

# Public Ethics Radio

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## Episode 21, Jon Quong on Self-Defense

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**MATT PETERSON:** This is Public Ethics Radio. I'm Matt Peterson.

Today on the show we're returning to one of our favorite themes: self-defense and the ethics of war. With Jon Quong of the University of Manchester, we're going to ask the question, what conditions make it permissible for one person to kill another? And what does it mean if the theories that we've used as the basis of war turn out to be wrong?

Christian Barry spoke to Jon Quong in Canberra.

**CHRISTIAN BARRY:** Jon, welcome to Public Ethics Radio.

**JON QUONG:** Thanks.

**CHRISTIAN BARRY:** So Jon, what is the problem of self-defense? And why is thinking about the permissibility of self-defense such a puzzle for philosophers?

**JON QUONG:** I guess one thing I might say is I'm not sure there's a single problem of self-defense, but a big puzzle with regard to self-defense is there are very few instances in our social life where we think it's morally permissible to intentionally impose harm on people. Punishment is one area where some people sometimes think it's permissible to intentionally harm others, but there are very, very few other areas.

But self-defense and defense of others holds this special place in our moral and social judgments. Many people think it's obviously permissible to intentionally harm or maybe even kill an attacker in self-defense or in defense of someone else.

And so the puzzle is to explain why there should be this special category, where doing things that would normally be considered obviously wrong or impermissible suddenly seem, to many people at least, to be clearly permissible, maybe even required under certain conditions.

**CHRISTIAN BARRY:** Criminal punishment is a case where we're often thought to be permitted to intentionally inflict harm on others, and the rationale for that ordinarily is that the person who's the target of such harm has done something that made them no longer able to call on the sort of protection that ordinarily people can call on. Do you see that as the way of, of generally justifying the permissibility of acting in self-defense or inflicting harm in self-defense on others?

**JON QUONG:** Well, that's a common way of trying to justify self-defense. So you might think it's easy to explain paradigm cases of self-defense. Imagine a toy example where we have Albert who is intent on murdering Betty in order that he can gain her inheritance.

Most people's immediate, intuitive reaction is, "Well, Albert's done something that means he's forfeited his rights. He's no longer entitled to the protection that people normally have." And that's why he's, you might say, liable to defensive harm. He wouldn't be wronged if Betty was to harm him in self-defense if that was necessary, or if someone else was.

But there are many other cases where it's less clear that someone has acted in a way that constitutes a forfeiture of rights or has acted wrongfully. Suppose—this is a case that originates with the philosopher Robert Nozick—that someone has fallen or been pushed from a great height, and now they're falling towards you and their body is going to land on you and kill you. They'll be fine, but you'll be crushed. But because it's a philosopher's example, you happen to have a trusty ray gun at your side. And you could zap the person and obliterate them—and thereby saving yourself and preventing them from killing you—but of course they'll be killed.

Many people's intuitive reaction in a case like that is, "Oh, self-defense is still permissible in that case." But that's very puzzling, because the person who's falling hasn't done anything at all. They've exercised no agency whatsoever. And so whatever rationale we were appealing to in the case we were talking about a second ago, where Albert is maliciously intending to murder Betty to inherit her fortune, that rationale clearly isn't going to do the explanatory work in this other case, where we have a falling—the threat is sometimes called a nonresponsible threat in the literature.

**CHRISTIAN BARRY:** So does that sort of account do better at explaining why in this particular type of case you can act in self-defense, even if the agent that is posing the threat has not in any way acted culpably?

**JON QUONG:** I'm not persuaded that that answer works because it still appeals to the idea of a rights-violation or a doing.

The example as described, that person doesn't do anything at all. They're entirely passive. We can imagine that they're unconscious. And once we fully imaginatively understand that they're entirely passive, I think it's no longer plausible to say that what happens is a rights violation.

Just like a falling boulder can't violate a person's rights, just like a giant falling baby couldn't violate a person's rights, it's also true that an unconscious person who has been pushed off the top of a cliff—that person can't violate your rights.

**CHRISTIAN BARRY:** So what sorts of relations do you take to be a more promising way forward in thinking about what could possibly ground this right to defend yourself?

**JON QUONG:** So in these particular kinds of cases, involving nonresponsible threats, the answer that I favor involves an appeal to two moral ideas. The first moral idea is the idea of an agent-relative or agent-centered permission to impose harm on people who are innocent of any wrongdoing, when that's necessary to save ourselves from some serious harm or possibly to save our own lives.

So the idea is that morality has to make a certain amount of space available for individuals to weight their own life out of proportion to its objective or impersonal weight. And in cases like this I think it's a tragic situation where both parties are morally innocent—neither party's done anything wrong—but the defensive agent who's standing at the bottom of the well or the cliff has an agent-relative permission to infringe the rights of the falling threat.

So that's the first part of the answer. Of course, if we just stopped there that answer would end up being far too permissive. It would end up—

**CHRISTIAN BARRY:** Permitting killing bystanders too?

**JON QUONG:** —killing by—grabbing someone who happens to be nearby and using their body as a shield to protect yourself, say, from an oncoming lethal projectile. And everyone, myself included, that I've spoken to about these cases finds those sorts of actions morally impermissible. So we need a way of limiting or constraining this agent-relative permission to harm innocent people.

And I think the best way of thinking about that constraint is to appeal to what it means to use another person as a mere means to your own ends. A similar idea is put forward by the philosopher Warren Quinn, who draws a distinction between what he calls eliminative harmful agency and opportunistic harmful agency.

If you zap the falling threat with your ray gun, you eliminate them from the situation. The idea is, you would be fine if they weren't there. So by killing them, you only keep what you would have without them, namely your life; you'd be fine without them. But in a case where you grab a bystander and use their body as a shield to protect yourself from some oncoming lethal projectile, it's not true that you'd be fine if they weren't there. Their body presents an opportunity for you. So it's only by making use of that in this harmful way that you can save yourself.

What we ought to think, I believe, is it's much worse to harm people in this opportunistic way, that involves using them in the way I've just described. And because it's much worse, morally speaking, to impose that kind of harm, the agent-relative or agent-centered permission I was talking about a moment ago doesn't extend to those sorts of harmful acts. So it won't allow us to use bystanders in that way. But it will extend to cases of what you might call merely eliminative harmful agency, like when you eliminate the falling threat.

**CHRISTIAN BARRY:** In the real world, most of the threats that are posed, of course, are not posed by boulders or falling babies or projectile—well, actually, they often are posed by projectiles—they involve different agents who are acting more or less responsibly, more or less culpably. In those sorts of contexts, how do you understand the permissibility of self-defense?

**JON QUONG:** Yeah. So when I first started working in this area, I was preoccupied with the issue of solving the nonresponsible cases, but we need an entirely different set of justifications for thinking about, you might say, more standard or paradigmatic cases in the real world, where the attackers, the people posing the initial threat, are usually responsible or acting wrongfully to some degree.

And so here I think instead of appealing to an agent-relative justification for acting in self-defense of defense of others we ought to appeal to a liability-based justification. By a liability-based justification, I mean in order for the imposition of defensive harm to be justified or permissible in these other cases, what makes it permissible is the fact that the attacker has done something that involves the forfeiture of his or her rights—the rights that we normally possess against having harm nonconsensually imposed on us.

**CHRISTIAN BARRY:** So this is more akin the example you started out with, with the example of criminal punishment.

**JON QUONG:** Yes.

**CHRISTIAN BARRY:** Right, so that the justification of the defensive action, the use of force, in this case depends on some characteristic of the agent, on something they've done to alter their rights status with respect to you.

**JON QUONG:** That's right. It has that in common with the justification of criminal punishment. But an important disanalogy between criminal punishment, I believe, and the permissible imposition in defensive harm cases is many people believe what makes acts of criminal punishment permissible is that the criminal, the wrongdoer, deserves that level of punishment. And I don't believe that moral desert plays any kind of justificatory role when we think about cases of self-defense.

**CHRISTIAN BARRY:** Right, so with respect to undeserving agents but who nevertheless make themselves liable, you can imagine a number of different things that we might say about what they're doing and who they are that would make them liable.

One would be, well, assimilating the case to an earlier example a little bit, is simply that insofar as they are acting as agents, all that's required is that they're acting as agents. And in their action as agents they are threatening a rights violation.

So that, insofar as your rights are at stake, it doesn't matter if the person is culpable. It doesn't matter about any of the characteristics about them, merely the fact that they are at threat of violating your rights and they are acting intentionally in this way—although perhaps nonculpably—that's enough to warrant self-defense against them.

**JON QUONG:** Yeah. The view you just described is fairly close to a view that one of the most prominent philosophers who works in this area has espoused, Jeff McMahan, who holds something that is sometimes referred to as the moral responsibility account of liability.

When an agent acts intentionally in a way that the agent knows there's some chance that this intentional action might result in wrongful or impermissible harm to an innocent person, then that if that wrongful or impermissible harm results, then the agent who acted is liable. They essentially take a moral risk when they act in this way.

And even if they're not culpable, even if it wasn't a particularly wrongful sort of action to engage in, given the evidence they had available to them, they know there was a chance they might hurt someone. And so if that chance eventuates, and now they are threatening to wrongfully hurt someone, they're liable to defensive harm.

Put in different terms, I think the intuitive argument behind that view is an appeal to something like fairness, distributive fairness. The thought behind the view is: it's only fair that we internalize or bear the costs for our own choices, our own actions. And other people shouldn't have to bear those costs, ideally. But it's not fair to impose costs on us for the choices of others. I think that's supposed to be underlying that account.

**CHRISTIAN BARRY:** Alright, so that seems to do pretty well in explaining our intuitions about a lot of cases about what might make it possible to harm someone without violating their rights. But you think it's not a complete account, or there are cases that it can't make adequate sense of.

**JON QUONG:** Yeah, so it does do very well simple paradigm cases where an attacker intends to hurt someone or they recklessly drive too fast knowing they might be endangering people nearby.

But I think there are important cases where the principle under discussion doesn't get the right answer. So imagine someone who's a conscientious driver. They're driving safely. So you imagine the ideal driver.

But in a way that's totally unforeseeable, the car hits a patch of ice, or for some reason swerves out of control, and now threatens to harm a pedestrian. On the moral responsibility view, this driver is liable to defensive harm. And indeed if the car's going to kill the pedestrian, on the moral responsibility view we're discussing, that driver is liable to be killed by the pedestrian in self-defense if necessary, because the driver took a chance.

When getting behind the wheel of a car, there's always a small chance that their car might veer out of control and hurt an innocent person. I find that view fairly counterintuitive.

The driver just hasn't acted in the sort of way that we normally think constitutes a forfeiture of his rights. He's acting in a way that's generally permitted. He's conscientiously trying to observe the rules of the road. He's given due weight to the considerations of others. And so when bad luck strikes, and his car serves out of control, it seems really bizarre to say, "Now he's done something that's so serious that he's forfeited his right not to be killed by someone in self-defense if necessary." That seems like the wrong answer to me.

**CHRISTIAN BARRY:** So is your view that it's impermissible to kill this driver in self-defense?

**JON QUONG:** No, this is where it gets a little complicated. So part of the intuitive force behind the moral responsibility view might be, "Well, look, it does seem permissible for the pedestrian to try and defend herself if necessary against this driver." And if it's permissible for the pedestrian to defend herself if necessary against the driver, then that must show the driver is liable to some degree of defensive harm.

I don't think we need to rely on a liability justification in this sort of story. I think, just like a nonresponsible threat, the driver in this case hasn't forfeited his rights. There's a really important difference between saying the pedestrian is permitted to kill the driver in this case—because there's an agent-relative justification—as opposed to saying the pedestrian's permitted to kill the driver because the driver is liable, as the moral responsibility account or McMahan's account would say.

If we say the driver is liable, then the pedestrian does nothing wrong, infringes no one's rights, if she kills the driver in self-defense. And moreover, the third party watching the scenario unfold can only come to the defense of the pedestrian, because only the pedestrian is nonliable.

Whereas I think the right view in this case is it's another tragic conflict, where both parties are symmetrical in terms of their moral status. Each one is innocent of any wrongdoing.

**CHRISTIAN BARRY:** So let's think about the, the driver a little bit. Now, it's true that there may be certain benefits of driving. It might be a justifiable practice; nevertheless, anybody who's spent any time on the road can recognize that any time you get behind the wheel, unpredictable things can happen.

You are, in fact, getting in, as an extension of your body, this massive apparatus, made out of steel, which can significantly harm others. Of course, you're not a villain, you're not a horrible person, but, nevertheless, you're knowingly taking a risk of imposing a very severe harm on others.

So you take that gamble. Why shouldn't, when things turn out that the gamble goes wrong and you're actually at risk of imposing a serious harm, why should we not think that you are liable to bear the cost of that decision?

**JON QUONG:** It's really important to distinguish different kinds of risks or gambles that we take with regard to potentially harming other people. And if we imagine the practice of prudent driving, even though we can foresee that a certain number of people will be unintentionally harmed or killed by permitting this practice, the best moral or political theory might tell us we should permit the practice anyway. Having weighed everyone's concerns equally, having counted each person with sort of due concern and respect, we might think we should permit this practice anyway.

So my claim is, if we've reached that kind of judgment about the practice, then when any individual person, any individual practitioner of prudent driving, engages in an individual instance of driving, they are treating each of their fellow society members with the concern and respect their society members are due. They don't treat anyone as having anything less than full normal moral rights not to be harmed when they engage in the practice of driving. And because they treat other people with that level of respect, my claim is they haven't forfeited any rights, even when things happen to go wrong.

That's very different from a case of reckless driving. The reckless driver who drives way above the speed limit, you know, is just selfishly in a tremendous hurry to get to the latest, you know, movie opening, that person doesn't show his fellow citizens due concern and respect. He imposes unjustifiable levels of risk on those people. And so if his car swerves out of control and threatens to harm a pedestrian, it makes sense to say he hasn't treated those people with the concern and respect they're due and that's why he might be liable to defensive harm in a way that the conscientious driver is not.

**CHRISTIAN BARRY:** We're discussing self-defense and the permissibility of harming others with Jon Quong. We're going to take a brief break and be right back.

**MATT PETERSON:** You're listening to Public Ethics Radio.

**CHRISTIAN BARRY:** So far we've been discussing about the bases that might be given for someone to act to intend to harm another. In particular, to harm another in self-defense. One of the contexts in which people often appeal to self-defense when they plan on intending harm is in the context of war or in the context of domestic enforcement of rules within a society, particularly by the police.

Does it make a real difference when we actually think practically about what wars might be justified which of these different accounts of self-defense we think are justified?

**JON QUONG:** I hope that it will make a difference. There's a really interesting, very important debate ongoing in philosophy about the appropriate relationship between thinking about what we've been talking about so far, which are moral principles to regulate individual conduct with regard to the morality of self-defense, and then cases where we might say the conduct is sometimes seen to be institutional rather than individual, what institutions like the police force do or institutions like armies do.

There's a view, which has been promoted by people like Jeff McMahan, and David Rodin and Cecile Fabre, which holds that we can move relatively unproblematically from thinking about moral principles that regulate individual conduct in these cases and apply them to the conduct of individuals in these apparently special institutional environments such as war.

So, for example, the moral responsibility account of liability, that Jeff McMahan has defended and developed, he then applies to the context of war and argues when a combatant takes a risk by joining a military, by deciding to engage in military action, then that individual combatant can make himself liable by virtue of responsibly doing something that he knows might end up wrongfully harming innocent people.

There are others, for example people like Michael Walzer, who've tried to defend a very different view. We shouldn't analogize between the individual case and how individual combatants may behave in war. That there's no relationship between the two.

My current belief is that things are more complicated than either of these two sides make out. In particular I think once we develop the view of liability that I favor, the one we were describing earlier, which depends really heavily on whether an individual acts in a way that has been deemed to be permissible despite the costs that might be imposed on innocent persons. If we take that view of liability seriously, we can see it might have really radical and far-reaching implications for, for example, how people behave in war.

In other words, in order to understand whether any individual combatant might be liable in wartime, one of the very deep and complicated questions we have to ask is: do we think it—wars, the practice of warfare, governed by any particular set of principles—might be permissible for individuals to engage in despite the tremendous costs that are imposed on other people?

Basically I think we have to answer that question first, before we can engage in questions about individual liability, where's there has been a tendency in the literature recently to think we can start with the questions of individual liability and work upwards towards questions about just war, or conduct in war.

**CHRISTIAN BARRY:** It's interesting. One of the aspects of your view seems to be that instead of thinking that, if we think about the two domains of moral reflection, one focusing on principles for the evaluation of individual conduct and character, and principles for the evaluations of institutions, that your view wedges them such that we can't make sense or we can't actually assess the permissibility of different types of conduct without first asking the question, relative to context, whether or not there are practices which are justified in terms of their effects and benefits that they confer on others, such that this individual's conduct is an instance of that sort.

And one of the things that's interesting there is how difficult it will turn out to characterize an individual's conduct, because we can usually describe an individual's conduct in many different ways, some of which might make their conduct look like a permissible type of conduct and others which may not.

**JON QUONG:** Yeah, I think that description is absolutely right. So I see myself as hopefully trying to contribute to a kind of reflective equilibrium, which I worry sometimes gets lost in these discussions between thinking about the moral principles that regulate our background set of entitlements and rights and forms of permissible conduct and our particular judgments about individual rights and entitlements to say impose harm or engage in risky activities.

It is going to be a very difficult task to decide what's the appropriate description of an individual's conduct, because sometimes, depending on the perspective you take, you can say “Well, look, that person was doing something”—if we focus on their very specific intentions, for example—“they were doing something selfish. They were just running off to, you know, meet their date. They weren't worried about other people's rights and entitlements.”

Or you can take a very sort of wider scope view—

**CHRISTIAN BARRY:** Rough-grained, yeah.

**JON QUONG:** —of their conduct and say, “Well, their intentions are totally irrelevant, what matters is their actions can be classified as among a set of actions that a moral principle deems permissible.” And so one of the areas I'm particularly interested in, and of course a lot of philosophers are interested in these days, is trying to understand the relationship between a person's intentions and the permissibility of what they're doing.

**CHRISTIAN BARRY:** A further complication. So insofar as we think that, if it can be shown that a type of action is such that, although it carries risks, is justified on the whole because of the benefits this permission brings to society as a whole, there are going to be a lot of instances where we're actually not very sure about whether or not conduct is of that type.

Arguably, even something like driving might be of that type. We might think that driving is on whole good, general—certainly the way things are structured now, we may not be sure about what sort of feasible alternatives there are, what types of costs and benefits they might bring. In these types of contexts of course, we, nevertheless, given and even in the face of all these uncertainties, have to think about liabilities, have to think about the degree to which we can act in certain ways.

What, as a general matter, is your approach to that sort of issue?

**JON QUONG:** As a general matter, my approach is when we're assessing whether an individual has acted in a way that constitutes a forfeiture of his or her rights, whether they've treated their fellow citizens or persons with the due concern and respect, the perspective we ought to adopt is what Derek Parfit calls the evidence-relative perspective.

So, given the best evidence available, both to that individual but also to society more generally, we have to ask: given the best evidence available, do we think that kind of activity was morally permissible? And when we're asking did the person in question show the right kind of concern and respect for others, that seems the only acceptable perspective to take.

Suppose as a matter of fact driving is not a morally permissible activity. It imposes totally unacceptable costs. As we know, tens of thousands of people are killed every year in road accidents. And suppose a brilliant moral philosopher, sort of Peter Singer, writes an incredibly persuasive new paper that illuminates for everyone the deep wrongfulness of the practice of driving and we come to think, "For all these years we've been mistaken, and it's not a morally permissible activity."

I don't think that would mean that all the people who engaged in driving when we all thought it was morally permissible were therefore doing things which constituted a forfeiture of their rights; they were recklessly endangering the lives of their fellows. I think based on the best evidence they did what they thought was right. So that's the perspective I think we ought to take.

And this raises a really interesting issue for just conduct in war. I think it's uncontroversial to say that for a long time that's sort of been the view that people have taken of the behavior of combatants in war. The thought was, so long as combatants adhere to the rules of *jus in bello*—so long as they adhere to the rules governing just conduct of combatants in war—then what they're doing is institutionally permissible. The costs of their behavior are kind of worth it; this is the right way to regulate this practice of warfare.

And so I think, if that was the widely held view—as I think it was and still is amongst everyone apart from a handful of philosophers—then that ought to affect our judgment about what those combatants were doing. Of course, if we come to revise that view about war—if we come to think that was the wrong view about war, and the best evidence now gives us reason to think something else, namely, soldiers ought to be behaving very differently than the way we previously believed, then that would affect our judgment about the liability of particular combatants.

**CHRISTIAN BARRY:** A lot of people would respond to those sorts of cases, I think, by saying that, "Well, you know, the fact that there was this widespread societal belief that these types of rules were justified certainly would make it more excusable that this person engages in this sort of conduct and deliberates this way, but there's a difference between excusing their conduct and making it excusable and actually justifying it." And insofar as we now think that in fact it wasn't justifiable, shouldn't we think that nevertheless they were excusably engaging in rights violations that made them liable to certain types of harm?

**JON QUONG:** I agree there's a really important difference between someone being excused for wrongful action based on their faulty beliefs and someone actually having acted in a way that was, as I've been calling it, evidence-relative permissible. The mere fact that someone

believes what they're doing is permissible, even the fact that many people believe that what someone is doing is permissible, is not going to be enough to do anything more than perhaps give them an excuse.

So the relevant question is whether the best evidence available to us at the time gave us reason to think it was in fact permissible. So when we ask the question about driving, the practice of driving, or we ask about the practice of warfare, what we have to ask ourselves is, “What does the best evidence give us reason to believe?”

I think the best evidence gives us reason to believe many of our current practices in war are probably wrongful, but it—that's an incredibly complicated question and, you know, I wouldn't really want to prejudge any particular issue there. But we can easily imagine cases where, at the time, the best evidence available didn't give us any reason to believe that what we were doing was wrongful.

Many people for example think that prior to some point in the 20th century, we simply didn't have the evidence to know that what we were doing was resulting in dangerous greenhouse gas emissions. So if that was true, the best evidence didn't give us reason to know those practices were potentially harmful and wrongful, then that really does alter, or it ought to alter, our judgments about the agents who engaged in those actions.

**CHRISTIAN BARRY:** Jon Quong, thanks for joining us on Public Ethics Radio.

**JON QUONG:** Thanks very much.

**MATT PETERSON:** Thanks for listening to Public Ethics Radio. The show is produced by me, Matt Peterson, with help from Stephanie Collins. Christian Barry is our host. The show is supported by the Centre for Moral, Social, and Political Theory at the Australian National University and the Carnegie Council for Ethics in International Affairs.

We'll be back soon with another conversation about Public Ethics. In the meantime, you can find us on the web at [publicethicsradio.org](http://publicethicsradio.org).

Thanks for listening.