

Shooting to Kill: The Ethics of Police and Military Use of Lethal Force, by Seumas Miller, New York, Oxford University Press, 2016, £74.00 (HBK), ISBN: 9780190626136, £29.99 (PBK), ISBN: 9780190626143

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Over the last two decades, the ethics of defensive harm has become a leading area in applied philosophy. Much of the debate has focussed on the relationship between individual self-defence and the use of force by institutional agents, such as soldiers and police officers. So-called ‘reductivists’ hold that the ethics of killing in war (indeed in all institutional contexts) is governed by the same moral principles that regulate killing by private individuals (McMahan, 2009; Gardner, 2012). An opposing ‘non-reductivist’ view, takes the morality of killing in institutional domains to be partly *sui generis* (Kutz, 2005).

In this ambitious book, Seamus Miller aims to tread a middle-path between these views that absorbs the insights of each. As I interpret him, Miller agrees with reductivists that the *ultimate* ground of permissible killing is defence of individual rights, but that these principles are shaped and supplemented by the institutional context in which they are applied. Miller’s key idea is that morally justified institutions involve individual agents engaging in structured ‘joint action’ in order to realise collective goods. An agent’s role within an institution can “generate additional duties and rights” (p.4) and these make a crucial difference to the permissibility of inflicting harm.

Chapters 1 and 2 provide a general treatment of permissible killing in non-institutional contexts, as well as Miller’s own theory of self-defence. In Chapter 3 Miller sets out a detailed account of institutional roles that distinguishes the normative situation of soldiers and police officers from that of private actors. One key difference between the two roles, Miller argues, lies in the degree of deference to authority that each requires: while soldiers have a presumptive duty to kill on command, police officers are required to use their own judgement.

Chapters 4 and 5 develop the theory of institutional roles in the case of policing. In Chapter 4 Miller argues that, contrary to the ‘standard view’, there are cases of permissible killing by police officers that are not justified by appeal to individual self- and other-defence. To do so, Miller considers some fascinating real-life ‘fleeing felon’ cases, in which police officers face a choice between allowing a serious criminal to escape, or preventing that escape by (i) killing the criminal or (ii) escalating the situation so it becomes necessary to kill the criminal in self-defence. He suggests that police officers’ duty to uphold the law may be sufficient to justify killing in such case. Chapter 5 examines the specific case of police shootings of suspected suicide bombers, and provides an in-depth of institutional moral responsibility for such killing, illustrated with the case-study of the shooting of Jean Charles De Menezes.

Chapters 6 to 10 shift from the police to the military context, where Miller argues that more extensive permissions to harm and kill are generated. This is illustrated with a qualified defence of the much-debated doctrine of ‘the moral equality of combatants’ (very roughly, the view that combatants who participate in unjust wars may nonetheless possess a moral permission to kill). Chapter 7 considers the principle of civilian immunity in war. In defence of civilians, Miller argues that states may not place greater weight on their own combatants over the lives of innocent enemy civilians. However, Miller also argues that a non-trivial proportion of civilians

can render themselves non-innocent in war, in virtue of their collective responsibility for unjust threats. Chapter 8 shifts from the question of national self-defence to humanitarian intervention, with a particular focus on distribution of responsibility for undertaking such interventions. Chapters 9 and 10 address two distinctively modern methods of war: targeted killing (with a discussion of the killing of Osama Bin Laden) and the potential for the use of autonomous weapons.

The central contribution of Miller's book is the detailed application of work in social ontology to topics that have previously been the exclusive domain of applied ethicists. Those interested in the moral significance of institutions for theorising about permissible harm will benefit from considering the relevant chapters of *Shooting to Kill*. However, the book also contains a number of weaknesses, which compromise its value to both specialists and newcomers.

For one, the book is not an easy read. The writing is often quite dense (even by the standards of analytic philosophy) and sometimes insufficiently precise, requiring the reader to labour. Most importantly, for a book focussed heavily on the morality of defensive harm, there is very little engagement with the huge amount of sophisticated work on this topic published over the last decade. It is hard to shake the suspicion that this book has been pieced together out of material written prior to this surge of interest, and has not been significantly updated. Revealing, despite the book's stated aim of critically engaging with reductivism, two key works in the reductivist tradition (Fabre, 2012; Frowe, 2014) are mentioned only in a footnote in the introduction (p.7). These omissions significantly limit some of Miller's arguments. Below are five examples (I could have selected many more).

In Chapter 1, Miller provides some examples of defence by groups to motivate the idea that the 'necessity' condition on defence cannot be reduced to individual morality. But this thought has been developed with far greater thoroughness by Seth Lazar (2012).

In Chapter 2, Miller criticises Jeff McMahan's well-known 'responsibility account' of liability to defensive harm, as presented in McMahan (2005). One objection is that McMahan famously argues that 'justification defeats liability', but also suggests that the innocent victims of justified threateners may use self-defence against the threateners (due to considerations of permissible self-partiality). Miller claims that this is inconsistent. The first thing to say here is that McMahan has publically revised his view, and now rejects the second claim (see McMahan, 2014)! The second is these claims are not inconsistent, and that Miller himself also seems to endorse this conjunction of claims (pp.68-69). So it is hard to see what the problem is supposed to be. Miller writes that since McMahan endorses a partiality justification in these cases (which, to reiterate, he no longer does), he can't claim that his view is an 'impartial' one. But McMahan obviously isn't claiming that. What McMahan *does* claim is that his view of *liability* is grounded in the just (impartial) distribution of unavoidable harm. But that's compatible with there being *other* justifications, such as those grounded in partiality. Miller's discussion seems to rest on misunderstanding.

The idea that partiality plays a significant role in the ethics of defensive killing recurs throughout Miller's discussion. But there is no detailed analysis of how these justifications work, and what their limits are. This is disappointing. A central debate within the recent literature on defensive harm concerns the validity of these justifications (Quong, 2009; Tadros, 2011; Lazar, 2013; Frowe, 2014; McMahan, 2014). A further feature of Miller's view is that (*contra* McMahan) attackers remain liable to defensive killing even if killing them is not necessary to avert the threat they pose (because, for example, the victim can avert the threat non-lethally). But Miller doesn't

say a great deal to defend this view, which is strange given that detailed versions of it have recently been elaborated (Frith and Quong, 2012; Frowe, 2014).

Lastly, while Miller's discussion of the permissibility of killing 'fleeing felons' is genuinely interesting, his argument is mainly based on intuitions, and he offers no general theory of how to analyse these cases. Again, this is disappointing, since questions of 'non-necessary' defence and 'justified escalation' have been extensively discussed (Statman, 2008; Frowe, 2014; Fabre and Lazar, 2014).

Let me close by raising an objection to Miller's theory of defensive killing in non-institutional contexts (Chapter 2). One of the distinctive features of Miller's theory is that it posits a fundamental asymmetry between the morality of defending *oneself* and the morality of defending *others*. Here's an example to help illustrate:

Self-Defence: Andy attacks innocent Victor with a knife because he hates Victor and wishes him dead. Victor can only save himself by shooting Andy dead.

In this case, Miller's account holds (along with practically every other account of defensive killing) that it is morally permissible for Victor to kill Andy in self-defence, and that the *explanation* for this permission is that Andy has forfeited his normal right not to be killed (in the relevant terminology, he is *liable* to defensive killing). Killing Andy is permissible because the usual (extremely stringent) moral constraint imposed by others' rights does not apply.

So far, so good. But what about killing in defence of *others*? Consider a second example:

Other-Defence: Andy attacks innocent Victor with a knife because he hates Victor and wishes him dead. Victor can do nothing to save himself. However, Richie is walking by and can save Victor by shooting Andy dead.

In this case, again, most theories of defensive killing hold that defensive killing is morally permitted, and that this is because Andy has forfeited his normal right not to be killed. Richie is permitted to kill Andy for the same reason that Victor is.

Miller, however, explicitly denies that self- and other-defence have the same moral basis. According to Miller's theory, when an attacker threatens his victim, he forfeits his right not to be killed only *with respect to the victim*. The right still holds with respect to third-parties (like Richie), who remain subject to a rights-based constraint on killing (p.71). On this view, then, the justification for other-defence cannot be forfeiture (whereby the usual rights-based constraint on killing is absent) but a completely different form of justification, in which the rights-based constraint on killing is *overridden* by a weightier moral reason.

But, based on what Miller says, it is hard to see how Richie's killing Andy can be justified in this way. The right not to be killed is one of the most stringent rights we have, and so it should be very hard to justify overriding it. Philosophers who work on this issue have proposed two broad types of justification for doing so. First, that acting contrary to the right will avert a much greater harm (such as saving many lives). But this can't apply in *Other-Defence*, since killing Andy would only save one life. Second (as mentioned above), some argue that permissible partiality can sometimes justify overriding others' rights. But, again, this can't apply in *Other-Defence* because Richie bears no special relationship to Victor (he is not Victor's parent, for example.)

Miller simply stipulates that “The duty of the third person to preserve an innocent life, coupled with the fact that the attacker is the guilty party, is sufficient to override the attacker’s right not to be killed by the third person” (p.72). But why? The most plausible interpretation of the claim is that the attacker, in virtue of their ‘guilt’, has *reduced the moral strength* of their right not to be killed, so that the duty to save one person is now able to override the right not to be killed. But this just seems to invoke something very much like the notion of forfeiture!

The problem with Miller’s ‘rights overriding’ account of other-defence becomes clear once we consider cases of defensive killing involving *multiple* attackers:

Self-Defence 2: Andy and four accomplices attack innocent Victor with baseball bats because they hate Victor and wish him dead. Victor can only save himself by throwing a grenade that will kill Andy and the four accomplices.

I take it to be intuitive that Victor is morally permitted to kill five culpable attackers in order to save his own life. The idea of forfeiture can explain why this is so. Although Victor must kill five persons to save himself, he does not *transgress any rights* by doing so, since each of the five assailants has forfeited their right not to be killed. Forfeiture justifications are *numbers insensitive*. Since Miller endorses forfeiture in the case of self-defence, his theory can accommodate the intuitive permissibility of killing in this case.

But now consider:

Other-Defence 2: Andy and four accomplices attack innocent Victor with baseball bats because they hate Victor and wish him dead. Victor can do nothing to save himself. However, Richie is walking by and can save Victor by throwing a grenade that will kill Andy and the four accomplices.

Again, it seems intuitive that killing the five assailants in defence of Victor would be morally permissible. But the previous explanation of this is not available to Miller. On Miller’s view, each of the attackers has a right not to be killed by Richie. Even if we are prepared to grant Miller’s claim that the importance of saving Victor’s life is somehow able to override Andy’s right not to be killed, it is hard to believe it is able to justify overriding the rights of *five* people. If the right not to be killed is that weak, it is no real constraint at all. Miller theory thus seems committed to the conclusion that permissible other-defence is much more limited than self-defence. On this view, attackers can render it impermissible for rescuers to defensively harm them simply by recruiting a few willing accomplices. Since this is deeply counter-intuitive, we should reject this aspect of Miller’s theory.

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