

# Self-Defense, Permissions, and the Means Principle: A Reply to Quong

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In the self-defense literature, much theorizing centers around whether it is permissible to kill innocent aggressors and innocent threats.<sup>1</sup> Innocent aggressors are not culpable but nevertheless will kill you if you do not kill them. A child, who mistakenly thinks a real gun is a toy, is an innocent aggressor. Innocent threats do not even will the movement of their bodies, yet they nevertheless will cause your death if you do not kill them. Robert Nozick famously imagines a man pushed down a well, who will fall on you and kill you if you do not kill him.<sup>2</sup> Although many theorists claim that one may kill innocent aggressors and threats, some theorists present a powerful counterargument to the permissibility of such killings. These theorists argue that innocent aggressors and threats are morally indistinguishable from innocent bystanders.<sup>3</sup> Thus, because one may not kill innocent bystanders, one may not kill innocent aggressors and threats. In *Killing in Self-Defense*, Jonathan Quong claims that one may kill innocent aggressors and threats in self-defense,<sup>4</sup> but he denies that it follows from his position that innocent bystanders may also be killed when one acts defensively.<sup>5</sup> Quong thus takes issue with the argument that if it is impermissible to kill innocent bystanders then it must

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<sup>1</sup> See, e.g., George P. Fletcher & Luis E. Chiesa, *Self-Defense and the Psychotic Aggressor*, in CRIMINAL LAW CONVERSATIONS 365–83 (Paul H. Robinson, Stephen P. Garvey & Kimberly Kessler Ferzan eds., 2009) (including comments thereon authored by various authors and a reply to their comments authored by Fletcher and Chiesa following the main article); Jeff McMahan, *Self-Defense Against Morally Innocent Threats*, in CRIMINAL LAW CONVERSATIONS 385–406 (Paul H. Robinson, Stephen P. Garvey & Kimberly Kessler Ferzan eds., 2009) (including comments thereon authored by various authors and a reply to their comments authored by McMahan following the main article).

<sup>2</sup> ROBERT NOZICK, ANARCHY, STATE AND UTOPIA 34–35 (1974).

<sup>3</sup> See, e.g., Jeff McMahan, *Self-Defense and the Problem of the Innocent Attacker*, 104 ETHICS 252 (1994); Michael Otsuka, *Killing the Innocent in Self-Defense*, 23 PHIL. & PUB. AFF. 74 (1994).

<sup>4</sup> Jonathan Quong, *Killing in Self-Defense*, 119 ETHICS 507, 507 (2009).

<sup>5</sup> *Id.* at 508. Quong defines innocent bystanders as “those people who have no significant causal involvement in whatever it is that threatens my life and have done nothing that would normally make them liable to be killed.” *Id.* It should be noted, however, that to the extent that a bystander’s presence limits one’s range of defensive options, bystanders do play causal roles. See Larry Alexander, *Self-Defense, Justification and Excuse*, 22 PHIL. & PUB. AFF. 53, 54–55 (1993).

be impermissible to kill innocent threats and aggressors because none of these individuals are morally responsible for the threat to the defender.<sup>6</sup> Quong acknowledges that in terms of moral responsibility, none are responsible, but he argues that this fact is not dispositive, as agents may favor their own lives over the lives of others. For this reason, a defender may kill innocent aggressors and innocent threats.<sup>7</sup> However, even if we are entitled to prefer our own lives over others' lives, there are moral constraints, including that one may not "use someone as a mere means."<sup>8</sup> Quong roughly defines this constraint as, "if *X* and all the things currently belonging to *X* were suddenly to disappear, would your life be saved?"<sup>9</sup> If one answers this question negatively, then one is using *X*, which violates the means principle. Quong argues that in most cases a defender will be using an innocent bystander.<sup>10</sup> For Quong, then, the means principle is thus what will typically distinguish the permissibility of killing innocent aggressors and innocent threats from the impermissibility of killing innocent bystanders.

According to Quong, innocent threats and innocent aggressors are not liable to be killed defensively.<sup>11</sup> That is, they have done nothing wrong such that they have given up their right not to be killed.<sup>12</sup> Rather, a defender may kill an innocent threat because every person has an agent-relative permission to favor his own life.<sup>13</sup> "I assume that many people will believe that considerations of partiality make it permissible to act in the first case . . ." <sup>14</sup> "[Y]our life is of particular importance to *you*."<sup>15</sup> In our recent book, Larry Alexander and I likewise raised this suggestion, although we remained more agnostic as to whether the killing is better viewed as excused.<sup>16</sup>

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<sup>6</sup> See *supra* note 3 for sources making the argument that it is impermissible to kill innocent aggressors and threats for this reason.

<sup>7</sup> Quong, *supra* note 4, at 517–18.

<sup>8</sup> *Id.* at 523.

<sup>9</sup> *Id.* at 529.

<sup>10</sup> *Id.* at 532.

<sup>11</sup> *Id.* at 519.

<sup>12</sup> The liability/permissibility dichotomy is a recent distinction drawn in the self-defense literature. According to some theorists, under some conditions an actor is liable to be killed defensively, say, when he culpably attacks another. Even when an actor is not liable to be killed, some theorists maintain that it may be permissible nevertheless for the defender to kill the actor, for instance, when a defender acts upon her reasonable perception that someone is going to kill her but she is mistaken and there was no threat. See, e.g., Helen Frowe, *A Practical Account of Self-Defence*, 29 *LAW & PHIL.* 245 (2010).

<sup>13</sup> Quong, *supra* note 4, at 516–17.

<sup>14</sup> *Id.* at 512.

<sup>15</sup> *Id.* at 516.

<sup>16</sup> LARRY ALEXANDER & KIMBERLY KESSLER FERZAN WITH STEPHEN J. MORSE, *CRIME AND CULPABILITY: A THEORY OF CRIMINAL LAW* 136–41 (2009).

Quong also argues that we may not use others as a mere means to our ends.<sup>17</sup> I agree. Indeed, Alexander and I have argued just that too.<sup>18</sup> Specifically, we have argued (1) that the principle that we cannot use another as a mere means to our ends constrains actions that would otherwise be consequentially justified, and (2) that we believe this principle is largely what motivates the law's reluctance to require individuals to act for the benefit of others.<sup>19</sup>

Admittedly, I am more equivocal than Quong as to whether, when an individual kills an innocent bystander or threat, we should recognize an agent-relative permission or whether it is best to categorize such conduct as excused. But I am willing to accept his agent-relative permission for the purposes of this argument. Where I part company with Quong is in his claim that the means principle draws a principled distinction between the permissibility of killing innocent threats and the impermissibility of killing innocent bystanders. Properly understood, the means principle cannot equate the use of space with the use of a person. Thus, when evaluating whether one may kill the bystander or the innocent threat to save one's own life, the permissibility of this action cannot turn as sharply on whether the victim's space is being used as Quong claims.

What is particularly jarring about Quong's claim is the way he interprets the means principle. Certainly, if one grabs a bystander and uses her as a shield, she uses the bystander. However, Quong maintains that the means principle reaches far beyond such cases. He claims that we use a bystander when we run roughshod over him; this is, as Judith Thomson imagines it, when 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.<sup>20</sup>

When we ride roughshod over bystanders, we would prefer they were not there at all. When we substitute them (as when one redirects a runaway trolley from oneself to a bystander on the other track), we still do not find them necessary to our ends.<sup>21</sup> Consider Quong's example:

*Alcove:* You are in a tunnel and see a runaway trolley headed straight for you and it will kill you if [you] do not escape. You can only escape the trolley by squeezing into a small alcove in the tunnel. Unfortunately for you, there is already someone in the small alcove. You could pull them

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<sup>17</sup> Quong, *supra* note 4, at 529–30.

<sup>18</sup> ALEXANDER & FERZAN WITH MORSE, *supra* note 16, at 99–103.

<sup>19</sup> *Id.* at 99–103, 235.

<sup>20</sup> Judith Jarvis Thomson, *Self-Defense*, 20 PHIL. & PUB. AFF. 283, 290 (1991).

<sup>21</sup> *Id.* at 289–90. “Riding roughshod” and “Substitution-of-a-Bystander” are Thomson's terms.

out of the alcove and onto the tracks, where they will die, so you may fit in the alcove and save yourself.<sup>22</sup>

In this case, you do not need the bystander to die. You wish he did not exist at all. How is it, then, that you *use* him? Quong states that you use him by using *his* alcove. Quong states that it is impermissible to kill the bystander because individuals have a prima facie claim-right to the space that they occupy.<sup>23</sup> For this reason, one cannot move another in a public park (even without harming or even touching him).<sup>24</sup> The breadth of this assertion is worth quoting at length:

The same consideration that supports the view that people have presumptive claim-rights over their body motivates the thought that people must have presumptive claim-rights over the physical space where their body is. Without a right over the space they occupy, people would have almost no control over their own life. Without such rights we would lack the most basic elements of human agency—we would be unable to limit others from using our body for their own purposes. We must, at a minimum, have control over our own body, and the space it occupies, in order to realize an idea of persons as more than mere means to be used for others' purposes.<sup>25</sup>

I want to raise a number of concerns about Quong's argument. First, I believe that Quong overstates the relationship between an individual's agency and the space he occupies. Second, Quong misconstrues the means principle—using an individual's space is not the moral equivalent of using him. Third, there is an inherent tension between an agent-relative permission that looks to what morality can fairly ask someone not to do and the means principle's constraint on behavior. That is, I worry that a person of reasonable firmness may yield to using others or their property now and then. Finally, I question whether Quong's claim can be cabined in a way that complies with our deep-seated moral commitments in other cases.

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<sup>22</sup> Quong, *supra* note 4, at 526 (citing Thomson, *supra* note 20, at 291).

<sup>23</sup> *Id.* at 528.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 528–29.

## I. DOES THE “RESPECT FOR PERSONS” THAT GROUNDS QUONG’S CLAIM RESIDE IN THE RIGHT TO PHYSICAL SPACE?

Quong claims, “[w]ithout a right over the space they occupy, people would have almost no control over their own life.”<sup>26</sup> What is important about this claim is that Quong takes our occupation of physical space to be a central component of our agency. Thus, any use of our space is a profound use of us. This is what motivates his claim that we cannot kill bystanders because we substantially use them when we use their space. Unfortunately, I think this claim is significantly overstated.

Quong elides the distinction between our control over the space we occupy and our ability to control occupying that space. His claims about use require strong control in the first sense, but our agency, I believe, is centrally implicated in the second sort of control. Consider the following example:

*Genie*: Jeannie has the power to blink her eyes and magically control people and events. Jeannie blinks her eyes and transports Major Nelson across the room. She then blinks a vase to where Major Nelson was.

Jeannie treats Major Nelson as a marionette. She denies his agency. And she denies that agency by denying him the control to determine where his body is and how it moves. That is the truth in Quong’s claim that “[w]ithout a right over the space they occupy, people would have almost no control over their own life.”<sup>27</sup> However, what *Genie* does not show is that the use of the space that Major Nelson was occupying is central to his agency. That is, Jeannie does not *use* Major Nelson by putting a vase where Major Nelson was.

It may certainly be argued that once Major Nelson leaves the spot, he no longer has a right to that space and the objected-to use is, therefore, the use of the space Nelson currently occupies. This is not Quong’s argument. Quong wants to establish that pushing a bystander out of the alcove uses the bystander because using the alcove uses the bystander’s space. Temporally, this will occur by the agent moving the bystander and then occupying the space he was in. The agent does not use the space until the bystander is gone. Likewise, in *Genie*, Jeannie moves Major Nelson first and then uses the space. In my view, whatever is objectionable about this act is not the vase’s subsequent occupation of the space. Jeannie’s use of space for the vase has no bearing on Major Nelson’s agency.

To put the point another way, Quong does not say that any time we shove a person, we are using that person’s space. That is, if one shoves another out of an alcove but does not then seek to occupy it, I do not think Quong would argue that there is any impermissible use of the person. Quong’s argument is that the use

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<sup>26</sup> *Id.* at 528.

<sup>27</sup> *Id.*

occurs when one occupies the space that the bystander had a right to occupy. He claims that this space is central to our autonomy. *Genie* reveals that this is not so.

## II. IS USING SPACE THE SAME AS USING A PERSON? ARE ALL “USES” ALIKE?

Even if we accept that the bystander has some sort of claim-right to the space he occupies, would and should the means principle be interpreted to prevent the use of that space? When one uses a person, one benefits from that person's existence. One appropriates that person. One treats that person as a tool for one's use. Ultimately, one treats that other person as a resource to be distributed. This exhibits profound disrespect for what it means to be a person.

Using someone's property exhibits some of this disrespect, but not all. If I use something that you have created, I benefit from your existence, and from your creation of that property, but my taking and using some *thing* of yours is not the same as taking and using *you*.

Any use of another's space certainly manifests less disrespect than using his property. Space is not something you create; it is not something to which you bring value. Space is just something that you occupy and then you leave, and then it is not yours anymore. It is not part of your identity; indeed, in many of Quong's examples, it is something you can have a right to in only a limited way because it belongs to the public and not to you. Admittedly, we are all annoyed when, for example, we are jostled in a crowd and someone takes over the spot in which we were standing to see a performance. I do not doubt that we like our space. I do doubt, however, that it is central to our agency and thus has sufficient stringency to constrain others' choices in self-defense cases. Once you walk out of the alcove, it is as if you were never there and it was never yours.

It seems to me that there is a significant difference between those instances in which one's self-preferential behavior requires the use of another person, and those instances where one's self-preferential behavior requires the use of another person's *stuff* or *space*. Warren Quinn's initial formulation, upon which Quong relies,<sup>28</sup> focuses on the violent usage of individuals—blowing up civilians and treating patients as guinea pigs—not on the use of the space they were in.<sup>29</sup>

To illustrate, consider four cases, all of which result in the death of Bystander. In *Human Shield*, Villain is attacking you. To save yourself, you use Bystander as a shield. Villain's bullet hits and kills Bystander. In *Shield*, Villain is attacking you and Bystander. You take Bystander's shield and use it. Villain is able to kill Bystander. In *Suffocation*, Villain is attacking you. You cram into an alcove already occupied by Bystander that is big enough for only one person. You

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<sup>28</sup> Quong, *supra* note 4, at 525.

<sup>29</sup> Warren S. Quinn, *Actions, Intentions, and Consequences: The Doctrine of Double Effect*, 18 PHIL. & PUB. AFF. 334, 336, 342 (1989).

suffocate Bystander. Then, consider Quong's *Alcove*, where you shove the Bystander out of the alcove, and he, not you, is hit by a runaway trolley.<sup>30</sup>

Although your intuitions about whether these actions are impermissible may turn on intending-versus-foreseeing or doing-versus-allowing, I simply want to ask how we understand whether you are *using* Bystander. In which cases does Bystander's claim, "you used me," have meaning? *Human Shield* is a clear appropriation. It is an instance of "opportunistic agency," where you substantially benefit from Bystander. In *Suffocation*, on the other hand, the moral claim is one of "get off me" or "this is killing me," not "stop using me." In *Alcove*, Bystander's claim, "you used me," seems wholly implausible. In *Suffocation* and *Alcove*, it is just not the case that you are benefitting from Bystander. Bystander does not, in any meaningful sense, enter into the causal mechanism that results in your life being saved.

### III. IS IT EVER PERMISSIBLE TO USE ANOTHER?

Thus far, I have tried to press two points. First, that Quong's claim about using bystanders is overstated when he claims that to use a bystander's space is to undermine significantly the bystander's agency. Next, I tried to press that once we understand the relationship between an individual and his space, we see that using his space is a far cry from using him. Now, I will analyze the interaction between the means principle and the agent-relative permission which, according to Quong, allows one to kill innocent aggressors and innocent threats.<sup>31</sup>

The means principle, I have argued, ought not be construed so as to equate the use of a person's space with a use of the person. In contrast, I take it that the agent-relative permission—if we are to accept the plausibility of such a permission—is compelling. If we believe that individuals may give their lives greater weight, this permission is not likely to be a mere tie breaker. Consider:

*Fat Man and the Cat:* You are at the bottom of a well. Villain pushes a Fat Man, who happens to be holding his pet cat, down the well. If they fall on you, they will live but you will die. The cat has dug its nails into Fat Man so it cannot be detached from Fat Man. You have a laser gun and can disintegrate the Fat Man. But if you disintegrate Fat Man, you will also kill the cat.<sup>32</sup>

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<sup>30</sup> The switch from Villain to trolley was necessary, as one might wonder whether, if Villain kills Bystander in *Alcove*, Villain is killing Bystander instead of you, and you are using him for this purpose.

<sup>31</sup> See Quong, *supra* note 4, at 516–17.

<sup>32</sup> This is a variation of the case suggested by Nozick, *supra* note 2. I do not intend to suggest that the cat is an "irrelevant utility" whose interests are irrelevant to the question of who should live and who should die. See F.M. KAMM, *MORALITY, MORTALITY: VOLUME I: DEATH AND WHOM TO SAVE FROM IT* 146 (1993). Rather, my aim is to suggest that, even granting that the cat may tip the scales in favor of Fat Man from an agent-neutral point of view, the agent-relative permission

I do not think it is plausible that the cat tips the balance in favor of Fat Man. If you have an agent-relative permission to kill Fat Man, you still have that permission when it is Fat Man and the cat.

Quong carefully limits his claims to two-person conflicts.<sup>33</sup> However, this reluctance gives us very little sense of how he actually conceives the agent-relative permission. Consider:

*Babies in a Plane:* Villain ties you up and then flies a plane overhead. Villain then pushes 100 babies (tied together) out of the plane. They will land on you and kill you with their combined weight. Even tied up, you can still disintegrate the babies with your laser gun.<sup>34</sup>

A theorist who takes Judith Thomson's approach will easily grant that you may justifiably kill the 100 babies.<sup>35</sup> A theorist who takes Jeff McMahan's approach will easily grant that you cannot.<sup>36</sup> But we cannot tell how Quong comes out because the answer crucially relies on the strength of the agent-relative permission. How many innocent threats may one kill? Just one? Two? One hundred?

As a workable assumption, suppose that Quong borrows a standard from the law of duress. We can ask what a person of reasonable firmness in the actor's situation would do. The answer then hinges on how demanding morality is, and that seems to be precisely the right sort of question.

However, borrowing this standard from duress reveals a further question. If morality asks us to act as the person of reasonable firmness would, why would morality forbid any and all appropriations? After all, the acts with which we are dealing are not justified. They are not actions to which third parties should assist. But they are actions that are understandable given the weight that you are entitled to give to your own interests. Morality would be too demanding to ask you not to engage in the conduct. Consider:

*Family Transplant:* Amy is a world-class surgeon. Her family was just involved in a terrible car accident, and her husband and four children all need one organ. Amy can only save them if she immediately carves up an innocent bystander who just stopped to offer her aid.

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(granting that your life has more meaning to you) would still allow you to privilege your own life over both the life of another person and the life of a cat.

<sup>33</sup> Quong, *supra* note 4, at 530.

<sup>34</sup> See Alexander, *supra* note 5, at 62.

<sup>35</sup> According to Thomson's view, the babies, who are innocent threats, will violate your right not to be killed and thus lack rights that you not kill them. Thomson, *supra* note 20, at 302.

<sup>36</sup> McMahan, *supra* note 3, at 268–70.



This action is not justified. The means principle certainly constrains the consequentialist calculus. No one can help Amy. From an agent-neutral perspective, this action is clearly wrongful. On the other hand, is Amy permitted to take into account that she is not saving five strangers, but rather, her family? Can her personal relationship to the injured people allow her to engage in this otherwise impermissible appropriation of another person? Can we say that morality prohibits her preferring the lives of five family members to the life of this one bystander?

Indeed, we are permitted to use *things* and perhaps even *people* for significant enough consequences. In Thomson's example, if you break into someone's freezer and steal his steak to feed a child with a terrible protein deficiency, then you infringe his property right and have to compensate him.<sup>37</sup> But we certainly think that you may take the steak and use it. According to tort law, when a sudden storm arises, an actor is allowed to tie her boat to another's dock, and indeed, the dock owner may not untie it.<sup>38</sup> Notably, the boat owner must then pay for any damage to the dock caused by the boat.<sup>39</sup> Perhaps, then, we are even permitted to kill one person to save five. Duress cases are frequently cases in which the balance of evils is positive, but the appropriation of another requires us to treat the action as unjustified.<sup>40</sup> The question for Quong then is this: Why is morality not too demanding when it asks us not to appropriate others?

You (and Quong) may not agree with all of this. You may believe that we are categorically prohibited from using others, not just in a way that constrains our consequentialist calculations, but in ways that bar what would otherwise be permissible actions of self-preference. Still, does anyone believe that we cannot give the dying child the steak for her protein deficiency? Or that we cannot save our houseboat by tying it to a dock and causing minor damage? I doubt it. The uses are sufficiently minor and what we aim to save is rather significant. Quong concedes, "I leave open the possibility that infringements which cause only very small harm in pursuit of a very large benefit may be permissible even if they fall foul of [the means principle]."<sup>41</sup>

We now must return to the balance. Quong does not tell us how to evaluate the agent-relative permission. And I question how strong the constraint can be against use in the bystander cases, where Quong cannot maintain that the defender uses something significant of the bystander's. If you may kill Fat Man and the cat

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<sup>37</sup> JUDITH JARVIS THOMSON, RIGHTS, RESTITUTION, AND RISK 40–41 (William Parent ed., 1986).

<sup>38</sup> *Ploof v. Putnam*, 71 A. 188, 189 (Vt. 1908).

<sup>39</sup> *Vincent v. Lake Erie Transp. Co.*, 124 N.W. 221, 222 (Minn. 1910).

<sup>40</sup> ALEXANDER & FERZAN WITH MORSE, *supra* note 16, at 140.

<sup>41</sup> Quong, *supra* note 4, at 530.

then you may kill bystander and use his space.<sup>42</sup> The use is minor and the agent-relative permission is compelling.

In my view, all instances in which an actor behaves in the way that a person of reasonable firmness would, should rise and fall together. Quong believes you may kill an innocent aggressor and an innocent threat. The fat man falling toward you would very much like to live, and the agent-relative permission allows you to kill him because you may choose your life over his. Why is it that the permission would treat *Alcove* differently? In this context, you must also kill an innocent person to save yourself. You are choosing to prefer your life to the innocent bystander. The bystander's occupation of that space cannot create a moral prohibition of sufficient stringency to allow you to act in one case and not the other. *Alcove* is best viewed as an instance of direct eliminative agency.<sup>43</sup> You (arguably) intend to kill the bystander but only to get him out of your way so you can get in the alcove. Innocent threat cases present exactly the same structure. You intend to kill the innocent threat only so as to remove the threat he presents to you.<sup>44</sup>

#### IV. DOES THIS PRINCIPLE PROVE TOO MUCH?

My final worry is that Quong's means principle, as he construes it, is far too restrictive, and it ultimately forbids action in cases in which we (and he) believe the conduct to be permissible. For *Trolley*, when one diverts the trolley from the five trapped workers to the one worker, Quong states this action is permissible.<sup>45</sup> However, Quong cannot deny that, under his theory, one uses the space occupied by the lone worker. Quong is thus committed to the view that in *Trolley*, diverting the trolley is impermissible.

It is not sufficient to point to numbers here.<sup>46</sup> First, *Trolley* can be distinguished from *Transplant* on the basis of the means principle. However, if *Trolley* is a use case, then we could not distinguish them on this basis. (Unless Quong admits that there are uses and then there are *uses*.)

Moreover, Quong specifically approves the transfer of the trolley in a one-to-one comparison, wherein he argues that you do have an agent-relative permission to divert the trolley (to save yourself or your child),<sup>47</sup> but Quong argues you may not shove the Fat Man into the path of the runaway trolley in order to stop it from

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<sup>42</sup> If you believe the cat is an irrelevant utility, see KAMM, *supra* note 32, I would suggest the same principle holds for the bystander's space.

<sup>43</sup> Quinn defines "direct eliminative agency" as "direct agency that aims to remove an obstacle or difficulty that the victim presents." Quinn, *supra* note 29, at 344 (emphasis removed).

<sup>44</sup> Quinn takes the Craniotomy Case wherein "a woman will die unless the head of the fetus she is trying to deliver is crushed" to be an instance of direct eliminative agency. *Id.* at 336, 344.

<sup>45</sup> Quong, *supra* note 4, at 537.

<sup>46</sup> *Id.* at 530.

<sup>47</sup> *Id.* at 537.

killing your child (*Man on the Overpass*).<sup>48</sup> Once again, he points to the very principle that he wants to do the work of distinguishing innocent threats from bystanders—the means principle. He states:

Because we do not use (or perhaps intend) the death of the man on the track it may be permissible to turn the trolley in this case, but it is clearly not permissible to kill the large man on the overpass because this killing would require that we use (or perhaps intend) his death as a means to our end.<sup>49</sup>

This statement is clearly wrong on the terms of Quong's argument. We are using the space occupied by the lone worker, and thus, we are violating the means principle as he constructs it.

Perhaps our intuitions are influenced by the fact that the one person is a worker and that he is trapped. Maybe workers assume some risks. Maybe trolley tracks are not things that common individuals dawdle upon. To remove these concerns that may influence our intuitions, consider the following:

*Sidewalk*: You are the passenger in a car when the driver suddenly suffers a heart attack and the car is veering out of control and you cannot stop the car. The car is headed toward your son who is standing on the left sidewalk; the car will kill him unless you turn it toward the right. However, on the right sidewalk is a stranger who will die if you hit him with the car. The car will not travel straight.

If we may turn the trolley in one-to-one cases, then we should be able to turn the car in *Sidewalk* because we would have an agent-relative permission to prefer the life of our child to that of a stranger. But then, we use the space that the person occupies. Quong's argument leads to the conclusion that we cannot turn the car in this situation; I suggest we should be skeptical of this conclusion.

Ultimately, Quong may be correct that the killing of innocent threats and aggressors may be permissible actions because morality cannot demand individuals to treat their lives as interchangeable with the lives of others. And, because innocent aggressors and threats are innocent and are not liable to defensive killings, these are regrettable killings. Likewise, the killing of an innocent bystander may be a regrettable killing in the name of self-preference. But if the killing of an innocent person can be permissible, so can the death of an innocent person when you use his space.

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<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

