

Abstract for *Targeted Killing as Preemptive Action*

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The use of “targeted killing” has expanded in the last several years, but at the same time, doubts about the morality of this technique have never been fully resolved. Specific aspects of the policy are at present widely debated, such as whether a person who is not a belligerent in the traditional sense can count as a legitimate target if he poses a danger to the defending country, the degree to which the lives of innocent bystanders may be risked when a belligerent is targeted, whether carrying out such killings with the use of drones changes its moral profile, or to what degree one must attempt to apprehend the suspect prior to targeting his life. Such discussions, arguably put the cart before the horse, in that they should follow, rather than precede, a clear account of the basic justification for intentional killing in this context. The aim of this paper is to re-examine the moral justification for targeted killing, under a version of that practice that approximates the current Administration’s use of that technique.

There are two central reasons for returning to basics on this topic. First, it is not self-evident that targeted killing is a legitimate technique of armed conflict, especially when the conflict involves diffuse combat with non-state actors rather than conventional inter-state warfare. Second, subsidiary concerns about the extent of the permission to engage in targeted killing surely *cannot* be coherently answered without knowledge of the justification for the practice as a whole, as the former will be dependent on the latter. In seeking to establish a

justification for the practice of targeted killing, I will make use of general principles of moral theory, as well as analogous practices in domestic criminal law, where moral theory has made more extensive inroads. In this way, I shall hope to draw on more clearly established principles of moral justification pertaining to practices like self-defense and defense of others, and to use them to develop a possible justification for targeted killing.

Consider the following relevant features of domestic law in this connection. It is sometimes permissible to use more force to prevent harm than it is to punish instances of that same harm. In many cases, for example, the victim of an assault may use deadly force to defend herself against a harm that could not be permissibly punished with death. It is even permissible in many jurisdictions to use deadly force in defense of habitation, but no jurisdiction has ever authorized the death penalty for intrusions into one's home alone. Finally, the police may use lethal force to pursue a fleeing suspect who is resisting arrest, as long as they suspect him of having committed a felony, believe he poses a risk of future felonious activity, and have warned him of their intent to use force if he does not submit to custody. In most such cases, however, the felony for which the use of lethal force is authorized is not murder, and hence would not merit the death penalty as punishment. These examples permit a generalization about the relation between preventive and retributive force: the extent of permissible preventive force is broader than the extent of permissible retributive force. Thus if targeted killing is a form of extended self-defense, its scope may be narrower than if targeted killing is justified as preventive law enforcement.

In keeping with the foregoing observations from domestic criminal law, I shall elaborate a distinction between two kinds of preventive killing: the first I shall call simply "preventive" killing, and the second I shall refer to instead as "pre-emptive" killing: preventive killing, when

justified, is dependent on the need to physically put a stop to the use of force on the part of another. Pre-emptive killing, by contrast, bears a more attenuated relation to the harm it is designed to forestall; its permissibility follows from the use of rational techniques legitimately employed to dissuade a potential aggressor from following through with his course of action. In particular, it often depends on the fact that it is sometimes permissible to threaten to inflict a harm in order to deter another from the use of violence. In such a case, when deterrence fails and when the threat was a legitimate response to the fear of force on the part of the other, it may be permissible to follow through on a threat it was morally permissible to issue, despite the fact that the threatened action would not have been permissible as straightforward preventive action. Such is the case, I claim, with law enforcement action.

In keeping with the distinction between preventive and pre-emptive action, I claim that targeted killing is permissible when it falls squarely into the category of justified pre-emptive killing. It is rarely, if ever, justified as a form of preventive action. This places certain constraints on the legitimate reach of targeted killing that would not be present if the action could be considered purely preventive. Among other things, targeting must be preceded by a threat to use force, along with an attempt to apprehend the source of the threat. As we shall see, considering targeted killing a form of pre-emptive killing also has ramifications for the crucial questions of who may be targeted, the extent to which bystanders may be endangered, and other policy aspects of the current debate over targeted killing.