

On Getting One's Retaliation in First¹

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The witty advice that one should 'get one's retaliation in first' has found momentous embodiment in the rhetoric of so-called preemptive and preventive self-defense which has come to prominence following the terrorist attacks in the United States on September 11, 2001.² In this chapter, I provide a general, philosophical account of the use of harmful force in self-defense as a type of retaliation and argue that preemption, the use of harmful force for prevention, is not an act of self-defense. This point has obvious relevance for the terminology in which a policy of preventive war is properly presented, but its importance to moral and political discourse about this issue is not simply a matter of conceptual clarity.

In many contexts, we regard preventive action as superior to allowing a threat to develop to a point where it needs to be forcibly resisted or repelled. Where human conflict is concerned, preventive measures are considered vastly morally preferable to using harmful defensive force, provided prevention can be achieved by legitimate means and with acceptable risk and cost. Within contemporary just war theory, fighting a defensive war is justified as a 'last resort' when reasonable efforts aimed at prevention of hostilities fail. This thinking invokes a strong presumption in favor of prevention as an *alternative* to the use of harmful force: prevention is a means of averting violent conflict.³ The moral balance moves in the other direction, however, if the way of preventing a defensive war were to initiate violent conflict. The moral presumption in favor of prevention is in fact reversed where the means used for prevention would constitute aggressive force. While there is a strong moral presumption *against* the use of harmful *aggressive* force (even for

¹ For helpful comments I am grateful to participants in the Workshop on Preemption and Preventive War, Leverhulme Project on the Changing Character of War, University of Oxford, June 19–21, 2005, and also to James Booth and Paul Gilbert at the University of Hull. The paper was supported by a research leave grant from the Arts and Humanities Research Council (UK).

² Marc Trachtenberg argues that a commitment to preemptive and preventive military force was firmly established in US policy well before 2001. Marc Trachtenberg, 'The Bush Strategy in Historical Perspective', in James Wirtz and Jeffrey Larsen (eds), *Nuclear Transformation: The New U.S. Nuclear Doctrine* (New York: Palgrave, 2005).

³ This is evident, e.g. in the Report of the United Nations Secretary-General's High-level Panel on Threats, Challenges, and Change, when it asks: 'What happens if peaceful prevention fails? If none of the preventative measures so far described stop the descent into war and chaos?' *A More Secure World: Our Shared Responsibility* (New York: United Nations, 2004), 3.

self-protection), there is a *right* to use necessary and proportionate force in *self-defense* against an immediate unjust threat. Moreover, the justification of the use of harmful force in self-defense is grounded in the type of act it is, a central feature of which is that it is directly retaliatory.

The terminology of current political discourse that refers to preemptive, preventive, and anticipatory self-defense, often shifting between notions of defense, preemption, prevention, and protection, obfuscates some acutely relevant moral distinctions and presumptions. This gives such terminology a distinct rhetorical advantage in political debate. Philosophically informed discussion of this immensely important issue, however, ought to be more deeply critically aware than it would mostly appear to be.

3.1. RETALIATION AND SELF-DEFENSE

Self-defense does not always involve retaliation. The intentional use of harmful force in self-defense can be a type of retaliation however, and this is highly significant for its justification. My explanation of why this is so will begin with a general analysis of retaliation. Before doing this, I must emphasize that 'retaliation' and 'self-defense' are not morally judgmental terms. The question of whether particular conduct is retaliation or self-defense is distinguishable from and prior to the question of whether that conduct is morally justified. The fact that that conduct is retaliation or self-defense can influence our moral assessment of it. Nevertheless, to characterize conduct as retaliation or self-defense does not itself imply a particular moral judgment. Some retaliatory conduct is morally permissible and some is not. The use of force in self-defense is justified under certain conditions and can be unjustified where these conditions are not fulfilled.⁴

3.1.1. Retaliation

Retaliation is responsive conduct; typically it is a reaction by someone to someone on account of something. In outlining central features of retaliation, I assume for the sake of argument that the actor (the one who retaliates) and also the object of retaliation (the one retaliated against) are morally responsible agents (either individuals or groups) and refer to both as persons. I also assume that retaliation is taken against conduct that has either been directed against the actor herself or at least that she has been on the receiving end of it, and that the object of retaliation is responsible for the conduct retaliated against.⁵

⁴ For example the use of lethal force in self-defense is positively justified only against an unjust threat to one's life or comparable interest. *Contra* Thomas Hobbes, *Leviathan* (Harmondsworth, UK: Penguin Books, 1974), 199.

⁵ These assumptions are not essential to retaliation but they enable me to focus on the chapter central concerns. Each of these assumptions would be open to broader and more critical interpretation on a fuller account of retaliation. I provide such an account in *The Ethics of Retaliation* (in preparation).

We distinguish retaliation from other responsive conduct in virtue of two defining features: what retaliation is a *response to*, and the *type of response* it is. Retaliation is a response to being treated not as one wants to be treated. Treatment that is retaliated against is usually an identifiable incident or course of action that has cast or caused harm.⁶ The notion of *harm* against which a person might retaliate is an inclusive one that encompasses injury or loss of some sort (e.g. physical injury or destruction of property), as well as insult (e.g. verbal abuse or a nasty review) and wrongs in the form of injustice or violation of rights (e.g. coercion or theft). Retaliation is a doubly normative concept in that it invokes a standard both in respect of what retaliation is a response to, and also in respect of what type of response it is: 'retaliation' refers to a *hostile or adverse* reaction to the imposition or infliction of *harm*. Moreover, the relationship between what retaliation is a response to and the type of response it is, is a conceptual one: retaliation involves a *return* of harm. Clear illustrations of this relationship are interpersonal ones in which A retaliates against B by casting harm against B in return for harm that B has cast against A.

Since retaliation is responsive conduct, we might be tempted to contrast retaliation with aggression. In situations involving violent conflict we distinguish between someone launching an aggressive 'first strike', as opposed to retaliation by the person on the receiving end. A general contrast between retaliation and aggression could be misleading however, because retaliatory conduct can also be aggression in some contexts. We identify particular conduct as aggression with reference to a relevant norm that governs how persons might interfere with one another. Where the norm to which we appeal is a legal one, a retaliatory act could be aggression against other individuals, the community or the state where, for example, a private individual decides to avenge an injustice by taking the law into his own hands. Similarly, a state that retaliates against what it perceives as wrongful conduct against it can be engaged in aggression if in so acting it contravenes international law. While in some contexts retaliation can also be aggression, at the same time we distinguish acts of aggression from acts of self-defense. These relationships are relevant to my later discussion.

Retaliatory conduct is perceived and intended by the actor as hostile or adverse in that it aims to cast and usually also to inflict harm against another person. In everyday discourse 'retaliation' often refers to a particular type of retaliation such as revenge. Nonetheless, 'retaliation' is a generic term that is applicable to a wide range of actions and their effects that meet the central conditions of being intended as a return of harm. It includes retaliatory speech as well as retaliatory actions. Retaliation can flow from emotions such as anger, fear, resentment or indignation, or it can be dispassionate, as it is in cases of retribution. Retaliation can be strategic or it can be nonstrategically motivated. Retaliation can be defensive, vindictive, or retributive; it can be used against the infliction of injuries or against the commission of wrongs or offenses.

⁶ I use the phrase 'cast or caused harm' since harm that is *cast* at someone does not always connect so as to cause harm. A missile might miss its target and explode in mid-air, for instance.

3.2. RETALIATION IN SELF-DEFENSE

Individual persons can engage in self-defense, and collectives such as states are said to act in self-defense when they suppress civil strife or wage defensive warfare against an external enemy. In explicating the general conditions under which self-defense involves retaliatory force I, for the sake of argument, leave open the sense of the 'self' who is being defended so as to include both individual persons and collective selves.⁷ I also use the term 'self-defense' in a broad sense that refers to defense of the vital goods of life and physical integrity and security, and that can include defense of other people and might in some circumstances encompass defense of liberty or property.⁸

We are not well accustomed to regarding the use of harmful force in self-defense as a type of retaliation. There are a number of reasons for this. It might be objected that the use of force in self-defense is not *hostile* conduct, since it aims simply to repel or resist a threat. It might also be maintained that 'retaliation' should always be used, as often it is, in a strictly backward-looking sense in which its rationale is always a return of harm for a *past* injury or wrong. Self-defense against a current attack is not retaliation in this sense even when it involves the intentional use of harmful force in striking back at an aggressor who has struck first. These two objections are not significant. The use of force in self-defense is hostile or adverse conduct when it is intended to cast or deliver harm against someone.⁹ (This aim is instrumental. Harm is cast against someone in self-defense as a means of resisting or repelling a threat, as opposed to being, say, vindictive.¹⁰ But retaliation can be instrumental.) A generic conception of retaliation is soundly based; it includes acts of self-defense that aim to cast or inflict harm against another person, where the normative context that occasions this conduct establishes that it is a hostile or adverse response to negative treatment.

⁷ For a discussion of the self of self-defense, see Neta C. Crawford, ch. 4 in this volume.

⁸ Defense of liberty or property might be regarded as *self-defense* when a person's life or physical security is at stake (e.g. a person who is kidnapped might legitimately fear for his life, a person's life might depend upon retention of his food or his parachute). However, in other circumstances liberty can be defended for its own sake against a threat of subjugation or incarceration, or defended against such threats because of other goods that are aspects of self-development that liberty makes possible. Defense of property can also be motivated by various concerns other than self-defense, self-protection, or self-preservation, such as a desire to protect the property itself (especially where it has significant intrinsic, monetary, or sentimental value), a desire to keep one's rightful possessions, or a desire to fulfil one's obligations (e.g. as a custodian).

⁹ According to the 'double effect' justification that has its origins in Aquinas, an aggressor's death is always an unintended (incidental) effect of the use of lethal force in self-defense. Nevertheless, even on that view someone who uses lethal force in self-defense intends to *cast* harm against another person. Further, the claim that homicide in self-defense is unintended killing need not maintain that a person who uses force in self-defense never intends to *inflict* harm. To maintain this would be highly implausible, since a person acting in self-defense typically intends to use the type and the degree of force necessary in the circumstances to resist or repel the aggressor.

¹⁰ Even where an actor believes that his defense will be unsuccessful, he can act in self-defense in trying to resist the threat against the odds.

An objection to the very idea that self-defense can involve retaliation might be based on a particular contrast between the two concepts that can be relevant in a criminal trial where, for instance, a question arises about whether a householder who has shot an intruder in the back was engaged in retaliation as opposed to self-defense.¹¹ Along similar lines, we can ask whether a defendant's use of grossly excessive force in repelling, for example, an unwelcome sexual advance was caused by a desire for retaliation, as opposed to a misjudgment (due to fear) about the limits of permissible self-defense in the circumstances. However, these legal contrasts do not show that the use of harmful force in self-defense cannot be a type of retaliation. The sense in which 'retaliation' is being contrasted with self-defense in these legal contexts is not a generic one. Rather, it refers to a particular type of retaliation with a certain motive—revenge or vengeance—as opposed to self-defense. We could equally well ask whether a defendant's use of force was self-defense as opposed to revenge, or whether a defendant's self-defensive conduct was affected to some extent by considerations of vengeance. At this point, it is also appropriate to revisit a contrast between retaliation and aggression outlined above (see p. 71), where we noted that retaliation can also constitute aggression in certain contexts. Retaliation is not always aggression of course, and commonly it is not. Significantly, retaliation can be *contrasted* with aggression when the context in which the retaliation occurs establishes that it is an act of self-defense against an unprovoked attack.

In characterizing the use of harmful force in self-defense as a type of retaliation, I should reiterate that not all self-defense involves retaliation. Self-defense aims to resist or repel harm and this might be achieved by means other than a return of harm. Passive resistance might be regarded as a form of self-defense where, for example, individuals or a community refuse to comply with the dictates of an oppressive regime. However, passive resistance is not paradigmatically self-defensive since 'defense' usually implies the use of *force* of some kind. (For this reason, ducking a threat by, e.g. moving out of the path of a missile, is an act of self-preservation or self-protection and not strictly speaking *self-defense*. An act of self-defense aims to ward off, resist or repel harm, not simply avoid it.) Force used in self-defense is not retaliatory where, for instance, it aims to repel or deflect an attack by means of an object such as a shield that is used as a barrier.¹² In taking precautionary action a person is not acting *in self-defense*. However, precautionary steps might involve, for example the acquisition of defensive weapons, or putting a barrier in place that would subsequently act as a defense if and when an attack occurs. Even in cases where force is used directly against a threat, self-defense can be nonretaliatory where a person harmlessly restrains an aggressor by confining or overpowering her.

¹¹ A relatively recent English case attracted extensive media and public comment. After several break-ins at his isolated farmhouse, Tony Martin shot two teenage burglars, one fatally. He pleaded self-defense. Martin's conviction in April 2000 for the murder of one of the boys, shot in the back, was later reduced to manslaughter on appeal after the introduction of evidence that Martin was suffering from paranoid personality disorder.

¹² Unless the barrier is designed to deflect the harm back against the perpetrator.

Although self-defense need not involve retaliation, the use of force in self-defense can be and often is retaliatory when it involves a counterattack or an act of striking back at someone who has cast or caused harm. Moreover, these retaliatory acts are paradigm examples of self-defense. The basic condition under which self-defense involves retaliation can be generalized as follows. An act of self-defense involves retaliation when it aims to resist or repel harm by return of force that casts harm against the perpetrator. A person, A, *retaliates in self-defense* against another person, B, when A aims to resist or repel the harm that B would inflict on A, by directing harm back at B (e.g. by returning B's fire). Irrespective of whether A intends actually to harm B, A intends to cast harm at B, intending this as a return of harm that will resist or repel the harm that B would inflict.

The conditions under which the use of force is retaliation, and the conditions under which a person can retaliate in self-defense, are important for the elucidation of both of these concepts and, consequently, for the ethical norms that govern these types of actions. These two sets of conditions have a highly significant bearing on issues of serious practical concern. They provide a particular insight into the highly contentious issue of the so-called 'right of preemptive self-defense' proclaimed by the US administration following the terrorist attacks in New York and Washington in 2001, and into the subsequent debate about the justification of a policy of preemptive and preventive self-defense.

3.3. SELF-DEFENSE AND PREEMPTION

Debate since 2001 about the circumstances in which preemptive force can be regarded as self-defense, and about the justification of preemption and preventive war as questions of political ethics and international law has sometimes invoked the conditions expounded in 1840 by the US Secretary of State, Daniel Webster, who maintained that preemption (in the form of intrusion into the territory of another state) can be justified *as an act of self-defense only in cases of imminent threat in which the actor can show 'a necessity of that self-defense, instant, overwhelming, leaving no choice of means, no moment of deliberation'*.¹³ (These conditions are also applicable to the circumstances in which individual self-defense might include preemption.) The notion that self-defense can include the use of force against an imminent threat has a history that significantly predates Webster's conditions, however. Natural law accounts of self-defense and traditional just war theory maintain that (legitimate) self-defense does not require that one be struck first. They allow that one can act in self-defense against an imminent attack by, for example, using force (including lethal force) against an enemy who takes up arms with the manifest intention of using them.¹⁴

¹³ Daniel Webster, 'Letter to Henry S. Fox, British Ambassador to the United States, 24 April, 1841', in K. E. Shewmaker (ed.), *The Papers of Daniel Webster: Diplomatic Papers*, vol. 1 (1841–3), (Hanover, NH: University Press of New England, 1983), 62.

¹⁴ See, e.g. Hugo Grotius, *The Rights of War and Peace*, an abridged translation by William Whewell (Cambridge University Press, 1853), 61–8, esp. bk. II, ch. I., para. V, sec. 1 and 2.

The particular focus of this section, and a central concern of the chapter, is to examine the conditions under which the use preemptive force might reasonably be regarded as self-defense and the relevance of retaliation to those conditions. Prior to paying direct attention to that issue, we need to address a fundamental challenge to the claim that acting in self-defense can include preemption. Preemption, it might be argued, is by definition neither self-defense nor retaliation, preemptive action being necessarily prior to the casting of harm against which a person might otherwise defend himself or retaliate. The legal theorist, George Fletcher, for instance, would appear to express something like this view in contrasting self-defense with both preemption and retaliation as follows: 'A pre-emptive strike against a feared aggressor is illegal force used too soon; and retaliation against a successful aggressor is illegal force used too late.'¹⁵

Above I adopted a generic sense of 'retaliation' that can include retaliation in self-defense. This is obviously distinguishable from the strictly backward looking sense of 'retaliation' that Fletcher invokes. Fletcher's characterization of 'preemption' can also be contrasted with a recent trend in political ethics that would reserve the term 'preemption' for the use of force against an *imminent* threat, as opposed to 'prevention' that refers to the use of force against a threat that is (merely) possible or potential. However, a critical response to the claim that preemption cannot be self-defense or retaliation must acknowledge, as Fletcher's remark suggests, that the central sense of preemption *does* refer to prevention of feared or anticipated harm prior to a stage at which counteraction can reasonably be regarded as self-defense or retaliation. Preemption in this central sense aims to prevent the development of a situation that would require self-defense. This is clearly the sense in which we would speak, for example, of sending someone a preemptive letter aimed at averting a possible misunderstanding; of preempting criticism by taking possible objections to one's own position into account in a presentation; and of using various tactics in order to preempt a swing of support toward a rival candidate. We also speak about force as preemptive when it is used to avoid the need to act in self-defense. For example, lacking confidence in my ability to defend myself if attacked, I might preempt a feared attack by pulling the rug from under a potential aggressor, so to speak, before he has a chance to act against me or even to form an intention so to act. Consequently, I mostly use the term 'preemption' in this central sense in which it refers to the use of force for prevention and contrasts with self-defense. Later in this chapter, I address the very restricted (somewhat technical) sense of 'preemption' in which preemption of an imminent threat might reasonably be regarded as self-defense.¹⁶

¹⁵ George Fletcher, *Basic Concepts of Criminal Law* (Oxford: Oxford University Press, 1998), 133.

¹⁶ The senses of preemption and prevention that I invoke in this discussion are those of everyday discourse as applied to more formal ethical thinking about conflict and war. Hew Strachan, (ch. 1 in this volume) details the historical development of notions of military preemption and preventive war as they arose within particular institutional and political rationales of war. I take the restricted sense of preemption that I identify later in this chapter as akin to the sense in which, as Strachan explains, preemption was originally an operational, military concept whereby one party to a conflict took a

Even if we have the central sense of preemption in mind, the claim that preemptive action cannot be self-defense or retaliation is overstated. Consider, for instance, that a preemptive strike in the course of war can be defensive. A person who has already been attacked might retaliate in self-defense in order to preempt further attack. (The US-led war against the Taliban and al-Qaeda in Afghanistan following the attacks of 9/11 was defended in terms of self-defense and a 'right of retaliation', presumably to preempt further such attacks.) Of greater significance for our discussion, the claim that by definition preemption cannot be self-defense or retaliation can also be contested at a deeper level that brings to the fore the relevance of retaliation to the conditions under which the use of preemptive force might reasonably be regarded as self-defense. These conditions depend not only on the circumstances of the preemption in question (as is widely recognized) but also, I argue below, on the conditions under which the use of harmful force in self-defense is retaliation.

3.4. THE SIGNIFICANCE OF THE STATE OF THE THREAT

We distinguish self-defense from preemption in its central sense (prevention) with reference to the state of the threat against which force is used. The use of force in self-defense is directed against an actual, as opposed to a (merely) possible or potential threat.¹⁷ This existential condition is often expressed in temporal terms, where self-defense is held to require a present threat such as an attack that has been mounted, as opposed to a future threat that is merely feared or anticipated.¹⁸ In the quotation above, Fletcher invokes a temporal criterion in saying that a preemptive strike against a feared aggressor is force used 'too soon'. Note, though, that Fletcher's characterization of preemption against a feared aggressor (and also of retaliation against a successful aggressor) is also doubly evaluative: he says that a preemptive strike is 'illegal force used *too soon*'. Whether Fletcher takes the distinction between self-defense as opposed to preemption to be necessarily evaluative,

strategic offensive in the conduct of a war, as opposed to a notion that applied to a political decision to wage a preventive war.

¹⁷ More generally, defining the conditions under which *x* constitutes a threat to *y* can raise difficult philosophical issues, especially in relation to marginal and contested cases and highly unusual causal sequences. Nevertheless, for our purposes it is sufficient that we specify that a threat is an existing event or state of affairs that will, if not counteracted, make its object (the person threatened) worse off than she would otherwise have been.

¹⁸ Indeed, existential and temporal terminology is sometimes commixed in drawing pertinent contrasts. David Luban, e.g. refers to prevention of 'immature or distant threats'. (David Luban, (ch. 4 in this volume, see p. 172). Consider also the following quotation from the Report of the United Nations High-level Panel on Threats, Challenges, and Change, op cit: 'What happens if peaceful prevention fails? If none of the preventative measures so far described stop the descent into war and chaos? If *distant* threats do become *imminent*? Or if *imminent* threats become *actual*? Or if a *non-imminent* threat nonetheless becomes very *real*...' (my emphases).

there is a common tendency to use 'self-defense' as an evaluative term that implies justification.¹⁹ Our immediate concern, however, is to identify the difference between the use of force in self-defense as opposed to preemption in its central sense (prevention), without prejudice as to whether or not either is justified.

An essential difference between self-defense, as opposed to preemption in its central sense is that the latter occurs in relation to circumstances in which a threat is (merely) feared or anticipated, as opposed to actual, the aim of preemption being to prevent the development of an actual threat that would require self-defense. This distinction is obviously temporal in that preemptive action occurs prior to a stage at which self-defense would be necessary. There are further, related reasons why it can be appropriate to express what is essentially an existential distinction in temporal terms. Possible or potential threats often develop into actual threats over a period; we speak of some circumstances as constituting an emerging threat, one that will, if unchecked, become an actual threat in due course. Force used in self-defense is directed at a threat which has reached a stage at which it might be resisted or repelled, as opposed to an earlier stage at which its development might have been prevented.

Notwithstanding the relevance of temporality, the familiar reference to temporally distant harm can be a misleading way of identifying an instance of prevention, as opposed to a case of self-defense. This is because the phrase 'temporally distant harm' tends to elide a distinction between a *future threat* which might be prevented from becoming an actual threat, as opposed to an event or state of affairs that constitutes an *actual threat of future harm* against which a person might act in self-defense. A future threat consists in circumstances that would or could, if unchecked, *develop* into an actual threat. (We might so regard, e.g. the early stages of cumulative pollution of a water supply, or so regard a rival state's interest in acquiring a nuclear capability which it claims is not intended as a basis for arms production.) A future threat is different from something that already constitutes a threat of future harm. If, for example, I were to set a device now that is programmed to kill people in five years' time, what I do now would constitute an actual threat of future harm to those people. Significantly, if someone were to use force to stop me setting this delayed-action device, he could be acting in defense of those who would later be killed by it.

There are a number of ways in which persons might be subjected to an actual threat of future harm, against which they might then act in self-defense. Consider three further examples. In the first case, Person A is stranded with the evil Person B, who declares his intention to kill A when A falls asleep. Knowing that he will be unable to resist sleep indefinitely, A uses force to disable B when he gets the chance. In the second example, D threatens to kill C unless C kills E. C then uses

¹⁹ This is appropriate where 'self-defense' is the name of a legal defense that acts as a justification for what would otherwise be illegal conduct. In everyday speech, however, as a defense of conduct that would otherwise be wrongful, 'I acted in self-defense' must be elliptical for 'I acted in justified self-defense'.

force against D in order to resist this duress. In the third example, F is lighting a fire that will engulf G should a wind spring up. G uses force against F to stop him lighting the fire. In the first of these three examples, the material harm with which A is threatened (being killed) is some time off its 'delivery'. In the second example, the threat to C is conditional. In the third example, the threat to G is contingent. Nevertheless, A, C, and G are under actual, as opposed to (merely) possible or potential threats, and arguably each acts in self-defense.

The view that A, C, and G act in self-defense rests on a critical interpretation of what it is to be under an actual threat, which includes the imposition of conditional and contingent threats and threats that will inflict material harm at a later time. According to this interpretation, the use of force in self-defense does not always require that material harm has been cast or is about to be inflicted. A disables B under what can be regarded as a 'promissory' threat: A's use of force to preempt B's *strike* is importantly different from the case of someone who preempts a *threat* by, say, preventing a (merely) potential aggressor from obtaining weapons. Whether we can reasonably regard A, C, and G as acting in self-defense depends, further, on whether in using force they are *resisting* or *repelling* an actual threat.²⁰ In this regard, the clearest instance might seem to be G who uses force on F directly to resist the imposition of an immediate contingent threat. However, earlier I alluded to the possibility that a person might retaliate against a *wrong* or an offense, whether it also brings material harm. (A person might, for example, retaliate against coercion even if the effects of the coercion are actually beneficial.) We need also to take this into consideration in identifying *what* a person might resist or repel in self-defense. In using force against D, C is resisting the duress that D has put her under; in so doing C also repels D's violation of her rights together with a conditional threat of grave material injury. As this example shows, an act of self-defense might directly resist or repel the imposition or infliction of a wrong in the form of rights violation, where the interest the person is thereby defending is one that is vital to *self*-preservation. Life, bodily integrity, and physical security are obviously among such interests. A person might also act in self-defense in resisting the violation of his freedom in some circumstances; in an extreme case, he might act in self-defense in resisting kidnap or enslavement.²¹

²⁰ If A were to have known that B's declaration of intention was imminent, and at that point were A to have used force against B in order to prevent B's uttering his threat, would A have been acting in self-defense? I think that the answer is no. This is because A's forcible preemption of B's imminent (verbal) threat insufficiently resembles an act of resisting or repelling a threat of harm, as opposed to preventing the declaration of an intention to deliver it.

²¹ At the same time, we must recognize that a person can use force to resist the violation of her rights where the interest that she thereby defends is outside the scope of *self*-defense. For example, someone might forcibly resist the violation of her privacy, or the appropriation of her work, or a wrongful attack on her reputation. Defense of interests that are protected by one's rights is not always *self*-defense. Where it is not, the use of force in defense of the relevant interests might be justified nonetheless.

3.5. THE RELEVANCE OF RETALIATION

In paradigm instances of self-defense, the threat that is resisted or repelled is an attack that has been launched. Nonetheless, the view that in the above three examples, Persons A, C, and G act in self-defense preserves and underlines an important conceptual connection between the use of harmful force in self-defense and retaliation. The use of force in self-defense requires an identifiable threat that can be resisted or repelled, and against which it is possible to retaliate. (I might retaliate against someone's drawing a gun on me, e.g. even if he does not fire.) One can retaliate against a current or past threat by force or by counterthreat, but one cannot retaliate against a threat that is merely possible or probable. (This is why the advice about 'getting one's retaliation in first' is a joke. Like 'anticipatory retaliation', the phrase 'anticipatory self-defense' is a contradiction in terms. Prior to an actual threat one can of course take steps, such as obtaining or aiming counterstrike weapons that anticipate retaliation in self-defense.) As an act of directly resisting or repelling a threat, the use of harmful force in self-defense is essentially retaliatory; and it is the retaliatory nature of the use of harmful force in self-defense that is conceptually problematic for the claim that preemption can be self-defense. 'Resisting' and 'repelling' (a threat) are responsive terms. In the case of self-defense they refer to a forceful *reaction* against a threat; they imply the forcible warding off of harm that has been cast or is being imposed. Self-defense is a far more limited notion than preemption, prevention, and self-protection. (The latter notions can include aggression, for instance.) Thus, harmful force that meets Webster's conditions can be regarded as preemption as opposed to self-defense in that it does not strictly speaking resist or repel a harm that has been cast or is being imposed. Nevertheless, fulfillment of Webster's conditions is characteristic of the use of force in self-defense, as opposed to preemption in its central sense (prevention). This both makes Webster's cases noncentral instances of preemption and suggests that they might reasonably be regarded as self-defense.

3.6. CAN PREEMPTIVE FORCE BE SELF-DEFENSE?

The use of force for preemption can reasonably be called an act of self-defense only if it approximates very closely to the conditions under which force is used in *self*-defense. As previously emphasized, force used in self-defense aims to resist or repel harm; force is directed against another person in self-defense only if that person poses an actual, as opposed to a (merely) possible or potential threat. For convenience, I follow convention and refer to the object of an act of self-defense as an aggressor.²² There is, then, the question of the point at which a person who

²² Force can be used in self-defense against persons who are not strictly speaking aggressors. (I discuss this in Suzanne Uniacke, *Permissible Killing: The Self-Defense Justification of Homicide* (Cambridge:

poses a (merely) possible or a potential threat, and hence is a (merely) possible or a potential aggressor, becomes an actual aggressor. This can be difficult to identify and open to dispute in the case of emerging or cumulative threats. It can also be genuinely difficult to discern in some practical contexts. (The menacing-looking stranger who approaches me might actually be harmless. Even if he has malevolent intentions, he might not go through with them. If a known adversary takes up a gun and waves it in my direction, how do I know that he intends to fire it as opposed merely to show off?) Nevertheless, a person who possesses the means to conduct an attack and who intends to do so is not an aggressor until he acts on the intention in some way. The phrase 'in some way' is deliberately imprecise at this very general level, since the activity in virtue of which a person becomes an actual aggressor will depend on the evaluative norms which apply to his conduct toward other persons in the particular context in which he acts. (I return to this important point.) These norms generally allow, however, that someone who, for example, takes up arms with a clear intention of using them can be an aggressor before actually striking a blow or firing a shot and, consequently, that a person thus threatened can act in self-defense in using force against him. Someone who uses preemptive force in this very restricted sense, in response to an attack that is clearly imminent, can reasonably be regarded as acting in self-defense.

An important implication of the preceding discussion is that an act of striking before one is struck can reasonably be regarded as self-defense only if it approximates closely to an act of retaliation, a return of harm. This is why the *imminence* of the attack being preempted is significant to the representation of restricted instances of preemption as self-defense. Preemption that can be regarded as self-defense must aim to stop harm that is about to be cast, by casting harm 'back' at someone who can reasonably be regarded as an actual aggressor. Outside of these conditions, the use of preemptive (preventive) force against a (merely) possible or potential threat is not an act of self-defense. A person acting in self-defense aims to prevent the infliction or imposition of a harm or a wrong; he does so by resisting or repelling an actual, or under certain conditions an imminent threat. In contrast, preventive force aims to prevent a possible or potential threat from becoming an actual threat, by means of disabling a possible or potential aggressor. Clearly, if such prevention succeeds, the use of force in self-defense will be unnecessary.²³

Cambridge University Press, 1994), 160–72.) However, the relevant qualifications are not pertinent to this discussion.

²³ Once the use of force in self-defense becomes necessary, it is not always successful. Indeed this is the point made in recent purported justifications of a preventive war policy. Once threats posed by weapons of mass destruction become imminent or actual, so it is claimed, they are 'out of control' so that use of defensive force will be 'too late'. ('If we wait to defend ourselves, defense will be ineffective.') Such arguments often present the available alternatives as a dichotomy of extremes, whereby a nation fearing a threat can either adopt a policy of using force early on to prevent the development of the feared threat, or else allow the development of a situation that is 'totally out of control' or 'irretrievable'.

3.7. PREEMPTION AND 'THE SELF-DEFENSE JUSTIFICATION'

Some contemporary defenses of preemptive force tend to slide uncritically from an evaluative judgment that preemption can come within the self-defense justification of the use of force, to a conceptual claim that preemption is self-defense. Arguments that go in this direction suppress the moral relevance of the type of act that an act of self-defense is. More specifically, as I argue in this section, they ignore the significance of retaliation to the justification of the use of harmful force in self-defense.

The fact that harmful force is used in self-defense is insufficient to justify it. Nevertheless, the fact that self-defensive force is used against an actual threat is directly relevant to fulfillment of two conditions that are widely regarded as necessary (although not jointly sufficient) for its justification. The first of these is an evidentiary condition that requires the actor to believe on reasonable grounds that the threat is real, as opposed to (merely) perceived.²⁴ Being subjected to an attack can provide the actor with clear evidence for this belief. The second condition requires that force used in self-defense is necessary to avoid the harm with which the actor is threatened.²⁵ The fact that an attack has been mounted usually greatly narrows realistic options for avoidance by nonviolent means such as negotiation, retreat, or calling upon higher authorities (such as the police or the UN), especially where the threatened harm is grave.

Both of these conditions can also be said to be necessary to any justification of preemptive or preventive force, making preemption in its central sense usually more difficult to justify than self-defense. Where a threat is (merely) feared or anticipated there is greater scope for uncertainty and for mistaken belief on the actor's part both about a possible or potential aggressor's intentions and capabilities, and also about whether apparently hostile developments will, if unchecked, escalate to a point where self-defense would be necessary. With a feared or an anticipated, as opposed to an actual threat there is usually also greater scope for the pursuit of alternatives for avoidance other than a resort to harmful force.

²⁴ Reasonable grounds must be relative to the circumstances in which the actor is placed. A person who is confronted by an apparently threatening situation cannot reasonably be expected to make the kind of careful assessment of the facts that would be appropriate under less pressured or anxious conditions. (For this reason, traditional natural law accounts of permissible self-defense admit a certain latitude of judgment while emphasizing that 'mere fear' does not give us a right to use force for prevention.) Nevertheless, the reasonableness of the actor's belief that she is under immediate threat requires the exercise of judgment that is consistent with an appropriately measured view in the circumstances. A person who acts rashly, for instance, and uses force against someone whose conduct is obviously harmless, does not act with justification even if her belief that she is being attacked is honestly held.

²⁵ The term 'last resort' is frequently invoked, but evaluative considerations of risk and cost are relevant to whether the force used is necessary. For instance, nonviolent means of self-defense, or escape, might be possible in some circumstances that would leave the actor unreasonably vulnerable. Some interests we might be entitled to stand and defend with harmful force if necessary, as opposed to giving way. Nevertheless, a person is not justified in, say, shooting an attacker in the head if he can easily escape by pushing him away.

Nevertheless, one might argue a case of preemption in its central sense (prevention) that addresses justificatory conditions of reasonable belief and necessary force. A person could have good grounds for anticipating a threat against which, *should it eventuate*, she would be unable successfully to defend herself. Moreover, she could now be in a position to take preventive measures that require the use of harmful force against someone who is presently a (merely) possible or potential aggressor. Note, however, that in a case of an anticipated as opposed to an actual threat, the condition of necessary force (for prevention) is a *contingent* one. And this is very revealing, because as applied to a case of prevention, two further conditions of legitimate self-defense must also be rendered contingent. The use of harmful force in self-defense is justified only against an *unjust* threat; but in a case of prevention, the analogous condition could require only that a (merely) possible or potential threat would be an unjust threat were it to eventuate. The use of harmful force in self-defense is justified only if the harm cast against an aggressor is *proportionate* to the harm he threatens;²⁶ but the analogous condition for prevention could require only that the harm cast would be proportionate to the anticipated threat were it to be an actual threat.²⁷

A justification of the use of harmful force for prevention would in effect be a case for justified aggression. As such, it lacks the definitive normative context of the legitimate use of harmful force in self-defense, namely that of retaliatory force that aims to resist or repel an actual unjust threat. This particular retaliatory context has two interconnected aspects that underpin the moral justification of the use of harmful force in self-defense. The first is that there is a right of self-defense; that is to say, the use of necessary and proportionate force in directly resisting or repelling the infliction or imposition of an otherwise irreparable injustice is something that we are positively morally entitled to do. The second aspect is that an unjust aggressor against whom necessary and proportionate force is used in self-defense is not wronged; that is to say, even if he is intentionally harmed by such force, he is not thereby treated unjustly. Traditional natural law accounts of self-defense are right in maintaining that 'mere fear' does not give one a *right* to use force for prevention. The right of self-defense is grounded in the fact that it is an act of directly resisting or repelling unjust harm; moreover, an unjust aggressor against whom force is used in self-defense no longer has the moral immunity that he would otherwise have against harmful interference.²⁸ These are dual aspects of the right of individual self-defense. I should draw attention here to the fact that in

²⁶ The self-defense conditions of *necessary* and *proportionate* force are often conflated, especially in cases of so-called excessive defense. However, force that is necessary in the circumstances to repel a particular threat can be unjustified if the harm it would inflict would be disproportionate to the harm with which the self-defending actor is threatened. If, e.g. circumstances really are such that the only way I can prevent you from stepping on my toe is to push you off a cliff to your death, this would be disproportionate.

²⁷ This assumes, as I think it must, that for a justification of prevention, the force used would need to be proportionate to the anticipated threat that it is intended to prevent, and not to the existing circumstances.

²⁸ I argue more fully for this analysis of the morality of self-defense in Uniacke (1994), op. cit.

leaving open the sense of the 'self' being defended so as to include both individual and collective selves, I am also assuming for the sake of argument the conventional view that there is a parallel right of national self-defense.²⁹

Not all retaliation is directed against aggression, and not all retaliation is justified. Nevertheless, a retaliatory context is highly significant to the moral justification of using harmful force directly to resist or repel an unjust threat. The relevance of this particular normative context to the justification of self-defense represents a far deeper challenge to the justification of the use of harmful force for prevention than do the demands of the four conditions outlined above—unjust threat, reasonable belief, necessary force, and proportionate harm—suitably modified so as to be applicable to cases of anticipated, as opposed to actual threat. The use of harmful force against someone who is (merely) a possible or potential unjust aggressor could at best be a 'lesser-of-evils' justification, as opposed to the exercise of a right or positive entitlement as it is in the case of self-defense. There is no moral presumption, let alone positive moral entitlement to use harmful force for prevention against someone who does not actually pose an unjust threat.

Having emphasized the significance of a particular retaliatory context to the right of self-defense I have yet to address two difficult closely related issues raised in earlier discussion. The first concerns the norms that are relevant to determining whether particular force is aggression, as opposed to self-defensive retaliation. The second is what sort of activity constitutes an actual, as opposed to a (merely) possible or potential unjust threat. These issues are obviously crucial to identifying situations in which the use of force can be regarded as legitimate self-defense. Although too complex for a comprehensive analysis here, these issues come together in the context of self-defense because although retaliation can be aggression in some normative contexts, retaliation is not aggression when it is a genuinely self-defensive response to an unprovoked threat.

Broadly speaking, aggression is the beginning of a quarrel or war. Whether particular conduct such as the use of harmful force is aggression depends on the normative context in which it occurs.³⁰ This means that in classifying conduct as aggression we appeal to a norm or standard of conduct with which people can be expected to comply. The basis of such expectation might be evaluative and appeal to what we morally expect of someone in particular circumstances (e.g. we expect people to accept the decisions of others in many contexts, preferably with good grace). However, there are various standards against which conduct can be aggression, and in addition to moral norms these standards include legal and institutional codes of conduct as well as social and other types of conventions and norms that are established by habit. There are well-established 'acts of aggression',

²⁹ For critical discussion of whether there is a right of national self-defense, see Richard Norman, *Ethics, Killing and War* (Cambridge: Cambridge University Press, 1995) and David Rodin, *War and Self-Defense* (Oxford: Clarendon Press, 2002).

³⁰ Since in contemporary philosophical writing 'normative' is frequently used to mean 'evaluative', it is worth saying that just as the characterization of an action as retaliation or self-defense does not itself amount to an ethical evaluation of it, so too the ethics of an act of aggression can be an open question.

the most obvious being the launching of an unprovoked attack. However, in some contexts conduct can be aggression because it alters the nature of an existing conflict, for example by escalating a verbal dispute to the level of physical violence.³¹ Whatever standard of conduct is invoked, a person whose conduct is aggression according to that standard must *do* something in virtue of which he violates that standard and becomes an actual, as opposed to a (merely) possible or potential aggressor. This means that a person's simply having the means 'suddenly and fully' to become a serious threat to someone else is insufficient to establish that he is an actual aggressor. (Any of my neighbors, for example, probably has the wherewithal in his garden shed to set my house ablaze while I sleep.)

The second issue concerns what constitutes an actual unjust threat. The use of harmful force in self-defense requires an identifiable threat against which it is possible to retaliate. The imminence of the infliction of material harm, or of a strike in the case of preemption in Webster's restricted sense, is a sufficient condition of actual threat (although not of unjust threat). I have maintained above that the notion of actual threat relevant to self-defense can also include delayed action, conditional and contingent threats, as well as the violation of rights that protect interests essential to the self. In order for one person to be an *unjust* threat to another, her conduct must also contravene a standard of what it is (morally or legally) *permissible* for her to do such that her conduct *infringes the other person's rights*. This requirement of rights violation means that, for instance, someone is not an unjust threat to another person provided only that her conduct toward that other person is wrongful. (I might, for example, insist on my rights against another person in circumstances in which I ought to act benevolently and waive those rights. I can thus act wrongfully toward another person by a failure of benevolence, without thereby constituting an unjust threat to her.) This requirement also means that even if, as some commentators maintain, the conditions of what constitutes an actual threat can be significantly different for collective entities such as states, as opposed to individual persons, the 'mere existence' of something (an alien culture, for instance) cannot be an unjust threat against which one might legitimately use harmful force in self-defense, unless its very existence constitutes a violation of one's moral or legal rights.

In any moral, legal, or political context where the use of harmful force against others might arise, the norms that are relevant in that context to determining what constitutes *aggression* and an actual *threat*, and to determining when any such threat is *unjust*, must be carefully explained and critically defended. These norms can be sensitive to changing empirical circumstances to some extent. (For example, my encroaching on your property without your permission can be aggression, but if I routinely walk across your property and seeing this you raise no objection,

³¹ This point addresses a possible argument that the use of force for preemption is not aggression where, for example, it is also a response to being taunted. One can forcibly retaliate against a verbal taunt, as is well recognized by the criminal law defense of provocation. However, the escalation of a verbal conflict to the level of violence, although it can be retaliation, *also* constitutes aggression. If Person A insults B, and B reacts violently against A, A could act in self-defense against B. (Whether B or A would have a legal defense for their respective reactions are further questions.)

it can be aggression on your part suddenly one day to warn me off). In no context, however, can the specification of the relevant norms be a purely subjective matter, dependent only on the perception and evaluation of the interested parties in any instance where a person might use harmful force on others for the purposes of self-protection.

3.8. REJECTING 'PREEMPTIVE AND PREVENTIVE SELF-DEFENSE'

Even though under Webster's conditions it makes sense to say, 'I acted in self-defense; he was about to strike me', it is important to recognize that the use of force against an imminent threat represents a restricted, as opposed to the central sense of preemption. It is also vital in moral and political argument that morally relevant shifts of meaning not be disguised and that moves of conceptual and evaluative significance not be elided. For this reason, it is always preferable to speak in explicit terms of preemptive action in self-defense against an imminent threat, than to use the opaque contraction 'preemptive self-defense'. The terminology of 'preventive self-defense' should be rejected. While preemption might be reasonably regarded as self-defense under Webster's strict conditions, the use of the term 'self-defense' to characterize aggressive acts for the purpose of prevention is a move too far.³² The use of force to prevent a (merely) possible or potential threat from developing into an actual threat (e.g. by disabling someone with whom one has a disagreement or dismantling her weapons), is not an act of self-defense on the two related grounds outlined above. It does not aim to resist or repel, as opposed to prevent the development of an imminent or actual threat; and the person against whom force is directed is not (yet) an aggressor: she is, rather, prevented from becoming one. The claim that in twenty-first century political affairs what constitutes an actual or imminent threat must take into account the capacity of WMD to be used without warning is a legitimate one. Nevertheless, there remains a valid and morally important distinction between using force in circumstances that can plausibly be said to pose an actual or imminent threat, as opposed to the use of force to prevent those circumstances from developing.

In public discussion following the US-led coalition's invasion of Iraq in 2003, many of those who have subsequently advocated the justifiability of *preventive*, as opposed to preemptive force in Webster's sense, maintain that preventive force can be used in self-defense. Here we can ask why it is so important to some of the advocates of a preventive-war policy to misrepresent *aggressive* prevention as *self-defense*, rather than straightforwardly to defend what they really think, namely that the use of aggressive force early on to prevent the development of

³² The role of the *restricted* sense of 'preemption' within traditional just war theory has led some writers to refer to preemption in this restricted sense as the traditional sense of the term.

an actual threat can be justified in certain circumstances.³³ This position typically maintains something vastly more far-reaching than a 'right of preemptive self-defense', namely a 'right of self-protection' that encompasses the use of aggressive force under certain conditions. The argument that the use of preventive force is justified against terrorists and so-called rogue states who might acquire WMD that can be deployed without warning is properly seen as an *alternative* to the 'self-defense justification' of warfare, not as an extension or development of that justification.³⁴

Allen Buchanan has argued that what he calls the norm of self-defense can be extended to include the use of force for prevention. In so arguing, he takes the traditional 'self-defense norm' of justified war to be confined to actual or imminent *attack*.³⁵ (This may well be how this norm has come to be construed in contemporary just war thinking, but traditional just war theory is not as restrictive as that.) Buchanan maintains that this self-defense norm can legitimately be extended to include the use of force for prevention, since it can be permissible to use force in self-defense against an enemy whose wrongful conduct subjects you to constant risk of grave harm. What Buchanan takes to be the traditional norm of just war theory is, however, significantly narrower than the norm that governs self-defense more generally and the circumstances in which individual persons can reasonably be regarded as acting in self-defense. I have argued above that a person who uses force to resist or repel a *wrong* (such as coercion) that is actually being imposed, and in so doing defends a vital interest (such as life), acts in self-defense as opposed to prevention. In such cases, in using harmful force to *prevent a strike*, a person can be *defending* herself against an *existing* unjust threat, namely, an actual violation of her rights.³⁶ Wrongful conduct that subjects a person to constant risk

³³ Some purported justifications of preventive war *do* explicitly defend a view that the traditional justifications of deterrence and defense are now obsolete, given the factual conditions of 'new wars' which include the use of biological weapons and the role of nonstate actors.

³⁴ The concept of self-defense cannot plausibly be 'redeveloped' to encompass aggression, even for the purposes of self-protection. The term 'preventive self-defense' currently canvassed by some advocates of preventive war is nonsense. (All self-defense aims at prevention. But self-protective action that aims at prevention by aggressive means is not self-defense.) Neta C. Crawford, however, sheds a different light on the issue in suggesting that a central aspect of the position of those who appeal to the changed nature of war as a justification of preventive force amounts to the claim that the threat posed by 'new adversaries' (terrorists and rogue states) is *immanent* (ever present). (Neta Crawford, 'The Justice of Preemption and Preventative War Doctrines', in Mark Evans (ed.), *Just War Theory Revisited* (University of Edinburgh Press, 2005). Now, it is possible to act in *self-defense* against an immanent threat where, for example, in the context of ongoing hostilities there is a pause (as opposed to an agreed cessation) in the fighting. In such circumstances one party might reasonably regard the threat posed by the other side as immanent, and act against it in self-defense given the opportunity. It might also be possible to act in self-defense against an immanent threat posed by a serial aggressor who engages in intermittent attacks, at a time when he is, say, asleep. The existence of an *established and ongoing* threat is crucial to the characterization of the use of force as *self-defense* in these contexts.

³⁵ Allen Buchanan, 'Institutionalising the Just War', *Philosophy and Public Affairs*, 34.1 (Winter 2006), 2–38.

³⁶ In order for such conduct to be self-defense, the unjust threat need not be intentionally imposed. It might be due to negligence, for instance.

of grave harm can constitute an unjust threat to that person if that conduct violates her rights.

Whether what Buchanan takes to be the self-defense justification of waging war should accommodate this more inclusive notion of self-defense is a substantive ethical and political issue, as Buchanan says. In my opinion, Buchanan's overall argument for this position is marred by the extent to which he represents the purpose of the *jus ad bellum* norm of just war theory as principally a means of ameliorating the risks of war—risks which, Buchanan goes on to argue, could in some contexts be ameliorated in other ways. The *jus ad bellum* condition of *just cause* is, however, a justificatory condition of a different order than the requirements of necessary and proportionate force. These two latter conditions act as moral constraints on waging war in a context in which there is an existing right to wage war. Within just war theory, the principal ground of a *right* to wage war has come to be regarded as that of self-defense against an unjust threat. What Buchanan refers to as the highly restrictive traditional just war norm can, thus, be seen as highly restrictive in two distinguishable respects. One of these respects—that just war is a response to an actual or imminent (unjust) attack—might, as Buchanan argues, be regarded as contingent and dependent on existing institutional and empirical conditions. The second respect in which the just war norm is highly restrictive, however, is essential to the norm: it requires that waging war has a just cause, such as its being the exercise of a right of self-defense.

The existence of a right, a positive entitlement to act in self-defense depends crucially on normative context. Specifically, it depends on a context in which a person is subject to an unjust threat. What a right of self-defense then permits one to do in self-defense can depend on the actual circumstances and vary with those circumstances; the right of self-defense is in *that* respect contingent in its specification. In particular, as Buchanan notes, force that would be necessary to resist or repel an unjust threat in some situations would be unnecessary, and for that reason unjustified in others. The focus of Buchanan's discussion tends, however, to sideline the crucial moral relevance of the retaliatory nature of the use of harmful force in self-defense to the justification of the use of such force. There is no general right, possessed by individuals or by nations, to use harmful force on others for the purposes of self-protection.³⁷ If we take the analogy between individual and national self-defense seriously, as I do here for argument's sake, the central point of the restrictive norm of just war theory is that a *right* to use harmful force in self-defense is a right directly to resist or repel an unjust threat.

Buchanan's is a well-motivated attempt to extend the scope of (what he takes to be) the traditional self-defense norm of just war theory to include what might legitimately also be regarded as self-defense. By contrast, a large part of the explanation of the language of 'preventive self-defense' in recent political and public discourse is the perceived need to maintain that military force that is aimed at prevention is not aggression because it is consistent with the tenets of international

³⁷ The use of such force might be excusable in some circumstances, or it might admit of a 'lesser evil' justification. The rights of the unoffending person or nation would be contravened, nonetheless.

law that govern the conditions of justified war. The UN Charter explicitly recognizes only two exceptions to its prohibition of the use of force by any state against the territorial integrity or political independence of another state. One exception is the enforcement of international law under the auspices of the UN itself. The other exception is national defense. International legalities aside, such very public and far-reaching activities as waging war against or within another state also need to be defended both domestically and internationally in terms of a justification of widespread acceptance. The currently dominant approach to such justification is the just war theory, which in its modern formulations emphasizes national defense as the principal justification for waging war. These are certainly important influences behind the rhetoric of a 'right to preventive self-defense'. But at a deeper level, an important motivation for the misrepresentation of aggressive, preventive force as self-defense is surely also the implicit *moral* advantage of characterizing harmful interference with a perceived enemy in retaliatory terminology, by representing it as a response to an actual threat of harm.

It is possible to mount a defense of the use of aggressive force for prevention under certain conditions. (Whether convincingly so is another matter.) But these conditions will nonetheless lack a considerable justificatory advantage that a retaliatory context—one that characterizes the use of force as a *return of harm*—can provide. The justificatory advantage of the language of self-defense is not simply rhetorical. The particular retaliatory context of self-defense implies fulfillment of important justificatory conditions of the use of force against another person, namely that he is an aggressor who poses an actual threat. More fundamentally, this particular retaliatory context also affects the moral presumptions that shape the justification of the use of harmful force against others. The fact that force is used directly to resist or repel a threat is itself morally significant. It is highly relevant to the *right* of self-defense that the use of harmful force in self-defense directly repels or resists the infliction of an (otherwise unavoidable) irreparable injustice. For this reason, in explaining the tendency of some advocates of preventive war to misrepresent it as the use of force in self-defense, it is insufficient that we point out that the evidentiary and factual circumstances in which self-protection or self-preservation could justify the use of aggressive force against others are more difficult to establish than are the circumstances in which retaliation in self-defense is justified. The ethical significance of the distinction between aggressive, as opposed to defensive force is not merely conceptual. The appropriation of the language of self-defense has a deep resonance in ethical discussion because the use of aggressive force is subject to different, more stringent ethical norms than is the use of retaliatory force in self-defense.