a bystander relative to a particular situation. Suppose Y is in no way causally involved in X's being at risk of death. That seems intuitively to be a sufficient condition for Y's being a bystander to the situation that consists in X's being at risk of death."[9] On this account, and in line with Thomson's understanding of what it means to be causally involved, Frank in Rifle and all the people behind Tom in Flamethrower are bystanders. None of them is in any way causally involved in Mary's being at risk of death.

But it is a mistake to treat those behind Tom in Flamethrower as bystanders. People can be causally related to a harmful outcome in at least two ways. Relative to a situation in which some people are at risk of harm, people can be causally related to the creation and existence of the situation in which the victims' become at risk of harm. This applies to Tom and corresponds to Thomson's account. But people may also be causally related to our ability to save those under risk of harm. These are, for instance, people who either obstruct our attempts to save those under threat or are simply so placed that we cannot proceed without harming them. Those behind Tom in Flamethrower are causally related to a harmful outcome because they are placed such that Mary cannot proceed without harming them.

9. Thomson, "Self-Defense," 298.

Thomson's concept of a bystander therefore fails to capture an important difference between two types of people who are not causally involved in creating a threat. The presence of people such as Frank only presents an option for Mary to save herself and the others, while the people behind Tom in Flamethrower affect in some sense negatively Mary's defense (to be explained).

I am not claiming, of course, that those behind Tom in Flamethrower are a threat to Mary and the others or that they are harming these people. If Mary decides not to use her flamethrower, it is Tom who harms Mary and the others. Yet, the presence of those in the house is nevertheless causally related to the outcome in a significant way. Their presence makes it the case that, whichever way Mary acts, some innocent person will be harmed. Depending on what Mary does, either she and the people around her will be harmed or the people in the house will, or both groups will be harmed in some measure. I call people who are causally related to harm in this way *moral obstacles*. Tentatively, we can define a moral obstacle as follows:

> *Moral Obstacle*: When an innocent person A is under threat of harm and has a defensive action available to her (independent of the presence of other people), another innocent person B, who poses no threat or physical hindrance, is a moral obstacle if his presence has the consequence that either (i) B will be harmed (if A performs her available defensive action) or (ii) A will be harmed (if A completely restrains her defensive action), or (iii) both A and B will be harmed in some measure (if A partially restrains her defensive action).

Moral obstacles typically give rise to cost by their presence, and when they do I argue that this is morally significant (I explore its moral significance below and in Sec. III and say more about instances in which moral obstacles do not give rise to cost in Sec. IV). When people give rise to cost by their presence, some people will be harmed as a consequence. For instance, simply by virtue of being in the house behind Tom, these people give rise to cost. Their presence makes it the case that either Mary will be harmed or they will be harmed.

The cost in question could be broadly conceived as negative utility measured in welfare units on the part of the various people involved. However, since I restrict the exploration in this article to situations in which an agent needs to defend herself against a threat, I will only talk about cost in terms of injuries to the body, death, or simply as harm. How the cost will materialize depends on what the defending party does. If Mary proceeds with her defensive option in Flamethrower, the two people behind Tom will be killed. If she does not, Mary and the others will be killed. The magnitude of the cost will also vary; either two or twenty

innocent people will be killed. The cost a moral obstacle gives rise to may therefore materialize as harm to the obstacle himself. Yet, the cost I refer to with the phrase 'giving rise to cost' is not that cost or any other particular cost that comes about as the result of Mary's choice.

I will be talking about the presence of moral obstacles, since this is how moral obstacles typically give rise to cost. What is important, however, is not that they are in a certain location but that their circumstances have the consequence that either the defending party or the moral obstacles or both the defending party and the moral obstacles will be harmed in some measure. Moreover, while giving rise to certain probabilities of cost could transform a person into a moral obstacle, I will not discuss such cases here.

I limit the discussion in four ways. First, I discuss only the presence of moral obstacles and not other types of circumstances in which people become obstacles. Second, I conceive the cost involved in terms of injuries to the body and death. Third, I explore cases in which the different outcomes are certain. Fourth, I do not discuss moral obstacles that are causally related to the creation of the situation whereby A comes under threat.

On my view, moral obstacles are not bystanders. Others may hold that they are bystanders—presumably because they are not threats. However, it would on that account be true that some but not all bystanders are also moral obstacles, and this would make a difference to the costs that could permissibly be imposed on them. What is important, however, is not how we describe these distinct classes of people but that we differentiate morally between those who give rise to cost and those who do not.

Respecting the constraint against harming Frank might be called a cost that Mary needs to bear. Is Frank, then, giving rise to cost by his presence and therefore morally equivalent to a moral obstacle? No. He is not in the way of Mary's otherwise harmless defensive means (Tom's death apart). That Mary and the others are harmed if Mary complies with the constraint against harming Frank is not a cost Frank's presence gives rise to. Frank's presence only provides Mary with an option to save herself and the others. But this option does, however, give rise to a particular type of 'cost'—a cost Mary would not need to bear in his absence. This is the cost of having to do the right thing, such as refraining from harming people when doing so is impermissible. Bystanders may give rise to this sort of cost. So while there is a sense in which they give rise to cost—Mary would have to resist the temptation to save herself and the other nineteen by killing Frank—this is not the type of cost I am concerned with.[10]

10. I am grateful to Jeff McMahan for pressing me on this point.

To better understand how the constraint against harming moral obstacles is reduced, consider a situation involving only single individuals and the imposition of harm short of death:

> Mo: Tom impermissibly attacks Mary with lethal means. The only way she can save herself is by killing him with certain available means. Behind Tom is a person, Mo. If Mary uses her available means she will harm Mo and impose a certain cost on him.

I have assumed that it is impermissible to kill one moral obstacle to save only one person. Hence, it would be impermissible to proceed if Mary would need to kill Mo to survive. Suppose therefore that harming Mo in a way that falls short of killing him would suffice to save Mary's life.

To facilitate exposition I assume that we can represent the relevant type of harm in cost-units. The numbers are for illustrative purpose only. Suppose that Mary is under threat of being seriously harmed; let us say that she will suffer harm equivalent to one hundred cost-units (perhaps death). Assume also that it is permissible for her to impose up to one cost-unit (perhaps the equivalent of losing a finger) on a person who is truly a bystander, in order to save her life.

Since Mo's presence gives rise to cost it seems permissible to impose some of that cost on him. One hundred cost-units are at stake for Mary. Perhaps it would be permissible to impose something like ten units (the loss of a limb) on the moral obstacle if that would save Mary from the threat. While ten units is significantly higher than the amount of cost units it is permissible to impose on innocent bystanders (one unit), it seems fair that Mo bear the additional cost of nine units because his presence has the consequence that Mary will be killed or Mo will lose a limb.

It would be unfair to Mary if Mo were to be treated as a bystander. Not much cost could be imposed on Mo in that case, and it would be very difficult for Mary to defend herself within that limit. This would be unfair because, although Mo is not a threat to Mary and not physically obstructing her defensive action, his presence has the consequence that Mary or Mo has to be harmed. That Mo's presence gives rise to cost weakens the constraint against harming him (although it does not nullify it), and Mary would accordingly be allowed to act even if doing so imposes more cost on Mo than she would be permitted to impose on a bystander.

Mary may not impose all the cost on Mo. After all, Mary is the one who is under the initial threat, and it seems plausible that she should be required to bear the most cost.[11] One reason for this is that Mary needs

11. But if both have been exposed to random bad luck, why shouldn't they split the cost 50:50 if they could? I will not try to argue why the person under threat should bear more cost since my interest is to make it plausible that moral obstacles should bear addi-

to overcome the presumption against doing harm to others. Another is that although a moral obstacle gives rise to cost, the person under threat gives rise to cost as well. If she had not been under attack, there would be no need for her to use defensive force and no need to harm moral obstacles. Mary would therefore be required to bear cost in this situation as well. For instance, she could be required to abstain from defending herself if it would imply imposing more than ten units on Mo.[12]

Why is it morally relevant that a person is a moral obstacle? I think it has to do with the fact that the presence of a moral obstacle may give rise to cost. While being a moral obstacle is defined in noncounterfactual terms, the moral significance of being a moral obstacle—that his presence gives rise to cost—is best understood counterfactually. Expressing the idea of giving rise to cost as a counterfactual will, however, generate well-known problems of determining the appropriate baseline. A simple expression of the counterfactual idea is as follows: a moral obstacle gives rise to cost by virtue of his presence in a given situation, relative to a situation in which he is absent. Or more precisely, a moral obstacle gives rise to cost which would not arise were he not in the circumstances he is in. This would imply that we could compare a situation like Mo with a similar situation, controlling for the presence of the moral obstacle. We could then say that Mo gives rise to cost in the case Mo. This is because if he had not been there Mary could have defended herself against Tom without harming an innocent person.

But this description is problematic. The situation could be overdetermined. Suppose that it were the case that if Mo had not been present (standing behind Tom), some other innocent person would have been there in his place. In that case, the presence of Mo does not give rise to cost, compared to a situation in which he is not present. Mary would accordingly have been unable to proceed with her defensive action without harming an innocent person, even if Mo had been absent. But there seems to be no difference in the permissibility of Mary proceeding against Mo, even if some other person would have been there and Mo absent.

Does Mo's presence give rise to cost in such a case? Well, compared to a situation in which no one is present he clearly does. To better capture the morally relevant counterfactual we should therefore say, all else being equal, a moral obstacle gives rise to cost by being at a particular place relative to a situation in which no one is in that place (and gives

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tional cost, as compared to bystanders, and not to sort out how much. I am grateful to Daniel Schuurman for pressing me on this point

12. This corresponds to the view held by proponents of the doctrine of double effect. They believe that promoting a greater good would be needed to justify harming people as a side effect.

rise to cost by his or her presence).[13] All else being equal, if no one were behind Tom, Mary could defend herself without harming or killing an innocent nonthreatening person. Whenever some person is in the way of Mary's defensive means, that person's presence gives rise to cost. And in Mo, that person happens to be Mo.

Someone is a moral obstacle and that person should be required to bear additional cost in order not to let Mary bear the entire cost. It so happens that Mo is the moral obstacle, and he will therefore be the one who must bear the additional cost. Mary is able to defend herself, and she should not be required to restrain herself simply because some other person would be there (the presence of which would also not affect Mary's ability to defend herself) if Mo wasn't.[14] That would not be fair to Mary. That another person would have been a moral obstacle if Mo had not been present is relevant only for considerations of the distribution of cost between Mo and this person. It could be argued that Mo should be compensated somewhat by this person—since Mo's presence has been beneficial to him—but I will not go into this here.

In saying that the presence of a moral obstacle gives rise to cost, I am making a factual claim.[15] The cost created is not a function of the constraint against harming the moral obstacle. The cost created by the presence of the moral obstacle is that the defending party, the moral obstacle, or both (in some measure) will now be harmed relative to a situation in which no moral obstacle is present and all else is equal. Given this fact, morality must say something about who should bear the cost.

My proposal is that not all cost should be borne by the person under threat but that the moral obstacles should also bear some cost. It would be unreasonable to ask Mary and those surrounding her to bear the full cost which arises as the consequence of the presence of the peo-

13. I have no illusion that this simple understanding of the relevant counterfactual will suffice to explain all relevant complications of cases with multiple moral obstacles. But it suffices for the purpose of presenting the main idea of the theory of moral obstacles, which is the aim of this article.

14. There is another way in which a harmful situation can be overdetermined. The outcome of the person being harmed could be overdetermined. This would affect the permissibility of proceeding with defensive force in a way that will harm innocent people. If Mary is going to die anyway, it is not permissible for her to kill an innocent moral obstacle in vain. That much seems straightforward. It is, however, different if those one harms in vain are culpable. For two very different accounts of why culpability matters, see Daniel Statman, "On the Success Condition for Legitimate Self-Defense," *Ethics* 118 (2008): 659–86; and Gerhard Øverland, "On Disproportionate Force and Fighting in Vain," *Canadian Journal of Philosophy* 41 (2011): 235–61.

15. I am assuming that Tom's action will not be altered by realizing that Mary is responding in a way that kills moral obstacles. Tom could also be seen as a placeholder for some kind of natural disaster against which Mary needs to defend herself.

ple in the house behind Tom. Fairness requires that the moral obstacles themselves absorb some of the cost to which they give rise.

Situations of self-defense may involve single individuals who can defend themselves by imposing only bodily injury short of death on the moral obstacle, such as in Mo. But situations of self-defense may also involve groups of people, some of whom would have to be killed for the target successfully to defend herself, such as in Flamethrower. In such cases, in order to save herself, the person under threat needs to kill a limited number of people who stand in harm's way. The permissibility of using force will then depend on the number of people who will be saved and killed. My proposal is that, corresponding to the reduced constraint against harming people who give rise to cost (as compared to bystanders), the constraint against killing them is also reduced.

To justify killing moral obstacles, we would need to save a larger number of people, but we would need to save fewer people than to justify killing bystanders. In Flamethrower, I tentatively suggest that it is permissible to kill those behind Tom when the numbers are one to ten. The reduced constraint against harming individual moral obstacles makes it permissible to kill the lesser number of moral obstacles.

II. THE DUTIES OF MORAL OBSTACLES

You can become a moral obstacle without exercising any agency. Through bad luck you might end up giving rise to cost, and this may have implications for the permissibility of harming you. This might seem unpalatable. To further support my proposal, I will approach the issue from a different angle by considering the duties of moral obstacles. Consider:

> Mo's Escape: Tom impermissibly attacks Mary with lethal means. The only way Mary can save herself is by killing Tom with a flamethrower. Behind Tom is a person, Mo. If Mary uses her flamethrower she will kill Mo; she therefore abstains from using it. Mo understands the situation and can get out of the way at a certain cost.

I assume that it is impermissible for Mary to proceed in this case since she will save only one innocent person—herself—by killing innocent Mo and that Mary does the right thing in abstaining from using her flamethrower. It seems that when Mo understands the situation he has a duty to take on significant cost to get out of the way, in order to enable Mary to use her defensive means. At the very least, he seems required to get out of the way even if this means that he would bear a cost that is greater than a bystander would be required to bear when intervening to save Mary.

Clearly, the situation of the moral obstacle is now different from the previous cases, since he is able to get out of the way. The moral obstacle must decide whether to bear a certain cost to help protect another person. This is similar to a bystander who is considering whether to intervene and to bear some cost to help protect Mary. Yet, their situations are relevantly different in the sense that only the moral obstacle considers whether to bear cost from a situation of *giving rise to cost*.

When refusing to assist another person in severe need, one needs to give a reason for the refusal, and in particular a reason that is proportionate to the severity of what is at stake for those in need.[16] For an innocent bystander, it seems sufficient to point out that saving the person will impose more than some low or moderate cost (such as the loss of a finger). Having to incur a higher cost than this would be an acceptable reason for refusing to bear the cost necessary to save a stranger.

But pointing to such cost would not be sufficient for an innocent moral obstacle to justify his refusal to get out of the way. This person cannot say that he is completely uninvolved in the situation. In contrast to a bystander, the moral obstacle's presence makes it the case that the defending party, the moral obstacle, or both of them (in some measure) must bear some cost. The moral obstacle would therefore need to explain why the defending party is the only one who should bear cost as a consequence.

The moral obstacle could, for instance, say this: "I am not threatening you, and I am not responsible for your being under threat. Why should I take on additional cost to enable you to defend yourself simply because you are now under threat?" To this the defending party might reply: "I am not saying that you are the cause of my problem or that you contribute to harming me, nor do I blame you for being where you are. However, your presence makes my situation very difficult. Because you are where you are, I must restrain myself from using means that I could otherwise permissibly use to protect myself (all else being equal). I see that I might be required to take on significant cost to protect you, and probably more than I can impose on you to protect myself—I, after all, am the one who is under threat. But surely you should be required to take on *some* of the cost to which your presence gives rise."

What else may the moral obstacle say? He might claim that he has a right to be where he is (in the sense that he is not violating anyone's right by being there). But this is also true of bystanders; the difference is that the presence of the moral obstacle gives rise to cost. The question therefore remains as to why only the person under threat should be re-

16. On this, see Garrett Cullity, *The Moral Demands of Affluence* (Oxford: Clarendon, 2004).

quired to bear cost that arises partly as a consequence of the presence of the moral obstacle. The moral obstacle cannot simply claim that he is neither a threat nor at fault for being where he is. Both parties agree that this is so. The moral obstacle needs to explain why he should not be required to absorb any of that cost to which his presence gives rise. It is difficult to see what the moral obstacle could say to establish that he is on par with a bystander.

Bystanders have some duty to bear cost to help protect people under threat. My point is only that a moral obstacle has a duty to bear additional cost to do so. For instance, while a bystander may be required to bear the cost of up to one unit (on a scale from zero to one hundred) to save another person's life, a moral obstacle may be required to save the person under threat, even if doing so would cost him up to ten units.

The duty to bear additional cost is a reflection of the situation of the moral obstacle and not a reflection of the fact that the agent does not intend to kill him or use him as a means. It is because the moral obstacle gives rise to cost that he has a duty to take on more cost than a bystander. It would be pretty odd to think that this additional duty on the part of the moral obstacle could be derived from what is going on in the agent's mind or the means that she does (not) use. Moreover, if the moral obstacle does not help when he has a duty to do so, and thereby becomes a culpable moral obstacle, he becomes liable to greater harm than the bystander would be liable to if he too failed to help when he had a duty to do so.

I have been discussing the duties of moral obstacles to get out of the way. The reason is obvious: moral obstacles give rise to cost by simply being where they are, and if they could get out of the way, they will no longer give rise to cost. However, there might also be cases in which moral obstacles are unable to get out of the way but could intervene. In such cases, they would on my view have a duty to intervene at a higher cost than would bystanders. Consider:

> Mo's Intervention: Like Mo's Escape, but even though Mo cannot get out of the way, he is able to intervene and prevent Tom's attack at a certain cost.

Although not at fault, it seems plausible that Mo has a duty to intervene even if this means absorbing additional cost relative to the low or moderate cost that an innocent bystander would be required to take on.[17] I therefore conclude that whenever a bystander has a duty to bear a cer-

17. I leave open whether moral obstacles have a duty to bear just as much cost when intervening as they would when getting out of the way.

tain cost to help protect a person under threat from harm, then, everything else being equal, a moral obstacle (who gives rise to cost by his presence) has a duty to bear some additional cost to help protect this person from harm.

I have argued that moral obstacles have a duty to take on additional cost to help protect a person under threat and that it is permissible to impose additional cost on moral obstacles to protect a person under threat. It may even be permissible to kill moral obstacles if the numbers are appropriate. This may generate a tension. While moral obstacles may have a duty to bear additional cost to help protect people under threat, our intuitions may not readily support the idea that moral obstacles have a corresponding duty to sacrifice their life for the people under threat (although the numbers would justify killing them).

But our intuitions may not even support the view that innocent doers (and perhaps not even negligent doers) of harm have a duty to sacrifice their lives to save the people they are about to kill. To illustrate, suppose you are driving your car. The brakes fail, and you come to a curve. You are in the outer lane, and a big truck is in the inside lane. You spot a (innocent) person in your lane and are unable to stop in time because of the brake failure. Your only way to avoid killing this person is to drive your car over a cliff. Doing so will save this person, but you will die. Do you have a duty to do so? I am unsure. Regardless, lethal defensive force against you seems permissible all the same if it is necessary to save the life of the innocent person in the lane. Moreover, you would clearly have significantly more demanding duties to help protect the person in your lane than a bystander would.

We can understand this tension in at least two ways. First, it may indicate a true difference in the duties of people to bear cost for others and the permissibility of imposing cost on them. This would not be a problem for the theory of moral obstacles since it takes the two questions of cost to be independently grounded in the fact that moral obstacles give rise to cost by their presence. Second, it may indicate that our intuitions about cost vary depending on the perspective we adopt. When considering the permission to impose cost, we tend to identify with the defending agent and therefore grant him permission to use lethal force. When considering the duty to bear cost, we tend to identify with the person that is asked to bear it and therefore resist the idea that he should be required to bear the cost of death.

Whatever the correct understanding of this issue, it would pose no challenge to the theory of moral obstacles. My point has simply been to show that it is possible to see that moral obstacles have more demanding duties to bear cost to help protect the person under threat than those of bystanders and that this helps us see that we have reason to treat moral obstacles differently from bystanders.

III. OBSTACLES, OBSTRUCTORS, AND THREATS

A moral obstacle is defined in factual terms—a person's presence at a certain location has the consequence that the defending party, the moral obstacle, or both (in some measure) now has to be harmed. A theory of giving rise to cost incorporates moral obstacles in the class of people who are causally related to harmful outcomes and thereby can give rise to cost. To better understand the concept of moral obstacles, I will briefly consider some other ways in which a person can give rise to cost by being causally related to a harmful outcome, such as is the case with physical obstructors, passive threats, and those who do harm or enable it to occur.

A person is a passive threat (or *threat* for short) to another person when he is about to harm her but has not performed any relevant action to become a threat. Passive threats therefore typically give rise to cost by being about to harm another person but not through their agency. A person falling toward another gives rise to cost by causing a danger to the person below him, and he would be a threat if he were simply blown over a cliff by the wind or thrown over the edge by a villain against his will.

In a situation in which a person is under threat of harm, a nonthreatening person is a *physical obstructor* if he must be removed completely or partly for the person under threat to make effective use of her means of survival. Physical obstructors typically give rise to cost by being situated in the path of another person, as in the case of a man who stands on a narrow bridge that is another person's only escape route from danger.[18] According to my definition of a moral obstacle, a moral obstacle "poses no threat or physical hindrance." This distinguishes moral obstacles from threats and physical obstructors.

The difference between a moral obstacle and a physical obstructor is that only the latter is a physical hindrance to a defensive action. They share a feature, which distinguishes them from threats, which is that they each give rise to cost without posing a threat through their bodies or movements. Should the defending party refrain from using defensive means because of their presence, she will indeed be harmed, but not by the physical obstructor or the moral obstacle. She will be harmed by the initial threat of harm.[19]

18. Thomson didn't separate physical obstructors from bystanders, but she presented this example: "A villain is shooting at you, and your only defense is to run. But your only path to safety lies across a bridge that will hold only one person, and there is already a man on it; if you rush onto the bridge, he will be toppled off it into the valley below" ("Self-Defense," 290).

19. For an argument on why physical obstructors should be regarded as threats, see Helen Frowe, "Threats, Bystanders and Obstructors," *Proceedings of the Aristotelian Society* 108 (2008): 365–72.

I leave open whether there are morally relevant differences between moral obstacles and physical obstructors. The feature they share—that they give rise to cost by their presence—seems more significant than what distinguishes them. And any difference between them seems smaller than the difference between these two categories and bystanders on the one hand and these two categories and threats on the other.

Becoming a moral obstacle is only one of the many ways in which we can give rise to cost. In addition to giving rise to cost by being an obstacle, an obstructor, or a threat, we might give rise to cost through our agency, for instance, when we do or enable harm. The case of the moral obstacle is special, however, because the person's presence does not diminish or otherwise affect the effectiveness of the threatened person's use of defensive means. The decision about whether his presence will make the defending party worse off is entirely in the hands of the defending party. That is not always true of physical obstructors and threats; they may actually make the person under threat worse off by making it impossible for her to escape (obstructors) or simply by landing on her (threats).

Quite a few philosophers argue that mere causal contribution to harm is morally insignificant for the question of defensive force.[20] On this view, to be *liable* to defensive force, that is, to forfeit one's right against such harm, a person must be morally responsible for an unjust threat to others. Innocent and nonresponsible threats (as well as obstacles and obstructors) are therefore indistinguishable from innocent bystanders when it comes to liability to harm. These philosophers are, of course, not arguing against the significance of the causal contribution of moral obstacles (making people unable to avoid harm without harming others) since this is a category that they have not considered. But if they deny the moral significance of the causal contribution of innocent threats and aggressors for the question of liability, they would most likely also deny the moral significance of the contributions made by innocent moral obstacles.

It is, however, possible to combine the idea of giving rise to cost with this idea of liability. One can hold that a person cannot make himself liable to defensive harm unless the person is morally responsible for danger to others but accept that there might be other reasons that could make it permissible to harm him other than the fact that he is liable. One reason could be that he gives rise to cost. In such cases, being a

20. See, e.g., Jeff McMahan, "Self-Defense and the Problem of the Innocent Attacker," *Ethics* 104 (1994): 252–90, and "The Basis of Moral Liability to Defensive Killing," *Philosophical Issues* 15 (2005): 386–405; Michael Otsuka, "Killing the Innocent in Self-Defense," *Philosophy and Public Affairs* 23 (1994): 74–94; and David Rodin, *War and Self-Defense* (Oxford: Clarendon, 2002), 70–99.

moral obstacle, physical obstructor, or passive threat would (somewhat) overcome the presumption against harming a nonliable person.

The rationale behind the weakening of the constraint against harming moral obstacles is similar to the rationale behind the weakening of the constraint against harming threats and physical obstructors. The rationale is that it is important how our whereabouts affect other people, and it is not plausible that we should be allowed to affect them negatively (no matter how innocently and nonresponsibly) without being required to bear some cost (when cost must be borne). If we required the person under threat to bear the entire cost arising from the presence of the moral obstacle, obstructor, or threat, that would make an unreasonable demand on her.[21]

The theory of moral obstacles identifies a feature that moral obstacles share with obstructors, threats, and those who do or enable harm: that they typically give rise to cost. This feature has moral implications. Although having this feature may not make people liable to harm, I maintain that they are among the appropriate set of (innocent) people that could reasonably be required to bear some additional cost to help protect a person under threat. Relative to a situation in which a person is under threat of harm, all innocent people may be called on to bear some limited cost in order to help protect her on the basis of a duty of assistance. But there is a subclass of innocent people who may be required to bear some additional cost to further this purpose because they themselves give rise to cost. Moral obstacles are members of this subclass.

If we reject the idea that those who give rise to cost due to pure bad luck should bear additional cost, then we must maintain instead that those initially under threat must bear all the cost. Mary would then have to constrain her attempts to save herself and the others by taking care not to harm people—even if their presence gives rise to cost—as if all people she harmed were bystanders and not relevantly involved in the situation. That would limit her defensive options only at the cost of herself and those around her, and that would be unfair.

This fairness argument is unlikely to settle the controversy surrounding the moral significance of mere causal relevance to a harmful outcome. But it would be a mistake to dismiss the theory of moral obstacles on such grounds, especially if one accepts that other instances of mere causality have moral significance. Philosophers who have argued against the significance of mere causal relevance have typically done this on the grounds that causality alone cannot make a person liable to harm.

21. In discussing Thomson's example of the falling nonresponsible fat man and the problem of the innocent threat, Frances Kamm suggested that a "person's inappropriate location vis-à-vis another raises moral questions no matter how it comes about" (*Creation and Abortion* [New York: Oxford University Press, 1992], 47).

And it may very well be true that a person cannot lose his rights against being harmed due to factors for which he is not morally responsible. But it is a mistake to hold that the constraint against harming a person can be reduced only if this person becomes liable to harm.

IV. SOME CLARIFICATIONS AND OBJECTIONS

Apparent and Beneficial Moral Obstacles

The moral significance of being a moral obstacle is captured by the idea that obstacles give rise to cost by being in a particular place relative to a situation in which no one is in that place, all else being equal. When all else is not equal, the counterfactual may not hold. Suppose that if it were not for the presence of Mo, Mary would not be able to defend herself. Mo's presence is what makes her able to defend herself. Yet, Mary now needs to harm Mo in the process of defending herself. Mo could then be a *beneficial moral obstacle*.

Suppose, in a variation of Mo, that the presence of Mo has led Tom to attack Mary in a way different from how he would have attacked her had Mo not been present.[22] The reason why Tom now attacks Mary in a different way may be because the presence of Mo motivates him to act differently or because Mo's presence makes him unable to use the means he otherwise would have used. There might be a morally relevant difference between these two instances, but I discuss only the latter type. Suppose Mo's presence makes Tom unable to use his napalm bomb. Had Tom used the napalm bomb, Mary would have had no way of defending herself. But due to Mo's presence, Mary is now able to defend herself against Tom's attack. However, she will thereby also harm Mo. How should we judge this case? I am not sure.

It is not clear that Mo's presence gives rise to cost. All else being equal, the absence of Mo would have left Mary unable to defend herself.[23] To justify harming Mo, Mary can therefore not say that his presence gives rise to cost. The presence of Mo is like the presence of a bystander; his presence provides Mary with an option to save herself that she would not have had in his absence (all else being equal). It is true that Mary has to decide whether to harm Mo or to let herself be harmed. But bystanders may also give rise to such choices. On reflection, I think Mary should treat Mo as a bystander when knowing the facts about the situation.

Sometimes it makes sense to differentiate the benefit-making feature of the beneficial moral obstacle from his cost-making feature. We could then say that the person's present situation gives rise to cost but

22. I owe this example to Kasper Lippert Rasmussen.

23. There will often be uncertainties about whether Mary would have had no option to defend herself if it were not for the beneficial aspect of the moral obstacle. This is likely to affect our intuitions.

that his past situation gave rise to a benefit. For instance, Mo's presence could have made Tom unable to put together his napalm bomb, and for that reason he now has to use some means against which Mary is able to defend herself. We could then say that Mo is a moral obstacle now but that his benefit-making feature of the past should reduce the cost he would be required to shoulder.

The moral significance of being a moral obstacle has to do with whether his presence gives rise to cost. A moral obstacle's benefit-making feature should therefore reduce the cost he would be required to bear as a consequence of giving rise to cost. I will not try to settle the extent to which it should be reduced here, nor will I try to explore how it is influenced by an increase in time between the benefit-making feature and the cost-making feature.

Is Mo a moral obstacle when his presence generates a benefit? One way to explore this is to consider what would happen if Mo were removed or jumped out of the way. Would Tom still be unable to use his napalm bomb, or would his removal imply that Tom used the napalm bomb? If the latter, then Mary's current defensive means and Tom's not using his napalm bomb would depend on Mo's continuous presence. Mo would then not really be a moral obstacle according to my account, only an apparent one. If, by contrast, removing Mo would not imply that Tom become able to use his napalm bomb because Mo's presence permanently destroyed this option, then Mo would be a moral obstacle, but he would be a beneficial moral obstacle (beneficial in the past).

Means

Whether a person is a moral obstacle depends on the means the person under threat has available. For instance, in Flamethrower, whether Mo is a moral obstacle depends on the means Mary has (and not only on where Mo is). If Mary had no flamethrower, Mo would not be a moral obstacle. And should the flamethrower cease to work, the people behind Tom would no longer be moral obstacles. This may seem counterintuitive. But observe that in such cases Mo's presence gives rise to no cost, and we could not plausibly claim that he should bear more cost than any other bystander.

It may also be worth observing that the doctrine of double effect would face a similar challenge, although it would be presented in a different way. Whether Mo can be harmed without Mary needing to target him or to use him as a means depends on the means Mary has. If Mary has no flamethrower, or it is not working, she is not able to harm Mo as a side effect.

But the type of means the person under threat has available poses a further challenge. In Flamethrower, I indicated in footnote 7 that the flamethrower could be given a plausible context by assuming that it was used in war, that Tom was an unjust soldier, and that the people behind

Tom were civilians. This is because if the means of defense are completely outlandish it may seem unreasonable to require a moral obstacle to bear additional cost as a consequence.[24] Let me explain.

A person becomes an innocent moral obstacle due to bad luck, and this has implications for the cost that can permissibly be imposed on him and the cost he would be required to bear to protect the person under threat. Yet, a person may become a moral obstacle not only due to ordinary bad luck but also due to *extraordinary* bad luck. When these extraordinary circumstances take the form of something that happens directly to the moral obstacle (suppose, e.g., some aliens have dropped Mo behind Tom), it nevertheless seems correct that he would have to bear additional cost as a consequence. It would be unreasonable to require the person under threat to bear all cost as a consequence of Mo's extraordinary bad luck.

By contrast, if what makes the situation extraordinary relates directly to the person under threat—perhaps because she carries some outlandish means of defense—then it may not be reasonable to require the moral obstacle to bear additional cost as a consequence. For instance, suppose Mary happens to carry a small atomic bomb that she could set of to defend herself against Tom (and extraordinarily enough, she is also carrying a protective suit that will enable her to survive the blast). All people within the perimeter of the explosion would now become moral obstacles to Mary's defense. But we might resist the idea that all those within the reach of the atomic explosion would incur additional cost due to their being within its reach. The means Mary has at hand seem too expansive for it to be reasonable to require those who end up as moral obstacles to bear additional cost.

We therefore need to delimit instances when what is extraordinary relates to the person under threat and not to the moral obstacle and when the defensive means of the person under threat would count as outlandish. In such cases it might be unreasonable to require the moral obstacles to bear additional cost. To specify this is a difficult task, and I will not try to do it here. But there need not be a clear demarcation line since a person's requirement to bear cost can be altered along a continuum.

Scope and Limits of the Theory of Moral Obstacles

Consider:

> Alice's Rifle: Like Flamethrower, but there are twenty people standing on the roof of the house, all of whom would be killed by the flamethrower. Killing these twenty to save herself and the nineteen others would be disproportional, and Mary decides not to

24. I am grateful to Lars Christie and Michael Selgelid for pressing me on this point.

> do so. One of the other nineteen—Alice—has a rifle, with which she can shoot any of the twenty behind Tom. The person shot would fall and make Tom's attack ineffective. Since Tom is hiding behind some trees, Alice cannot shoot him with the rifle.

In this case one could hold that the people on the roof are only moral obstacles vis-à-vis Mary. Since Alice does not have access to the flamethrower, they would not be moral obstacles vis-à-vis her. Hence, while it would be permissible for Mary to use a rifle (if she had one) according to this view, it would not be permissible for Alice.

To assess this claim, we need to consider the rationale behind the theory of moral obstacles. Recall that when a person A is under threat of harm and has a defensive action available to her, a person B is a moral obstacle if his presence has the consequence that B will be harmed, A will be harmed, or both A and B will be harmed in some measure. This is true about the relation between Mary and the twenty people standing behind Tom. But the presence of the twenty also has the consequence that Alice, Mary, and the other eighteen will be harmed, or (some of) the twenty people behind Tom will be harmed, or all parties will be harmed in some measure.

This indicates that my previous definition of moral obstacles would have to be amended such that it applies not only to the person A but to all those whose ability to avoid harm is affected by B's presence when A abstains from using her otherwise harmless means. Here is a tentative expansion of the definition:

> *Moral Obstacle Expanded*: When persons A and C are under threat of harm, and A (or both) has a defensive action available to her (independent of the presence of other people), a person B, who poses no threat or physical hindrance, is a moral obstacle relative to A and C if his presence has the consequence that either (i) B will be harmed (if A performs her available defensive action) or (ii) A and C will be harmed (if A completely restrains her defensive action), or (iii) all will be harmed in some measure (if A partially restrains their defensive action).

This implies—at least if Mary chooses not to use her defensive means due to the presence of the twenty in Alice's Rifle—that these twenty people are moral obstacles relative to all of those who are under threat by Tom. Having assumed that it is permissible to kill one moral obstacle to save ten people under threat, it will also be permissible for Alice to proceed in order to save herself and the nineteen others.[25]

25. It would presumably also be permissible to kill one of the two on the roof if that saved only ten people, even if Mary were not among the ten. When discussing a related case, Kamm asks: "What if someone else has the capacity to permissibly do what would kill

There is another reason for thinking that the twenty behind Tom are moral obstacles relative to Alice. I have argued that a moral obstacle has a duty to bear additional cost to help protect people under threat. If Mary decides against using the flamethrower in order not to impermissibly harm these twenty, it seems quite plausible that they would have a duty to bear additional cost (relative to bystanders) not only to help protect Mary but also to help protect Alice and the eighteen others.

True Alternative

A worry could be that there would be no fundamental distinction between being a moral obstacle to successful self-defense and being someone who must be killed as a side effect if self-defensive action is to be successful. It could therefore be suggested that I am not rejecting the significance of the distinction between killing as a side effect and killing as a means but instead offering an explanation of the significance of that distinction by reference to bystanders and moral obstacles. This would mean that the distinction between bystanders and obstacles would be a different pair of terms for describing the same phenomena that have traditionally been described using the distinction between means and side effects.[26]

Suppose that this were true. The theory of moral obstacles would still have significant advantages over the doctrine of double effect since it points to relevant features of the people who are about to be harmed in explaining why the constraint against harming them is reduced, rather than pointing to features of the agent that is doing the harming or the means that she employs.

But this is not correct. What seems true is only that in all ordinary cases in which a person is under threat and has a defensive option available to her that will unavoidably harm another person as a side effect, the person who will be harmed as a side effect is also a moral obstacle. This has led people to think that it is the type of agency that is important and not the circumstances of the victim.

But the doctrine of double effect and the theory of moral obstacles render different verdicts in situations in which it is permissible to harm a moral obstacle by using him as a means, even though there is no permissible option to harm the moral obstacle to that extent as a side effect. Consider:

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the bystander but chooses not to do this. Does this give us license to do something harmful to the bystander?" To this Kamm answers in the negative ("Justifications for Killing," 660–61). I may agree with Kamm here, provided that the person is only protecting herself.

26. I owe this objection to Jeff McMahan.

> ARMOR: Tom impermissibly attacks Mary with lethal means. She can save herself by killing Tom with a flamethrower. To the left of Tom is a person, Mo. If Mary uses her flamethrower she will kill Mo. Killing Mo to save only herself would be disproportional, and Mary decides not to do so. However, Mo is wearing light armor, and can be used as a shield without being killed. But using Mo as a shield will impose some cost on him.[27]

In this case Mary needs to use as a means a person that she is not permitted to kill with the flamethrower because doing so would be disproportionate. According to the theory of moral obstacles, it could be permissible intentionally to impose a certain cost on Mo when using him as a shield even though it would not be permissible to impose the same cost on a bystander, even if the bystander were also wearing light armor.[28] This seems correct. Mary may not kill Mo, but she may impose some additional cost on him because his presence gives rise to cost.

In contrast to agent-centered theories, a victim-centered approach like the theory of moral obstacles places no emphasis on harming and killing in a certain way or on the type of agency exercised. What is crucial according to the theory of moral obstacles is whether these people give rise to cost. In ARMOR, Mary may therefore permissibly impose a certain cost on Mo when using him as a means, even if imposing permissible cost on him as a side effect is not an available option, and it would not have been permissible to impose that cost on him had he been a bystander.[29] Being a moral obstacle is therefore not equivalent to being harmed as a side effect.

Quinn's Distinctions

In his discussion of the permissibility of killing people, Warren Quinn makes two distinctions that apply to actions of ending someone's life. The first distinction, between direct and indirect agency, is between the agent deliberately involving the victims in something in order to further his purpose (direct agency) on the one hand and the agent not involving the victim (indirect agency) on the other. The second distinction, between eliminative and opportunistic agency, is a distinction between two types of direct agency in which the agent intends to involve the victim.

27. I am grateful to Bashshar Haydar for presenting an early version of this case to me and for long discussions of the general idea of giving rise to cost.

28. I would think that Mary could impose just as much cost in this case as in MO, but that is not essential to my position.

29. Since there is no initial permissible option that would not violate agent-centered constraints, we cannot appeal to Kamm's Principle of Secondary Permissibility to accommodate the intuition that it would be permissible to impose more cost on Mo in this case. See Kamm, *Intricate Ethics*.

In opportunistic agency the harmed or killed person presents only an opportunity. In eliminative agency the harmed or killed person is an obstacle of some sort.[30]

One might suggest that the theory of moral obstacles is a variation of a distinction between direct opportunistic agency and indirect agency. The morally relevant difference between a moral obstacle and a bystander is that a moral obstacle, by his presence, creates a cost that he or the person under threat has to bear, whereas the bystander, by his presence, only creates an opportunity for the person under threat. One could therefore suggest that when the person under threat harms the moral obstacle, he is not taking advantage of his presence, not using him, and the agent is not involving the moral obstacle in his plans, whereas when he harms the bystander, he is taking advantage of or exploiting his presence—deriving a benefit that he would not have had in the bystander's absence. One could therefore think that the feature I have identified is equivalent to the one identified by the distinction between indirect and opportunistic direct agency.[31]

But these distinctions are not equivalent. The case (Armor) that distinguishes the theory of moral obstacles from the doctrine of double effect would also distinguish the theory of moral obstacles from Quinn's proposal. Mary's agency is opportunistic in Armor, when she involves the moral obstacle in her project by using him as a shield. But it seems permissible for her to proceed. It is of course true that she is using him opportunistically only because she is unable to harm him indirectly without imposing disproportional harm on him. One could therefore claim that Mary is not really taking advantage of Mo's presence and that Mary's agency is not really opportunistic. If we try to save Quinn's distinction by appealing to this fact, however, we would essentially have converted it into the theory of moral obstacles. We would not look at the agency that Mary would be involved in but rather look at whether Mo gave rise to cost.

One might nevertheless think that Quinn's distinction has more explanatory power than my proposal since it appeals to the agency of the person under threat. But it is worth noting that Quinn's distinction seems vulnerable to the same objections as the doctrine of double effect. Why exactly should the type of agency be important when we evaluate the permissibility of knowingly harming another person?

Recall the case Mo, and imagine that Mary can save herself by killing Tom at the cost of one of Mo's limbs. Mary can, however, do this in two different ways. She can save herself and only in an indirect way make it the case that Mo loses a limb, or she can make direct opportunistic use of his limb. Assuming that both actions would have been performed with

30. See Quinn, "Actions, Intentions, and Consequences."

31. I am grateful to Seth Lazar for pressing me on this point.

an equal degree of regret, my suggestion is that, in order to justify having cut off one of his legs, Mary would have to explain to Mo not the type of agency that she was engaged in when cutting of his limb but that his presence had the consequence that she had to let herself die or to take his limb. This would be the substance of her justification, not whether or not she acted in an opportunistic way.

Permissibility and Duties

I do not take a stand here on whether there is a particular connection between a person's duty to bear cost and the permissibility to impose cost on him. My proposal is that it is permissible to impose additional cost on the moral obstacle because he gives rise to cost by being where he is, and the moral obstacle has a duty to bear additional cost because he gives rise to cost by being where he is (at least when he is aware of the situation). Neither of these arguments grounds the other. Both are based on the fact that a moral obstacle gives rise to cost and that it is fair that he bear some of that cost to protect the person under threat. Whether there is a difference between the cost the person under threat is permitted to impose on the moral obstacle and the cost the moral obstacle has a duty to take on to protect the person under threat, I also leave open.

It is, of course, possible to hold that it is permissible to harm a person to obtain a good insofar as this person has a duty to bear a similar cost to promote that good. Victor Tadros adopts this view in his book *The Ends of Harm*.[32] Tadros argues that it can be permissible to harm people when they have an enforceable duty to make a certain sacrifice in order to prevent or mitigate harm to someone else but are unable or unwilling to act on that duty.[33]

Perhaps it is true that whenever it is permissible to impose a certain cost on a person to promote a particular good, this person must have a duty to bear the same cost to promote that good.[34] But I do not need to assume this for the purpose of my argument. This is fortunate since I have already indicated that there might be a difference between the permissibility of killing someone and that person's duty to sacrifice his life.

32. Victor Tadros, *The Ends of Harm* (Oxford: Oxford University Press, 2011).

33. "It is permissible to harm a person as a means to an end if that person would have had an enforceable duty to avert the threat were she able to do so, even if, in exercising her duty she would be harmed to the same degree" (ibid., 129).

34. In fact, I have expressed this view myself in earlier work and written that "the permissibility of using force would be based on an agent's initial duty to bear cost" and that "just as we expect people to discharge their duties, they should be willing to accept that others impose costs on them commensurate with their duties when they themselves are unable to discharge these duties" (see Gerhard Øverland, "Forced Assistance," *Law and Philosophy* 28 [2008]: 203–32, and "602 and One Dead: On Contribution to Global Poverty and Liability to Defensive Force," *European Journal of Philosophy* 21 [2013]: 279–99).

Moreover, to say that it is permissible to impose a certain cost on a person just because he has a duty to bear this cost does not solve the problem of justification. We need to know why the person has a duty to bear cost in the first place. This is what my theory explains for moral obstacles. A moral obstacle has a duty to bear additional cost because his presence gives rise to cost, and fairness dictates that he should bear some of it.

V. CONCLUDING REMARKS

The constraint against killing people in the process of defending yourself and others against an unjust attack appears to be weaker than the constraint against killing people in order to make the attack ineffective. Many have thought that this is because we do not intend the deaths of those who are killed in the process of defending ourselves or because we do not use them as a means. It is easy to understand why people have thought this; when we kill people as a side effect, we do not intend their death, nor do we use their death as a means for anything. This makes it seem that it is these features of the agent's actions that justify the weaker constraint against harming them. But this is a mistake.

The best explanation of the difference between the two types of killing, and the difference between two types of harming in general, is instead that those we need to harm are moral obstacles in one case and not in the other. A moral obstacle is causally related to a harmful outcome by being in certain circumstances. His presence has the consequence that the defending party, the moral obstacle, or both (in some measure) now have to be harmed. Being causally related in this way may give rise to cost. When a person gives rise to cost by his presence, some people have to be harmed as a consequence of his presence relative to a situation in which no person gives rise to cost in this way. It is therefore fair that the defending party should not be the only one required to bear cost. The person who gives rise to cost by his presence should also bear some of that cost. The morally significant distinction is therefore not one between killing people with or without intent or between using them as a means or not. The morally significant distinction is the difference between moral obstacles and bystanders.