ON WRONGS AND JUSTIFICATIONS*

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INTRODUCTION

In this paper, my goal is to shed light on a recent debate regarding the nature of justifications and wrongs in criminal law. As we delve deeper into the topic, we will see that wrongs and justifications are conceptually intertwined, and it is, therefore, crucial to have a clear

* This paper was completed under the supervision of Professor Gideon Yaffe during the Fall 2022 semester for the course "Criminal Law: Directed Research." I would like to express gratitude to Ketan Ramakrishnan for their valuable comments and guidance.
understanding of their nature. The theoretical disputes and perplexities surrounding this topic can be attributed, in part, to an improper conception of moral wrongs. However, once we have a better understanding of this phenomenon, we will be able to account for many of the issues associated with the nature of justifications in criminal law.

The distinction between offence denials and justifications is not morally neutral. The former assumes that there are no decisive moral reasons against performing an action. In short, they deny the existence of an offense altogether. Justifications, on the other hand, acknowledge the existence of an offense but deny that the conduct is wrong all things considered. To have a defense is to concede the existence of a pro tanto wrong or a provisional complaint, but to reject the claim that the conduct is wrongful in the particular context in question.

This distinction has usually been considered inconsequential, a matter of classificatory convenience rather than of moral relevance. That is, it is thought to depend on accidents of language or the convenience of legal drafting. Others have argued that it is simply a procedural distinction, arising from differences in the burden of proof in criminal proceedings. The prosecution must prove the existence of an offense by demonstrating the mens rea and actus rea of the offense and by proving the absence of any negative elements of the offense. In contrast, the defense must present evidence that supports the existence of a justification.

Yet these accounts fail to capture the moral consequences that sometimes attach to offence denials and justifications. Maintaining that a particular conduct is not an offense and maintaining that one was justified in committing that offense represent two distinct moral phenomena. In other words, the question of whether or not a certain conduct warrants justification goes beyond the mere burden of proof or incidental linguistic considerations. This

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paper will thus examine the various attempts made to explain the moral distinction between these two legal concepts.

This paper aims to address and answer questions regarding the identity and implications of justifications in criminal law. Specifically, we will explore what it is about justifications that make them justifications, and what necessarily follows from the fact that a justification is what it is. Regarding the latter question, there has been some consensus as to one of the fundamental implications of justifications. When an action is justified, it loses its status as a pro-tanto moral wrong. That is, all things considered, a justified action does not amount to a moral wrong. However, philosopher John Gardner's recent works dispute this consensus. He argues that justifications do not change the moral status of an action but rather make it permissible. This perspective better explains the moral remainder that some justified actions leave in their wake, such as in cases of lesser evil. Although defending oneself by damaging a neighbor's property may be justified, certain duties of compensation and reactive emotions are still appropriate in these cases. This would only be explained, then, because the behavior (albeit justified) is a moral wrong.

In this paper, I will argue that both the standard view and Gardner's view have vices and virtues. The traditional view provides a better explanation of self-defense justifications, while Gardner's view can better account for necessity justifications. However, both are susceptible to objections that they cannot fully address. This difficulty stems, in part, from an inadequate understanding of moral wrongs, which we will examine in detail.

But also, as we shall see, both conceptions face the difficulty of accounting for the identity of justifications. Self-defense and necessity justifications exhibit contrasting behavior: while the former does not imply that the defender wrongs the aggressor, the latter requires the violator to compensate their neighbor for property damage. Neither the standard view nor
Gardner's view is capable of providing a satisfactory explanation for this. However, by drawing on Nicolas Cornell's insights on the nature of moral wrongs, we can resolve this issue. Justifications challenge the moral status of an action by providing an explanation that justifies it. Only necessity justifications are proper justifications since only they can claim moral standing. Hence, we will argue that, with a proper account of moral wrongs, cases of self-defense should not be considered as justifications but rather as negative elements of the offense.

1- WHAT DO OFFENSES AND DEFENSES ENTAIL?

1.a. CLOSURE VIEW AND JUSTIFICATIONS

Whenever we try to differentiate justifications from excuses, we appeal to a deeply rooted principle in our practice: the former negates the wrongness of the action, and the latter negates the responsibility of the agent. This principle was influenced by the Closure View (CV) of wrongdoing. According to CV, speaking of a justified wrong would be an oxymoron since an action we previously considered a moral wrong is no longer such once a justification comes into play. In brief, we can summarize the CV as follows:

Closure View (CV): A's φing is wrong only if unjustified.

The CV assumes that A's φing is wrong only all things considered. That is, we can predicate that the conduct is wrong only when we consider all the relevant reasons for and against performing it. This view has concrete effects on how we understand offenses and justificatory defenses in criminal law. An offense only constitutes a prima facie wrong; but, once a justification comes into play, that conduct is no longer a moral wrong. Justifications modify the normative status of the conduct, and this is why a justified wrong is an oxymoron. Essentially, an offense that was previously considered wrong is no longer so when a justification operates.
As we said, the literature on justifications and excuses often draws the CV. J.L. Austin's distinction, famously presented in his work "A Plea for Excuses," can be seen as reflecting this vision.:

“In the one defence [justifications], briefly, we accept responsibility but deny that it was bad: in the other [excuses], we admit that it was bad but don't accept full, or even any, responsibility.”

Justifications and excuses are two distinct concepts in moral philosophy. While excuses deny responsibility for wrongdoing, justifications deny that the conduct itself is wrong. In other words, justifications dispute the moral status of the conduct, whereas excuses do not.

Gardner identifies Kant and Bentham as the main proponents of the CV and attributes two assumptions to this theory:

**Benthamite Assumption:** one has a duty to perform that action which, on the balance of reasons, one ought to perform.

**Kantian Assumption:** there can be no moral reasons in favor of doing an action if there are moral reasons against doing it.

The convergence of these two assumptions forms the theoretical basis of the CV, which holds that once wrongdoing is established, there is no further room for questioning about justifications.

While not all theories of offenses and defenses necessarily endorse the assumptions presented above, the influence of CV can still be observed in the works of some of today's prominent moral philosophers; for example, Silwa argues that justifications, unlike excuses,

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erase the normative footprint that a wrong often leaves in its wake. If we assume that only wrongs have the capacity to significantly alter the normative landscape, any other type of conduct would not have the same effect. Only a wrong would trigger obligations to compensate or make reactive emotions appropriate.

Despite its intuitive appeal, the CV has faced criticism because it fails to account for the normative consequences that result from necessity justifications. Consider the following case:

Adrenaline: Luke is suffering a severe allergic reaction and, to save his life, decides to break the door of his neighbor Paul to get the adrenaline shot that was inside.

Luke's action was clearly justified. It was necessary to save his life even though it caused damage to his neighbor's property. According to the CV, however, Luke's conduct does not amount to a wrong all things considered. If Luke's action is justified, it leaves no normative footprint in its wake: he owes no compensation or apology to the victim since his conduct is right and permissible. However, such a consequence is implausible. Although he is not liable to punishment, it is fitting for Paul, the neighbor, to expect Luke to offer an apology and to take responsibility for repairing the damages caused to his property.

The CV faces difficulty in explaining actions that have full rational approval but, at the same time, leave a blemish on one's life. According to this view, as we have seen, justified actions are permissible all things considered (they do not constitute wrongs) and, therefore, lesser evil situations should not trigger any relevant normative consequences.

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6 Although the CV assumes certain Kantian principles of morality, the fact is that Kant does not admit the necessity defense as a justification, but rather as an excuse.
In addition, the CV view may face a second critique: it assumes that the distinction between offenses and defenses is not morally significant. In a way, it conflates offense denials with justifications as both serve the same function of denying moral wrongdoing, albeit at different stages in the analysis. However, denying an element of the offense or having a justificatory defense seems to imply different consequences. The CV fails to capture the relevant difference between cases such as Adrenaline and simple cases of offense denials.

1.b. REMAINDER VIEW AND GARDNER’S ACCOUNT

There are alternative theories of offenses and defenses in criminal law that provide an adequate explanation for this phenomenon. One such proposal was put forward by Kenneth Campbell, who argued that the distinction between offenses and defenses is analogous to the distinction between reasons for and against performing a given action. An action that has no relevant reasons against it does not constitute an offense; thus, committing an offense implies non-conformity with the reasons against it. However, when a cause of justification applies, the reasons in favor prevail but the reasons against do not disappear. Campbell argues the following:

“The reasons may have been overwhelmingly in favor of performing the action, but as long as the law takes the view that some harm has nevertheless been done it recognizes the continuing existence, even in those circumstances, of a prima facie reason against”

Unlike the CV, an offense is not merely a prima facie wrong but an actual wrong that does not lose its moral status even when justified. Justification makes the performance of the conduct all things considered permissible; but the offense was still committed, and it is, qua offense,
unwelcome. The reasons against performing the conduct continue to exist, even if they were
defeated on the balance of reasons. We can summarize the position as follows:

*Remainder Thesis:* A's φing when justified leaves a rational remainder by
failing to conform to the underlying reasons against performing that action.

Campbell provides a compelling example that illustrates his point effectively: imagine
someone kills a terrorist who is about to detonate a bomb that would kill dozens of people.
According to the author, this action, while permissible and even praiseworthy, still constitutes
an offense because there are reasons against doing so, such as the protection of the terrorist's
life. Although these reasons have been overridden, they do not cease to exist.

According to this view, then, justified wrongdoing is not a contradictory notion. When
we commit a justified offense, we commit an undesirable conduct that, all things considered,
is permissible. There is a hiatus between what is a moral wrong and what is ultimately the right
thing to do. Justified conducts are still regrettable since the reasons against doing it still express
their force. Defenses, according to this view, do not cancel (do not negate) the reasons against
the action but merely *defeat* (or override) them, maintaining their countervailing force. The
*Remainder Thesis* might better explain cases like *Adrenaline*. Although Luke was justified, he
still committed a wrong by violating Paul's property. Acting against the reasons for avoiding
the conduct, even though they were defeated, allows us to account for the normative
consequences that the action leaves behind. This explanation shows why it is appropriate for

Gardner drew on Campbell's ideas to propose a more specific and detailed distinction
between offenses and defenses. Gardner contends that the *Remainder Thesis* aptly captures the
moral residue left behind by justified actions. However, with regard to offenses and defenses,

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the tension between reasons (the rational remainder) emerges in a more particular manner. Since not every failure to conform to reasons needs to amount to a moral wrong, when we commit an offense, we violate reasons of a particular type. We violate norms. According to Gardner (following Raz) norms constitute reasons of a particular type called protected reasons. A protected reason consists of a first-order reason to ϕ and an exclusionary reason not to ϕ for some other first-order reasons (e.g. the rule that forbids me to violate the property of others is a first-order reason not to violate the property of others and an exclusionary reason to refrain from committing such action for other reasons). This type of reason punches above its weight: protected reasons defeat some reasons by their weight, but defeat many others by exclusion. That is to say: often, according to the balance of first-order reasons, it may be more convenient to take a different course of action, but the exclusionary character of such norms prevents me from considering such options. We commit a wrong, then, when we fail to conform to a norm.

Justifications, according to Gardner, are not a contradiction between first-order reasons (as Campbell argues); justifications are canceling permissions that create a gap in the mandatory force of legal norms. When a justification operates, the reasons that were previously excluded can now be brought into play. We can summarize this view of offenses and defenses as follows.

**Cancelling Thesis (CT):** A's ϕing constitutes a wrong since it violates a protected reason against ϕing. Justifications are canceling permissions that remove the protection of some protected reasons. A's ϕing will be justified if, according to the balance of first-order reasons (now de-excluded by the canceling permission), A ought to ϕ.
According to this approach, a justification only allows considering (and act on the basis of) some of the previously excluded reasons. They are reasons that partially\(^9\) cancel the exclusionary force of the norm by enabling the balancing of first-order reasons that were previously forbidden. An action will be justified, if and only if, according to the balance of non-excluded reasons, the wrongdoer ought to commit the wrong. We will return to this point later, but it is important to emphasize that, for Gardner, an action will only be justified if one acted as indicated by the balance of first-order reasons (considering, of course, all the reasons that were excluded by the canceling permission). In *Adrenaline*, the lesser evil justification canceled the exclusionary force of the legal norm that forbids violating another's property. Luke was justified in violating Paul's property because it was the conduct that, all things considered, he ought to perform.

The *CT*, by elaborating on Campbell's developments, manages to account for the appropriate reactions that the *CV* could not. In *Adrenaline*, Luke committed a wrong by failing to conform to protected reasons (although all things considered he ought to violate his neighbor's property), and that would explain the duties of compensation. A justified offense, according to Gardner, is not a prima facie wrong as the *CV* might assume; a justified action is an actual wrong\(^{10}\). The reasons against performing the conduct are neither vanished nor canceled; the justifications only cancel the exclusionary force of the protected reason, but the first-order reasons are only overridden. They continue to exert their rational appeal. Therefore,

\(^9\) It is necessary to clarify an issue that is ambiguous in Gardner's own work. Justifications do not cancel the protected nature of a rule. They only enable the consideration of some of the reasons that were previously excluded, but the rule does not lose all its exclusionary force. Justifications are a norm (a particular type of reason) that reduces the scope of the excluded reasons but does not dis-exclude everything. If any legal norm (such as not to kill) were completely dis-excluded (in other words, if it did not exclude any reason for not performing such conduct) it would not be an obligation. Always, in these cases, there will be second-order reasons that justification will not affect. This explains, in part, two phenomena: a) the existence of limits such as proportionality or necessity in the response to aggression; and b) the fact that if I act for the non-excluded reason, I do not have justification enabled (e.g., I cannot be motivated by bad reasons to act in self-defense). There are certain reasons that will always remain excluded. Justification is obtained when, in the balance of reasons, the now dis-excluded reasons overcome the first-order reasons.

the Cancelling Thesis has greater explanatory power to account for the moral remainder of justified actions.

2- PROBLEMS WITH GARDNER’S ACCOUNT

2.a. SELF-DEFENSE AND MORAL REMAINDERS

While the CT has greater explanatory virtues to account for cases of lesser evil, it presents two problems: (1) it fails to explain how self-defense justifications work; (2) it fails to account for cases of suboptimal self-defense. These problems, as we shall see, reduce the explanatory power of the CT to understand defenses in criminal law.

The first problem with the CT can be summarized as follows: if a justified action remains a wrong (and generate obligations to compensate and/or express certain appropriate reactive emotions), cases of self-defense should follow the same fate. Killing the aggressor would constitute a wrong, albeit a justified one; therefore, the one who defends himself would have certain obligations towards the aggressor (compensation, apologies to the family, providing explanations, etc.). But the intuitive appeal is very poor.

The CT provides a better explanation for the phenomenon of lesser evil justifications since justified actions are moral wrongs and, thus, normative consequences are applicable. However, this theory encounters difficulties in accounting for self-defense if we presume that such actions do not wrong the aggressor. The intuition that actions in self-defense do not wrong the aggressor underlies Dahan Katz's criticism of Gardner. According to the author, the CT compromises us with implausible solutions. If justifications do not negate the wrong, then we should consider that actions in self-defense might trigger reactive emotions like resentment.
However, Dahan Katz understands that killing in self-defense does not constitute a wrong and, therefore, does not trigger any normative consequences\textsuperscript{11}.

Faced with this challenge, Gardner can offer at least two responses: 1) to argue that in cases of self-defense, the action constitutes a genuine wrong and therefore generates relevant normative consequences.; 2) to concede that cases of self-defense do not wrong the aggressor\textsuperscript{12}. Taking the first path is clearly implausible: it would be absurd for the victim to have an obligation to compensate, apologize or provide an explanation to the aggressor. Taking the second path, however, would imply conceding that actions committed in self-defense do not constitute true offenses, meaning there are no compelling reasons against taking the action. Moreover, this second path would force Gardner to recognize that self-defense, the archetype of justification in criminal law, does not constitute justification at all. In short, it would deviate from a homogeneous consensus in criminal law. Dahan Katz explains this challenge as follows:

\begin{quote}
“Self-defense is the central justificatory defense offered by criminal law.

Thus, if self-defense falls outside of the conceptual category of justified ..., this creates a problem for the explanatory force of Gardner’s theory”\textsuperscript{13}
\end{quote}

According to Gardner, what calls for justifications are wrongs; in other words, we only justify that for which we have a rational objection\textsuperscript{14}. Therefore, if actions committed in self-defense do not wrong the aggressor, then, naturally, they need not be justified. Self-defense would constitute, in short, a negative condition of the offenses. But, as we have seen, this conclusion

\textsuperscript{12} It could also be argued that remedies are not a necessary consequence of all wrongs. This last answer will not be discussed in this paper.
\textsuperscript{13} Ibid. 11.
collides with a certain theoretical consensus in criminal law, according to which there are good reasons to treat self-defense as a justification.

When faced with this hurdle, Gardner bites the bullet and argues that self-defense is not a genuine justification, despite being treated as such in criminal law textbooks. Gardner maintains that criminal law does not genuinely view self-defense as a justification:

“courts sometimes speak of self-defence as a justification but that may only go to show that lawyers sometimes apply the label ‘justification’ rather generously to cover both justification defences and those offence-denials in respect of which the defendant has an evidential burden. They do not mean a justification, exactly, but something more like ‘a defendant-instigated line of argument that is not excusatory’”\(^1\)

Gardner’s view is that necessary and proportionate acts of self-defense do not infringe upon the rights of the illegitimate aggressor, and thus do not constitute a wrong to them. Therefore, self-defense should not be considered a true case of justification, but rather a negative element of the offense. But as we saw at the beginning, the distinction between Offenses and Defenses is not morally neutral and implies very different consequences.

Let us take a step back and revisit Gardner’s argument for a moment. According to him, justified wrongs leave a normative footprint in their wake that generates duties of reparation, forgiveness, and regret, among other reactive emotions. Cases of lesser evil would be paradigmatic of the latter: in *Adrenaline*, many of these reactions are obtained, and it is appropriate to compensate the neighbor. Gardner posits that if acts committed in self-defense do not trigger such normative consequences, then they do not qualify as wrongs.

Berman has presented an intriguing objection to Gardner's argument.\textsuperscript{16} the duties deriving from justified actions (especially the duty to show regret) do not arise because the conduct is an actual wrong. They arise, in fact, because the justified action produced an unfortunate state of affairs, and it is a mark of decency and empathy to repair the damage. Gardner himself\textsuperscript{17} admits that regret, for example, can arise from actions (and mere events) that are not wrongs. Nonetheless, he posits that there is a distinctive type of reaction that arises from justified actions, namely agent-regret, that would demonstrate that justified wrongs are not an oxymoron. This reactive emotion, identified by Williams, can be defined as "something more than regret, but less than remorse"\textsuperscript{18}. It arises from those justified actions that an agent had reasons against performing. The existence of agent-regret, according to Gardner, refutes the CV, which posits that there can be no moral reasons to perform an action if there are moral reasons against it. Agent-regret would be meaningless if the CV were true. However, in many cases, this regret arises from acting justifiably yet still violating a duty. This type of attitude in ordinary moral experience demonstrates that the CV is incorrect and that people react in a distinct way to actions that are wrong but also justified.

Even so, according to Gardner, this type of reaction does not derive from actions committed in self-defense since, according to him, when we defend ourselves against aggression, we do not commit a wrong. There are, in short, no reasons against performing such action. We will return to this argument later.

\section*{2.b. Suboptimal Cases}

The second problem of the CT is that, according to Gardner, to act justifiably is to do what is *ought all things considered*. Recall that justifications are canceling permissions that only affect the exclusionary force of norms; justifications, in short, enable the balancing of first-order reasons that was once forbidden. But an action will be justified if and only if the balance of first-order reasons *favors performing the action*; that is: I act justifiably only when all things considered I do what I ought to do.

However, one can act justifiably but in a suboptimal way. Let's see:

*Suboptimal Lesser-Evil:* Andrew is being chased by an assassin and has two options at his disposal to save his life: 1) break down his neighbor's door and seek shelter inside; 2) break the 13\textsuperscript{th}-century stained-glass windows of the heritage-listed City Hall and take refuge inside.

The decision to take refuge in his neighbor's house instead of breaking the stained-glass windows of a heritage building is a less damaging option. When compared to the threat of death, however, both options still represent a significantly *lesser evil*. In truth, given the available choices, Andrew's decision was not the one he ought to have made. But, despite this, we would still say that he was justified in acting as he did.

Gardner cannot account for this situation. He stated that to act justifiably is to act as one ought all things considered. However, it is still possible to argue that the necessity justification applies to *Suboptimal Lesser-Evil*, even though Andrew ought not to have done that according to the balance of first-order reasons. Breaking 13\textsuperscript{th}-century stained glass windows is a suboptimal option compared to taking shelter in your neighbor's house. Yet it does not seem problematic to claim that Andrew's action was still justified all things considered. If this is the case, then there is a flaw in Gardner's account that needs to be addressed.
One possible response that Gardner could provide is that justifications (and oughts) are not contrastive. The *Suboptimal Lesser-Evil* example assumes that reasons are always reasons for one thing *rather than another*, that is, reasons for one thing out of a certain set of alternatives\(^{19}\). In this sense, justifications (and oughts) would be inherently contrastive. It is not simply that Andrew is justified in breaking 13th-century stained glass *simpliciter*. Rather, Andrew is justified in breaking the stained glass rather than letting himself die. Thus, both breaking his neighbor's door and breaking the stained glass windows in the city hall would be justified vis a vis allowing himself to be killed by the murderer. Both actions are permissible, despite the fact that some, such as breaking the windows, are suboptimal when compared to other potential courses of action. But, as we said, Gardner would argue that to be justified in acting one must do that which, all things considered, is optimal simpliciter and *without regard to contrastive reasons*\(^{20}\). As a result, in the *Suboptimal Lesser-Evil* scenario, Andrew would not be covered by the justification of necessity\(^{21}\).

Assuming Gardner's argument that justifications are not contrastive in nature\(^{22}\), let us now consider the following example:

*Suboptimal Self-Defense*: John threatens Matthew: "give me your watch, or I'll kill you." Matthew is not at all interested in the watch (in fact, he was willing to give it away). If Matthew hands over the watch, John will leave peacefully, and no one will get hurt. All things considered, Matthew ought

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20 Gardner's objection assumes, then, that not all reasons are contrastive in nature. And that only non-contrastive reasons are those that count in favor of performing a justified action. Naturally, this has many edges beyond the scope of the present paper, but we will assume it in favor of presenting the objections in their best light.

21 Apart from the fact that, for other considerations, it may be considered excused and not blameworthy.

22 The argument that follows, as we shall see, assumes that there are instances where justifications are not contrastive. But I sense that this is mistaken. Even though, as we shall see below, the view of justifications that I propose need not be committed to a particular metaphysics of reasons.
to give John his watch. However, Matthew punches John in the face and runs away.

I believe that Matthew should have given away his watch. Unlike *Suboptimal Lesser-Evil*, there are no compelling reasons for Matthew to defend himself, regardless of whether considers contrastive or non-contrastive reasons. The defensive action of punching John and running away is worse than the scenario where Matthew hands over the wallet. From a contrastive standpoint, the option of punching John has less rational support than Matthew letting the wallet be stolen. Furthermore, Matthew does not do what ought all things considered. Still, it is plausible to think that the law does (or should) provide him with recourse to the self-defense justification in cases like this. However, the *CT* fails to account for such scenarios.

As we have seen, in order to maintain the coherence of his theory of justifications, Gardner rejected the idea that self-defense justifications are justifications at all. However, if we accept this account, we would also have to assume that cases of necessity justification, such as *Suboptimal Lesser-Evil*, would not be justified, since contrastive reasons do not carry weight in the balance of reasons when determining what one ought to do all things considered. While it is not within the scope of this paper to explore this issue in detail, such a conclusion seems highly implausible and comes with a significant explanatory cost. Holding that one is justified only if one does what is optimal all things considered would exclude many cases that we typically consider justified.

In sum, Gardner's theory falls short in accounting for the four possible relationships between what ought to be done and what is justified. An action can be:

<table>
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<th></th>
<th>a) ought and justified</th>
<th>c) not ought and not justified</th>
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<tr>
<td></td>
<td>b) ought and not justified</td>
<td>d) not ought and justified</td>
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According to Gardner's theory, cases of type "a" are the archetypal cases of defenses (i.e., a state of necessity like Adrenaline where I do what the balance of reasons requires me to do and, at the same time, my behavior is justified). Type "b" cases are actions that, although I did what I should have done according to the guiding reasons for action, I was not motivated by those reasons and, therefore, cannot benefit from a justification (in Gardner's terms, my explanatory reasons for action were not appropriate²³). Type "c" cases are quite simply offenses for which there is no appropriate justification at all; and, finally, the cases of type "d" are those of suboptimal justifications that we saw above. Based on this taxonomy, Gardner's theory cannot account for type "d" cases and, in that sense, loses explanatory power.

We will see later how this taxonomy can be better explained with a different account of justifications. But what these cases show us is that, while most of the time what is justified and what is ought tend to concur, that overlap (or identification) is not necessary. There are cases where, even when you do what is ought (i.e., what the balance of first-order reasons for acting indicates²⁴), that behavior is not morally justified.

3- A SHORT BLANKET DILEMMA

So far, we have presented two theses concerning offenses and defenses that entail very different consequences. The CV holds that once wrongdoing is established there can be no further question of justification²⁵. Meanwhile, the CT holds that offenses are actual wrongs to which further justification can be applied. Both views have their weaknesses: the former, according

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²³ Cases in which, for example, one defends oneself legitimately (fact-relative) but, even so, the intention was to kill the aggressor (belief-relative).
²⁴ Recall that in these cases the exclusionary force of the rules is canceled. Naturally, in many cases what one ought to do is not what the balance of first-order reasons determines. In type "b" cases, a justification does not operate (i.e., the second-order reason is not canceled). However, even when I did what I ought to do according to the norms, the explanatory reasons were not the appropriate ones.
to Gardner, cannot explain the duties of compensation that follow from justified actions; the latter cannot explain why self-defense might be a justification, and neither can it account for cases of suboptimal self-defense.

What is interesting is that both theses can explain what their opposite thesis cannot: first, the CV does not have to commit to the controversial thesis that self-defense is not justification. Since justifications do not leave a normative footprint in their wake, defending myself against an aggressor does not constitute a wrong \(^{26}\). Second, the CT can account for the obligations of compensation and agent-regret type emotions that follow from justified actions. We face, then, a sort of short blanket dilemma: adopting either of the two positions gaining greater explanatory potential concerning certain phenomena but losing it for others. Neither thesis can plausibly cover the entire normative landscape.

What, then, is the desiderata of a good theory of defenses? What phenomenon needs to be explained?

Firstly, it is important to explain why necessity justifications produce a moral remainder. This is not only intuitively plausible, but our legal practice gives us reasons to believe that this is the case. Many civil and common law legal systems maintain that actions committed out of necessity create duties of compensation for the victim, and this seems to track the practices of ordinary morality. However, in cases of self-defense those duties do not obtain. In sum, only the one who defends himself out of necessity is accountable to the person who suffered the harm necessary to save his life. This, then, is one of the facts that a good theory of justifications must account for. As we have seen, the CV is unable to explain this.

\(^{26}\) It is not clear how the Closure View could respond to cases of suboptimal justifications but, if we consider its underlying assumptions, they would seem to have the same problem as Gardner’s thesis.
On the other hand, it is also necessary to explain the relationship between what I ought to do and what I am justified in doing. It may happen, as we have seen, that the balance of reasons that determine what I ought to do and the justification for my behavior do not overlap (if we consider contrastive reasons for action). It is important, then, that a theory of justificatory defenses in criminal law can account for this relationship. The fact that ought and justifications sometimes differ, as in *Suboptimal Lesser Evil*, should be explained by a good theory of justifications. As we have seen, the CT is unable to account for this.

Finally, a sound theory of justifications must explain the differences and similarities between the negative elements of an offense and justificatory defenses. Firstly, it should clarify why necessity justifications and self-defense justifications behave so differently despite both being classified as justificatory defenses. It should also be able to explain what is about justifications that make them justifications (and not, for example, an offense denial or an excuse). We require an account of justifications that avoids conflating these defenses with a mere offense denial, as occurred in the CV.

Then, the desiderata of a theory of justifications are, at least, the following:

a) The moral remainder of justified actions

b) The relation between what is ought and what is justified all things considered

c) The identity of justifications and the differences between self-defense and necessity justifications

In the following section, I will present an account that has stronger inductive support and can successfully meet these desiderata compared to the CV or the CT. The explanatory power of such an account will provide us with a reason to believe in it since it will make more intelligible the facts that the previous thesis could only partially explain.
4- A WAY OUT

This part will be structured as follows: first, I will present a possible way out of the problem based on a critique of Gardner's account of obligations. Second, I will highlight the weaknesses of this solution by pointing out its explanatory shortcomings. I will then try to illustrate how a proper understanding of the nature of wrongs can help us illuminate the normative landscape of both offense denials and justifications.

4.a. A PLAUSIBLE ACCOUNT: ON OBLIGATIONS AND ACCOUNTABILITY

Gardner's account of justifications is deeply rooted in a Razian account of obligations. As we have seen, according to Gardner, one does the wrong thing in the mandatory sense if one fails to do what one has a protected reason to do. That is, a first-order reason for an action combined with a second-order reason not to act for the reasons against that action. Committing a criminal offense amounts to committing a wrong - that is, a failure to conform to our obligations by violating a norm that is absolutely protected. However, justifications provide us with a canceling permission that cancels the exclusion of certain reasons not to perform the criminalized action. This permission enables us to act in accordance with the balance of the certain first-order reasons for action that were previously excluded.

However, it is a distinctive feature of obligations that they can ground accountability, and the Razian account is unable to explain this feature. Exclusionary reasons seem to add nothing to accountability. It is difficult to consider the idea of a wrong without thinking about the moral standing of another person (or group) for whom we are accountable. But Raz's conception of protected reasons does not provide the basis for grounding accountability. As we

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will see, committing a wrong entails accepting that someone can hold you accountable for it. Standing to complain is a necessary condition for the existence of a wrong, and being wronged implies being in a position to complain\textsuperscript{29}.

When I have an obligation, I have a particular kind of reason (a \textit{second-personal} one) that plays a fundamental role in my deliberation about what I should do. I have a second-personal reason to \( \varphi \), then, when someone else (with practical authority) has a valid demand to me, and I am accountable for complying\textsuperscript{30}. In short, we can summarize the vision as follows:

\textit{Obligation}: An Agent X has an obligation to \( \varphi \) iff it’s appropriate for A to demand that X \( \varphi \) (that is, if X has a second-personal reason to \( \varphi \)).

In contrast to the Razian view of obligations that underlie Gardner's approach, a view of obligations as second-personal reasons can explain two central features of duties\textsuperscript{31}. First, as Monti puts it, it can explain how obligations restrict our \textit{freedom}: there are reasons for someone else to decide for us that we conform to our obligations. Secondly, they can explain how obligations \textit{matter to what we ought to do}: the fact that it is appropriate for A to demand that B \( \varphi \) is a reason for B to \( \varphi \)\textsuperscript{32}. These features cannot be addressed by the Razian account of duties as protected reasons.

So, how exactly do self-defense and necessity justifications operate within this new framework of obligations? In cases of lesser evil, like \textit{Adrenaline}, the justifications operate by \textit{overriding} my second-personal reasons - the reasons that make the complaint appropriate. However, these second-personal reasons that ground my neighbor's claim do not disappear.

from the normative landscape\textsuperscript{33}. The fact that my life is in danger is a weightier reason than the reason I have to avoid violating my neighbor's property. In short, these cases are based on a balance of second-personal reasons where the overridden reason still has some pull and grounds for further claims. It is appropriate for my neighbor to request compensation even though their reason has been overridden by a second-personal reason of greater weight. Conversely, in self-defense cases, the justifications work by canceling the second-personal force of the reasons. The aggressor in \textit{Suboptimal Self-Defence} has endangered Matthew’s life, and therefore he cannot demand that Matthew does not punch him. The absence of accountability indicates that Matthew owes nothing to his illegitimate aggressor. His act of putting Matthew's life at risk canceled out the second-personal reasons.

In cases like \textit{Adrenaline}, the party that is harmed still retains their right not to be harmed, even though it may be permissible to infringe upon that right to achieve a sufficiently important end. However, the fact that the party retains their right not to be harmed explains why victims are entitled to compensation. In self-defense justifications, the permission to defend oneself against the aggressor is not explained by the overriding of rights but by the cancellation of rights, which results in a lack of moral standing to demand different treatment or compensation. In these cases, the aggressor does not retain their right not to be harmed.

Neither the \textit{CV} nor the \textit{CT} can reach the conclusion just stated. The former is forced to conclude that there can be no reasons against doing what is due and, therefore, cannot frame justifications as cases of overriding or canceling reasons. Simply put, when I have a justification according to \textit{CV}, I do what I ought to do all things considered, and my conduct does not constitute a wrong. As we saw earlier, this theory collapses offense denials with

\textsuperscript{33} The reason not to violate my neighbor's property is a pro tanto moral obligation. But, all things considered, I have greater moral reasons to violate your property and, thereby, I have reasons to violate my pro tanto moral obligation.
justifications. All conduct for which I have a justification ex-post is conduct for which I had no reason against doing it. However, this theory cannot explain why we have duties of compensation for lesser evil cases, and it fails to distinguish these cases from mere offense denials. Conversely, the CT cannot arrive at a solution like the one posited above since justifications only operate as a balance of reasons. The canceling permission forces us to weigh first-order reasons, and thus all justified actions would function by overriding. For this very reason, Gardner was forced to argue that self-defense was not a justification, although he still faces the problem of not being able to explain cases of suboptimal justification.

Up to this point, this novel approach appears to offer a convincing explanation: in self-defense cases, I do not infringe upon the aggressor's rights because they have fortified them (this justification cancels out second-personal reasons); in cases such as Adrenaline, on the other hand, I violate my neighbor's rights even though they have been overridden by more significant reasons (this justification overrides the second-personal reasons that do not disappear from the normative landscape).

According to this view, what explains the fact that we treat self-defense and lesser evil cases as justifications is that, in both cases, the wrong-making features of the action remain, although in one case the standing to make a complaint was canceled (while in the other, it was merely overridden by weightier considerations). However, there is still a type of value that is relevant in both cases, which is why we must justify our conduct. The value of the aggressor's life is still important, regardless of whether they have waived their rights to issue a complaint. The limitations of proportionality and necessity required by self-defense are explained by this. Our moral standing is highly sensitive to our intentions or social conventions, whereas such values are not sensitive to our intentions in the same manner.
4.b. A WAY OUT: ON WrONGS AND RIGHTS

So far, we have been able to provide a plausible explanation based on rights that accounts for the differences between self-defense and necessity justifications. However, this account encounters two problems: first, it fails to provide a satisfactory explanation of the identity of justifications and thus cannot differentiate between offense denials and self-defense cases; second, the relationship it posits between rights and wrongs is not entirely appropriate.

As previously mentioned, an essential aspect of a sound theory of defenses is to elucidate what it is that makes us treat justifications as such and not as something else. According to the CV, justifications deny that our actions are wrong. According to the CT, justified actions do not lose their status of a moral wrong even though are permissible all things considered (that is, if those actions are supported by the balance of first-order reasons). However, as we have noted, both views have their shortcomings, leading to implausible results.

The theory presented in the previous subsection plausibly explains the differences between the two paradigmatic types of justificatory defenses. However, it fails to take a clear position on the identity of the justifications. Some offense denial cases (especially those cases of denial of the mens rea) seem to generate the same consequences as self-defense justifications: imagine a case of infancy as an exception to criminal liability where a child damages his neighbor's property. In such cases, children under a certain age are not liable under criminal law even when they committed an act for which there were grounding reasons that made the act impermissible. The fact is that, for reasons that will not be discussed here, some cancellations of the second-personal reasons occur such that young children are not accountable. It appears, therefore, that the same canceling dynamics that operate in self-defense also apply in other offense denial cases. Moreover, in such cases, the act's wrong-

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34 We can also think about cases of consent that constitute authentic denials of the mens rea and works in a similar way.
making features remain (as with the example of infancy mentioned earlier, the property still holds value) even if they are denials of offense and not justifications.

I believe that these explanatory hurdles arise from the fact that all the theories we analyzed are based on a conception of wrongs (and their relationship with rights) that is not entirely adequate. The basic assumption of all the above theories is that wrongs are inextricably related to rights.

Wrong (Standard Account): X wrongs Y iff Y has a right that X violates

Wrong and rights, then, are two phenomena that cannot occur independently: they are two sides of the same coin and serve the same moral function. In self-defense cases the victim does not violate the rights of the illegitimate aggressor and, therefore, does not wrong him. But, in cases of lesser evil such as Adrenaline, the neighbor is wronged by the one who damages his property since, as we saw, his right is maintained even if it has been overridden for second-personal reasons of greater weight.

The previous account of defenses does not satisfactorily explain what it is that makes justifications what they are and not something else. It does not allow us to assess what their identity is. If self-defense justifications deny the status of moral wrong and necessity justifications grant it, what do both defenses share? That they exclude blame is not an appropriate answer since excuses (and even offense denials) also produce the same output. What, then, is the distinctive property of justifications?

I believe that an incorrect account of the relationship between wrongs and rights is part of the problem in accounting for the identity of justifications. Hereafter, briefly, I will try to show how a different conception can help us understand the difference between offense denials and justificatory defenses.
Part of the error, I believe, comes from binding in constant conjunction two metaphysically independent phenomena. Wrongs and rights represent moral relations between persons, but the mistake is to think that both are part of the same one; they are not, in fact, coextensive. Rights and wrongs can come apart since they entail different things that, too, come apart. In sum, they fulfill different functions and have different characteristics.

Thus, we can argue that there are two distinctive types of second personal relations between moral agents: *ex ante*, a relation of demanding one another's *respect* between X and A, where X has an obligation if A has authority over X through the activity of shaping its deliberations; *ex post*, an *accountability* relation between X and A, where X wrongs A if X is answerable to A and cannot provide a justification. In short, we can summarize the approach as follows: an Agent X has an obligation to φ iff it’s appropriate for A to demand ex ante that X φ; and an Agent X commits a wrong iff it’s appropriate for A to complain that X ¬φ and X cannot provide a justification. Briefly, let's see how these relations work.

Rights imply being owed a directed duty by another and are action-guiding (i.e., exerting a special force over the person deciding what to do). As we said, rights fulfill an ex ante function since they play an important role before the action is performed (the presence of a right shapes the deliberative process of an agent who is going to act by giving authority to the rightholder over the contemplated action). Rights, likewise, are related to respect since having a right implies being the bearer of importance in others’ deliberations (i.e., recognizing the special normative importance of others). But, the distinctive aspect of rights is that they involve one party making a claim on the other party35. Then:

*Right:* X has a right that Y do φ iff Y has a duty to φ and X can claim that Y performs that duty.

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On the other hand, wrongs arise ex post when actions involve a third party against whom the action cannot be justified. We wrong another when we commit an action that ends up negatively affecting a third party, and, at the same time, we cannot justify our action to them. Wrongs, unlike rights, involve a type of ex post relationship that is not directly action-guiding, nor does it depend on certain ex ante entitlements but rather on the consequences of the action and on the person affected. Wronging, in short, depends on two separate elements: moral standing to complain and absence of justification. When these two situations obtain, we can say that a person has been wronged. We can define it as follows:

\[
\text{Wrong: } X \text{ wrongs } Y \text{ in doing } \phi \iff Y \text{ can demand justification for } X\text{'s doing } \\
\phi \text{ and } X \text{ cannot justify doing } \phi \text{ to } Y.
\]

The first requirement, then, is related to the moral standing of a person to demand justification. A third party negatively affected by an action can hold us accountable and demand the reasons that would justify it. In a sense, as Cornell says, having moral standing to demand justification implies being able to answer the question "What's it to you?"\textsuperscript{36} So, unlike rights which are intimately related to the act of claiming ex ante, wrongs are distinctively related to making ex post complaints. Being able to demand justification, then, can be viewed as lodging a provisional complaint.

Two issues deserve to be clarified in this regard: first, having a complaint does not necessarily depend on actually being able to complain. That is, the victim of a homicide is wronged even if, naturally, he or she does not have the ability to demand justification. What is important is that the person could complain in normal conditions and that we could accept that complaint. Secondly, it is important to clarify that the threshold of moral standing can be satisfied in different ways. That something "matters to you" or that you have a "stake in the

\textsuperscript{36} This threshold has many flaws and that is why the requirement should be detailed more precisely. This is part of the horizon of my dissertation, but who knows if I have something interesting to say.
matter” is usually related to having been harmed in some relevant way. But harm is not the only way in which this condition can obtain: there is also standing even in cases when a right has not been violated or when one harmlessly trespasses on another's rights. I will not delve deeper into all possible scenarios; it is only important to clarify that the threshold of moral standing is not necessarily limited by the presence of a harm or a violated right. In Cornell’s words:

“someone is in a position to demand justification only if the action concerns or matters to her in some identifiable way, but this standing requirement is broad... All that there must be is some way that the action bears on her adversely. There must be something that the person could complain of.”

Once the provisional complaint is issued by an agent with sufficient moral standing, the other moral agent must provide an appropriate justification to prevent the wrong from arising. If that person cannot justify himself to the one who demands it, then we say that that person has committed a wrong. The provisional complaint becomes an actual complaint. As we mentioned earlier, an individual is wronged only when their actions cannot be justified before someone with standing to complain. However, it's important to clarify that it's the mere possibility of justifying the action that matters, and not necessarily the fact that it has been actually demanded or given to a third party. It is the lack of justification that transforms the action into a moral wrong, where no valid reasons can be provided in favor of committing such acts.

Justifications, then, seem in fact to bear on the moral status of our actions: having a justification implies denying that our actions constitute a moral wrong. The necessary consequence that follows from having a justification is similar to the CV: a justified wrong is, in fact, an oxymoron. However, the reasons for this conclusion differ from those of the CV. Recall that this theory states: 1) we have a duty to perform actions that, on the balance of
reasons, we ought to perform; 2) there can be no moral reasons in favor of doing an action if there are moral reasons against doing it; and 3) there is no relevant distinction between offense denials and justifications. But according to this new account, unlike the CV, justifications work by *overriding* the reasons we had for not violating my neighbor's property. That is, they are not erased from the normative landscape. In cases like *Adrenaline*, moral standing is based on the fact that such an action negatively *affected* the neighbor by violating their property rights. His is the basis for the provisional complaint, even if one can subsequently provide a justification based on the existence of more compelling reasons that have overridden the victim's rights.

But then, what is the relevant difference between offense denial and justifications? How do we avoid collapsing these two phenomena? The relevant difference, as it would be easy to guess by now, it’s moral standing itself. Offense denials and justifications differ in the *distinctive way* they deny moral wrongdoing. In the former, a wrong has not occurred simply because there is no one who can demand a justification. This may be due to past actions that have deprived someone of the ability to make a provisional complaint, or because requesting a justification would be inappropriate. In contrast, justification defenses negate the wrong by providing adequate reasons. In these cases, then, there are grounds for a provisional complaint (there is an action that has negatively affected a person and that, therefore, has the standing to complain) but there are reasons to support the performance of the action.

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37 This is an instance where wrongs and rights overlap. But, as we said, both phenomena can come apart and are metaphysically distinct. Consider the case of a child who takes their own life, causing emotional harm to their parents. It is reasonable to think that the parents have suffered a *wrong*, even though there is no clear violation of rights or obligations. Now, imagine a scenario where the parents are reunited with their deceased child in a hypothetical spiritual afterlife. Would it be inappropriate for the parents to ask their child for an explanation? Can the child deny the moral standing of their parents by simply saying "It’s none of your business"? If we have even a slight intuition that the parents have a legitimate complaint, then the standard understanding of wrongs and rights fails to fully capture a certain aspect of ordinary morality. A similar case can be seen in the example of wasted talent. Imagine a family living in extreme poverty who discovers that their son possesses an innate talent for fútbol. The son, who could have been the next Messi and brought financial stability to his family, chooses to waste his talent and pursue something else. While it is clear that the parents do not have a right to demand their son to better himself and not waste his talents (nor does the son have an obligation to devote himself to soccer), it is not implausible to think that his behavior has wronged his parents. It would be odd to claim that they have no reason to complain or that the son does not owe them a substantive explanation at the very least.
But if only actions that produce a *provisional complaint* are those that require justification, what about cases of self-defense? These cases appear to be the archetype of a lack of moral standing, as the illegitimate aggressor cannot hold the victim accountable. It would be implausible to suggest that the individual who attempted to assault me could legitimately complain that my defensive behavior wronged him. In ordinary self-defense cases, the reasons for an offense are canceled, rather than overridden, and thus, the illegitimate aggressor is unable to hold the defender accountable. Therefore, unlike lesser evil cases, self-defense negates moral wrongdoing because of the absence of standing to complain, which as we have seen, is categorized as an offense denial. In sum, Gardner's intuition (although based on erroneous considerations regarding wrongs and rights) was correct. Although we typically view self-defense as instances of justification, the reality is that their unique way of denying a moral wrong assimilates them with offense denials. Even risking to part ways with the settled doctrine in the philosophy and dogmatics of criminal law, I understand that self-defense justifications are cases of denial of the offense (denials of the *actus reus*) since they do not give rise to a provisional complaint.\(^{38}\)

Some readings of justifications, as we have seen, frame everything from a rights perspective: in self-defense justifications, the rights of the illegitimate aggressor are not violated since the latter has forfeited them; in necessity justifications, the rights of the aggressor are violated even though all things considered the action is justified. But, if we assume their reading, not all cases of justifications can be explained from a rights perspective. Consider

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\(^{38}\) One could reach the same conclusion without having to adopt such metaphysics regarding the nature of wrongs and rights. But, I would argue, this view has greater explanatory power to account for cases where there is not necessarily a violation of a right but, nevertheless, a wrong occurred.

\(^{39}\) An interesting objection would be that law, unlike ordinary morality, focuses only on those actions in which a right has been violated (even assuming that wrongs and rights can come apart). We are interested in calling to answer (i.e., to present justifications) only in those cases where wrongs and rights overlap. But, even so, I believe that such a reading is incorrect. Cases like Palsgraf seem to show the opposite.
cases like *Suboptimal Self-Defense*, where what I ought to do and what justifications permit do not align: by defending myself against conduct that posed no real threat to me, I have likely violated the aggressor's rights (i.e., I ought not to treat him that way). But, even so, I have not wronged him because he lacks the moral standing to complain. Let's look at a similar example provided by Cornell:

*Bar Fight*: In the middle of a sports discussion in a bar, Simon says that the Arsenal players are a bunch of whiners and cheats. The hothead at the stool next to him immediately lands a right hook to his chin. Suppose that the right thing to do is to turn the other cheek. But Simon gives in to his temptation and retaliates with a swing of his own.

In this case, even if the retaliatory conduct was not appropriate, it would be implausible to consider that the aggressor has the standing to complain that he has been assaulted and thus wronged. It would be absurd, likewise, for the aggressor to pretend to hold Simon accountable by demanding an apology or compensation. But, as in *Suboptimal Self-Defense*, Simon’s conduct is likely to be inappropriate. In this regard, Cornell argues as follows:

“The fact that the other party could not complain still leaves open a question of whether one ought to treat them that way. Insofar as this is correct, it suggests an important divide between our action-guiding moral norms and our ex post moral relationships”

But then, according to the new account of defenses, *Bar Fight* and *Suboptimal Self-Defense* are not examples of a relationship between ought and justifications but between ought and offense denials. They are cases where a wrong is not committed because of the *absence of moral standing* to demand a provisional complaint. Now, this does not mean that the relationship between ought and justifications is as Gardner intended it to be (recall that for the British
philosopher, one is justified if and only if one acts according to the balance of first-order reasons). Still, examples like Suboptimal Lesser Evil show us that, sometimes, you do something that you could justify to someone else, but, at the same time, you did not do what you ought to do all things considered. This new approach does not need to argue that the balance of first-order reasons must be optimal for conduct to be considered justified. It is enough for the justification to provide reasons that the person with the moral standing to complain must accept

So far, we have shown how self-defense and lesser evil cases differ in relevant ways, and we have also shown what their similarities are. Both deny moral wrongdoing but do so in distinctively different ways: the former denies the moral standing to complain, and the latter offers an appropriate justification for the wrong committed. Now, there is a further challenge for this account in order to meet the desiderata for a good theory of defenses expressed above: if justifications deny that an action constitutes a wrong, how can we account for the moral remainder that lesser evil cases leave in their wake? If we agree that actions justified by necessity produce compensatory duties and make appropriate certain reactive emotions, how can we account for that if the action is not a moral wrong? Recall Gardner's argument: that which calls to be justified is an actual wrong, and this is demonstrated by the fact that justified behaviors produce a type of reactive emotion called agent-regret. A type of emotion that does not vanish by the recognition that one's nonperformance was not one's fault; a type of regret regarding an action that one had reason not to perform. The fact is that Gardner is wrong in thinking that agent-regret is an emotion that derives only from justified actions, given that Williams himself argues the following:

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40 This makes justifications much more dependent on the particular relationship between subjects than we think. See CONNELL, N. (2014): Wrongs without Rights. Doctoral dissertation, Harvard University, p. 337 (the Bonnie and Clyde example).
"The sentiment of agent-regret is by no means restricted to voluntary agency. It can extend far beyond what one intentionally did to almost anything for which one was causally responsible in virtue of something one intentionally did."

It seems clear that agent-regret is not an emotion that derives only from justified actions: involuntary actions that, for example, harm a third party can also produce such a feeling even though they do not constitute offences at all.

Berman's objection now holds more weight: duties of reparation or duties to have certain reactive emotions do not necessarily derive from wrongs; sometimes it is a mark of decency to attend to such duties even when no wrong has been committed. Cornell, in the same vein, argues that:

"apologies can serve a variety of purposes, not all of which are responses to actual wrongs. In particular, they can be used as a symbolic way of repairing moral relationships by acknowledging wrongdoing. To say that by apologizing one would be acknowledging wrongdoing is not to say that by apologizing one would be acknowledging that one had wronged the other party."

Acknowledging wrongdoing does not necessarily imply acknowledging that one has wronged X, it only implies acknowledging that I acted wrongly toward X (i.e., I did not do what I owed to X). Cases like Adrenaline are an example of this: it is plausible to think that, even if I have not wronged my neighbor, it is true that I breached my obligation not to violate his property, and the duties of compensation or apology are a symbolic way of repairing that relationship.

What has been said so far may have some practical relevance to how we understand the criminal process: if offence denials are cases where there is no moral standing to make a
complaint, then naturally, those who committed such acts should not be called to answer. As Duarte D'Almeida argues⁴¹, our criminal system ought not to call such agents to answer for their conduct if and when we already know (or justifiably believe or have sufficient evidence) that defeating circumstances have occurred. And, then, self-defense cases would follow the same fate: if no doubt existed, we have no reason (better yet, we have no moral standing) to call to answer those who defended themselves from illegitimate aggression. But, in cases of necessity justifications, there is a provisional complaint for a defendant to be called to answer and face a trial where he can provide justifications for his conduct.

**CONCLUSION**

In this paper, I have attempted to propose an alternative view that can account for the identity and implications of justifications in criminal law. Justifications assume the existence of a provisional complaint while denying wrongdoing by providing an explanation that must be accepted. Lesser evil cases are paradigmatic examples of this. However, self-defense cases would not represent true instances of justification. Although they deny moral wrongdoing, they do so by denying moral standing to complain. This view has practical implications for the design of our criminal trials. In uncontested cases, those who committed an act in self-defense should not be called upon to answer.

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