

Civilian Liability*

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Adil Ahmad Haque argues that civilians who contribute to unjust lethal threats in war, but who do not directly participate in the war, are not liable to defensive killing. His argument rests on two central claims: first, that the extent of a person's liability to defensive harm in virtue of contributing to an unjust threat is limited to the cost that she is initially required to bear in order to avoid contributing, and second, that civilians need not bear lethal costs in order to avoid indirectly contributing to unjust lethal threats. I argue that Haque's defense of each claim fails.

I. INTRODUCTION

Adil Ahmad Haque's *Law and Morality at War* advances a complex, multifaceted defense of civilian immunity—that is, the view that it is impermissible to intentionally threaten harm to civilians in war. Haque seeks to vindicate a widespread civilian immunity, grounded in “deep moral principles” (rather than, say, pragmatism about what will reduce harm overall).¹ Like many contemporary writers, Haque places the notion of liability to defensive harm at the core of his account of permissible killing in war. On a standard view of liability, to say that a person is liable to defensive harm means that she has forfeited her usual rights against being harmed. According to many liability theorists, including Haque, this forfeiture occurs if one is sufficiently morally responsible for a threat of unjust harm (*LMW*, 7).² Neither civilians nor combatants who pose, or contribute to, only just threats are liable to be killed.

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1. Adil Ahmad Haque, *Law and Morality at War* (Oxford: Oxford University Press, 2017), 57, henceforth cited as *LMW*. For a defense of the harm-minimizing approach to the laws of war, see Janina Dill and Henry Shue, “Limiting the Killing in War: Military Necessity and the St. Petersburg Assumption,” *Ethics and International Affairs* 26 (2012): 311–33.

2. See also, e.g., Jeff McMahan, *Killing in War* (Oxford: Oxford University Press, 2009); Cécile Fabre, *Cosmopolitan War* (Oxford: Oxford University Press, 2011); Helen Frowe, *Defen-*

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According to Haque, a person is liable to defensive killing in war only if she directly participates in hostilities, which means that she must directly threaten harm (i.e., cause harm without anyone else's intervening agency), indirectly threaten by controlling the actions of others, or jointly perpetrate harm, which requires being an integral part of a coordinated military operation (*LMW*, 62).

Haque grants, then, that civilians who directly participate in an unjust war—for example, by taking part in a coordinated military ambush—can be liable to be killed. But, he argues, civilians who contribute to unjust threats without directly participating in hostilities are not so liable. For Haque, this includes civilians who “merely contribute to the general war effort, for example through the design, production, and shipment of weapons and military equipment; or if they merely engage in war-sustaining activities including political advocacy, voting, and paying taxes” (*LMW*, 57). I'll refer to civilians making these sorts of contributions as “indirectly contributing civilians.”³

The backbone of Haque's account of civilian nonliability consists in two central claims. The first is that the extent of a person's liability to defensive harm in virtue of contributing to an unjust threat is limited to the cost that she is initially required to bear in order to avoid contributing (*LMW*, 70–71). The second is that civilians need not bear lethal costs in order to avoid indirectly contributing to unjust lethal threats. Indeed, Haque argues that there is a fairly low justificatory bar for most civilian contributions, arguing that civilians may contribute to unjust lethal threats in order to avoid even quite moderate costs to themselves (*LMW*, 71). If sound, these claims together show that civilians are not liable to lethal defense.

Haque's defense of the claim that civilians need not bear significant costs rather than contribute to unjust lethal threats relies on his analysis of civilian contributions as either enabling or superfluous. A person enables a threat if she makes a necessary contribution to that threat, making others worse off than they would have been had she not contributed (*LMW*, 73, 75). A person makes a superfluous contribution to a threat if her contribution does not make others worse off than they would have been had she not contributed (*LMW*, 73). Haque argues that the “vast majority” of indirectly contributing civilians make only superfluous con-

sive Killing (Oxford: Oxford University Press, 2014). Not all liability theorists use the language of forfeiture, or limit liability to cases of forfeiture. See, e.g., Victor Tadros, *The Ends of Harm: The Moral Foundations of Criminal Law* (Oxford: Oxford University Press, 2011); Kai Draper, *War and Individual Rights* (Oxford: Oxford University Press, 2017).

3. Haque uses the term “non-participant civilians.” But this is unhelpfully ambiguous between civilians who neither directly participate nor contribute and civilians who do not directly participate but do contribute.

tributions to the unjust lethal threats posed by their state's armed forces (*LMW*, 68; see also 267). It is partly their superfluous nature that explains the low justificatory bar for most civilian contributions (*LMW*, 70–71, 73). Haque grants that the duty not to enable unjust lethal threats is more stringent, requiring an agent to bear more significant cost rather than breach the duty. However, since one still need not bear lethal cost rather than enable unjust lethal threats, even enabling civilians are not liable to defensive killing.⁴

Haque further alleges a conceptual connection between enabling and superfluous contributions and eliminative and opportunistic harming. According to Haque, “eliminatively harming someone prevents her from making others worse off than they would be in her absence. Opportunistically harming someone makes others better off than they would be in her absence” (*LMW*, 66–67). Opportunistic harming is typically harder to justify than eliminative harming, since it involves making harmful use of a person (*LMW*, 11).

Since a person who makes only superfluous contributions to a threat will not make others worse off, harming her cannot prevent her from making others worse off. Thus, harming her cannot be eliminative. Given that, according to Haque, the vast majority of indirectly contributing civilians make nobody worse off, there is no point at which harming those civilians could be eliminative. Intentionally killing indirectly contributing civilians is thus necessarily opportunistic (*LMW*, 68). Moreover, Haque argues, liability to opportunistic harming generally derives from liability to eliminative harming (*LMW*, 67).⁵ Only if a person is, or would have been, liable to eliminative harming can she later be liable to opportunistic harming. Since harming superfluously contributing civilians is never eliminative, they are never liable to eliminative killing. Thus, they cannot be liable to opportunistic killing.

I begin, in Section II, with Haque's claim that civilians who enable unjust lethal threats do not thereby render themselves liable to defensive killing. I grant, for the sake of argument, that one is justified in enabling unjust lethal threats in order to avoid lethal cost to oneself. But to secure civilian nonliability, Haque must show that someone who unjustifiably fails in a duty cannot become liable to costs in excess of those she was initially required to bear to fulfill that duty. This is the key premise of his view, since most civilians who contribute to lethal threats do not do so on

4. Haque does grant that someone who enables many unjust killings can be liable to be killed, but he claims that this is “clearly” not liability to defensive killing (75). Why such killings are not defensive is not clear to me, at least, but it need not detain us here.

5. The exception to which Haque alludes concerns overdetermined direct threats; see *LMW*, 69. I consider this in Sec. IV.B.

pain of death. And yet Haque offers no argument for this claim. Rather, he argues that even if unjustified enabling can render a person liable to defensive killing, it does not render enabling civilians so liable. I show that these arguments fail. In Section III, I argue that there is good reason to think that those who unjustifiably enable unjust lethal threats are indeed liable to lethal defense.

Of course, Haque believes that the vast majority of civilians make only superfluous contributions to unjust lethal threats. Thus, we might think that undermining the nonliability of enabling civilians is of only limited importance. However, in Section IV I argue that Haque's account of enabling contributions and superfluous contributions is mistaken. His analysis is unable to capture causally efficacious contributions to overdetermined threats. Since the fighting of war often essentially depends on civilian contributions, it is false that the vast majority of civilian contributions are superfluous. Many civilians make causally efficacious contributions to the threats posed by their combatants. I argue that the contributions that Haque has in mind are best characterized as preemptive, causally efficacious contributions to overdetermined threats. But it is implausible that those who contribute to overdetermined unjust lethal threats cannot be liable to defensive killing. Moreover, harming a person to prevent her from contributing to a threat is an instance of eliminative, not opportunistic, harming.

Section V rejects Haque's claim that civilians evade liability because they enable unjust lethal threats only collectively. Section VI concludes.

II. THE STRINGENCY OF DUTIES

A. *Enabling and Contributing*

On Haque's account, indirectly contributing civilians can breach two duties: the duty not to enable unjust threats, and the duty not to superfluously contribute to unjust threats. He claims that neither duty is sufficiently stringent to ground liability to defensive harm, even when the threats in question are lethal threats.

Haque argues that a duty's stringency is determined by the cost that a person is required to bear rather than breach that duty, and that one need not bear any significant cost rather than superfluously contribute to unjust lethal threats (*LMW*, 71). Thus, "civilians who pay income and sales taxes in order to avoid criminal punishment, keep their job, or feed and clothe themselves are justified in doing so . . . no contributing civilian makes anyone worse off by paying his or her taxes" (*LMW*, 70).⁶ While

6. Haque conceives of these as justified breaches of a duty, rather than as showing that the civilians are under no duty not to contribute under these circumstances. I don't think anything turns on which characterization we use.

the duty not to enable unjust lethal threats is more stringent, it still does not require a person to bear lethal cost rather than breach it.

B. Stringency and Liability

Haque supports his claim regarding the stringency of the duty not to enable unjust killing with the following pair of cases (*LMW*, 75):⁷

Coercion I: A threatens to kill B unless B kills V with B's rifle. A cannot kill V himself, nor by coercing anyone else.

Coercion II: A threatens to kill B unless B gives his rifle to A, so that A can kill V. A cannot kill V without the rifle.

Haque argues that while B ought to let himself be shot rather than kill V in *Coercion I*, he need not let himself be shot in *Coercion II*. If this is correct, it tells us that the duty not to enable an unjust killing is weaker than the duty not to unjustly kill and cannot require the bearer to suffer a lethal cost. Haque argues that B is therefore not liable to defensive killing if he hands A the rifle in *Coercion II*.

Let's grant Haque's claim that B may enable the killing of V to avoid a lethal cost to himself but may not kill V to avoid a lethal cost to himself.⁸ This tells us that it is easier to justify enabling unjust killing compared to unjustly killing. But, importantly, it doesn't tell us anything about what happens to a person's liability when she unjustifiably breaches her duty not to enable unjust killing. That it is easier to justify enabling killing compared to killing does not show that unjustifiably enabling killing is less wrong than unjustifiably killing.⁹

7. The cases are taken from Draper, *War and Individual Rights*, 207. In his discussion of enabling, Haque switches from talking about "enabling lethal threats" to talking about "enabling killing." Threats of harm are not equivalent to harm, so this change in terminology is a bit unfortunate. However, Haque must be taking the two concepts to be equivalent here, since his discussion of enabling killing is meant to support the view that enabling, indirectly contributing civilians (whom he also describes as "enabling threats"; 73) are not liable to defensive harm. Thus, whatever he wants to say about enabling killing must also be what he wants to say about enabling lethal threats. To avoid misdescribing Haque's view, I also switch to talking about killing, rather than lethally threatening, in this and the following section. Thanks to an anonymous reviewer for drawing my attention to this.

8. I grant this claim for the sake of argument: I've argued elsewhere that one can be liable to defensive killing if one enables an unjust lethal threat to someone else, even if one does so in order to avoid a lethal cost to oneself. See Frowe, *Defensive Killing*, 80. See also Victor Tadros, "Causal Contributions and Liability," *Ethics* 128 (2018): 402–31, for skepticism concerning the moral significance of the causing/enabling distinction. But we need not settle this to see the problems with Haque's view.

9. Victor Tadros makes a similar argument regarding the alleged worseness of killing civilians rather than combatants, pointing out that even if opportunistic harming is harder to justify than eliminative harming, this does not entail that wrongful opportunistic harm-

But the question of unjustified breaches is key. As Haque acknowledges, “contributing civilians generally do not contribute to an unjust war under threat of death,” but rather in the face of lesser penalties (such as fines for not paying their taxes; *LMW*, 71). That one may contribute to or enable an unjust killing in order to avoid being shot doesn’t tell us whether one may contribute to or enable an unjust killing to avoid paying a fine. And, of course, many civilians contribute to the war not in order to avoid penalties, but rather because they support the war effort (*LMW*, 70). Civilian contributions are often voluntary, intended to enable their combatants to pose threats and win the war.

Consider the following pair of cases:

Coercion III: A threatens to kick B in the shin unless B kills V with B’s rifle. A cannot kill V himself, nor by coercing anyone else.

Coercion IV: A threatens to kick B in the shin unless B gives his rifle to A, so that A can kill V. A cannot kill V without the rifle.

It seems to me that B acts equally wrongly in *Coercion III* and *Coercion IV* and is liable to the same degree of defensive harm in each case. Haque’s account deems B liable to defensive killing in *Coercion III*. But for his account to succeed, he must show that B is not so liable in *Coercion IV*.

Haque claims that liability to defensive harm is limited to the initial cost that one is required to bear to avoid breaching one’s duty: that “you would wrong me by inflicting a greater harm on me than I am morally required to suffer rather than violate my duty” (*LMW*, 71).¹⁰ Provided that the civilians are not initially required to bear a lethal cost rather than enable unjust killing—as suggested by *Coercion II*—they cannot be liable to be killed if they fail in that duty. Haque supports this claim by suggesting that someone who fails to save a drowning child for “a trivial or wicked reason” does not thereby become liable to be killed for the sake of saving the child.

But this example doesn’t support the claim at issue, which is that one cannot become liable to more harm in virtue of an unjustified breach, compared to the cost that one was initially required to bear. To support that claim, Haque needs to show that the potential rescuer was initially required to suffer a maximum cost of, say, a broken arm to save the child, and that therefore one may inflict no more than a broken arm on her

ing is worse than wrongful eliminative harming. See Victor Tadros, “The Moral Distinction between Combatants and Noncombatants: Vulnerable and Defenceless,” *Law and Philosophy* 37 (2018): 289–312, 291.

10. See also Adil Ahmad Haque, “Human Shields,” in *Oxford Handbook of Ethics of War*, ed. Seth Lazar and Helen Frowe (New York: Oxford University Press, 2018), 383–400.

when she unjustifiably refuses to save the child. That she may not be killed does not give us any reason to believe that her liability is limited to the cost that she was initially required to bear.

Indeed, several writers argue that, on the contrary, breaches of this sort render a person liable to increased harm. For example, while Victor Tadros shares Haque's skepticism that someone who fails to rescue would be liable to lethal harm, he argues that she is nonetheless liable to bear "a significantly higher cost than [s]he would have had to bear to rescue [Victim] in the first place."¹¹ The potential rescuer could have avoided bearing this increased cost by doing what he was required to do, and "avoidability typically makes a difference to liability, and wrongdoing typically makes a difference to avoidability."¹² Christian Barry also argues that unjustified failures to rescue increase liability, and that this includes liability to lethal harm if the failure is culpable.¹³

Haque notes, in particular, my disagreement with the claim that liability is limited by the initial stringency of duties. My argument is developed in the context of *Selfish Bridge*:

Selfish Bridge. Victim is fleeing Murderer, who wants to kill him. Victim's only escape route is across a narrow bridge that can hold only one person. Selfish Pedestrian is out for a walk on the bridge. Selfish Pedestrian could easily get off the bridge, but doing so would involve getting her feet wet and she has on her lovely new shoes. She decides, with a certain amount of regret, to stay on the bridge, realizing that her doing so impedes Victim's escape.¹⁴

I argue that Victim may lethally knock Selfish Pedestrian off the bridge in order to save his own life, even though Selfish Pedestrian was not initially required to bear a lethal cost to get off the bridge.¹⁵ Selfish Pedestrian had an opportunity to ensure that neither she nor Victim would need to suffer any serious harm, and she unjustifiably failed to take that opportunity.

11. Victor Tadros, "Resource Wars," *Law and Philosophy* 33 (2014): 361–19, 365. Tadros is responding to Cécile Fabre's claim that countries facing severe deprivations may have just causes for war against members of affluent states that fail in their duties of assistance (Fabre, *Cosmopolitan War*, chap. 3). While Fabre opposes Haque's claim that failures to rescue cannot ground liability to lethal force, she does not explicitly make the increased liability claim in which we're interested here. However, she argues elsewhere that individuals need not bear lethal costs in order to rescue, and thus she is committed to the possibility of increased liability by implication. See Cécile Fabre, "Mandatory Rescue Killings," *Journal of Political Philosophy* 15 (2007): 363–84, 366.

12. Tadros, "Resource Wars," 365.

13. Christian Barry, "Material Contribution, Responsibility, and Liability," *Journal of Moral Philosophy* 15 (2018): 637–50, 649.

14. Frowe, *Defensive Killing*, 76.

15. Ibid.

Her resultant responsibility for the fact that now either she or Victim must die makes it permissible for Victim to lethally knock Selfish Pedestrian off the bridge.

Surprisingly, rather than addressing my argument concerning unjustified breaches and increased liability, Haque agrees that it may be “all-things-considered permissible” to kill Selfish Pedestrian (*LMW*, 269). Since killing her is not the lesser evil compared to Victim’s death, this suggests that Selfish Pedestrian is liable to be killed.¹⁶ And since I doubt that Haque thinks that Selfish Pedestrian is initially required to bear a lethal cost to avoid endangering Victim, this suggests that Haque agrees with me that those who unjustifiably fail in their duties can render themselves liable to more harm than they were initially required to bear, including lethal harm.

What Haque does try to show is that the arguments that support Selfish Pedestrian’s liability do not apply to civilians. But each of Haque’s two arguments for this miss their mark. The first holds that, unlike Selfish Pedestrian, superfluously contributing civilians do not make others worse off. But this does not help with the liability of enabling civilians who, by definition, do make others worse off, and who, according to Haque, nonetheless avoid liability.

Second, Haque points out that my explanation of Selfish Pedestrian’s liability cites the opportunity Selfish Pedestrian has to ensure that nobody suffers any serious harm. But, Haque argues, contributing civilians do not have such opportunities: “Except in rare cases, there is nothing that contributing civilians can do to avoid being seriously harmed or to prevent others from being seriously harmed” (*LMW*, 269). But my argument can be easily clarified to meet this claim, in two ways. First, Selfish Pedestrian has a chance to ensure that she does not make it the case that either she or Victim must suffer a serious harm. This—rather than ensuring that Victim suffers no harm in general—is the content of the relevant duty. Enabling civilians (and indeed, as I argue below, contributing civilians in general) can similarly ensure that they do not make it the case that others will suffer serious harm, by not contributing to the threats posed by their armed forces.

Second, the focus on serious harm is a red herring. Selfish Pedestrian is liable not because she could have avoided bearing serious harm, but

16. We might say that Selfish Pedestrian is liable to some harm, and that inflicting the remaining harm is justified as the lesser evil. But Haque does not say this, and if he did, he’d be committing himself to the possibility of similar combination justifications for intentionally killing civilians. Since his account of civilian nonliability is intended to support a principle of civilian immunity to intentional killing, this approach is unlikely to appeal to him.

rather because the initial cost of getting off the bridge falls below the harm she was initially required to bear. And we're assuming here that this is also true of the civilians, because our focus is the liability of people who unjustifiably breach their duties. Whether contributing civilians can avoid being seriously harmed is irrelevant. What matters is that, in fulfilling their duties, civilians would not bear costs in excess of what they are obliged to bear. The question at issue is what happens to their liability when they wrongly refuse to bear those costs. Haque simply offers no argument for the claim that their liability is limited to the initial cost they were required to bear rather than breach their duty.

Haque does concede that it might be "less wrongful" to kill a person who unjustifiably breaches a duty even if she was not required to bear a lethal cost to fulfill it (*LMW*, 72). A third party trying to save the drowning child would act less wrongly if she killed the person who wrongly failed to save the child than if she killed someone who did not. Haque's concession here is grounded in my explanation of why one may kill Selfish Pedestrian—the potential rescuer could have avoided anyone's death by doing her duty. But "less wrongful" is a bit of a fudge; Haque doesn't elaborate on whether it is less wrongful because the additional harm does not wrong the person (that is, because she is liable to it) or because of some other consideration. Rather, he again focuses on resisting the extension of this argument to civilians, claiming that "no contributing civilian creates a situation in which either she or some other innocent person will be killed" (*LMW*, 72). Set aside the fact that assuming the innocence—that is, the nonliability—of the civilian who unjustifiably breaches her duty begs the question. As suggested above, and as I argue below, a civilian who contributes to unjust lethal threats does help to create situations in which other people will be killed. And our question is precisely whether, if killing the civilian would prevent those deaths, she may be harmed to that end.

Haque's account of liability also fails to give agents the proper incentives to comply with their duties (or, to put it another way, fails to appropriately respond to agents' failures to comply with their duties). It allows for a person who unjustifiably fails in her duty to be considerably better off than a person who voluntarily fulfills that duty. The person who unjustifiably fails in her duty might well suffer no harm at all, if there is nobody around to coerce her into complying. And she may be made no worse off than someone who voluntarily fulfills her duty, since she may be made to bear only the harm she would have borne had she voluntarily complied. We don't generally respond to unjustified failures to fulfill duties in this way. Even if, for example, a person is liable to only a fine in virtue of a past wrong, we may nonetheless impose a harsher sentence when she fails to pay—including, for example, a custodial sentence, even though impris-

onment infringes people's basic rights.¹⁷ Our justified response to the unjustified breach is not limited to simply enforcing the original fine.

III. ENABLING AND LIABILITY

A. *Enabling and Joint Perpetration*

Can unjustifiably enabling unjust killing render a person liable to lethal defense? Haque argues against B's liability in *Coercion II* but seemingly concedes that Selfish Pedestrian might be so liable. He also concedes that enabling harm might ground liability to defensive killing in another of my cases, *Drive-By*:

Drive-By: Terrorist holds a gun to Driver's head, and orders him to drive the car for a drive-by shooting, in which Terrorist will kill Victim.¹⁸

Haque argues that "it is at least plausible that Driver may not *enable* Terrorist to kill Victim even to avoid his own death" and is thus liable to defensive killing (*LMW*, 266).

What could explain such radical differences in liability between B, who hands over the gun that enables A to kill V in *Coercion II*, and Driver, who drives the car and thereby enables Terrorist to kill Victim? The answer, according to Haque, is that Driver not only enables but also jointly perpetrates Victim's death, "performing an integral role in a common plan in which each will mutually respond to the other's efforts to perform their respective roles . . . jointly posing an unjust threat generates liability to defensive killing" (*LMW*, 266). In contrast, Haque claims, B in *Coercion II* does not jointly perpetrate A's death. While Haque grants that there may be borderline cases in which it's unclear whether someone is a joint perpetrator, he insists that *Coercion II* is not a borderline case (*LMW*, 75).

But it's hard to see why *Coercion II* does not satisfy Haque's understanding of a plan to jointly kill V. Both A and B have an integral role to play in V's death (we've stipulated that A cannot kill V without B's rifle). And in any case of this sort, A is plausibly going to give B instructions about how to hand over the rifle to him ("slowly, put it down on the ground, kick it towards me, hands where I can see them, back away . . ."). B is going to respond to those instructions, and A is then going to respond to B's effort to fulfill his role, picking up the rifle that B has passed to him. Their actions thus meet the condition that "each will mutually respond to the other's efforts to perform their respective roles."

17. My claim is not that we should construe the increased harm in a defense case as punitive, but merely that in general unjustified failures plausibly make the violator liable to further harm.

18. Frowe, *Defensive Killing*, 162.

It is implausible that B's responding to A's instructions does not count as joint perpetration but Driver's responding to Terrorist's instructions does. I cannot see, then, how Haque can hold both that Driver jointly kills Victim and is liable to be killed and that B merely fails in a less stringent duty not to enable A to kill V and is not liable to be killed.

Of course, Haque could go either way here: perhaps both B and Driver are joint perpetrators and liable to be killed, or perhaps neither is a joint perpetrator and neither is liable to be killed. But is joint perpetration really necessary to render an enabler liable? After all, Selfish Pedestrian does not, on any plausible account, jointly perpetrate Victim's death with Murderer.

Here's another case in which it seems unlikely that joint perpetration is necessary for an enabler's liability:

Informant: Albert realizes that his neighbors are concealing Beth, a Jew, in their attic. Nobody else suspects this. He goes to tell the Nazi authorities, who will raid the house in order to send Beth to a concentration camp, where she will be killed. Beth can kill Albert to prevent his informing on her.

Recall that, on Haque's account, liability to defensive killing requires a person to directly threaten harm, indirectly threaten by controlling the actions of others, or jointly perpetrate harm as part of a coordinated military operation (LMW, 62). Albert is not directly threatening harm, nor controlling the Nazi officers. Nor does he jointly perpetrate harm: he will not be part of the raid, and to inform is not to be part of a coordinated military operation. And yet I find it deeply implausible that Beth may not kill Albert to save her own life. It seems equally implausible that Beth may not kill Albert after he has informed on her if doing so will enable her to escape the Nazis. Yet Haque cannot hold Albert liable even to prevent his informing on a whole family, all of whom will be unjustly killed.¹⁹ As above, we can grant that Albert might not have been initially required to bear a lethal cost to avoid informing. But that doesn't seem to limit his liability to less than lethal harm when he unjustifiably informs.

If Albert is indeed liable to defensive killing in *Informant*, we must either reject Haque's conditions for liability or broaden our account of joint perpetration to include someone like Albert. But any account broad enough to include Albert as a joint perpetrator is going to include many civilians. If providing information that results in unjust lethal threats is enough to make one a joint perpetrator, providing weapons and other material goods to carry out unjust lethal threats should also suffice. And since Haque argues that even superfluous joint perpetrators can be liable to defensive killing, this broader account of joint perpetration will include

19. Haque's concession that an enabler might be liable to nondefensive killing applies only if she enables many deaths, not just three or four.

even those civilians making only superfluous contributions to unjust lethal threats (*LMW*, 60–61, 65).

In sum, then, there's nothing in Haque's arguments to support the claim that a person who unjustifiably breaches a duty cannot be liable to increased costs as a result. *Selfish Bridge*, *Coercion IV*, *Drive-By*, and *Informant* all give us strong reason to reject Haque's claim that unjustifiably breaching the duty not to enable unjust lethal threats cannot render someone liable to lethal defense.

B. Intention, Cost, and Liability

Whether unjustifiably enabling unjust threats renders a person liable to lethal force is, I suggest, going to turn largely on the severity of the threatened harm. The cases discussed in Section III.A suggest that unjustifiably enabling a lethal threat to one person suffices.²⁰ We should also bear in mind, of course, that civilians who contribute to unjust wars enable not only the killings that their combatants inflict but also the achieving of the unjust goals of the war. Most killings in war are, after all, merely a means or side effect of perpetrating some other grave injustice, such as the forceful annexing of land, or the deposing of a government.

Importantly, we needn't settle here the question whether a person may enable an unjust lethal threat to avoid lethal harm to herself. This is—quite simply, and as Haque grants—because civilians do not typically contribute to wars on pain of death, nor anything like it (*LMW*, 71). Many contribute willingly, because they support the war and want their combatants to win. Of course, the proportion that do so, and the extent of their enthusiasm, will vary between conflicts. But if we're looking to support widespread civilian immunity, that obtains with respect to (nearly) all sides in (nearly) all conflicts, we cannot rely on the idea that civilians enable unjust lethal threats only to avoid grave harms to themselves. Moreover, as Haque argues, even willing contributors who would have faced grave harms to themselves had they refused to contribute act unjustifiably, since “the normative reasons that favour their actions are not the motivating reasons that explain their actions” (*LMW*, 70). An enthusiastic concentration camp guard or informant is not justified in enabling lethal threats, even if he would have been shot had he refused his role.

The cases discussed in Section III.A also suggest that shared intention with the principal is unnecessary for liability to defensive harm. Selfish Pedestrian does not intend or hope for Victim's death; the fact that she foresees that if she does not move Victim must either kill her or die, and yet she intentionally fails to take a reasonable opportunity to avoid this, is enough to render her liable. Albert might inform on Beth for a reward,

20. I'm using (but not endorsing) Haque's terminology here, which identifies these cases as instances of enabling harm.

or some other advantage, and not because he particularly wants Beth dead. It seems similarly unlikely that his lack of shared intention with the Nazis exempts him from liability. But, given the facts about civilian contributions, we can remain neutral on whether enablers can be liable only if they share the principal threateners' lethal intent. Civilians often share their combatants' aims, support the war, and willingly contribute to the war effort. Their contributions are often made not only in the knowledge that they are enabling lethal threats but also in order to enable lethal threats and secure their country's victory. Thus, we cannot ground any widespread defense of civilian immunity in the idea that civilians lack the relevant intentions. Indeed, it's because so many civilian contributions are unjustified in these ways that Haque is at pains to extend nonliability to unjustified contributors (*LMW*, 70). His doing so is an acknowledgment that no plausible account of justified contributions to unjust killing is going to cover a sufficient proportion of civilian contributors to sustain widespread civilian immunity.

Nor can we support civilian nonliability by suggesting that civilians may not intend to enable or contribute to *unjust* lethal threats—that is, that they may justifiably believe that their war is just—without undermining the claim that combatants and direct civilian participants are liable. There's no reason to suppose that, for example, a combatant or civilian who directly participates in hostilities is better informed about the injustice of their war than an indirectly contributing civilian. On the contrary, combatants are often less well placed than civilians to judge the justness of a war: they may have less access to impartial or reliable information, they often have below-average levels of education, and they are often in particularly stressful conditions that make it harder to form considered judgments. If combatants are nevertheless liable to defensive killing, civilians' epistemic positions cannot preclude their being liable to defensive killing.

The foregoing doesn't show that one may not enable unjust threats on pain of death. But, provided that many enabling civilians contribute to unjust lethal threats on pain of considerably less than death, or do so willingly, it does undermine the view that enabling civilians cannot be liable to defensive killing. Still, if Haque is correct that the vast majority of civilians make only superfluous, rather than enabling, contributions to unjust threats, the foregoing argument will have only limited implications for civilian nonliability. However, as I now argue, Haque's claim that civilian contributions are either enabling or superfluous is mistaken.

IV. SUPERFLUITY AND ENABLING

On Haque's account, all contributions to a war made by indirectly participating civilians are either enabling or superfluous—that is, they are all

either necessary or irrelevant. Recall from Section I that, according to Haque, a contribution is enabling if it makes others worse off than they would have been had that contribution not been made. In contrast, a contribution is superfluous if it does not make others worse off than they would have been had that contribution not been made. Recall also that, according to Haque, the vast majority of civilian contributions are superfluous, and thus intentionally killing those contributing civilians is necessarily opportunistic (*LMW*, 68).²¹

My aim in this section is not, of course, to defend any substantive account of causal contributions. Rather, it is to show, first, that Haque's account of superfluity and enabling is mistaken and, second, that many civilian contributions are not superfluous but rather causally efficacious. I leave open some of the harder questions—what to say about overdetermined election results, and so on. We need not answer those questions to show that many contributing civilians do not make only superfluous contributions to war.

A. A False Dichotomy

Haque's analysis of causal contributions leaves us unable to capture important, and distinct, types of causal connection to an outcome. Consider *Bottle*:

Bottle: Adam puts a bottle on a ledge. Billy and Sue each throw a rock at the bottle. Sue's rock hits and smashes the bottle. Billy's rock would have hit and smashed the bottle had Sue not thrown her rock.²²

On Haque's account, despite the fact that she smashes the bottle, Sue makes a merely superfluous contribution to the smashing of the bottle. The bottle is no worse off for Sue's contribution than it would have been in the absence of her contribution. This entails that harming Sue to pre-

21. Note that Haque does not argue that civilians make only minimal contributions to unjust threats. Others have made this claim, arguing that civilians do not contribute enough to make killing them a proportionate response, a claim which relies on, among other things, the contentious idea that causal contributions come in degrees. For defenses of the minimal contribution view, see McMahan, *Killing in War*, 225; Cécile Fabre, "Guns, Food and Liability to Attack in War," *Ethics* 120 (2009): 36–63. For criticism, see Seth Lazar, "The Responsibility Dilemma for Killing in War," *Philosophy and Public Affairs* 38 (2010): 180–213; Frowe, *Defensive Killing*, 172–77; Tadros, "Causal Contributions and Liability."

22. David Lewis, "Causation as Influence," *Journal of Philosophy* 97 (2000): 182–97. The literature here is vast, of course, but for discussion of this case, see, e.g., Ned Hall, "Two Concepts of Causation," in *Causation and Counterfactuals*, ed. J. Collins, E. Hall, and L. Paul (Cambridge, MA: MIT Press, 2004), 225–76; Jonathan Schaffer, "Causation, Influence, and Effluence," *Analysis* 61 (2001): 11–19; Tadros, "Causal Contributions and Liability."

vent her from throwing the rock would not be eliminative, but rather opportunistic.²³ It also denies any difference between Sue's and Billy's causal connections to the broken bottle: they each make merely superfluous contributions. (Note that there's nothing in the case to imply that Billy and Sue act jointly. They are not together trying to smash the bottle.)

Haque's definition of superfluous contributions cannot be right. The fact that the bottle is no worse off for Sue's contribution than it would have been had she failed to contribute does not mean that Sue makes only a superfluous contribution to smashing the bottle. Rather, Sue's action is part of a causal chain that results in the smashing of the bottle. She is responsible for the smashing of the bottle, even though her contribution is unnecessary because it preempts Billy's smashing of the bottle. And her contribution is clearly different in kind to Billy's contribution, which is not part of the causal chain that results in the smashing of the bottle.

Haque also employs inconsistent definitions of enabling a threat of harm. He claims to use enabling "in its ordinary sense of making others able to do what they could not otherwise do, for example by providing a necessary means" (*LMW*, 73 n. 40). But he also defines an enabling contribution as one that "makes others worse off than they would be in our absence" (*LMW*, 75). These are quite different criteria. It seems to me that enabling a threat of harm is plausibly understood as providing a necessary means of posing that threat. But one can provide a necessary means of bringing about an overdetermined event or outcome, in which case one enables the outcome but does not make others worse off than they would have been in one's absence. For example, it seems plausible to describe Adam's placing of the bottle as enabling—that is, providing a necessary means of—Sue's smashing of the bottle. But it's compatible with this that someone else would have placed the bottle had Adam not done so. And whether Adam enables the smashing of the bottle doesn't seem to depend on whether David stands ready to place the bottle if Adam does not.

Haque's understanding of both superfluous and enabling contributions must be mistaken. A better way of parsing *Bottle* is to say that Sue makes a preemptive, causally efficacious contribution to the smashing of the bottle. One can thus make a causally efficacious contribution to an overdetermined outcome. In such cases, one's contribution does not make others worse off than they would have been for one's absence. But it doesn't follow that one makes a superfluous contribution.

In contrast, Billy's throwing of his rock after Sue has smashed the bottle is not causally efficacious in the smashing of the bottle. His action is superfluous to the smashing of the bottle. (The notion of a superfluous contribution to an outcome is, of course, a little odd, since the point is

23. For Haque's discussion of preemption, see *LMW*, 69.

that Billy does not contribute to the outcome at all. But it captures the thought that his actions would have caused the outcome had they not been preempted by Sue's.) As I discuss below, and contra Haque, we cannot plausibly describe the vast majority of contributing civilians as making only superfluous contributions to unjust threats. What Haque has in mind are in fact preemptive, causally efficacious contributions to overdetermined unjust threats. But that one contributes to an overdetermined unjust lethal threat is unlikely to exempt one from liability to defensive killing.

B. Eliminative and Opportunistic Harming

Before moving on, we should note that once we jettison Haque's account of enabling and superfluous contributions, we thereby undermine his correlative claims about eliminative and opportunistic harming. Haque argues that if a threat would have occurred even if A had not acted as she did, then A's contribution is superfluous and killing her is opportunistic. But our discussion of *Bottle* showed that this analysis is incorrect.

Haque recognizes that overdetermination cases are problematic for his view (*LMW*, 69). But he misses the real force of the challenge, because he considers only cases in which harming one threatener is a means of averting the threat posed by another:

Preemptive: A decides to shoot V. A then sees B about to shoot V. A resolves to shoot V if B does not. V cannot shoot A, but knows that shooting B will frighten off A.

Simultaneous: A decides to shoot V. A then sees B about to shoot V. A resolves to shoot V at the same time as B. V cannot shoot A, but knows that shooting B will frighten off A. (*LMW*, 69)

Haque argues that killing B in each case is opportunistic, since "B does not threaten to make V worse off than V would be in B's absence. After all, in B's absence, A will kill V. Instead, B presents V with an opportunity to make V better off than V would be in B's absence" (*LMW*, 69). Explaining these cases requires an exception to his view that one can be liable to opportunistic killing only if one was previously liable to eliminative killing. Haque defends this exception on the grounds that although B will not harm V in either case, B threatens to wrong V by threatening to directly kill V. Thus, killing B does not wrong B (Haque likens killing B to killing someone attempting to murder a terminally ill patient). Given this, it is only the using of B that stands in need of justification, something that Haque claims is justified on lesser-evil grounds.

But the real challenge from overdetermination lies in cases in which harming one threatener is not a means of averting a threat posed by an-

other threatener. Consider a different case of simultaneous overdetermination, *Water*:

Water: Ali and Ben are about to simultaneously add independently lethal doses of poisons to Victim's water supply. Neighbor sees that Victim is running the tap for a glass of water and cannot warn her. She can prevent Ali and Ben from poisoning the water only by killing them.

According to Haque's account, Ali and Ben each make a merely superfluous contribution to the threat to Victim, since Ali will add sufficient poison to kill Victim even if Ben does not, and vice versa. Hence, neither makes Victim worse off than she would have been if he had not contributed. Thus, on Haque's view, shooting either poisoner to prevent him from adding his dose of poison is an instance of opportunistic harming.²⁴ But this is hardly plausible—or at least, it is very much at odds with our ordinary use of the term “opportunistic.” Neither Ali nor Ben provides Neighbor with an opportunity to make Victim better off than she would have been in their absence. It's similarly implausible that killing someone to prevent her from murdering a terminally ill patient is an instance of opportunistic harming. Yet presumably the comparison with B is meant to lie in the fact that since the patient will (very soon) die anyway, her death is overdetermined and the would-be murderer will therefore not make her worse off by killing her. Thus, on Haque's account, killing the would-be murderer to prevent his killing the patient must also be opportunistic. Things have surely gone awry.

Whether harming a person is opportunistic is more plausibly determined by whether she is used than by whether a given threat counterfactually depends on her contribution.²⁵ For example, Tadros suggests that we harm a person opportunistically if we harmfully derive a benefit from her presence, and manipulatively if we nonconsensually and harmfully use her in the service of a goal.²⁶ Neither of these descriptions applies to the killing of Ali and Ben to prevent their poisoning Victim, or

24. Thanks to an anonymous reviewer for this point.

25. The distinction between eliminative and opportunistic harming was first articulated by Warren Quinn. See Warren Quinn, “Actions, Intentions and Consequences: The Doctrine of Doing and Allowing,” in *Morality and Action*, ed. Philippa Foot (Cambridge: Cambridge University Press, 1994), 149–74. Several modifications of Quinn's account have been proposed. See, e.g., Jonathan Quong, “Killing in Self-Defence,” *Ethics* 119 (2009): 507–37, esp. 526–27; Victor Tadros, “Dimensions of Intentions,” in *Oxford Handbook of Ethics of War*, ed. Seth Lazar and Helen Frowe (New York: Oxford University Press, 2018), 401–17, 413; Tadros, *Ends of Harm*, 242–46.

26. Tadros, “Dimensions of Intentions,” 413. Earlier in his book, Haque himself characterizes opportunistic harm as that which “wrongfully involves [the subject] in your plans without her consent and wrongfully uses her to benefit others at her expense” (*LMW*, 11).

to harming Sue to prevent her from smashing the bottle, or to harming the would-be murderer of a terminally ill person. Since these threateners are not used in these ways, we cannot plausibly describe harming them as opportunistic.

In contrast, consider the way in which Andrew is harmed in *Shield*:

Shield: A javelin is heading to where it will kill Victim. Victim grabs a nearby innocent person, Andrew, and harmfully uses him as a human shield to save herself.

Victim's using of Andrew is a paradigm example of opportunistic harming.²⁷ This is true irrespective of whether Haque's counterfactual holds—that is, whether Victim is better off for Andrew's presence than she would have been in his absence. (We can imagine that if Andrew had been absent, Victim would have grabbed someone else instead.) What makes the harm opportunistic is that Victim uses Andrew: she exploits his presence in order to save her own life. But an account of opportunistic harming grounded in using, rather than allegedly superfluous contributions, does not support Haque's claim that "civilians are not morally liable to any form of defensive killing" (*LMW*, 69). Killing a civilian to prevent her from contributing to either a preemptively or simultaneously overdetermined threat does not use her and is not opportunistic, any more than harming Sue, or Ali, or Ben is opportunistic.

I suggest that harming A is eliminative if it prevents A from causing or contributing to an outcome. By understanding eliminative harming in this way, we can properly identify harming Sue to prevent her from smashing the bottle as eliminative. Killing Ali and Ben in *Water* also seems to be most naturally understood as eliminative harming, since Neighbor kills each to prevent their threatening Victim. This seems true even though either's actions will suffice to kill Victim if Neighbor does not intervene.

C. *Overdetermination and Liability*

It can hardly be true that the vast majority of civilians who seemingly contribute to wars are in fact engaged in merely superfluous actions, akin to Billy's casting his rock once the bottle is already smashed. Wars require enormous resources. Civilians provide, among other things, money, weapons, munitions, clothes, food, trucks, planes, communications equipment, surveillance tools, and medical supplies, without which the war could not be fought. Such contributions are thus clearly causally efficacious, even if the threats to which they contribute are overdetermined. The government may fund some of its outlay through loans, in addition to tax revenues (*LMW*, 77). But even these loans may be based on civilian contributions,

27. It is also, on Tadros's view, an instance of manipulative harming.

such as war bonds.²⁸ As Cheyney Ryan has recently suggested, “whatever the differences in political systems, success in modern war has required the contribution and support of the populace,” as evidenced by the fact that political defeat—that is, eroding an enemy’s domestic support for a war—can vitiate the need for military defeat.²⁹

Since Haque claims that all indirect civilian contributions are either enabling or superfluous, he offers no argument for why an unjustified, efficacious contribution to an unjust lethal threat cannot render a person liable to be killed. And yet a great many civilian contributions will fall into this category. We’ve just seen that the contributions are efficacious—most civilian contributions will assist the war effort. And many will be unjustified, made not to avoid criminal penalties or threats of death, but rather to avoid trivial costs, or because the contributors support the war and want to aid their combatants, or in exchange for financial reward. Civilians might contribute, as Haque writes, “out of a sense of duty, patriotism, or support for the policies of their government” (*LMW*, 70). As he also notes elsewhere, “Many contributing civilians seem to have reasonable opportunities to avoid making political, material, or strategic contributions to an unjust war. For example, civilians generally suffer no penalty if they do not vote for war-making leaders, advocate war, or work in tank factories as opposed to car factories.”³⁰ To be clear, my claim here is not that civilians cannot (also) make justified contributions to an unjust war; it is rather that—as Haque and I agree—many civilian contributions are unjustified. Haque’s account of civilian nonliability requires him to show that all these unjustified, causally efficacious civilians avoid liability. But his false dichotomy between superfluous and enabling contributions causes him to consider only unjustified superfluous contributions—which are, it turns out, largely irrelevant for determining civilian liability.

When Haque talks of civilian contributions as superfluous, what he must have in mind is that the threats to which civilians contribute are overdetermined. Consider, for example, what Haque says about Driver’s liability in *Drive-By*: “If Terrorist could not kill Victim without Driver, then it is at least plausible that Driver may not *enable* Terrorist to kill Victim even to avoid his own death. In contrast, if Terrorist could kill Victim just as easily without Driver then it is hard to believe that Driver may not su-

28. Under the heading “Lend Your Money to Your Country,” the British government took out newspaper advertisements urging its citizens to buy war bonds in World War I, reminding them that “victory cannot be won without money as well as men, and your money is needed” (*Glasgow Herald*, April 13, 1916, 9). Austria and Hungary also ran successful war bond schemes in World War I. It’s estimated that in World War II 85 million US citizens—roughly half the population—bought war bonds totalling \$185.7 billion.

29. Cheyney Ryan, “The Hard Hand of War,” *Law and Philosophy* 37 (2018): 69–287.

30. Adil Ahmad Haque, “Defending Civilians from *Defensive Killing*,” *Journal of Moral Philosophy* 15 (2018): 731–49, 733.

perfluously contribute to the direct threat posed by Terrorist to avoid his own death . . . since almost all contributing civilians make superfluous contributions to the direct threats posed by their armed forces, *Drive-By* fails to show that contributing civilians are liable to defensive killing” (LMW, 266). That Terrorist might have killed Victim just as easily had Driver refused to drive the car presumably relies on the idea that someone else would then have driven the car. But while this makes the threat to which Driver contributes overdetermined, it does not make his contribution superfluous. Someone needs to drive the car, and whoever drives makes a necessary, and efficacious, contribution to the threat to Victim, just as Adam makes a necessary and efficacious contribution to the smashing of the bottle irrespective of whether David would have placed the bottle in Adam’s absence.

Haque’s phrasing also suggests some conflation of a threat’s being overdetermined and a harm’s being unavoidable. That Terrorist “could kill Victim just as easily without Driver” implies that Victim is certain to die no matter what Driver does. But that using another driver would not make it any harder to kill Victim does not entail that Victim is certain to die provided that someone drives the car. On the contrary, the fact that someone else would have helped Terrorist threaten Victim, had Driver refused, is consistent with Victim’s being able to avoid harm—for example, by shooting Driver to prevent him from driving the car. Indeed, the question of liability arises only when harming a person can avert unjust threats, since liability is essentially instrumental.³¹ We are interested only in cases in which Victim is not certain to die.

The important question, then, is whether someone who contributes to an overdetermined unjust lethal threat evades liability to defensive harm, whereas someone who makes an irreplaceable contribution—that is, a contribution that only she can make—to a lethal threat does not. But it hardly seems plausible that Victim’s defensive rights in *Drive-By* are sensitive to whether someone else would have driven the car had the driver refused, such that Victim may kill Driver only if he was irreplaceable. It seems similarly unlikely that Beth’s defensive rights against Albert in *Informant* depend on whether someone else would have informed on her had Albert not done so. Rather, prospective victims plausibly have consistent defensive permissions regarding unjustified efficacious contributors, irrespective of whether the threats to which they contribute are overdetermined.

Haque’s alternative view has various unpalatable consequences. For example, it implies that Terrorist can make it impermissible for Victim to defend himself against Driver merely by conditionally intending to coerce someone else into driving if Driver refuses. I doubt that Terrorist

31. See, e.g., McMahan, *Killing in War*, 9; Frowe, *Defensive Killing*, chap. 4.

can alter Victim's defensive rights in this way. Nor can the fact that someone else would have driven the car plausibly confer on Driver a permission to help kill Victim. Nor can it give Driver a right that Victim let himself be shot by Terrorist rather than kill Driver. If Driver lacks a right to drive the car when he is irreplaceable, he also lacks that right when the car's being driven is overdetermined.

Denying that someone who contributes to an overdetermined threat can be liable to be killed also implies that such contributors are permitted to employ counterdefense against Victim, or against third parties acting on Victim's behalf. If Driver has a right not to be killed, Victim's defense will pose an unjust threat, violating Driver's rights. Again, this seems implausible.

This is, then, an unattractive account of defensive rights. Whether Driver has a right not to be killed by Victim is plausibly determined by whether Driver is morally responsible for an unjust threat to Victim's life. The fact that someone else could have (and would have) played Driver's role in threatening Victim's life does not prevent Driver's being so responsible. It is not plausible that those who make efficacious contributions to overdetermined unjust lethal threats cannot be liable to lethal defense.

This is true at least in cases in which Victim is not required to kill all of the conditional contributors, as well as the initial contributor, in order to save his own life. Things might be different if Victim would, for example, need to kill a succession of drivers—if every time he shoots a driver, a new one is forced to take their place. But while this raises a familiar and interesting puzzle about liability, it is a puzzle that arises precisely because each of the drivers seems to be individually liable, and there's something worrying about the idea that one can kill an unlimited number of even liable people to save one's own life.³² Thus, the fact that Victim wouldn't be permitted to kill an endless number of drivers doesn't show that Driver isn't liable, and it certainly doesn't show that Victim may not kill a contributor to an overdetermined threat when that suffices to save his life. Likewise, that the civilians have, by acting in large numbers, made the unjust threats to which they contribute overdetermined doesn't preclude or alter their liability, provided that the harms they help to threaten can be mitigated or averted and those harms warrant lethal defense.

The worry about Victim's killing multiple drivers also assumes that in doing so he defends only his own life. This worry disappears if there are at least as many victims whose lives are saved as there are drivers who

32. See, e.g., McMahan, *Killing in War*; Jeff McMahan, "Liability, Proportionality, and the Number of Aggressors," in *The Ethics of War*, ed. Saba Bazargan-Forward and Samuel Rickless (New York: Oxford University Press, 2017), 3–27; Helen Frowe, "Review of McMahan's *Killing in War*," *Journal of Moral Philosophy* 10 (2013): 11–115.

are killed. Since the combatants who might threaten contributing civilians act not only in self-defense but also in other-defense, and to prevent the achievement of the unjust goals of the war, it might be proportionate to kill additional, conditional contributors to prevent these harms.

C. Overdetermination and Civilian Contributions

Bottle is an example of a preemptive contribution to an overdetermined outcome. At the point at which they throw their rocks, either of Sue's or Billy's contributions would independently suffice to smash the bottle, but Sue's contribution cuts off the causal chain that would (presumably) have led to Billy's smashing the bottle. Some civilian contributions to unjust threats are preemptive—a common defense of civilian nonliability is that if, for example, A had not played her role in the munitions factory, then B would have played that role instead. A's contribution thus preempts B's contribution. But individual civilian contributions are likely to be insufficient to cause an unjust threat, even if their combined contributions mean that a given threat is overdetermined.

In some such cases, it might be unclear which contributions caused an outcome. For example, when the result of an election is overdetermined, it's unclear which votes are causally efficacious.³³ But not all cases of overdetermination are like this. Consider a submarine that sinks an enemy ship, unjustly killing hundreds of people. We can grant, plausibly, that no individual contribution would have sufficed to bring about this outcome, and that there were multiple submarines available, so that if that particular submarine had not carried out the attack, another would have attacked in its place. The unjust killings inflicted by the submarine and its crew are thus overdetermined, and nobody's contribution independently suffices to bring about the killings. But this does not seem to pose any particular difficulty for understanding who contributed to the killings. It will be easy enough to trace the submarine to a particular shipyard. The facts of who contributed to the unjust killings are not mysterious or unknowable. And the contributions of those who made the submarine are clearly causally efficacious in the unjust killings.

The foregoing seems generally true of at least material contributions to the war effort, such as weapons, ammunition, vehicles, parachutes, and communications and surveillance equipment. At best, it might sometimes be hard to establish the causal chain between indirect contributions and an outcome. But there will always be a fact of the matter about who is in the causal chain. And those people make efficacious contribu-

33. See, e.g., Shelly Kagan, "Do I Make a Difference?," *Philosophy and Public Affairs* 39 (2011): 105–41; Julia Nefsky, "Consequentialism and the Problem of Collective Harm: A Reply to Kagan," *Philosophy and Public Affairs* 39 (2011): 364–95.

tions, just as Sue smashes the bottle.³⁴ Since civilians make efficacious contributions to wars, harmfully preventing them from contributing to wars is not opportunistic, but rather eliminative. And if they are liable to these eliminative harms, then they are also, by Haque's own lights, later liable to opportunistic harms that avert the threats for which they are responsible.

Furthermore, as we saw above, Haque's argument for why civilians are justified in contributing to unjust threats by paying their taxes also relies on the idea that their contributions are superfluous: "No contributing civilian makes anyone worse off by paying his or her taxes" (*LMW*, 70). But this is false, just as it's false to say that Sue in *Bottle* does not make the bottle worse off because Billy would have smashed it if she had not. Even if some civilian contributions are superfluous, and the posing of unjust threats by their armed forces is overdetermined, it hardly follows that nobody contributes to those threats, nor that their victims will not be made worse off when they are killed. Imagine, for example, that a country's munitions workers make more bullets than their combatants can use, so that some bullets are superfluous. We would not conclude that nobody's bullets are used in the war, or that those whose bullets are used do not contribute to unjust threats. So Haque's argument for the justifiability of contributing to unjust threats does not succeed either.

This doesn't show that those who pay their taxes are liable to be killed. But it does show that their nonliability cannot be explained by the fact that their contributions to unjust lethal threats are superfluous, since that is false. The claim that needs defending is that civilians are morally permitted to make efficacious contributions to unjust lethal threats in order to avoid fines, keep their jobs, buy clothes, and so on. But the problem for Haque is not only that he does not defend that claim; it is also that even if that claim is true, it covers only a fraction of the contributions that civilians make in war, since, as above, many civilian contributions are made willingly in order to support the war effort.

V. COLLECTIVELY ENABLING THREATS

Of course, Haque recognizes that civilians collectively enable unjust threats: that "although the contributions of individual taxpayers to their armed force are each superfluous, the aggregate of these contributions may enable their armed forces to pose unjust threats" (*LMW*, 77). But he denies that this can ground liability to defensive killing, since (*a*) the duty that

34. Note, too, that overdetermined elections are tricky in part because there's a threshold at which further votes make no difference—that is, some votes that do seem genuinely surplus to requirements. But wars are not times of material surplus, in which lots of contributions go to waste because the government has more than enough to fight. On the contrary, wars are usually times of material scarcity.

each civilian violates in contributing is insufficiently stringent to ground liability to defensive killing and (b) their contributions are anyway superfluous, which means that harming them cannot be eliminative, and so they cannot be liable to be killed. We've seen that neither of these arguments succeeds.

But Haque also writes that civilians are not liable to be killed even if they collectively enable unjust lethal threats because "we lose our rights by our own actions, not by the independent actions of others."³⁵ If a civilian does not lose her right not to be killed by making her own contribution to the war, she cannot lose that right in light of other people's contributions. Haque makes this point in the context of paying taxes, but remember that his argument there turns on the idea that making superfluous contributions cannot render a taxpayer liable. We've seen that these contributions are not superfluous. But let's grant that they are nevertheless sometimes justified, when they are made to avoid the costs Haque identifies, and so will not ground the loss of rights.

This doesn't tell us whether a taxpayer becomes liable when she makes unjustified contributions, as we saw above. But might we prove her nonliability by pointing to the fact that civilian contributions are efficacious only if other people also contribute?

I doubt it. It cannot be generally true that the loss of my rights cannot depend on other people's independent actions. Other people's actions can determine whether, for example, harm is necessary for averting a threat. Consider *Car*:

Car: Attacker is unjustly shooting at Victim. Victim runs behind a car, where he can safely wait for the police to arrive. But then Owner unwittingly drives his car away, leaving Victim vulnerable to Attacker's bullets.

On any view that holds that a person can be liable only to harm that is necessary for averting a threat, Attacker is not liable to be killed when Victim can hide behind the car but is so liable when Owner drives the car away.³⁶ Thus, the loss of Attacker's rights will depend on Owner's independent actions.

Whether or not one poses a threat, or whether one poses a lethal threat, can also depend on other people's independent actions. Consider *Poison*:

Poison: Alice unjustly gives Victim a small dose of poison that would normally cause Victim moderate stomach pains. Unbeknownst to Alice, Ben has earlier given Victim a sufficiently high dose of poison that the addition of further poison will kill Victim.

35. LMW, 77.

36. McMahan, for example, defends this view (*Killing in War*, 8–9).

Alice is plausibly liable to defensive killing, even though the fact that she poses a lethal threat is the result of Ben's independent actions, and, were it not for Ben, Alice would be liable to only moderate force proportionate to averting stomach pains.

Haque will likely grant that Attacker and Alice are liable to defensive killing but insist that this is because the ground of liability in each case—Attacker's unjustly shooting at Victim; Alice's administering the poison—is under the agent's own control. Of course, an agent might not control whether she satisfies the whole set of sufficient conditions for liability. But whether she is a candidate for liability must depend on what she, herself, has done.

But this simply brings us back to the question whether contributing to an unjust lethal threat can ground liability to defensive harm. It doesn't provide an answer to that question. Contributing to the war—paying taxes, campaigning for a belligerent politician, making bullets—is something civilians do, as individuals. The fact that other people must also do things—pay their taxes, cast their votes, make their bullets—in order for a civilian's contribution to bring about an unjust threat doesn't show that the civilian cannot be liable to defensive harm when those others do in fact make those contributions.

Moreover, Alice is liable to defensive killing in *Poison* even though she has no idea what Ben has done. Civilians know that other people are paying their taxes, casting their votes, and making their bullets. If I know that other people are making the necessary contributions such that there will be unjust lethal threats, it seems even more unlikely that I can point to the necessity of those other contributions to exempt myself from liability to defensive harm. Indeed, civilians often contribute only on the expectation or condition that others will similarly contribute. I am unlikely to vote in a general election, for example, unless I believe that other people will also vote, since elections depend on a certain degree of participation for their legitimacy. I'm also unlikely to vote for a particular candidate unless I think that others will also do so (the fear of the "wasted vote"). I am unlikely to do my tax return if nobody else bothers. And so on. When I contribute only on the expectation that others will similarly contribute, it seems especially unlikely that I might evade liability in virtue of the fact that the efficacy of my contribution depends on other people's contributing.

VI. CONCLUSION

My goal here has not been to show that we should permit targeting civilians who indirectly contribute to unjust wars. Rather, I have argued that Haque's arguments do not support the nonliability of such civilians.

As Haque grants, many civilians who contribute to unjust wars do so unjustifiably—because they contribute either willingly or to avoid costs that they should have borne rather than contribute. Haque's central claim in

favor of civilian nonliability is that even those civilians who unjustifiably contribute to unjust killings do not breach duties of sufficient stringency to render them liable to defensive killing. I have argued that Haque offers no support for the crucial premise of this argument—namely, that those who unjustifiably breach duties do not thereby become liable to increased costs, compared to the cost they were initially required to bear rather than breach the duty. Moreover, this premise is false. Someone who, for example, willingly enables an unjust killing, or enables a killing to avoid a trivial cost to herself, is liable to lethal defense even if she was not initially required to bear a lethal cost.

I have further argued that we should reject Haque's account of enabling and superfluous contributions. Many civilians make causally efficacious contributions to unjust killings. The most plausible way to characterize the contributions Haque has in mind is as preemptive, causally efficacious contributions to overdetermined unjust threats. But that the threat to which one contributes is overdetermined typically has no bearing on one's liability, at least when one's contribution is unjustified, as many civilian contributions are. That someone else would have helped pose an unjust lethal threat cannot preclude the victim's having defensive rights against actual contributors. Nor does the fact that the efficacy of one's contribution to a threat depends on other people's contributions exempt one from liability. Liability can depend on the independent actions of others in various ways. Provided that whether she makes her contribution is under her control, that the efficacy of the contribution relies on others' contributions is not a bar to a person's being liable to defensive harm.