

## THE ETHICS OF CONTINUING HARM

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“I’M A KIDNAPPER FOR HER, that’s what I am,” Tumnus tells Lucy. Shortly after Lucy Pevensie arrives in Narnia, she is befriended—or so she thinks—by a Faun named Mr. Tumnus. Tumnus lures her into his home and delivers on his promises of tea and a warm fire. Lucy, unaware, is not his guest but his prisoner. Tumnus’s acts of apparent hospitality are in fact stalling tactics as he awaits the arrival of the White Witch who will undoubtedly kill Lucy. In a moment of contrition and on the verge of releasing his prisoner, Tumnus confesses. He is a kidnapper.

“Well,” said Lucy rather slowly, . . . “that was pretty bad. But you’re so sorry for it that I’m sure you will never do it again.”

“Daughter of Eve, don’t you understand?” said the Faun. “It isn’t something I have done. I’m doing it now, this very moment.”<sup>1</sup>

Tumnus’s confession presents a puzzle. What can he mean when he says that he is now, at this very moment, in the act of kidnapping? Was he in the act of kidnapping when he built the fire and put on the kettle? Was he in the act of kidnapping while he played his flute and she slept? In this moment, even as Tumnus confesses to Lucy, she is nevertheless his prisoner. Tumnus continually violates Lucy’s right not to be kidnapped—the harm he poses is a continuing harm. Moreover, in this moment, Tumnus also poses a continuing threat of harm, for, at each moment, he is about to imprison her even longer and thereby to harm her even further. The harm Tumnus causes and the threat he poses are temporally coextensive—his is a continuing harm and a continuing threat. He is correct both about the harm and the threat when he says he is “doing it now, this very moment.” And, crucially, the continuing violation of Lucy’s right to freedom he has caused is in addition to the lethal harm the Witch would have caused. Throughout her imprisonment, Tumnus continually violated Lucy’s rights even though he never turned her over to be killed.

1 Lewis, *The Lion, the Witch and the Wardrobe*, 16.

At first glance, the question of defensive harming might appear to be merely a question of whether an imminent threat is a necessary condition for justified defensive harming. For instance, one might think that the threat *Tumnus* poses is fully explained as an ordinary nonimminent threat, and that nonimminent threats can justify defensive harming. Instead, as I argue here, the continuing threat attackers can pose, and the continual harm attackers can cause, are of a different kind than the discrete threats we often think of as either imminent or nonimminent. The harm victims suffer, and therefore the harm defenders may proportionately cause to defeat those threats, are fully captured only if we include continuing harms.

In the literature on the ethics of defensive harming, threats are often categorized as either imminent or nonimminent; and nonimminent threats are often treated as though the harms they threaten are discrete, rather than continuous. In other words, the existing literature on defensive harming sometimes does include threats of continuing harm, but those threats of continuing harm are often coincident with threats of discrete harm. As a result, it is difficult to determine what role threats of continuing harm play in moral justifications for defensive harming. As I argue here, a theory of defensive harming is incomplete if it fails also to identify and account for threats of continuing harm like the one *Tumnus* posed to *Lucy*. To this end, I develop continuing harm as a subset of the harms that are relevant to defensive harming. I then sketch an account of the morality of continuing harms and show that the proportionality calculus in defensive harming is sensitive to threats of continuing harm in addition to threats that are more easily categorized as imminent or nonimminent. I pay special attention at the end of the paper to the application of this account of continuing harm to the proportionality condition in just war thinking. To summarize, I intend for this paper to serve two purposes: first to show that we should develop an account of continuing harms, and then to develop one such account.

There are several ways in which harms caused over time can be relevant to questions of proportionality. For instance, in the context of war, one might ask whether, or in what ways, harms that have already been caused are relevant to a forward-looking proportionality calculus. That is, suppose a state decides that it can proportionately accept one thousand friendly losses to achieve its just war aims. Further suppose that once the fighting begins, the state has suffered nine hundred losses. It might still achieve its aims, but doing so will likely result in five hundred more losses. Is the state morally justified in continuing its war?<sup>2</sup> Though these questions certainly involve proportionality and harms caused

2 These are questions Fabre, McMahan, and Rodin have addressed in a 2015 *Ethics* symposium on ending wars. See Fabre, "War Exit"; McMahan, "Proportionality and Time"; Rodin, "The War Trap."

over time, they are peripheral to the questions of continuing harm with which I am concerned here. One difficulty in discussing continuing threats and continuing harms is that these terms can be ambiguous. For instance, an attacker might continuously threaten a discrete harm. Suppose an attacker says, “As soon as you’re alone, I’m going to break your arm.” If the attacker follows through on the threat, the harm he causes is discrete; and yet as the attacker lurks, waiting for his victim to be alone, the threat is continuous. Or suppose an attacker unjustly and imminently threatens to amputate my arm and follows through. I will suffer some immediate harm—pain, for example—but the deprivation of the use of my arm will also amount to a continuing harm for the rest of my life. Here, the threat is discrete, but the harm is continuing. Or an attacker might pose a discrete threat of a continuing harm. In Singer’s torture case, an attacker sets the torture machine in motion, continually harming his victim, but then dies.<sup>3</sup> The harm the victim suffers is continuous even when the threat ceases to be continuous. Throughout this paper, when I refer to “threats of continuing harm,” I have in mind situations in which an attacker threatens to deprive his victim of some right continually, for instance, a right to freedom. Often, though not always, when an attacker causes a continuing unjust harm, the attacker also poses a continuing threat. In this paper, I focus on threats of continuing harm as opposed to continuing threats of harm even though the latter often accompany the former. According to this definition, kidnapping victims, hostages, and those unjustly imprisoned are all victims of continuing threats.<sup>4</sup>

These kinds of continuing harms—kidnapping, hostage-taking, and imprisonment—are different from repeated discrete harms. For instance, imagine a victim who is unjustly imprisoned by an aggressor. Each day of the imprisonment, the aggressor beats the victim. There are (at least) two different kinds of unjust harms being perpetrated against the victim. First, she is regularly and repeatedly being beaten. These are repeated discrete harms. But additionally, she is unjustly imprisoned. In most cases—both hypothetical and real-world cases—continuing harms are often accompanied by repeated discrete harms. Though a discussion of repeated discrete harms will certainly arise throughout the paper, I am focused on the continuing harms of, for instance, kidnapping, hostage-taking, and imprisonment.

Ultimately, as I argue below, continuing harms are relevant to the proportionality calculus in defensive harming and in just war thinking. If we fail to account for continuing harms, we also fail to account for the role that the

3 Singer, “Bystanders to Poverty,” 195.

4 There are also justified threats of continuing harm. If someone is justifiably placed in prison, for example, she faces a justified threat of continuing harm. If she kills to defeat that threat, she does so impermissibly.

duration of the relevant harm can play in the proportionality calculus. One is undoubtedly permitted to cause more harm to keep from being wrongfully imprisoned for a year than one is permitted to cause to keep from being wrongfully imprisoned for a day. To explain this difference, we must appeal not just to repeated threats of discrete harm that can be easily categorized as threats of imminent and nonimminent harm, but specifically to threats of continuing harm. Common approaches to defensive harming and, more specifically, to just war theory, have not thoroughly developed threats of continuing harm.

### 1. CONTINUING HARMS IN THE REAL WORLD

The fact that threats of continuing harm obtain in the real world—and that legal categories might be insufficient to account for them—arises in several real-world cases of domestic abuse. Here, I focus on Judy Norman's case.

*Domestic Abuse:* Judy Norman was tortured and beaten by her husband for years and threatened with death and mutilation if she attempted to escape or obtain outside help. She finally killed her sleeping husband. Denied a self-defense instruction [by the court], she was convicted of manslaughter and sentenced to six years' imprisonment.<sup>5</sup>

There is a widely held intuition that Judy Norman was justified in killing her abuser, but it is not immediately obvious what moral principle ought to ground that justification.

On the night that Norman killed her abuser, she did not face an imminent threat. Throughout the paper, by "imminent threat" I mean that an attacker will harm the victim immediately. The time available for a defender to react is so brief that her defensive options are drastically reduced. In Kimberly Kessler-Ferzan's words, "an imminent threat is one that will happen 'in an instant' or 'at once.'"<sup>6</sup> The intuition that Norman was justified in killing her abuser stands in contrast to the common legal requirement that either a justified defensive harm must be immediately necessary or that defensive harm is justified only against imminent threats. This conflict between moral intuition and legal standards is reflected in the conflicting legal decisions on the case. The district court initially denied a self-defense instruction to the jury, and Norman was convicted. The appellate court, however, reversed the decision arguing that the district court

5 Rosen, "On Self-Defense, Imminence, and Women Who Kill Their Batterers," 372. Norman's abuse is cataloged in greater detail in Fletcher, "Domination in the Theory of Justification and Excuse," 555; and Ferzan, "Defending Imminence: From Battered Women to Iraq," 233–34.

6 Ferzan, "Defending Imminence," 229.

erred and that the jury should have been given a self-defense instruction. Later, the Supreme Court of North Carolina reversed again, arguing that the self-defense instruction was not available for Norman precisely because the imminence requirement had not been met.<sup>7</sup> One plausible—if partial—explanation for these conflicting legal interpretations is that imminent threats are not the only threats relevant to moral justifications for defensive harming.

Though Norman did not face an imminent threat on the night she killed her abuser, she almost certainly faced a nonimminent threat of discrete harm. Norman's husband had already threatened her "with death and mutilation if she attempted to escape or obtain outside help."<sup>8</sup> Suppose that, on the night she killed her abuser, he credibly told her that he would beat her the next morning. If so, she faces a threat of nonimminent discrete harm. Perhaps it is this threat that justifies her killing her abuser. On this question, too, various legal jurisdictions disagree with one another. For example, the English legal system retains imminent threat as a necessary condition for a self-defense justification but has considered some cases of victims killing their abusers in nonconfrontational situations as cases of provocation, and therefore treats abuse victims who kill their abusers more leniently. Australia, by contrast, has abandoned imminent threat as a necessary condition in cases in which the abuse victim who kills is diagnosed with "battered woman syndrome." Finally, the various jurisdictions in the United States have adopted different positions. Some retain imminent threat as a necessary condition for justified defensive harming and others have rejected it. George Fletcher went so far as to say as early as 1996 that "the central debate in the theory of self-defense for the last decade has been whether we should maintain a strict requirement of imminence in assessing which attacks trigger a legitimate defensive response."<sup>9</sup>

Even if we agree, though, that Norman faced no imminent threat but did face a nonimminent threat of discrete harms of physical assault, our understanding of Norman's moral justification is incomplete without incorporating the threat of continuing harm she faced. Norman was not the victim solely of physical torture, but she was also, in Fletcher's words, made to be a prisoner in "this gulag she called home."<sup>10</sup> If the intuition that Norman was morally justified in killing her abuser is correct, and she faced no imminent threat but instead faced nonimminent threats of discrete harm and a threat of continuing harm,

7 Ferzan, "Defending Imminence," 235.

8 Rosen, "On Self-Defense, Imminence, and Women Who Kill Their Batterers," 372.

9 See, respectively, Belew, "Killing One's Abuser," 770, 787–88; Fletcher, "Justification and Excuse," 567.

10 Fletcher, "Justification and Excuse," 556.

it is unclear whether either the nonimminent threats or the continuing threats are independently sufficient to justify defensive harming. As I argue here, Norman's justification for defensively killing her husband instead is grounded, at least in part, in the threat of continuing harm—what Ferzan calls “the kidnapping paradigm.”<sup>11</sup> At the moment Norman killed her husband, he posed a threat of nonimminent harm in that he had previously threatened to kill and mutilate her; but he also posed a threat of continuing harm in that he made her—even at that moment—a prisoner in her own home.

Some might be skeptical of the claim that Norman was made to be a prisoner in her own home. After all, she was not physically restrained nor locked up. While her husband slept, it was physically possible for her to walk out the front door—even if doing so would have resulted in additional beatings. This had, in fact, occurred. In Fletcher's words, “she had experienced beatings in retaliation for prior efforts to leave the scene of her suffering.”<sup>12</sup> And so, if she is physically able to leave the house, even if doing so would result in additional harm, then is she really a prisoner? Or is it more accurate to describe her condition only with reference to the several discrete harms that would result if she tried to leave the house?<sup>13</sup> This is an important question because, if the whole of her suffering can be captured with reference to discrete harms, then the concept of continuing harm adds no additional value. But I do not think that the fact that she can walk away, at the risk of additional discrete harms, entails that she is not imprisoned, and therefore, it does not entail that she suffers no continuing harm. Instead, the conditional threat that escape attempts will result in additional harms is one element of her imprisonment. Indeed, threats of additional harm in response to escape attempts are probably a common element of imprisonment. In the US federal detention system, for example, “escape” is considered to be a prohibited act of the “greatest severity,” and sanctions for escapees can include anything from monetary fines to extended imprisonment.<sup>14</sup> Like Norman, if a prisoner in the federal penal system for whom it is physically possible to escape does walk away, he risks suffering additional discrete harms as a result. The fact that a victim might possibly—or even might easily—escape does not entail that the victim is not imprisoned. Had Norman attempted to escape, it is very likely that she would have been punished. We should not conclude from this that she was not imprisoned; only that punishment for attempting escape was a feature of her imprisonment.

11 Ferzan, “Defending Imminence,” 253.

12 Fletcher, “Justification and Excuse,” 555.

13 I am grateful to an anonymous reviewer for identifying this concern.

14 73 Fed. Reg. 76263 (Dec. 8, 2010), reprinted as amended in 28 C.F.R. 541.3.

In what remains of this paper, I develop this conception of threats of continuing harm and attempt to demonstrate its relevance to the morality of defensive harming, and ultimately, to just war thinking.

## 2. DEVELOPING THREATS OF CONTINUING HARM

### 2.1. *Continuing Harms in the Defensive Harming Literature*

Even if we agree that Judy Norman had a moral justification for defensively killing her husband, that justification might be overdetermined. For instance, the repeated, discrete threats of torture might be sufficient on their own to justify defensive killing without reference to the continuing harm of imprisonment. Or else, perhaps the threat of continuing harm is sufficient to justify defensive killing without reference to the several threats of discrete harm. One reason it is difficult to develop an account of continuing harms is that in most cases, both real and hypothetical, continuing harms are accompanied by discrete harms. In such cases, it is impossible to determine whether the nonimminent threat of discrete harm or the threat of continuing harm is independently sufficient to justify defensive harm. Threats of continuing harm do, indeed, arise in the defensive harming literature, but when they do, they are accompanied by threats of discrete harm. Consider these two well-known cases.

Here is Helen Frowe's Trolleyology case.

*Trolleyology*: Imagine that I . . . lock you up in your house for an indefinite period, perhaps the rest of your life. I force you to practice a particular religion. . . . I make you dress in army camouflage, read only the collected works of Frances Kamm, spend hours enacting moral dilemmas using a toy train set, and start every day with a rousing rendition of what I like to call the Trolley Anthem. I credibly threaten to kill you if you try to force me out of the house or otherwise resist the imposition of my regime.<sup>15</sup>

Frowe's own intuition in Trolleyology is that her victim is indeed permitted to kill to defeat the threat she asks us to imagine. But which of the myriad hypothetical harms Frowe imposes on her victim are sufficient to justify defensive killing? Is the victim justified in defense of his right to autonomy each discrete time Frowe threatens his autonomy? Or is he justified because she poses a conditional threat of nonimminent lethal harm if he resists? Or is he justified on the grounds that she has locked him up in the first instance, thereby continually violating his right to personal freedom? Or is it that the threats are independently insufficient to justify lethal defensive harm, but jointly sufficient?

<sup>15</sup> Frowe, *Defensive Killing*, 140–41.

In other words, it is unclear whether the threat of continuing harm by itself is doing the work in the intuitive response to the case.

Fabre's Home Invaders case avoids the additional threat of imminent harm but still includes a conditional threat of nonimminent harm alongside the threat of continuing harm.

*Home Invaders:* Suppose that your house is wrongfully invaded by a group of individuals who intend to stay there permanently and who use coercive force against you if you dissent with whatever decision they make with respect to your house. . . . [And suppose that the home invaders coerce you into living a less than minimally decent life.] You have a choice between fully complying with wrongdoers' demands or killing them.<sup>16</sup>

There are at least two kinds of harm at issue here. The victim is imprisoned, as in Trolleyology. But additionally, the victim is coerced into living a "less than minimally decent life." Though we do not know exactly what harms constitute or have brought about that condition, whatever they are, they are in addition to the continuing harm of imprisonment. In other words, I believe it is possible for prisoners—say, persons rightly found guilty of white-collar crimes serving prison sentences in minimum security prisons—to live a minimally decent life. If so, then imprisonment by itself does not imply or entail a less than minimally decent life. If this is correct, then the victim in Home Invaders is the victim both of imprisonment and of other harms significant enough to make his life less than minimally decent. I agree with Fabre's conclusion that the victim has a right defensively to kill the invaders, provided the home occupation will continue for some significant period of time; but because the victim faces two kinds of threat—the continuing harm of imprisonment and whatever harms constitute the cause of his less than minimally decent life—it is not clear whether the continuing harm of imprisonment on its own is sufficient to justify defensive killing.

In each of these cases, and in Judy Norman's case, we are left wondering which, if any, of the harms imposed is sufficient to justify defensive killing. In each case, a threat of continuing harm is posed, but without developing the category of threats of continuing harm, we can have no way of knowing whether such a threat is sufficient to justify lethal defensive harm.

## 2.2. *Continuing Threats and Proportionality*

To this point, I have considered the distinction between threats of continuing harm and threats of discrete harm. But what is the relationship between threats

<sup>16</sup> Fabre, *Cosmopolitan War*, 69.



of continuing harm and proportionality? Threats of continuing harm can be, *inter alia*, threats of unjust imprisonment, kidnapping, or violations of personal freedom. While rights to personal freedom are important and violations of those rights significant, it nevertheless seems as though one would be permitted to cause more harm to defend one's life than one would be permitted to defend one's freedom. And if so, it is *pro tanto* impermissible to cause lethal harm to defeat a threat of continuing harm. But is this correct? A close look at a second distinction—that between vital and lesser interests—will help to answer that question.

The distinction between vital and lesser interests was first introduced by David Rodin. A vital interest is an interest the defense of which can justify lethal harm. According to Rodin,

[Vital interests are] those centrally important interests, the unjust threat to which can justify lethal force in [the] context of self-defense. These are in broad terms: threat to life, substantial threat to bodily integrity (including loss of limb, torture, and rape), profound attacks on liberty such as slavery, and permanent or long-standing displacement from one's home.<sup>17</sup>

At its core, the distinction between vital and lesser interests is a descriptive mechanism for proportionality in defensive harming cases. Whether an interest falls into the lesser or the vital category depends upon what one may do to defend it. An interest is vital only if one can be, under some circumstances, justified in killing to defend it.

To determine whether threats of continuing harm are sufficient to justify lethal defensive harm—that is, whether a threat of continuing harm can threaten a vital interest—we are in need of a case in which the attacker threatens the victim with continuing harm only and not with other discrete harms.

*Pleasant Detention:* Agatha wants wrongfully to abduct and imprison Violet. Agatha gently takes Violet prisoner in Violet's sleep and deposits her into the detention facility, cut off from the outside world. Within the detention facility, however, she is well fed, warm, and generally well provided for. She is free to do more or less as she pleases. Agatha, for unknown reasons, has rigged the locks to a pulse monitor on Agatha's own wrist. If she dies, the locks will open. Violet, by mere happenstance, finds a gun in the detention facility and is able to shoot and kill Agatha in the adjacent building in which Agatha lives whenever she chooses.

17 Rodin, "The Myth of National Self-Defence," 80.

During Violet's imprisonment, the harm with which Agatha threatens Violet is neither like a paradigmatic case of a threat of imminent harm nor is it like a paradigmatic case of a threat of future harm. In an important sense, continuing harms are constituted by both a threat of imminent harm and a threat of future harm. In Pleasant Detention, Agatha threatens to harm Violet "in an instant" or "at once."<sup>18</sup> But it is also the case that, to the degree that Agatha intends to keep Violet imprisoned for some time, Agatha also threatens to harm Violet in the future. A threat of imminent harm and a threat of future harm are both constituent parts of a threat of continuing harm. And because this harm takes place over time, the defensive harm that Violet may proportionately cause to Agatha depends upon the duration of her captivity. To be denied one's freedom for an hour or a day might not justify lethal defensive harm. But cutting Violet off from the rest of the world for the rest of her life seems to reach the proportionality threshold for lethal defensive harm. Defensive killing, at least in cases like Pleasant Detention, can be permissible against threats of continuing violation of interests such as personal freedom if the duration is sufficiently lengthy.

There is an important implication here regarding the common use of "vital interests" and "lesser interests." If an interest is threatened with continuing harm, then whether that interest is vital or lesser can depend upon the duration of the threatened harm. For example, it is not sufficient to say that one's interest in not being killed is a vital interest while one's interest in not being imprisoned is a lesser interest. For, as is the case in Pleasant Detention, whether or not one may kill to defend one's interest in not being imprisoned depends in part upon the duration of the imprisonment. And since the category of vital interests is defined as the set of interests one may kill to defend, then whether one's interest in not being imprisoned is a vital interest depends on the duration of the imprisonment. Those who offer lists of exemplar vital interests often include interests in not being enslaved or kidnapped. Rodin includes in the set of vital interests "profound attacks on liberty such as slavery, and permanent or long-standing displacement from one's home." Likewise, in summarizing Rodin's position, Frowe includes slavery in her list. Lazar includes one's interest in not being kidnapped. Fabre argues that one may kill to defeat threats of kidnapping and enslavement. McMahan holds that in some cases one may kill to prevent "enslavement or captivity for a significant or indefinite period."<sup>19</sup>

18 Ferzan, "Defending Imminence," 229.

19 See, respectively, Rodin, "The Myth of National Self-Defence," 80; Frowe, *Defensive Killing*, 125; Lazar, "National Defence, Self-Defence, and the Problem of Political Aggression," 15; Fabre, *Cosmopolitan War*, 69; McMahan, "War as Self-Defense," 78.

The reason so many theorists hold that it can be proportionate to kill in defense against kidnapping and enslavement points to the moral significance of the continuing harm. One's interest in not being kidnapped or enslaved is a vital interest only if the harm that is threatened in these cases is a continuing harm of a sufficient duration. Though we might maintain the distinction between vital and lesser interests, there is no such distinction between vital and lesser rights. This is because, while the categories of vital and lesser interests are sensitive to duration, the category of rights is not. My right not to be unjustly killed is of greater moral significance than my right not to be unjustly imprisoned, and this claim is true independent of the duration of my imprisonment. But I have a much stronger interest—indeed I have a vital interest—not to be imprisoned for a decade as compared to my lesser interest not to be imprisoned for a day.

If proportionality is sensitive to the duration of a continuing harm, it should be no surprise that proportionality is also sensitive to the magnitude of the harm threatened. By "magnitude," I mean the amount of harm one suffers at any given moment. Suppose Agatha is a supervillain who can cause headaches in her victims. Causing a severe migraine for an hour is worse than causing a mild headache for an hour. The proportionality calculi track this difference. A defender would be justified in causing more harm to defend the migraine victim than one would be justified in causing to defend the mild headache victim.

The moral weight of the continuing harm is sensitive both to the magnitude of harm and the duration of harm. For proportionality, then, what is at issue is something like the "area under the curve" in integral calculus. A harm of lesser magnitude can justify greater defensive harm if continuous over a long period of time, while a harm of greater magnitude over a shorter period of time can justify that same defensive harm.

Though the moral weight of continuing harm such as imprisonment increases over time, the increase is not necessarily linear. That is, any period during which the victim suffers continuing harm might be of a different moral significance than other periods of the same duration. For instance, it might be the case that the longer one is imprisoned, the more harmful is each day of imprisonment. Or perhaps imprisoning a victim during a period that causes her to miss important events in the lives of loved ones might be worse than imprisoning a victim during a period of the same duration that does not cause her to miss important events. Or perhaps, for psychological reasons, the first few days of imprisonment are among the most difficult as the prisoner becomes accustomed to her new environment. Or maybe, as in Judy Norman's case, the discrete harms—torture, physical violence, and the like—that accompany the imprisonment make the continuing harm of imprisonment itself more harmful than it would otherwise be. My argument about the relationship between

continuing harms and proportionality does not depend on answers to these nuanced questions about the causal relationships between harms. Instead, my argument is compatible with any number of potential accounts of the causal relationships between harms.

Having developed this account of continuing harms, we are in a position, first, to return to Judy Norman's case to determine what relevance continuing harms might have to her self-defense justification and, second, to apply this conception to political conflict.

### *2.3. Applying Threats of Continuing Harm to Domestic Abuse Cases*

In Norman's Domestic Abuse case, as in the aforementioned Trolleyology and Home Invaders cases, it is difficult to isolate the various kinds of threat and harm to determine which, if any, is independently sufficient to justify lethal defensive harm. This difficulty bears out in some of the existing analyses of the Norman case. For example, Ferzan claims that the kidnapping paradigm is sufficient in Norman's case to justify defensive killing. By imprisoning Norman in her home, Ferzan claims, Norman's abuser is "continuingly invading the victim's rights." But Ferzan's argument for this claim is ambiguous.

Judy Norman married J. T. Norman when she was ... but fourteen years of age. She could never escape him. During her time in captivity, she was "forced into prostitution"—that is, Judy Norman was repeatedly raped. ... There was not an imminent or inchoate threat of death. There was an ongoing and continuing denial of life. ... If it is in fact the case that the battered woman can show that she is a hostage and cannot escape her husband, this alone should be sufficient for the exercise of deadly force.<sup>20</sup>

There seem to be two distinct claims in this quotation. The first is that the repeated, violent, and life-denying attacks that Judy Norman's abuser imposed upon her and would continue to impose upon her were sufficient to justify killing in self-defense. The second is that the imprisonment alone—the fact "that she is a hostage and cannot escape"—is sufficient to justify killing in self-defense. Ferzan is here claiming that the many instances of threats of imminent, though nonlethal, discrete harm are sufficient to justify Norman's defensively killing her abuser. At the same time, Ferzan also claims that the threat of continuing harm—the fact that "she is a hostage and cannot escape"—is sufficient to justify Norman's defensively killing her abuser. These intuitions about sufficient

20 This quotation and those in the next paragraph are taken from Ferzan, "Defending Imminence," 253–55.

conditions for lethal defensive harm are similar to the intuitive responses to Trolleyology and Home Invaders. We have a strong intuition that defenders may cause harm to defeat the aggression, but it is not clear which kind of threat is doing the justificatory work. Looking only at Norman's case will not provide an answer. But if threats of continuing harm can justify defensive killing—as in Pleasant Detention—then they can also justify defensive killing in cases that include multiple kinds of threat—as in Domestic Abuse. Depending on the circumstances, and especially on the magnitude and duration of the imprisonment, the continuing threat can be independently sufficient to justify lethal defensive harm.

### 3. CONTINUING HARMS IN WAR

The relationship between threats of continuing harm and proportionality is relevant, not just to cases involving individuals, but to cases of political conflict as well. Reductivist (sometimes called “revisionist”) just war theory considers justified killing in war to be an instance of justified defensive harming. This might be easy to conceptualize in a firefight, for example, in which unjust combatants wrongfully threaten to kill just combatants.<sup>21</sup> Just combatants have self-defense justifications for shooting and other-defense obligations to shoot. But the experience of war is often characterized by the perennial waiting that takes place between the firefights—the “months of boredom punctuated by moments of terror.”<sup>22</sup> Can just combatants be justified in seeking out and engaging unjust combatants even while the unjust combatants are merely in the midst of this waiting? It would be counterintuitive, perhaps even paradoxical, to hold that just combatants are justified in going to war and justified in returning fire during the firefight and yet not justified in seeking out enemy combatants to defeat them. Most just war theorists hold that combatants on the just side are morally justified in seeking out enemy combatants to try to kill them. I argue here that the account of threats of continuing harm I have developed above can, under some circumstances, help to explain that moral justification.

To be sure, the conception of war as an ongoing activity, or of a soldier's discrete actions as constitutive of an ongoing conflict, is common in the just war literature. For example, Walzer considers the case of a soldier behind enemy lines. Walzer suggests that perhaps the soldier in his tent is “smoking his morning cigarette, [and] thinking only of the coming battle and of how many of

21 Throughout, I refer to combatants on the just side of a conflict as “just combatants,” and combatants on the unjust side as “unjust combatants.”

22 A Young British Officer, “The Baptism of Fire,” 979.

his enemies he will kill. He is engaged in war-making just as I am engaged in writing this book; he thinks about it all the time or at the oddest moments.”<sup>23</sup> Walzer goes on to reject this notion on the grounds that most combatants do not approach war in this way. Even if this description of the soldier in his tent is the correct one, though, the fact that the soldier is wholly devoted to his cause probably bears on his culpability; but it is not clear that by thinking about his next battle he is somehow engaged in a threat of harm. McMahan uses similar language in his response to Rodin’s conception of the bloodless invasion. “War involves threats that consist of activities organized in phases over extended periods of time. A soldier sleeping in invaded territory has already attacked and is engaged in attacking in the same way that I am engaged in writing this essay even while I pause to make a cup of tea.”<sup>24</sup> This is a better analogy. It is not that a soldier at rest is thinking a lot about the next battle, but that he is engaged, not just in discrete battles, unrelated to one another, but in a war. And on these grounds, we can be confident that he will cause harm again in the future.

These descriptions, though they incorporate a sense in which threats are ongoing—a soldier constantly threatens to cause harm at some discrete moment in the future—they refer only to the lethal actions a soldier has taken or will take in the future and not to threats of continuing rights violations. According to the distinction in the introduction above, they are continuing threats of discrete harm, but they are not threats of continuing harm. Limiting one’s conception of threats in war only to imminent threats of discrete harm and continuing threats of discrete harm is like evaluating Judy Norman’s case with reference only to the constant threat of discrete harm her abuser posed without considering the fact that she was imprisoned in her home. The picture of the morally relevant threats and harms is incomplete. War often involves threats of continuing rights violations because, as Brian Orend has put it, war is about “governance itself.” Armies do not meet on the field of battle as street gangs, each fighting for its own narrow interests. Rather, armies meet as representatives of political communities and use violence to “resolve disputes over governance.”<sup>25</sup> If wars are fought over governance, then at least some wars will entail the violation of one group’s right to self-governance. As I argue below, invasion and occupation can, under some circumstances, be considered continuing harms alongside imprisonment and kidnapping.

23 Walzer, *Just and Unjust Wars*, 143.

24 McMahan, “War as Self-Defense,” 76. It strikes me that both Walzer and McMahan compare academic writing to war. Though the comparison might be strained, one sympathizes with the analogy.

25 Orend, *The Morality of War*, 4.

In this section, I introduce three combat cases to show how the conception of continuing harm applies to just war theory.

### 3.1. *Sleeping Soldier*

The sleeping soldier might pose a threat, but what kind of threat does he pose? Consider this adaptation of Robert Graves's account from the First World War.

*Sleeping Soldier*: I saw a German . . . through my telescopic sights. He was [sleeping] in the German third line. . . . I handed the rifle to the sergeant with me. "Here, take this. You're a better shot than I am." He got him; but I had not stayed to watch.<sup>26</sup>

I take it for granted that Graves and his sergeant did have a moral justification, but on what grounds? If Graves's sergeant has a self- or other-defense justification for killing the sleeping soldier, against what threat does he defend? The sleeping soldier certainly does not pose an imminent threat of harm while he sleeps. He probably does pose a nonimminent threat of discrete harm in that, eventually, he will pick up his weapon and fire upon the adversary. But there is more to the sleeping soldier's liability to harm than the nonimminent threat of discrete harms he poses.

On the account of threats of continuing harm developed above, it might matter morally where the sleeping soldier is sleeping. For instance, Graves and his sergeant happened upon this particular German soldier in German-occupied Cuinchy, France. Even as the sleeping German soldier posed a nonimminent threat of lethal harm, he also caused a continuing harm. There, in the German third line in Cuinchy, he continually violated, and at once continually threatened to violate further, the French people's right to political autonomy and to territorial integrity. Perhaps this second kind of harm and second kind of threat are not necessary for Graves's sergeant's moral justification for killing the German soldier. In other words, perhaps, even if the German soldier threatened continuing harm, the German soldier's nonimminent threat of discrete lethal harm is sufficient to justify killing him. Even so, the proportionality calculus is at least theoretically sensitive both to threats of discrete harms as well as to threats of continuing harm. As we shall see below, in some cases, distinguishing between these various kinds of threat can have an effect on liability and the moral justification for killing in war.

26 I have modified this case from a bathing soldier to a sleeping soldier to sidestep some of the psychological questions that arise in the bathing case. See Graves, *Goodbye to All That*, 112; Walzer, *Just and Unjust Wars*, 140.

### 3.2. *Bloodless Invasion*

The just war literature is well acquainted with the idea that soldiers on the unjust side can threaten lesser interests without directly threatening vital interests. Often called “the bloodless invasion,” the idea that one state can begin a takeover of a neighboring state’s sovereign territory is not merely theoretical.

In March 2014, BBC correspondent John Simpson attempted to pass from the mainland of Ukraine into the Crimean Peninsula. In the preceding weeks, the Russian government had steadily increased the Russian military presence on its bases in Crimea—bases it was permitted to use under bilateral agreement with Ukraine. By the first of March, Russian forces had established a new checkpoint at Armyansk, and armed men in fabricated Ukrainian army and police uniforms detained Simpson and his colleague at the checkpoint while they searched the reporters’ equipment and confiscated much of it. When the two men were allowed to pass through the checkpoint, a man in a Ukrainian police uniform called out, “Welcome to Russia!” Simpson writes,

The Annexation of Crimea was the smoothest invasion of modern times. It was over before the outside world realized it had even started. And until Tuesday 18 March [when one Ukrainian was killed and another injured], it was entirely bloodless.<sup>27</sup>

The idea of a bloodless invasion was a useful thought experiment long before the Russian invasion of Crimea. It is a useful philosophical case because it separates individual citizens’ rights to life and the state’s putative right to territorial integrity. Most unjust invasions in the real world involve threats both to territorial integrity and to people’s lives. In these cases, as in *Sleeping Soldier* case above, reductivist accounts of just war theory can justify the killing of invading combatants on individualist defensive harming grounds. The aggressors threaten the defenders’ rights not to be killed, and defenders justifiably and defensively kill aggressors, independent of any appeal to putative rights of the political community writ large.

Here is a generic version of the case.

27 Simpson, “Russia’s Crimea Plan Detailed, Secret and Successful.” Lazar admits that the bloodless invasion thought experiment might be strictly hypothetical without any real-world instance. But he also presciently suggests that “states like Russia and China, which have long-simmering territorial disputes with their neighbors, [might] take advantage of the opportunity to settle those disputes through bloodless invasion.” The chapter in which he wrote these words was published just one month before the 2014 Russian invasion of Crimea. Lazar, “The Problem of Political Aggression,” 24.



*Bloodless Invasion*: Soldiers of the state of Northland unjustly invade the democratic republic of Southland. The Northlandic soldiers are heavily armed and tell the people of Southland that they intend only to replace the Southlandian government with their own officials and autocratic institutions. They do not intend physically to harm any Southlandian citizens. But if Southlandian citizens or soldiers resist, the Northlandic soldiers will use lethal force to subdue them.

At first, *Bloodless Invasion* might seem like a fabricated, philosophical case. But there are reasons—even apart from the 2014 Russian action in Crimea—to think it is plausible. The fact that the threat of harm to vital interests is conditional is one such reason. The invading force tells would-be defenders that they will be harmed only if they resist. It might be the case that a great many unjust invasions throughout history would have been bloodless had they not been resisted. It is at least theoretically possible that many unjust invasions would be bloodless were it not for the resistance of the victims.<sup>28</sup>

The soldiers of Northland violate Southland's territorial integrity and political sovereignty. According to international law and to collectivist accounts of just war theory, Northland's violation of Southland's state rights amounts to a just cause to wage a defensive war against Northland. This war will undoubtedly include not only lethal harms to Northland's soldiers, but also the unintentional deaths of numerous noncombatants, perhaps on both sides of the conflict. In *Bloodless Invasion*, at first glance, it looks as though the reductivist must conclude that killing the bloodless invaders violates the principle of proportionality. If Southlandian soldiers kill Northlandic soldiers to defend their rights of, say, political autonomy, that lethal harm will *ex hypothesi* violate the proportionality principle in the narrow sense. In Rodin's words, "The argument from bloodless invasion is designed to show that defending the lives of citizens is not a necessary condition for national-defense."<sup>29</sup> The bloodless invasion thought experiment pressures reductivists either to admit that states have no rights of political autonomy and territorial integrity or that, if states do have those rights, they are not justified in causing lethal harm to defend them. Just as Graves's sergeant had to decide whether he was justified in killing a soldier who did not pose a threat of imminent, lethal harm, Southlandians must decide if they are justified in waging a war to defeat an enemy that does not pose a threat of imminent, lethal harm.

28 Both Norman and Lazar have made this point. Norman, *Ethics, Killing, and War*, 135; Lazar, "The Problem of Political Aggression," 19.

29 I follow McMahan's use of "narrow" and "wide" proportionality. McMahan, *Killing in War*, 20–21. For the Rodin quotation, see *War and Self-Defense*, 131.

Do the Northlandic soldiers threaten the vital interests of Southlandians, or do they threaten only lesser interests? Recall that vital interests are those interests that one is permitted to defend with lethal harm. Lesser interests may also be defended, and indeed one may still cause harm to defend them, but one may not cause lethal harm in their defense.<sup>30</sup> By invading Southland and taking over its political institutions, Northlandic soldiers do in fact violate the Southlandian citizens' rights to political autonomy. In addition, they pose a conditional threat—one instance of a threat of nonimminent harm—against the Southlandian citizens' lives. The first question to ask is about necessity. Is killing Northlandic soldiers the least morally weighted moral harm Southlandian soldiers can cause to defeat the unjust threat? If so, then the necessity condition has been met. The second question is about proportionality. Is it permissible for Southlandian soldiers to kill Northlandic soldiers, not in defense of their rights to life, but in defense of their rights to political autonomy? In other words, may soldiers on the defensive side kill to defend a *prima facie* lesser interest? Without a conception of threats of continuing harm, Southlandian soldiers lack a moral justification to cause lethal defensive harm because the proportionality condition has not been met. And if so, then we must conclude that, whatever rights states have to territorial integrity, they are not morally justified in waging war to defend those rights. Though this may turn out to be the correct conclusion, it is antithetical to common sense intuitions about the rights of states as well as long-standing international norms.<sup>31</sup>

There are two ways in which previous accounts of reductivist just war theory have responded. My argument is that the conception of threats of continuous harm provides a more complete response to the bloodless invasion challenge than do either of these two options. The first appeals to escalation and the second to interpersonal aggregation. Space does not permit a thorough analysis here, but a sketch of each approach will be helpful. McMahan has developed an appeal to escalation according to which, when the Northlandic soldiers unjustly and bloodlessly invade Southland, they threaten Southlandian citizens' lesser interests but also pose a conditional threat of nonimminent harm against their vital interests if they resist. If Southlandian soldiers do resist, Northlandic soldiers will pose an unjust threat to vital interests and, at that point, Southlandian soldiers will be justified in causing lethal defensive harm. Thus, *ex hypothesi*, Southlandian soldiers are justified in causing lethal harm to defend against the bloodless invasion. McMahan ultimately rejects this account on grounds

30 See, respectively, Rodin, "The Myth of National Self-Defence," 80–81; McMahan, "War as Self-Defense," 77–79, and "What Rights May Be Defended by Means of War?," 126.

31 For example, Article 2(4) and Article 51 of the UN, "Charter of the United Nations."

that, even if Southlandian soldiers are permitted to accept additional risk to themselves by escalating, they are not permitted to accept the additional risk to their fellow citizens that would undoubtedly result from the escalation.<sup>32</sup>

The second reductivist response to Bloodless Invasion appeals to interpersonal aggregation. On this line of thought, even if a Southlandian soldier would be unjustified in killing to defend her own lesser interest, she acts not merely for herself but on behalf of her fellow citizens. Once aggregated across members of the political community, the sum of the Northlandic soldiers' violations of lesser interests against which Southlandian soldiers defend on this view meets the proportionality requirement in both its narrow and wide senses.<sup>33</sup> The challenge facing this argument is that war will most likely result in harms to citizens of the aggressor state, too. These harms must also be aggregated in the proportionality calculus. In other words, if the number of Southlandians who will be harmed weighs on one side of the proportionality calculus, surely the number of Northlandians who will be harmed must weigh on the other side.<sup>34</sup>

What is missing from both responses to the bloodless invasion challenge is any sense of duration. Bloodless Invasion constitutes a continued denial of persons' rights to political autonomy over a long period of time. Whether Northlandic soldiers pose a continuing threat to vital or lesser interests depends both on the magnitude and the duration of the threatened harm. Will Northland occupy and dictate to Southlandians for a month? For a year? Forever? As was the case in Pleasant Detention, if the Northlandic soldiers continually violate the rights of Southlandians, the proportionality calculus is sensitive to duration. There is some threshold in time at which the Northlandic violation of Southlandian interests crosses over from being a violation of lesser interests to becoming a violation of vital interests. In other words, in the war between Northland and Southland—a war over governance—on the most fundamental level, Northland poses a threat of continuing harm to Southlandians by violating their rights of political autonomy. In so far as wars are violent means of resolving disputes over governance, this is true in the general case: in war generally, aggressors continually violate and continually threaten to violate victims' rights of self-governance—even when they also threaten to violate rights of life. Even in a bloodless invasion, therefore, Southlandians are morally justified in

32 McMahan defended this view in his earlier work. In more recent work, he provides a helpful and clear account of the argument from escalation, but ultimately rejects it. McMahan, "Innocence, Self-Defense and Killing in War," 195–96, and "What Rights May Be Defended by Means of War?," 147–48.

33 For an example of this kind of argument, see Frowe, *Defensive Killing*, 139–43.

34 For a critique of this kind, see Lazar, "The Problem of Political Aggression," 32. For Frowe's response, see *Defensive Killing*, 139.

using lethal force to defend against the threat of continuing harm as long as the harm would otherwise continue for a sufficient duration.

The proportionality calculus in *Bloodless Invasion* depends on the continuing harm Northland threatens, aggregated over time—this is the intertemporal aggregation of harm. On the surface, it looks as though intertemporal aggregation of harm and intrapersonal aggregation of harm are synonymous. Intrapersonal aggregation is not aggregation across persons, but within a single person's life. But normally, the intrapersonal aggregation of harm refers to the additive harm a single person suffers if she is the victim of multiple discrete harms over time. As Frowe puts it, additive harm is aggregated interpersonally if I break lots of different people's arms. The additive harm is aggregated intrapersonally if I break the same person's arm lots of times. But the kinds of continuing harms I have in mind—kidnapping, imprisonment, enslavement—are dissimilar from Frowe's case of a repetitive series of discrete harms to the same person. In between discrete acts of arm-breaking, I do not harm the victim. But cases of kidnapping, enslavement, and imprisonment, as well as cases of invasion and occupation, include both the threat of denying and the actual denial of victims' freedoms.<sup>35</sup>

It is possible to preserve the conceptual distinction I apply here if we consider intertemporal aggregation to be a species of the broader genus of intrapersonal aggregation. This is etymologically appropriate, given that the continuing harm measured over time (intertemporal) is harm caused to the same person (intrapersonal). The point I make here is only that causing continuing unjust harm and causing repetitive unjust harm should remain conceptually distinct.

### 3.3. *Anwar al-Aulaqi*

In the two cases above, combatants pose a nonimminent threat of lethal harm and cause continuing harm. But how should we interpret a case in which a combatant poses a nonimminent threat of lethal harm without causing continuing harm? In other words, what might the moral difference be if a combatant is engaged in hostilities, but is not engaged in invasion, occupation, or otherwise threatening the political autonomy of his victims? The targeted killing of Anwar al-Aulaqi might prove to be such a case.

The US targeting of Anwar al-Aulaqi has received significant attention, most notably because Aulaqi was a US citizen—a fact that raises important questions about citizenship in political philosophy and in US law. But there are other facts about the Aulaqi case that pertain to threats of continuing harm. Assume for

35 For Frowe's description, see *Defensive Killing*, 140. For a discussion of the role of interpersonal aggregation in proportionality, see Tadros, "Past Killings and Proportionality in War."

the sake of argument that Aulqi was an operational leader within al-Qaeda.<sup>36</sup> Although Aulqi did pose a threat to US citizens, he did not invade the United States, having departed in 2007, never to return. Al-Qaeda's war against the US was carried out in discrete terrorist attacks and not on violations of political autonomy. In other words, Aulqi, and other al-Qaeda leaders like him, posed nonimminent threats to US persons—but he did not cause continuing harm.

The Obama administration's official position was that Aulqi was a legitimate military target because, in his role as an operational leader within al-Qaeda, he posed a "continuing and imminent threat" of violent attack against US persons and interests, but this phrasing is misleading. Suppose that from the use of "violent attack" we can infer that Aulqi threatened American citizens' vital interests. What can it mean for a threat to be both imminent and continuing? Though it is not with reference to the Aulqi case, Ferzan insists that "always imminent" is a contradiction in terms. If so, the same contradiction must obtain in the supposed "imminent and continuing" threat Aulqi posed. If an imminent threat is one that will cause harm "in an instant" or "at once," how is it possible that Aulqi posed an imminent threat for a year and a half?<sup>37</sup> Once threats of continuing harm are properly understood, it is plausible that an unjust combatant can simultaneously pose some combination of threats of imminent harm, threats of traditional nonimminent harm, and threats of continuing harm. But, in Aulqi's case, even though he posed threats of discrete harm, he did not pose a threat of continuing harm.

This case helps to show that the application of threats of continuing harm to the morality of war is sensitive to whether the war, campaign, or battle in question amounts to an invasion or an occupation. Like the sleeping soldier, at the time Aulqi was killed, he was not actively engaged in a firefight. However,

36 The public was originally made aware of Aulqi's online presence, pro al-Qaeda views, and propagandist role after reports that Aulqi had exchanged emails with Nadil Malik Hasan prior to Hasan's 2009 attack on Fort Hood, a US Army base in Texas. Shortly thereafter, however, the US government claimed that Aulqi was no mere propagandist and was in fact a member of al-Qaeda and an operational leader within that organization. Specifically, the US government claimed that Aulqi recruited, trained, and directed Umar Farouk Abdulmutallab, the so-called Underwear Bomber whose attempt to bring down a Detroit-bound airliner was thwarted on Christmas Day 2009. Epstein, "The Curious Case of Anwar Al-Aulqi," 725; Chesney, "Who May Be Killed?," 9.

37 For the US government's use of "continuing and imminent," see Office of Legal Counsel, "Memorandum for the Attorney General Re: Applicability of Federal Criminal Laws and the Constitution to Contemplated Lethal Operations against Shaykh Anwar Al-Aulqi;" Holder, "Attorney General Eric Holder Speaks at Northwestern University School of Law." For the Ferzan quotation, see "Defending Imminence," 229. For the factual claims about the Aulqi case, see Epstein, "The Curious Case of Anwar Al-Aulqi," 2; Van Schaack, "The Killing of Osama Bin Laden and Anwar Al-Aulqi," 6; Shane, *Objective Troy*.

unlike Sleeping Soldier and Bloodless Invasion, Aulqi has not unjustly invaded the territory of a political community and does not seem to pose a threat of continuing harm. Most unjust wars include threats to life and to political autonomy. Bloodless Invasion is a helpful case because it includes the latter but not the former. Aulqi's case is different in that it includes the former but not the latter. If it is the case that threats of continuing harm—especially those harms that will continue for a long time—help to justify harms caused in defensive wars, there might be an important difference between the defensive harms that are justified to defeat invasions or occupations and the defensive harms that are justified to defeat threats that are not invasions or occupations. The conception of threats of continuing harm for which I have argued might cast doubt on *jus ad bellum* justifications in any cases in which the enemy does not credibly threaten political autonomy—and more specifically, in twenty-first-century US and coalition asymmetric wars against transnational terror organizations. But a thorough investigation into this question falls outside the scope of this paper.

#### 4. CONCLUSION

At different times, attackers can pose imminent threats, nonimminent threats, continuing threats, and combinations thereof. For example, when soldiers on patrol discover opposing soldiers, they will pose a threat of imminent harm to those soldiers. Threats of conditional, nonimminent harm are more common. In fact, most combatants pose a conditional threat of nonimminent harm most of the time. Almost any combatant in the theater of combat operations—even noncombat troops such as maintenance, supply, or communications soldiers—will return fire if fired upon. But unjust combatants also pose threats of continuing harm when they are in the act of violating either civilians' or just combatants' rights. Whether defenders are justified in causing lethal defensive harm depends upon, *inter alia*, the magnitude and the duration of the continuing harm imposed.

The just combatant's justification for killing the sleeping soldier is not necessarily grounded in a threat of imminent harm. By participating in an unjust invasion, the sleeping soldier is in the act of violating, or attempting to violate, rights of liberty and political autonomy. The significance of these violations may seem trivial, but there are open questions about their duration. If the sleeping soldier's state had intended to affect permanent change—that is, to violate rights of political autonomy indefinitely—then the sleeping soldier is relevantly similar to Agatha in Pleasant Detention. The same is true of Bloodless Invasion. If the Russian soldiers in 2014 intended not only to invade Crimea, but also to keep it indefinitely—a conclusion that has become undeniable following

Russia's 2022 invasion of Ukraine—it is plausible that they violate the rights of Ukrainian citizens and that they intend to do so indefinitely.

There might be some outlying cases in which violent resistance to an unjust invasion violates narrow proportionality. One thinks, for example, of the Soviet Union's annexation of Finland during the Second World War. Imagine—even if doing so gives Stalin more credit than is due—that the Soviet Union had every intention to use Finnish territories unjustly as a buffer to deter German aggression only temporarily and to return the territories to Finland after a few years. The Soviet Union might have intended only a bloodless invasion. "Do you want matters to lead to a conflict?" the Soviet foreign minister asked Finnish negotiators. In the face of Finnish implacability, the same minister closed the negotiations by saying, "We civilians can see no further in the matter; now it is the turn of the military to have their say."<sup>38</sup> The annexation of Finnish territories, therefore, has all the hallmarks of a bloodless invasion, including the conditional threat of lethal harm. The Finns responded with defensive force, and the Winter War had begun. Surely the Soviet annexation of Finnish territory was unjustified and Soviet soldiers posed a threat of continuing harm to the Finnish people's rights to freedom, political autonomy, and property even before they posed threats of lethal harm. But suppose the duration of those violations was temporally limited. Suppose it would have been only for a couple of years, or even a couple of months. It is at least theoretically possible that the Soviet annexation of Finland—had it not been resisted with violence—would have failed to reach the magnitude and duration thresholds to justify lethal defensive force.

Even if it is the case that Finland's violent resistance to Soviet invasion in 1939 violated the proportionality principle in the narrow sense—and this claim is dubious—cases like this one are exceedingly rare. Invading forces often violate persons' rights to political autonomy and to property and threaten to do so for a very long period of time. If war is a conflict over governance, then demands for changes in governance are not likely to be demands only for a temporary change. And if the invasion—bloodless though it may be—threatens a permanent violation of otherwise lesser interests, then just as Violet is justified in killing Agatha in *Pleasant Detention*, so are defenders justified in warding off the bloodless invasion with lethal harm.<sup>39</sup>

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38 Sechser, "Goliath's Curse," 645–47.

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