

TARGETED KILLING AND THE IMMINENCE REQUIREMENT

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Perhaps the fundamental obstacle to justifying targeted killing is the imminence requirement. Because either the circumstances or the victims of targeted killing do not easily fit within the transnational war framework, the justification for targeted killings is often sought within the self-defense paradigm. And self-defense generally requires that the victim be posing an imminent threat at the time of the self-defense force. Typically, however, targeted killings occur while the target does not pose an imminent threat. As a result, if targeted killings are to be justified, the imminence requirement must be broadened or eliminated. This paper argues that the imminence requirement in self-defense should be substantially broadened if not eliminated. Despite the long heritage of the imminence requirement in the law of self-defense, the imminence requirement is an imperfect sorting mechanism for determining what instances of defensive force are permissible and what are not. Not only is the imminence requirement under-inclusive, as many have claimed in the spousal abuse context, it is also over-inclusive. As imperfectly translating the conditions for morally permissible defensive force, the imminence requirement obscures both the moral right of self-defense despite the absence of imminence and the absence of a moral right of self-defense despite the presence of imminence. Though inadequate as a dispositive criterion in a moral account of self-defense, the utility of the imminence requirement is as an evidentiary rule. A defensive killing in the absence of imminence is merely probative of the killing being morally impermissible; a defensive killing in the presence of imminence is merely probative of the killing being morally permissible. Over time, perhaps the imminence requirement, quite useful as an evidentiary rule, has assumed the weight of a moral requirement. But we should not confuse the evidentiary rule with the underlying moral principle. Even if we find that the evidentiary value of imminence to be indispensable in a law of self-defense, we should at least concede that some acts of defensive force, deemed unlawful for failure to satisfy an imminence requirement, are nonetheless morally permissible self-defense for which there is insufficient legal evidence. Targeted killings may well be such acts.