Liability Without Causation

FOR MOCKERY, NOT QUOTING

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In standard cases of liability to be harmed in self-defence, one person, X culpably poses a threat to another, Y, who can avert the threat only by harming X. If the harm that Y inflicts on X is proportionate to the threat that X poses, X is liable to be harmed to avert the threat. Y thus does not wrong X by harming her. X is liable to be harmed on any plausible account of liability. But whilst accounts of liability converge on the verdict this case, they offer different explanations of it, and they diverge on verdicts in less standard cases.

One dimension of a theory of liability to defensive force concerns roughly what criminal lawyers call the mens rea: the agential considerations that make a person liable. For example, one view is that liability depends on culpability, in which case if a person is not liable to be harmed to avert a threat that she is morally responsible for posing if she lacks culpability. This view rules out liability in cases where a person takes a justifiable risk of harm, but things go bad. There are also different views about what is required for culpability: some think that negligence can be culpable, others not.

Another view is that that liability depends on moral responsibility, in which case the person can be liable to defensive harm because they have taken a risk where that results in another person facing an objectively unjust threat, even if taking the risk was justified relative to their evidence. But the person is not liable, on this view, if that person is a non-responsible threat, such as a person who poses a threat as a result of having a muscle spasm, or

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by being hurled down a well. A borderline case is a person who takes a miniscule risk of harm.

A third view is that causal involvement in a threat can make a person liable to be harmed to avert it, even in the absence of culpability or moral responsibility. This view has the intuitive implication that it is permissible to kill non-responsible threats to avert the threats they pose, such as those who go completely insane and pose lethal threats, as well as those whose bodies pose threats, but who lack any control over that fact.

A second dimension concerns the causal relationship between the person and the threat. Suppose that Y faces a threat of harm that will be realized unless X is harmed. What causal involvement must X have in the threat in order to be liable to be harmed to avert it? If a person is liable to be harmed to avert a threat only if she is culpable or responsible for it, as some claim, liability depends on causation. For a person is culpable or responsible for a threat only if she is causally involved in it. Some who think that neither culpability nor moral responsibility is necessary for liability nevertheless think causal involvement essential.¹

These views admit variations. One view is that the person must pose the threat. Another is that causal involvement makes a difference to liability even if it occurs at an earlier stage, resulting in a threat being posed.² One view is that causation is all or nothing. Another is that the magnitude of a person’s liability to be harmed depends on the magnitude of her causal involvement.

¹ This is in effect Judith Jarvis Thomson’ view – see ‘Self-Defense’ (1991) 20 Philosophy and Public Affairs 283. It is not completely clear, but I think that Cécile Fabre shares it. See, Cosmopolitan War (Oxford: OUP, 2012) ch.2.2.
contribution to it.\(^3\) And that last view admits many variations, as there are many different views about how causation is scalar.\(^4\)

Liability without causation is not discussed in depth in the most important recent books on war and self defence: a great deal of attention is given to the question whether causation without moral responsibility is sufficient for liability, but much less to whether culpability or moral responsibility without causation is sufficient for liability.\(^5\) This is surprising because the practical implications of the latter issue are wide-ranging – probably more wide-ranging than the former issue. Many people who fight in a war, or who support it, are culpable and morally responsible, but they either make no causal contribution to a threat, or their causal contribution is difficult to establish.

Those who think that causation is important to liability need not believe that it is a necessary condition of a person’s liability to be harmed to avert a threat that she is causally involved in it. Liability might arise without causation in various ways. Attempting to harm a person might make that person liable to be harmed to avert a threat that another person poses.\(^6\) Those who pose different threats might be liable to avert the threats that others in

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\(^3\) See, for example, C Fabre ‘Guns, Food, and Liability to Attack in War’ (2009) 120 *Ethics* 61; *Cosmopolitan War* 76-7; McMahan *Killing in War* 225.

\(^4\) See V Tadros ‘Causal Contributions and Liability’ unpublished ms.

\(^5\) Non-responsible threats are discussed in depth, for example, in McMahan *Killing in War*, Fabre *Cosmopolitan War*, and H Frowe *Defensive Killing* (Oxford: OUP, 2014). But they devote almost no attention at all to the possibility of liability without causation.

the group pose. A person might be liable to be harmed to avert a threat in response to wrongs she has perpetrated. And she might be vicariously liable to be harmed, because of her relationship with the person who poses a threat of harm.

I believe liability can arise in all of these ways and others. Here I focus on one kind of case where the argument for liability without causation is especially powerful: the case of pre-empted potential causes. This case is especially important in war, because many culpable people in a war make no causal contribution to a threat because the contribution they would have made is pre-empted by the acts of others.

I begin with a more general exploration of the question of outcome luck and liability. This exploration shows that views that causation is necessary for liability are difficult to defend, remain undefended in prominent accounts of liability, and face a powerful objection that they make liability to defensive force a matter of luck. I then suggest a response to the last objection which will be relevant in considering the cases that do not involve causation that I consider later.

I then develop the case for liability without causation in pre-emption cases by focusing on variations on a case where a person is funded to perform a wrongful killing. In such cases, I argue, those who provide funds can be liable even if their funds make no causal contribution to the threat. This is so because it does not matter whether one’s funds themselves made a causal contribution, or the contribution they would have made was pre-empted by

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8 V Tadros The Ends of Harm, ch.12; Wrongs and Crimes (Oxford: OUP, forthcoming) ch.4.
the identical causal contribution of others. Finally, I offer a partial exploration of the implications of this discussion for war.

I. Causation and Outcome Luck

People can voluntarily execute the same actions with the same intentions, but with different outcomes. The outcome of our actions is, in this sense, beyond our control. It is not completely beyond our control, in that had we not acted the outcome would not have occurred. But whether the outcome arises from our actions or not is beyond our control. It is a matter of luck.

Compare these cases:

No Bird: Jake intentionally and wrongly shoots at Mehran, who is hit in the head and dies.

Bird: Kamara intentionally and wrongly shoots at Nell but a bird unexpectedly flies in front of Nell. The bird is hit and Nell survives.

Suppose all other things are equal. In particular, suppose that the epistemic probability of a bird flying in the way of the bullet was identical in No Bird and Bird. Jake is a killer whereas Kamara is only an attempter. This difference between them is a matter of luck. If liability depends on causation then liability is, in this sense, a matter of luck.

This fact puts us on notice of the limits one popular argument about liability. It has been claimed, most notably by Jeff McMahan, that a person is liable to defensive harm only if that person is morally responsible for an unjust threat.10 One argument that McMahan gives for this view is a fairness argument: where one of two people must bear a cost, the person who should

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bear the cost is the person who is most responsible for the situation where one or the other must bear the cost. This is so because any harm that the person suffers will depend on the choices that the person makes, rather than simply being inflicted on her outside her control.

But this argument is insufficient to support McMahan’s view. First let us consider the background to the argument. McMahan rightly notes that in cases where one person, X, poses or causes a threat of harm to another, Y, an argument is required to justify Y harming X to avert the threat that X poses or causes. This is because it is generally wrong to kill a person to preserve one’s own life, other things equal.

For this reason, he believes that it is wrong for a person to use lethal force to avert a lethal non-responsible threat in cases such as:

Well: X has been blown down a well by a tornado. Y is at the bottom of the well with a ray-gun. If Y does nothing, X’s body will kill him. As Y is standing on soft ground, had Y not been there, X would have been unharmed. Y can avoid death only by shooting X with his ray gun.

McMahan argues that causal involvement in a threat, however direct, is insufficient for liability to avert that threat. As there is a standing objection to inflicting harm on a person to prevent equivalent harm to oneself, an objection that is undefeated by X’s causal involvement in the threat, Y is not permitted to kill X.\(^{11}\)

However, he thinks that the objection to inflicting harm on a person to prevent equivalent harm to oneself can be defeated where a person is non-culpably morally responsible for the threat of harm. Consider his well-known case:

**Conscientious Driver**: A person keeps his car well maintained and always drives cautiously and alertly. On one occasion, however, freak circumstances cause the car to go out of control. It has veered in the direction of a pedestrian whom it will kill unless she blows it up by using one of the explosive devices with which pedestrians in philosophical examples are typically equipped.\(^{12}\)

McMahan claims that the driver is liable to defensive harm and that the pedestrian is permitted to kill the driver. This, he argues, demonstrates that culpability is unnecessary for liability. The standing objection to inflicting harm on a person to prevent an equivalent harm to the pedestrian is defeated in this case. It must be defeated by the driver’s liability. The driver is morally responsible, but not culpable, for the threat he poses to the pedestrian. Therefore, moral responsibility without culpability is sufficient for liability to be harmed.

Here is how McMahan explains the driver’s liability to defensive harm:

What makes him liable is that, as a morally responsible agent, he voluntarily chose to set a couple of tons of steel rolling as a means of pursuing his ends, knowing that this would involve a tiny risk that he would lose control of this dangerous object that he had set in motion, thereby imperilling the lives of the innocent. It is important to notice that the claim here is not that he is liable because he alone had the chance to avoid the tragic conflict between himself and the pedestrian. For the pedestrian could have avoided it as well by simply staying at home. The claim is, rather, that the driver is liable because he voluntarily engaged in a risk-imposing activity and is responsible for the consequences when the risks he imposed eventuate in harms.\(^ {13}\)

\(^{12}\) ‘The Basis of Moral Liability to Defensive Killing’ 393.

\(^{13}\) Ibid. 394.
But now suppose that the pedestrian is also a regular driver. He also regularly voluntarily chooses to set a couple of tons of steel rolling as a means of pursuing his ends, knowing that this would involve a tiny risk of imperilling the lives of the innocent. And suppose that the driver is a regular pedestrian, who has these risks imposed upon him by conscientious drivers, such as the pedestrian. In that case, it is just a matter of luck that the driver’s car threatened the pedestrian rather than the pedestrian’s car threatening the driver.

Given this, it is not clear why the driver’s choice to impose a risk on the pedestrian makes him liable to be killed. When we consider the two in a more temporally extended way, the driver and the pedestrian are equal with respect to risk-taking and equal with respect to having risks imposed on them. Why is it fair, then, that the driver’s voluntary choice to drive makes it permissible for pedestrian to kill him when the pedestrian chooses just as the driver does? Without an answer, McMahan’s explanation does not demonstrate the falsity of the alternative view that the standing objection to inflicting harm on a person to prevent harm to oneself remains undefeated.

One difference between the driver and the pedestrian is temporal. Neither the driver nor the pedestrian performs a risk-imposing action once the car goes out of control. But the driver’s performance of a risk-imposing action is closer in time to the occurrence of the threat than the pedestrian’s. But it is hard to see why this should matter.14

We could easily imagine a case where this is not true, and our judgements do not seem different in that case. Consider:

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14 Indeed, McMahan is himself hostile to the idea that liability is generated or vitiated by time: see The Ethics of Killing: Problems at the Margins of Life (Oxford: OUP, 2002) 406.
Conscientious Driver II: As conscientious driver, but there is a long time between the car going out of control and its getting to the pedestrian. In the meantime, the pedestrian has been for a quick drive before getting out of his car to go for a walk.

It is hard to believe that this case is morally different from Conscientious Driver, and yet the pedestrian’s risk taking activity is closer in time to the occurrence of the threat than the driver’s.

Another difference between driver and pedestrian is one of causal involvement: the driver’s car threatens the pedestrian and not the other way around. Of course the occurrence of the threat is, as McMahan notes, a consequence both of the driver driving and the pedestrian walking. But there is still some intuitive sense in which the driver threatens the pedestrian rather than the pedestrian threatening himself.

However, given that McMahan rejects the significance of causal involvement in cases such as Well, what grounds does he have to rely on it in Conscientious Driver? His view relies on something like:

Conditional Causal Relevance: A person’s causal involvement in a threat makes a difference to her liability to be harmed to avert the threat on condition that her causal involvement arises due to her moral responsibility.

This view is perfectly coherent but McMahan doesn’t provide a fully satisfactory defence of it.15

15 In ‘The Basis of Moral Liability to Defensive Killing’ McMahan acknowledges the intuitive plausibility of the idea that we can be liable to be harmed to avert a threat on the basis of an attempt to kill, but ultimately rejects the view. The main argument that he offers is that if we are liable without causation, for example in the case of attempts, there is no principled
Here is one way of defending it. Our liability to be harmed to avert threats is related to our reasons or duties to respond to those threats. We have special reasons to respond to threats of harm if they can be attributed to us as agents, and they can be attributed to us as agents only if we are morally responsible for bringing them about. This is so because we have special reason to respond to those things that we are deeply involved in, and agential involvement is the central case of deep involvement.

If this is the explanation, though, we must explore how far it extends. For example, we might consider whether it can also support liability in cases of causation without moral responsibility. I believe that it can. We have special reasons to respond to threats that we pose whether or not we are morally responsible for posing them, so we are liable to defensive harm even when we are not responsible for posing threats.¹⁶ This view does have the troubling implication that liability to defensive harm is simply a matter of luck, but then so does Conditional Causal Relevance. And even the outcome luck egalitarian views differentiate between people due to luck: circumstantial luck for example. Only views much closer to consequentialism eliminate luck altogether.

II. Funds and Causation

Still, although luck-based objections may not be decisive, we should be troubled by the fact that the view that causation is necessary for liability implies a very stark contrast in liability between those who are causally involved in threats and those who are not.

¹⁶ See The Ends of Harm chapter 11.
Consider: this variation on the *Bird* cases considered earlier:

*Two Shots:* Jake and Kamara each independently hire hitmen to shoot Mehran. Kamara’s hitman is killed in a car crash. Jake’s hitman will kill Mehran unless he is paid off with a very large sum of money.

Suppose that I could take all of the money from Jake, all of the money from Kamara, or take some money from each. The view that causation is necessary for liability implies that I should take all of the money from Jake. Jake might be left in poverty, where Kamara is left very well off, simply as a matter of luck.

Problems of this kind lead me to prefer the view that causation is relevant to liability, but it is not necessary. The deeper explanation of this view is that causal involvement in a threat is only one amongst a range of things that can give rise to reasons or duties to respond to that threat. Different cases of liability without causation arise because of a range of alternative explanations for reasons or duties that people have to respond to threats.

My aim in this paper is to put pressure on the view that causation is a necessary condition of liability by considering one kind of case where relying on causation has restrictive and implausible implications for liability to defensive harm; one that has important implications for liability in war. The case involves potential causal contributions to threats that are pre-empted by identical actual causal contributions to threats. I will get to this kind of case from less controversial cases; that will brightly illuminate them.

Begin with this relatively uncontroversial case:

*Hitman Fund:* Five people, Alf, Ben, Carl, Don and Eric, want Vince dead for no good reason. They see an ad in a local paper for a hitman who costs £1000. Each has only £200 spare cash. Each pays his £200 into a fund and together they hire the hitman, who is about to kill Vince.
It is relatively uncontroversial that the five are each liable to defensive harm to prevent the hitman killing Vince. Each causes the threat to Vince, the threat counterfactually depends on the action of each, and each is culpable for posing the threat. If any of the five could be used as a human shield to protect Vince from being killed, this would be permissible because each is liable to be manipulatively harmed to protect Vince’s life. Some might think that it would be wrong to kill any of the five in this way. I think that this might be permissible, but as I am interested in liability to be harmed, and not only liability to be killed, I need not rely on this view.

Some might doubt that the five are liable to be harmed because the causal contribution that each makes to the threat is small. But it is not clear what it means to say that each contribution is small. This might be thought true because of the number of acts that are necessary to bring the result about. But it is not clear why the magnitude of a person’s causal contribution to some result depends on the number of other acts that the result counterfactually depends on. In fact, this generally seems false. Suppose that I punch another person in the face. I can do so only if others hold the person down. It is not very plausible that the magnitude of my causal contribution to the person’s broken nose depends on how many people it takes to hold the other person down.

More generally, although some claim that the degree of a person’s liability to avert a threat depends on the magnitude of her causal contribution to that threat, no one has provided a successful defence of this view. Though I cannot defend this here, once we clarify different versions of the idea that causation is scalar, the view that liability depends on the magnitude of one’s causal contribution is doubtful. So we have seen no reason to reject the view

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17 Helen Frowe doubts that the magnitude of a person’s causal contribution is relevant because of this kind of case. See Defensive Killing, 175-7.

18 See ‘Causal Contributions and Liability’.
that each of the five is liable to suffer significant harm to avert the threat the hitman poses in *Hitman Fund*.

Now compare:

*Spare Cash: As Hitman Fund, except each of the five has £250 spare cash.*

Had any one of the five dropped out, the others would have made up the short fall by paying an extra £50.

That there is liability in this overdetermination case also seems relatively uncontroversial. The threat doesn’t counterfactually depend on the act of any of the five: the hitman would have been hired had anyone not contributed to the fund. Nevertheless, each causally contributes to the hiring of the hitman. It might be thought controversial whether each of the five causes the threat to Vince. But *something* causes the threat, and there must be some kind of story about how each person’s money is causally involved. Whatever the right view about causation, where a person is both culpable and she makes a contribution to the cause of the threat, the threat need not counterfactually depend on her act for her to be liable to defensive harm.19

Some explain this idea by the fact that each of the five is a member of a group of people who together pose a threat.20 But it is not clear why being a member of a group makes a difference to liability in overdetermination cases. If we replace four of the people with non-people (for example, robots) in such cases, I doubt that our intuitions about liability are significantly altered. And it is not clear what explanation could be provided for any difference in our intuitions.

19 Things are different where the person is not culpable. See V Tadros *The Ends of Harm* ch.7.

The view that each is liable to defensive harm in *Spare Cash* is not in conflict with McMahan’s view that moral responsibility for a threat is necessary for liability to defensive harm. These views can be made consistent by relying on the idea that a person can be responsible for a threat by making a causal contribution to it, even if the threat does not counterfactually depend on the contribution that person makes.

However, McMahan does at one point seem to suggest that counterfactual dependence of a threat on one’s conduct (perhaps not only one’s acts but also one’s failure to act) is necessary for liability. Here is how he responds to the possibility that his view makes ordinary civilians liable to military attack:

Most civilians have, on their own, no capacity at all to affect the action of their government. They may pay their taxes, vote or even campaign for particular political candidates (sometimes on the basis of general sympathy with their overall positions on matters of policy but seldom because of their advocacy of war), participate in the culture from which the country’s political leaders have emerged, fail to protest their country’s unjust war, perhaps because they correctly believe that to do so would be ineffective, or perhaps because they approve of the war, and so on; but none of these things, nor even all of them together, is ordinarily sufficient for the forfeiture of a person’s right not to be attacked and killed. Military attack exceeds what a person may ordinarily be liable to on the basis of these comparatively trivial sources of responsibility.21

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21 *Killing in War* (Oxford: OUP, 2009) 225. Fabre also thinks that counterfactual dependence is required for liability, and argues against the liability of voters on this basis. See *Cosmopolitan War* 76-7.
It is not completely from this passage what makes the source of responsibility of these civilians comparatively trivial, on McMahan’s view. Though it is not completely clear, the first sentence seems to suggest that this is so because they have no capacity to affect the actions of their government. One way of understanding this view is that the magnitude of defensive harm that a person is liable to suffer is proportionate to the difference they make, overall, to the magnitude of harm that others are threatened with.

If that is his view, it also applies to each of five in *Spare Cash*. Take Alf. Assume that he could do nothing else to prevent the hit from occurring – for example, he could not do so by informing the police. He cannot prevent the hit from occurring by withholding his money. The hitman poses the threat of death to Vince whether or not Alf pays. On the view just described he is not liable to defensive harm to protect Vince. But as each of the other four is equally placed, that implies that no one is liable to be harmed to save Vince. That is not very plausible, and McMahan doesn’t offer an argument to support it. The better view is that contributing to a lethal threat can make a person liable to be harmed to avert that threat even if that person cannot alone affect whether the threat occurs.

The passage quoted admits another interpretation, where a person can be liable to be harmed to avert a threat even if the threat doesn’t counterfactually depend on what the person did, but the magnitude of harm she is liable to suffer is restricted in such cases. After all, McMahan suggests that the person’s contribution is too small to make her liable to military attack, which might suggest that she is liable to be harmed to some degree to avert the threat she contributes to.

But even this view seems false. Suppose that the only way to save Vince’s life in *Spare Cash* is to kill two of the participants. This seems permissible. And even if that view is rejected, it seems permissible intentionally to kill two participants to avert a threat of greater magnitude – for example, in a variation where the hitman will otherwise kill several people. This suggests that a person can be liable to be killed to avert a lethal
threat, even if the threat does not counterfactually depend on their conduct, as long as the threat is sufficiently grave. There is room for disagreement about when a threat is sufficiently grave. I believe that a lethal threat to one person would be sufficient eliminatively to kill two highly culpable people in these circumstances.

Now consider:

Overpay: As Hitman Fund, except the ad was wrongly printed, and the hitman only required £800. The hitman receives the £1000 in an envelope. He counts it starting at the top of the pile. The notes of the five are all mixed up. When he gets to £800 he decides to take the hit. He counts the remainder and pockets the lot.

I take it that there is no important difference between Spare Cash and Overpay. In both cases, each person makes a causal contribution to the threat, but the threat does not counterfactually depend on the act of any of the five. This case thus still poses no threat to the view that liability depends on causation.

But now consider:

Count: As Overpay, except all of Eric’s notes are at the bottom of the pile, so the hitman makes the decision to kill prior to counting any of Eric’s notes.

In contrast with Overpay Eric does not seem to make a direct causal contribution to the hitman’s decision (though we will see a way in which he might in a moment). Suppose that is right. Now consider the view that causation is a necessary condition of liability. That view implies that whether Eric’s notes are in the pile or at the bottom of the pile may make a profound difference to his liability to be harmed. He is liable to suffer very severe harm to avert the threat posed to Vince if his notes are mixed up with the others, but he is liable to suffer no harm at all for this purpose if his notes are at the
bottom of the pile. This doesn’t seem very plausible at the outset. The view that there is no difference in Eric’s liability between *Overpay* and *Count* seems intuitive. The view that Eric is liable to be killed in *Overpay* but not liable to any harm at all in *Count* is deeply implausible.

III. **Complicity and Beyond**

*Count* has several features that might explain why Eric seems liable to be harmed. One feature is that he is a part of a group that jointly intend to kill Vince. Some claim that this makes a difference to liability. On this view, where a group of people form an intention to participate in a joint plan to perform a wrongful act, and everyone has a role in the performance, and each does her role, she is be liable even if she doesn’t make a causal contribution to the wrongful act.

This is a more plausible view of liability based on group membership than the earlier view that I considered: that a person could be liable simply by being a member of the group who together causally contribute to a threat. The reason is that it is plausible that by coordinating our plans to serve a common goal we each become responsible for the acts of other members of the group.

Saba Bazargan provides the most careful defence of this view. To support it he considers a case much like this:22

*Lookout*: Lisa is a member of a gang that wants to rob a local bank. Each member is given a role. Lisa is the lookout. If the cops are on their way, she will warn the rest of the gang, who will then have time to escape. No cops come and the bank robbery is complete.

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22 See S Bazargan ‘Complicitous Liability in War’ (2013) 165 *Philosophical Studies* 177, 182-3. In Bazargan’s version of the case, the lookout falls asleep, but this feature does not seem essential to the discussion so I leave it out.
Bazargan suggests that Lisa is liable to be harmed because she intentionally participates in a group project to rob the bank. She is liable to be harmed to prevent the robbery from occurring, he plausibly argues, even if it would have gone ahead without her participation. He concludes that liability to be harmed does not depend on the causal contribution that one makes to a cooperative project. A person who intentionally participates in a cooperative project is liable to be harmed to avert threats that arise from the project even if one makes no causal contribution to it.

However, Bazargan’s claim that Lisa does not causally contribute to the robbery is questionable. The fact that the robbery would have gone ahead without her participation does not determine whether she makes a causal contribution to it - we have already seen from our discussion of *Spare Cash* that counterfactual dependence is not necessary for a person to make a causal contribution to a result. Indeed, this is generally familiar from discussions of overdetermination.

Lisa’s decision to act as a lookout may play a causal role in the robbery by having an influence over the decisions of the other participants, even if those decisions did not counterfactually depend on her participation. It seems clear that she will have had such an influence: the other participants would have regarded her participation as a reason in favour of executing the robbery (or, more accurately, it would help to defeat a reason against doing so - the possibility of getting caught). Some might argue that the same thing is true in *Count*: whilst Eric’s money did not influence the hitman directly, his decision to pay may have influenced the decision of the others to pay, and that resulted in the hitman being hired. So perhaps the view that liability depends on causation need not have the implausible implication that there is a profound difference in Eric’s liability between *Overpay* and *Count*.

We can eliminate this feature of *Count*, though, and when we do we see that it does not alone explain our intuitions in that case. Consider:
Count Again: A hitman puts an ad in the paper indicating that if people send him more than £800 he will kill Vince, who is widely hated. Alf, Ben, Carl, Don and Eric don’t know each other. They each want Vince dead. Each sends him £200, hoping that the hitman will receive enough money to do the hit. The hitman puts the money in a pile and starts counting. When he gets to £800, he decides to do the hit. Eric’s money is at the bottom of the pile.

Eric makes no causal contribution either to the acts of the others, or to the hitman. So he seems to make no causal contribution to the threat at all. The view that a person is liable to be harmed only if she makes a causal contribution to a threat implies that Eric’s liability is no greater than an innocent bystander. Furthermore, it implies there is a profound difference in liability between Eric and the other four who contributed to the fund. This is still not very plausible.

Bazargan’s view would explain this case on the assumption that people can share a common plan without communicating with each other.\(^ {23}\) They do seem to share this plan: each intends the hitman to kill Vince, and each intends that some other people will contribute to killing him. Although Eric does not know who the other people are, he nevertheless cooperates with them.

The idea that liability depends on complicity in executing a common plan relies on the view that intentions make a profound difference to liability – where a person makes no causal contribution to a threat, the person is liable to be harmed to avert the threat only if she intends to play a role in the threat (or, perhaps, in the project that gives rise to the threat). Bazargan may be right

\(^ {23}\) Bazargan’s own view about what is required for a cooperative act is not stated precisely. It relies on the idea that different people have different roles to play, which might not seem true here. See ‘Complicitous Liability in War’ 184-7. But I think his view can naturally be extended to explain the case.
that joint intentions are a source of liability in cases where causation is absent. But the idea that joint intentions provide the central explanation of our intuitions in our Count cases is less plausible.

To see this, consider a further variation where there are no such intentions:

*Comics:* A hitman puts an ad in the paper indicating that he is willing to kill Vince, who is widely hated, for free. However, he needs a gun, which costs £800. The hitman offers his comics for sale to raise the money. Alf, Ben, Carl, Don and Eric are each avid comic collectors. They don’t want Vince dead, but they don’t care that he will be killed. Each sends the hitman £200 for a comic, knowing, but not caring, that some others will do the same. The hitman puts the money in a pile and starts counting. When he gets to £800, he decides to buy the gun and do the hit. Eric’s money is at the bottom of the pile.

There is no joint plan between Eric and anyone else to kill Vince, and Eric’s conduct makes no causal contribution to the killing, either by directly affecting the hitman, or by affecting the other purchasers. Alf, Ben, Carl, and Don are clearly liable to suffer significant harm to protect Vince. Had the money been mixed up, Eric would also have been liable to suffer significant harm for this end. It is not very plausible that the whether his money is mixed up in the pile or is at the bottom of the pile makes a significant difference to his liability, let alone that liability to suffer any degree of harm to avert the threat posed to Vince depends on it. Thus, even if Bazargan is right that complicitous intentions provide a source of liability, such intentions seem unnecessary for liability in some cases where a person makes no causal contribution to a threat.

**IV. Preemption and Securing a Threat**
I now offer an explanation for liability without causation that applies in both *Count Again* and *Comics*. I start with *Count Again* and then show how the explanation offered can be extended to *Comics*.

In *Count Again*, Eric acts in order to make the intended result – the hitman killing Vince – more secure. He does this because he thinks that the contributions that others make may be insufficient to cause the desired result. If they are insufficient on their own, his contribution may be causally necessary and sufficient to achieve that result. He also knows that if the desired result comes about, his conduct will either cause the outcome, or it will be pre-empted by a relevantly similar act. He has no reason to care whether his own money makes a causal contribution to the hiring of the hitman. That is not why he acts – he acts simply in order to increase the probability that the hitman will be hired. The others are identically placed.

Where these things are true, it makes little difference whether one actually causes the result, or the causal contribution that one would have made was pre-empted. The person has acted in order to make a result more secure, they have made the result more secure, and either they have contributed to the result, or the fact that it does not results from an identical event pre-empting the contribution they otherwise would have made. Look at it this way: Eric acts in order to ensure that Vince is murdered. He does this by contributing to a scheme where either his act contributes to Vince’s murder, or it is pre-empted by an identical event that contributes to Vince’s murder. In the latter case, the actual contribution would both cause the result, and prevent the pre-empted contribution from causing the result.

Those who make a contribution on this basis have no reason to care whether they actually contribute or their contribution is pre-empted by an identical cause. Therefore, there is little reason to distinguish those who make

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24 I leave open exactly what this means. It may mean simply ‘increases the epistemic probability’, but I leave open the possibility of other interpretations based on some idea of objective risk.
a causal contribution from those whose potential causal contribution was pre-empted when it comes to determining who is liable to be harmed to avert the threat that Vince faces. As those who actually cause the result are liable to be harmed to avert that threat, Eric is also liable to be harmed in \textit{Count Again}.

To be clear, I don’t claim, more generally, that a person never has a reason to care whether they bring about an intended result themselves, or another person brings about that result. There are cases where this is clearly false. In some cases, I have a reason to care whether I am the author of the result or not. I just claim that this is not so in the cases I am describing.

To reinforce this view, compare more positive cases with a similar causal structure, such as elections. People rightly take credit for electing the best candidate in elections when they voted for that candidate, even when the candidate wins by a significant margin on the basis that they causally contribute to the result. This is so even though the result did not counterfactually depend on any particular person voting.\textsuperscript{25}

Now suppose that in an election I vote for the best candidate, and that candidate wins by a significant margin. The announcement that the candidate has won is made when enough votes are counted to make it impossible for others to defeat her. The rest of the votes are then counted. The election of the candidate did not counterfactually depend on my vote. And I did not make a causal contribution to the candidate winning if my vote was not counted before the announcement was made. But this is only because the causal contribution that my vote would have made was pre-empted by others making an identical causal contribution. But even if that is so, I take pride in the result. I identify with the result – not simply in the sense that I affirm it, but also in a way that is no different from a contributor.\textsuperscript{26}


\textsuperscript{26} Goldman agrees, but attributes the idea to the existence of a social convention where we treat all votes as contributing – see ‘Why Citizens
This analysis does not rely on joint intentions. It also does not rely on there being a group of people whose members either causally contribute to a threat or have their potential causal contribution pre-empted. There is no essential reference to the acts of others. A person can make an outcome more secure in this way where no one else will be involved in bringing that outcome about.

To see this consider:

*Poison Ivy:* An annoying child, Mikey, lives next door to Bill. Bill notices that Mikey regularly eats leaves around the garden. He notices some poison ivy that Mikey might eat, though he has not touched it yet. As he finds Mikey annoying, he wants him to eat the ivy. After a while, he grows frustrated that Mikey keeps picking other plants so he secretly plants a lot more poison ivy in his neighbour’s garden, making it almost certain that if nothing is done to prevent him doing so, Mikey will eat some poison ivy. The next day, Mikey is about to eat some of the poison ivy that was already in his garden. If he does, Mikey will fall ill and Bill will be glad.

Bill makes no causal contribution to Mikey eating poison ivy. But he does intentionally make that result more secure by providing a potential causal route to Mikey eating the ivy, which is pre-empted by the eating of the actual ivy in the garden. I find it intuitive that this makes Bill liable to be harmed. Suppose that Bill’s wife knows what Bill has done. She can distract Mikey only by throwing a rock at Bill. I think that Bill is liable to be harmed to protect Mikey, and that he has lost his right not to have the rock thrown at him.

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Should Vote’ 212-3. My view does not depend on social conventions in this way.
The view that Bill’s conduct makes him liable to be harmed does not imply that either causation or joint intentions are irrelevant to liability. Perhaps if Mikey were about to eat the poison ivy that Bill planted Bill would be liable to a greater degree of harm. And perhaps he would also be liable to a greater degree of harm were someone else who was working with Bill wrongly to have planted the poison ivy that Mikey was about to eat. My more modest claim is only that the magnitude of harm that Bill is liable to suffer is increased because he has made the actual outcome that he intends to bring about more secure by creating a potential cause of the result that is pre-empted by Mikey eating the ivy that was already in his garden. But I am also tempted by the more extreme claim that the extent of Bill’s liability does not depend at all on whether he causes Mikey to be poisoned, or whether the causal contribution that he would have made is pre-empted by a similar cause.

Now let us see how this analysis can be extended to *Comics*. In that case, Eric knows that he makes the threat to Vince more secure in the relevant way by buying the comic, and he does so by ensuring either that he causes the result, or his causal contribution is pre-empted by a similar event. It is wrong for him to do this. Whether his notes actually cause the threat, or the causal contribution that they would have made is pre-empted, he is liable to be harmed to avert it.

Here is a deeper explanation why this seems right. Our reasons to accept being harmed to avert threats, I have suggested, depend on our own reasons to respond to those threats. If we would be required to avert those threats, we have good reason to accept that others harm us to avert them. Our reasons to respond to threats depend on our connection to them. One way in which we are connected to threats is by causing them. But that is not the only way.

Suppose that I have a decisive reason against making a certain outcome more secure by acting in a certain way because my conduct will either cause the outcome, or be a pre-empted potential cause of the outcome. I
cannot distance myself from the outcome by pointing to the fact that my conduct was not the cause where the only reason that it was not the cause was that its causally efficacy was pre-empted by a very similar event. The event that prevented my contribution from being effective was itself effective in contributing to the result, and in exactly the same way. And I knew that were my contribution in effective, this other event would be effective. In that case, I have good reason to respond to the event that pre-empts mine.

This is what occurs in *Comics*. Eric’s act makes the outcome that Vince is threatened more secure. The only reason that his conduct is not the cause of the outcome is that it was pre-empted by a very similar event – the counting of the notes of the other four pre-empted his notes being counted earlier, and made the provision of his notes causally ineffective.

V. **Inchoate Wrongdoing**

The argument just offered explains liability without causation in a theoretically narrow range of cases – cases where the liable person does not make a causal contribution to a threat, but only because the causal contribution that he would have made is pre-empted by a similar causal contribution that another person makes, or that naturally occurs.

One objection to this argument is that what matters in these cases is not pre-emption, but simply the fact that the person acts wrongly in the evidence relative sense. In other words, these cases are morally identical to straightforward cases of inchoate wrongdoing such as *Bird* and *Two Shots*.

For example, it might be argued that what makes Eric liable in *Comics* is that he risked Vince’s life by buying a comic. That makes his conduct evidence-relative wrong, and is sufficient for liability regardless of whether the causal contribution that he would have made was pre-empted by the acts of others. This view, of course, still shows that there is liability without causation, so its truth would be sufficient to establish my main point. But pre-emption cases nevertheless seem distinct from straightforward inchoate cases.
I am sympathetic to the view that inchoate wrongdoing can support liability to defensive harm without either a causal contribution to a threat, or pre-emption. But I think that whether one’s causal contribution is pre-empted makes a difference to the magnitude of the harm that one is liable to suffer to avert a threat.

Compare Comics with:

Lost in the Post: As Comics except that Eric’s £200 is lost in the post.

In Lost in the Post, Eric intends the hitman to get £200. The act he intends would either causally contribute to Vince facing a threat, or that contribution would be pre-empted by the acts of the others. But his intention is unfulfilled. Thus, the acts of the others do not pre-empt his making a causal contribution to the threat Vince faces.

Earlier, I suggested that whether Eric’s notes are at the bottom of the pile in Comics makes little or no difference to his liability to be harmed to avert the threat posed to Vince. Some might also claim that there is no difference in the extent to which he is liable to be harmed between Comics and Lost in the Post. They might also believe that Eric is liable to the same degree of harm in Lost in the Post as the four who actually provide the hitman with money.

Those who believe this think that liability to be harmed does not depend on outcome luck. Earlier, I suggested that McMahan’s luck egalitarian argument does not show that this view is false. But I doubt that this view is right. I suggested earlier that liability to be harmed to avert a threat depends on our connection to the threat. Causation makes a difference to our connection to a threat. So like McMahan I think that causation makes a

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difference to liability. The pre-emption cases that I have discussed are an exception to this general idea: in those cases, it makes no difference whether one is the cause or one’s cause is pre-empted, given that one’s contribution makes the outcome more secure, and the only reason why one did not cause the result is because the contribution that one would have made was pre-empted by a similar event.

Here is another reason to think that this class of cases is special. It is natural to respond to a failed wrongful attempt with relief. As a result, we should be glad about the occurrence of events that prevent our wrongful attempts being realized. Recall:

*No Bird:* Jake wrongly shoots at Mehran, who is hit in the head and dies.

*Bird:* Kamara wrongly shoots at Nell, a bird unexpectedly flies in front of Nell. The bird is hit and Nell survives.

If Kamara evaluates the case appropriately, he should be glad that the bird flew in front of Nell. We should be glad not to be the author of wrongful harm. This prevents him from being a wrongful killer. That is so even if the result that he intends still comes about; for example if Nell is immediately shot by another killer.

Although this is less clear, I am tempted by the same view in:

*Two Shots:* Jake and Kamara each independently hire hitmen to shoot Mehran. Kamara’s hitman is killed in a car crash. Jake’s hitman will kill Mehran unless he is paid off with a very large sum of money.

Kamara should be glad that his hitman was killed in a car crash because that ensured that he was not involved in Mehran’s death.
But this way of thinking is much less plausible in pre-emption cases, even though it is also true that the actual cause ensures that the person whose contribution was pre-empted played no causal role in the result. In such cases, the very event that prevents the person’s act making a causal contribution causes the result that the person’s act would otherwise have made. In such cases, we have much less reason, perhaps no reason, to be glad that the pre-empting event occurred. For the very event that prevents one playing a causal role itself causes the result.

This helps to explain why the intuition that causation is irrelevant in cases like *Comics* is especially powerful: it would be odd for Eric to be glad that the hitman counted Don’s money preventing the counting of his money contributing to the decision. The reason is that the counting of Don’s money prevented the counting of Eric’s money contributing to the threat only by making an identical contribution to the threat.

### VI. Implications for War

The idea that those whose potential causal contribution to a threat is pre-empted can be liable to avert threats has important implications in war. Wars involve large-scale complex organisations in which only some people make direct causal contributions to threats. Others may make a causal contribution only by influencing the actions of others. But many people who do not make direct causal contributions to threats make those threats more secure by providing a backup in case they do not occur. Sometimes, providing a backup makes a causal contribution – a person may be influenced to act by the fact that they have a backup if they fail. But my analysis of the funding cases suggests that this is not necessary for liability.

Consider the following:

*Backup:* A unit of twenty unjust combatants are given different jobs. In the first group, ten directly pose threats to a unit of twenty just
combatants who are trapped in a ravine. They have a rocket launcher and they will attempt to fire a rocket into the ravine. This is difficult to do, and some of the rockets will explode on the rocks. Once they have fired it takes time to reload their launcher. If they fail to kill all of the just combatants, ten more combatants, in the second group, will take their place. They will fire their rocket launcher, and if they fail the first group, whose launcher will by then have been reloaded, will take their place. This will continue until the just combatants are dead, which will occur as soon as a rocket is successfully launched into the ravine. The whole unit will then go home and play no further part in the war. Were only one group present, the just combatants would have a good chance of escaping the ravine before being killed. As there are two waves, they are almost certain to be killed. A helicopter from the just side is flying over the unjust combatants. The only thing that the bomber in the helicopter can do to save the twenty just combatants is to drop a bomb on the unit of unjust combatants. If he does this, he will kill them all.

The bomber knows that if he drops the bomb, he will kill ten unjust combatants who will otherwise kill twenty just combatants. But he will also kill ten unjust combatants who will kill no one. He doesn’t know which group will be the killers, but he knows that one group will not be killers.

It is normally wrong to kill ten innocent people in order to save twenty innocent people from being killed. But it seems permissible to kill the whole group in this case, and it seems that all twenty are liable to be harmed to avert the threat some of them pose. This further confirms the plausibility of the idea that liability does not depend on causation: the ten who will not be killers may well make no such contribution.

One explanation, offered by Bazargan, is that the whole unit is liable because they have joint intentions to secure the result. This, I suggested, does not seem necessary for liability. It is sufficient that they make the result more
secure by acting in a way that will either cause the result, or will be pre-empted by a similar event.

Here is another case where the argument offered has implications. Consider those who transport munitions to the front line, beginning with:

*Tank:* Bill and Ben are taking a tank to the front line in an unjust war. Cindy, who is fighting for the just side, can drop a bomb on the tank before it gets there. This is the only way to prevent the tank from arriving. If the tank arrives, it will be used to kill two unjust combatants who will otherwise survive.

It seems permissible to kill Bill and Ben. But suppose that Cindy knows that one is the driver and one is the backup. The backup will drive only if the driver is killed. Otherwise, he will make no causal contribution to the tank arriving. Cindy knows that whoever is driving will not be killed unless she kills both Bill and Ben. On the view that causation is necessary for liability, Cindy will kill one non-liable person to save two innocent people, which typically seems wrong. But doing this does not seem wrong in this case. Again, the view outlined above, that those whose causal contribution is pre-empted are liable to be harmed, has intuitive implications in war.

However, some might object that the view that liability does not depend on causation has implausible implications for the liability of non-combatants. Recall that Fabre and McMahan rely on claims about causation to rule out the liability of those who pay the taxes that fund the war, or who vote for the government that perpetrates the war. Does the view that I have defended imply that these people are all liable to be killed?

Voting and paying taxes have a similar causal structure to variations on *Overpay* that I considered earlier. Each person’s vote or financial contribution either makes a causal contribution to threats posed in war, or the causal contribution that they would otherwise have made is pre-empted. I argued that liability can arise in such cases even if the person makes no causal
contribution to the threat, and even if she could not have prevented the threat from occurring.

But the cases that I considered also had another feature: the person making the contribution significantly increases the probability of the threat occurring. For example, in *Count Again*, the contributors intend to increase the probability of the hit being carried out. In *Comics*, the contributors know that by buying the comics they increase the probability of the hit being carried out. In these cases, then, what these people do is wrong from the evidence-relative point of view because they have increased the probability that Vince will wrongly be killed. In contrast, in the case of paying taxes or voting, one increases the probability that others will face an unjust threat only by a miniscule amount.

Some may object that in the case of causation, a person can be liable to be harmed even when they do not affect the probability of the outcome at all. In *The Ends of Harm* I discuss this case:

*Poisoned Pipe*. Boss offers a reward of £1000 to anyone who kills Victim. Two henchmen, X and Y, independently find different points in the water pipe leading to Victim’s home. X puts sufficient poison in the pipe to kill Victim. At the same time, Y puts sufficient poison in the pipe to kill Victim. The poisons mix. Each sees what the other is doing. Neither can influence the behaviour of the other. X’s poison alone or Y’s poison alone would have caused Victim to suffer a very slow and painful death. Together, their poison kills Victim swiftly. When X and Y both act, V’s death occurs at exactly the same time as it would have
occurred had either X or Y acted alone.\(^28\) X and Y each acts only for the money.\(^29\)

I argued that X and Y each seem to act wrongly. Focus on X. He acts wrongly, I argued, even though they would act permissibly were he to do the same thing but with the good intention of making Victim’s death less painful. (*Benevolent Variation*).

It also seems permissible to kill X and Y to save Victim if that is the only way to prevent him from being killed. And that seems true because each has made himself liable to be killed by putting poison in the pipe with the intention of killing Victim for the money. But neither has increased the probability of Victim being killed.

This is a case where liability to be killed arises from his wrongful intentions. We can see this from the fact that X is clearly not liable to be harmed in (*Benevolent Variation*). Intentions, I conclude, not only make a difference to permissibility, they also make a difference to liability.

In the light of this, recall:

*Comics:* A hitman puts an ad in the paper indicating that he is willing to kill Vince, who is widely hated, for free. However, he needs a gun, which costs £800. The hitman offers his comics for sale to raise the money. Alf, Ben, Carl, Don and Eric are each avid comic collectors. They don’t want Vince dead, but they don’t care that he will be killed. Each sends the hitman £200 for a comic, knowing, but not caring, that some others will do the same. Each thus knows that he increases the

\(^{28}\) This feature of the case is potentially significant because it might wrong V to kill him earlier than he would have been killed without his consent even when his remaining life will involve only pain and suffering.

probability of Vince being killed. The hitman puts the money in a pile and starts counting. When he gets to £800, he decides to buy the gun and do the hit. Eric’s money is at the bottom of the pile.

*Comics* would be different were Eric to know that his contribution would not make the outcome more secure, and would make no causal contribution to the death. Suppose that Eric finds out that Alf, Ben, Carl and Don have already put their contributions in the post. He also knows that their money will be counted before his. It does not then seem wrong for him to buy the comic.

Here is the upshot of this analysis. There are different routes to a person’s liability to be harmed. A person who intends harm can be liable to be harmed to avert a threat that she poses even if she does not increase the probability of the threat occurring. A person can also be liable to be harmed, though, if she acts in a way that increases the probability of a threat occurring, but she does not causally contribute to it because her contribution is pre-empted.

But if a person neither makes the threat more secure, nor causally contributes to it, nor intends to bring it about, she is not liable to be harmed to avert that threat. That is so even if the only reason why she does not contribute is that her potential contribution is pre-empted by the contribution of others.

It is thus insufficient for liability to be harmed that one has voted for a government, or paid one’s taxes to it, and it perpetrates an unjust war. Those who do these things may not have acted with the intention that the unjust war will be perpetrated, and they do almost nothing to increase the probability of unjust threats being posed. These people are not liable to be killed to avert the unjust threats posed in war.

Now consider those who vote or pay taxes in order to contribute to the war effort. More would have to be done to determine whether they are liable to be harmed to avert the threats posed in war. But we can draw this modest
conclusion: if they are not responsible, this is not so simply because they make no causal contribution to those threats.

**Conclusion**

The idea that liability depends on causation has implausible implications in a range of cases. Its implications are especially implausible in the pre-emption cases that I consider here. Causation provides one important source of liability (either in conjunction with moral responsibility, or, I think, not), but it is not the only source of liability, nor is it necessary for liability. The full implications for liability of non-combatants in war are difficult to assess, because a range of other facts might be relevant to liability as well. But we have at least seen some reason to think that there are plausible limits to non-combatant liability that do not depend on showing that their causal contribution is insufficient to make them liable.