This piece defends the view that if defenders’ beliefs are relevant to determining whether aggressors are liable to self-defensive force by means of rights forfeiture, only reasonable beliefs are relevant. On the proposed view, the conditions for aggressors’ forfeiture of rights against self-defensive force are as follows:

If
   (1a) The aggressor forms an intention to purposefully, knowingly, or recklessly kill the defender and the defender must kill the aggressor to prevent being killed him/herself OR
(1b) The aggressor is aware that a given piece of conduct that may purposefully, knowingly, or recklessly cause a defender to have the reasonable belief that the defender must kill the aggressor to prevent being killed him/herself and nonetheless engages in that conduct, thereby causing a defender to believe s/he must kill the aggressor to prevent being killed him/herself AND
(2) The aggressor lacks a justification or excuse for doing whichever of (1a) or (1b) that the aggressor performs AND
(3) The defender intends to repel the attack s/he perceives by virtue of either (1a) and (2) or (1b) and (2),

Then:
   (4) The aggressor is not wronged by force employed by the defender.1

This piece primarily defends the reasonableness requirement in (1b). After preliminary comments about the scope of the project and its place in the self-defense and liability literature, the first substantive part explains why one would think defenders’ beliefs are relevant to determining whether aggressors are liable to self-defensive force by means of rights forfeiture.

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1 This account is inspired and partially constituted by a rational reconstruction of the conditions for liability in (Ferzan, 2012). The most radical departure is the addition of a reasonableness requirement in (1b). My primary aim here is to defend this amendment, which is friendly to Ferzan’s general project but opposes her distaste for reasonableness requirements in general and negligence standards in particular.
Two sections then explain how a principle of epistemic responsibility necessitates a reasonableness requirement and present cases that suggest it is necessary. The final two substantive sections defend against some possible criticisms.

**Preliminaries**

An adequate theory of self-defense will not only explain when an individual aggressor can be subject to self-defensive force without wronging him/her but also explain when it is permissible for a defender to subject the aggressor to such force. These elements of self-defense can come apart.\(^2\) This piece does not explain when and how both conditions can be met. It instead focuses on how aggressors can be subject to self-defensive force without wronging them, leaving aside other questions about the nature of self-defense. While an all-things-considered morally acceptable use of self-defensive force likely features permissible use of force by a defender on an individual who would not be wronged by it, one can separately study i) when an individual can permissibly subject someone to self-defensive force and ii) when someone can be subject to that force without being wronged (Ferzan 2012, 671).\(^3\)

This piece focuses on ii). It is concerned with when an individual aggressor can be subject to self-defensive force without wronging him/her. To maintain broad consistency with the self-defense literature, the property an individual holds such that s/he is not wronged by the use of self-defensive force inflicted upon him/her is referred to as *liability*. This term comes with

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\(^2\) E.g., an individual may act in a manner that would result in him/her forfeiting his/her right not to be subject to force without the act making subjecting him/her to such force permissible (McMahan 2005, 386).

\(^3\) I suspect that if our account of when an individual aggressor can be subject to self-defensive force without wronging him/her has no implications for when an individual can permissibly subject him/her to force, this is a sign of inadequacy for the account’s role in a broader account of self-defence. We want to know when individuals can act in self-defence and the fact that the subject of that self-defensive force should tell us something about whether that act is all-things-considered justified. If the fact that the aggressor would not be wronged gives one reason to subject him/her to this force, the relationship is clear. Liability, as defined at 2-3, is a defeasible reason to perform a permissible action and may help constitute it. Yet this piece makes no claims about the nature of this relationship. It merely seeks to explain the conditions for liability.
philosophical baggage. For instance, Kimberly Kessler Ferzan notes that many theorists believe “that it follows from liability that (1) the attacker cannot fight back and (2) third parties cannot aid the attacker (assuming the defender is not… liable)” (673). I do not mean to take on all the baggage affiliated with the term ‘liability’ in the work of Jeff McMahan, Victor Tadros and others (McMahan 2009, Tadros 2011, Tadros 2012). The following is not concerned with how third parties should react to conflicts between aggressors and defenders. I merely use ‘liability’ as a descriptor of the property that makes an aggressor the proper subject of self-defensive force from the defender such that the aggressor is not wronged by the force.

Even when the liability relationship is analyzed as adhering between an aggressor and a defender only, there are many ways of modeling the relationship. McMahan identifies three: the rights-based approach, the culpability approach and his own responsibility approach (McMahan 2005). These positions are not wholly consistent. For instance, Ferzan’s culpability approach suggests culpability is a necessary condition for liability while McMahan’s responsibility and Judith Jarvis Thomson’s rights-based approaches do not (Ferzan 2012). There is nonetheless space for one to be a pluralist about forms and/or causes of liability to the extent that they do not conflict. There could be many ways an individual could be subject to self-defensive force without being wronged. One may be liable to self-defensive harm both when one forfeits one’s rights and when s/he has a positive duty to sacrifice him/herself. If so, one needs an account of how both types of liability work (and preferably how they are related).

The following only seeks to identify how one can be liable by means of rights forfeiture. It does not thereby suggest that only individuals who forfeit their rights are not wronged when subjected to self-defensive force or that rights forfeiture is the only form of liability. It is committed to the claim that rights forfeiture is a means by which one can become liable but
makes no claims about the reality of other forms of liability that can coexist with forfeiture. Ultimately, it provides a partial defense of the view that an account of when an individual can be subject to self-defensive force without wronging him/her based on forfeiture cannot focus on the acts and related mental states of aggressors alone. It goes on to argue that if any of the beliefs of defenders are relevant, only their reasonable beliefs are and ought to be relevant.

**Why Defenders’ Beliefs May Be Relevant to Determining Aggressors’ Liability**

Many individuals believe that whether an individual is liable should be assessed on the basis of facts about the aggressor alone. Before one can assess the necessity of the reasonableness requirement in (1b), then, one must first motivate the idea that condition (1b)’s general attentiveness to defenders’ beliefs is necessary. While the argument for a reasonableness requirement here is a conditional argument examining the implications of such attentiveness, I have some sympathy for the defender-attentive view and will accordingly provide some motivation for it before arguing that it necessitates a reasonableness requirement.

Ferzan’s excellent “Culpable Aggression: The Basis for Moral Liability to Defensive Killing” (Ferzan 2012) is perhaps the best account of why defenders’ beliefs may be relevant in determining whether aggressors are liable to self-defensive force by means of rights forfeiture. While Ferzan suggests her view may have implications for third parties, I focus on the implications of her view for aggressor-defender interactions (Ferzan 2012, 673). While Ferzan is talking about lethal force, I suspect her view can be extended to any proportionate use of self-defensive force. I will thus talk only of self-defensive force and not of lethal self-defensive force here, but I am open to suggestions that other proportionate uses of force are not similarly structured.

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4 Technically, it is a culpability approach to liability insofar as an aggressor’s culpability is necessary for self-defensive force used against him/her not to wrong him/her. Yet the way the culpability operates to negate the wrongfulness of that self-defensive force is by making it such that the aggressor forfeits his/her right not to be subjected to self-defensive force. Ferzan is thus amenable to the claim that her view is fundamentally a view about forfeiture. See (Ferzan 2012, 692) (responding to a potential attack from McMahan and his followers by suggesting “at most, this amounts to the claim that I do not have a theory of liability, but a theory of limited forfeiture. I am prepared to live with that.”).
[(1a)*] The aggressor forms an intention to purposefully, knowingly, or recklessly kill the
defender, the aggressor lacks a justification or excuse, and the defender must kill the
aggressor to prevent being killed himself or…
[(1b)*] The aggressor purposefully, knowingly, or recklessly engages in conduct that he is
aware may lead the defender to believe that (1a) is true, and the aggressor lacks a
justification or excuse for so doing;
Then…
[(2)*] The aggressor is not wronged by force employed by the defender that is intended
to repel the perceived attack (670, 673, 683, 697).5

For Ferzan, an aggressor becomes liable to self-defensive force by fulfilling (1a)* or (1b)*. (1a)*
is fulfilled when an aggressor i) forms an intention to kill with one of three culpable mental
states ii) but without a justification or excuse and iii) it is an objective fact that the defender must
kill the aggressor to prevent being killed him/herself. This is an apt description of the standard
self-defense case:

*Classical Aggressor.* An individual walks into a store with a loaded gun and the intention
not only to rob the store but to kill all witnesses to the act and thereby cover his/her
tracks. S/he points the gun at the cashier. The cashier responds by shooting the robber.

While the defender here must intend to repel an attack and thus must have some belief in the
presence of an attack, this case and most other (1a)* cases are designed such that the belief and
the defender’s consequent action is justified by the aggressor’s actions alone. Defenders’ beliefs
are only trivially relevant in the standard (1a)* case. Ferzan’s argument for the relevance of
defenders’ beliefs instead focuses on (1b)*, which is designed to deal with bluffs.

Ferzan describes (1b)* as her substantial departure from the previous literature; on her
view, “when an aggressor is liable to self-defense, he is not wronged by the defender’s acting on
the prediction that she will be harmed” (683). She offers her own robbery case where this type of
liability is present:

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5 Here I add stars to Ferzan’s original numbers to distinguish her conditions from my own. I am tempted to add stars
to my own numbers given my indebtedness to Ferzan’s earlier work, but I instead add them here because I refer to
Ferzan’s conditions less frequently.
Unloaded Gun. Ike runs into a liquor store with a gun. After the clerk gives him the money, Ike points the gun at the clerk and says, ‘Now, I am going to blow your head off.’ The clerk shoots Ike. As it turns out the gun was unloaded – as Ike knew – he just wanted to toy with the clerk (690).

(1b)* requires i) a lack of an excuse or justification for ii) an act that iii) the aggressor is aware may lead the defender to believe something. This third qualifier is the hardest condition to parse with the ‘may lead the defender to believe’ locution proving particularly difficult and the related question about what it is that the aggressor may lead the defender to believe also raising issues. Ferzan intends the purposefully, knowingly, or recklessly qualifiers to apply to causing the belief in addition to the act that causes it. The aggressor must cause the belief by an act performed in one of those mental states. It is not the case that s/he must simply purposefully, knowingly, or recklessly engage in an act that may lead a defender to believe condition (1a)* is fulfilled. She must purposefully, knowingly, or recklessly induce the belief in the defender.

My conditions above largely mirror Ferzan’s up to this point, but her approach is most plausible when it is slightly modified. Technically, the aggressor must cause the defender to believe that all three elements of (1a)* are fulfilled, but Ferzan does not appear to intend for the defender’s belief in the lack of justification or excuse to be a necessary feature of condition (1b)*. It is also unlikely that the defender’s belief that the aggressor intends to kill the defender is necessary. It is more plausible that causing beliefs that i) the aggressor is a threat to the defender and ii) self-defensive force is required is sufficient to make an aggressor liable. The best account of a rights forfeiture approach to liability accounts for these considerations (as I do above).\(^6\)

\(^6\) Aggressors fulfilling either (1a)* or (1b)* are only liable to force ‘that is intended to repel the perceived attack’. This suggests that the defender’s intentions help determine whether an aggressor is wronged by force used against him/her by the defender. An aggressor purposefully, knowingly, or recklessly acting in a way that may cause a belief in the defender does not create liability on its own; the defender must actually have that belief as a result of the action. The defender must believe that there is a threat in order for the aggressor to be liable to force (and intend to repel it). This latter criterion is the most controversial one and is analyzed in the following.
Regardless of how one parses Ferzan’s particular position, further case-based analysis provides support for her view that defenders’ beliefs are relevant to aggressors’ liability to self-defensive force by means of rights forfeiture. The following case provides more intuitive support for (1b)* (and for (1b) and (3)):

_Incompetent Bluffer._ Prior to committing his robbery, an attempted robber ‘cases’ the store. The cashier sees the gun while the would-be robber cases the store and removes the gun from the would-be criminal’s belt, empties it of bullets and returns it to its original location. The would-be aggressor goes into a corner and puts on a mask in full view of the cashier and returns to the counter, pointing the empty gun at the cashier and threatening to kill him/her. The cashier shoots the attempted robber.7

Here, the would-be aggressor engages in conduct that may lead the would-be defender to believe that the intention to kill is present. S/he is aware that his/her conduct is the type that may cause an individual to have this belief. Indeed, such a belief may be necessary for the robbery to be successful, so we can stipulate the conduct is purposeful intended belief creation if necessary. The would-be aggressor does not, however, engage in conduct that may lead the particular defender to believe a threat is present, let alone a threat requiring the use of self-defensive force. The cashier personally disabled the threat prior to the aggressor pointing the gun and watched to ensure no threat could come of it. The cashier has a justified belief that no threat is present.8

On the rights forfeiture account, the lack of belief by the defender means that s/he would wrong the aggressor if the defender were to shoot the aggressor. The same acts by an aggressor in the absence of the defender’s actions and beliefs would forfeit the right against self-defensive force and mean that the defender could use it without wronging the aggressor. Those who believe liability should be determined solely by reference to aggressor’s actions will find this

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7 Thank you to an anonymous reviewer at Ratio Juris for suggesting the name of this case.
8 One could read the modalities in Ferzan’s construction such that the fact that the defender could not believe there is a threat in this case is enough to forestall liability. The crucial point here is that the defender does not believe there is a threat. This is enough to forestall liability regardless of how one reads the modal qualifier in (1b)’s ‘may lead the defender to believe’ locution.
problematic. They grant that the defender’s beliefs make it impermissible for him/her to use force against the aggressor, but do not think they would wrong the aggressor in so doing. In other words, the defender would commit a wrong by using force, but s/he would not wrong the aggressor since the latter forfeited his/her rights by means of his/her attempt at aggression. Yet it is unclear how defender’s beliefs could make Unloaded Gun’s aggressor liable and Incompetent Bluffer’s aggressor non-liable since both performed acts that may lead someone (if not the defender in the actual cases) to believe that self-defensive force was necessary. Indeed, Incompetent Bluffer’s intention to kill the defender may suggest s/he is more culpable for his/her actions and culpability is one of the key foci of Ferzan’s rights forfeiture account. Incompetent Bluffer appears to benefit from moral luck. Many theorists are squeamish about that concept.

My own intuitions about Incompetent Bluffer support the idea that defenders’ beliefs are relevant to liability determinations. This appeal to intuitions alone is not dispositive, but I can offer a few reasons to support them. In short, I think that the robber who finds out about the cashier’s actions would have cause to complain about the use of force against him/her (if s/he survived the attack); learning that the defender acted for the wrong reasons should not only allow the aggressor to say that the defender acted wrongly, but also that s/he was wronged by it. The aggressor need not take an impartial view in order to morally censure the defender. S/he has personal reasons to complain on the basis of her rights violation. S/he retains the right to tell the defender “You ought not to have done this to me”. This claim demands an account of the right, but it can be defended. It seems odd that the same act performed by two individuals can lead only one to forfeit his/her right against self-defensive force. Where the reasons for the force

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9 I take it that impossible attempts do not fulfill (1a)/(1a)*. They do seem to fulfill (1b)/(1b)* unless the attempt to cause the belief is impossible. Impossible attempts raise many questions in both the culpability and liability contexts. I put them aside for present purposes.
differ, however, this gives us a means of distinguishing between the two cases. Where the right of self-defense includes the ability to complain when it is violated, our intuitions about when complaint is appropriate can lead us to distinguish the two cases.

There are, however, still good theoretical and case-based reasons to suggest that this story about the role of defenders’ beliefs in determining aggressors’ liability to self-defense is incomplete. The following explains a principle that appears to require attentiveness to the reasonableness of the defenders’ beliefs. It then provides further cases to provide intuitive support for this reasonableness requirement; these intuitions are supported by the fact that they can be explained by the aforementioned moral principle.

**Applying the Principle of Epistemic Responsibility to the Case of Liability to Self-Defensive Force via Rights Forfeiture: The First Argument for a Reasonableness Requirement**

When the ‘principle of epistemic responsibility’ is applied to the forfeiture of a right against self-defense setting, it becomes clear that defenders’ beliefs should only be relevant for liability determinations where they are reasonable. While I develop the principle in further detail elsewhere (manuscript on file with author), a brief account demonstrates its merits. The principle holds that the epistemically irresponsible alone should be affected by their irresponsibility and should not be able to negatively affect the rights of others, even if the same beliefs could benefit others by preserving their rights. This principle is not as strong as the knowledge norm of action, which holds that one should act only on the basis of a knowledge-desire pair, rather than a weaker belief-desire pair (Williamson 2000, Gibbons 2001, Jenkins Ichikawa 2012). It makes no substantive claims about the proper epistemic warrants for action.10

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10 As discussed below, however, different claims about the proper epistemic warrant for action could lead to different determinations on certain cases and impact our understanding of both arguments for a reasonableness requirement.
It instead holds that wherever one lacks epistemic warrant (whatever it may be) and nonetheless acts, s/he should be held responsible for his/her epistemic irresponsibility and unwarranted action. S/he should not benefit in the moral realm from failures in other domains of normativity. If this principle holds true, a defender should not gain warrant for otherwise wrongful action (including the use of force) due to his/her epistemic irresponsibility.

The key reason to accept this principle rests on beliefs about the relationship between different realms of normativity that can be easily misunderstood. Claiming that one type of normative failure ought not benefit someone in another domain of normativity does not conflate different forms of responsibility. The principle of epistemic responsibility, in other words, does not necessarily entail that one ought to be morally blamed for his/her epistemic failures. Such a view would be implausible. Moral blame and epistemic blame are distinct. Even if they exist in distinct domains of normativity (and they do), however, they are related. Where the epistemic and ethical domains overlap, relationships between conceptual apparatuses in those domains should be unsurprising. Indeed, where liability to self-defensive force is partially defined in epistemic terms, as in (1b), epistemic norms are partially constitutive of ethical ones. It should not surprise us if being blameworthy in one domain may have implications for one’s standing in another where norms from the first domain help constitute norms in the second. Even if one may question the general applicability of the principle of epistemic responsibility, it is clearly relevant where epistemic and ethical norms are co-constitutive, which is always going to be the case in hypotheticals where the relevance of defenders’ beliefs to moral concerns are given and the debate concerns which subset are relevant.

The force of the principle is also particularly salient in cases where rights determinations are at issue. The addition of rights to the moral calculus presents another important moral factor
to which one must attend. When the principle is applied where rights determinations are necessary, it holds that the epistemically irresponsible alone should be affected by their irresponsibility and should not be able to negatively affect the rights of others, even if the same beliefs could benefit others by preserving their rights. This approach accords with our general views on the importance of rights. All-else-being-equal, a principle that preserves rights is preferable to one that results in their destruction, violation or even infringement. In general, the removal of a right from moral consideration requires justification. On the rights forfeiture view of liability, someone’s right is going to be ‘forfeited’ and thereby cease to be operative. The view on offer here suggests that it is more important to ensure we do not allow defenders’ beliefs to lead to rights forfeiture without proper justification than it is to ensure that they do not allow rights to stand without proper justification. Where we grant at the outset that would-be aggressors have rights against self-defensive force, the removal of the right requires justification. It is unclear how the epistemically irresponsible of others can provide it. To the extent that a defenders’ right against (here merely perceive threats) is contingent on his/her epistemic irresponsibility (since the perceived threat would not otherwise exist where it has no basis in fact), it is unclear how the right is justified, let alone why it ought to undermine the rights of others. The principle of epistemic responsibility helps us make difficult rights determinations by placing the onus of responsibility for rights preservation in the right place.

If, then, one takes the relationship between different domains of normativity (epistemology and ethics) seriously and further acknowledges the importance of a key concept (rights) in one of those two domains (ethics), the need for a reasonableness requirement in (1b) should be clear. Yet the principle of epistemic responsibility is bound to be controversial and is only defended in full elsewhere. Those who do not accept the principle may thus be unpersuaded
by the brief account here. If others do not share my belief in either the truth of this principle or its application in the present case, I am hopeful that case-based intuitions will help them see why a reasonableness requirement is plausible. Indeed, the fact that the principle of epistemic responsibility helps explain these intuitions suggests that even if the principle does not generalize elsewhere, it is useful in the self-defensive force context.

**Non-Believer and Eraserman: The Second Argument for a Reasonableness Requirement**

One does not need to accept the principle of epistemic responsibility to accept the necessity of a reasonableness requirement. The following independent argument for a reasonableness requirement succeeds on the basis of case-based intuition tests alone. Yet where intuitions could be deflated, the fact that the principle of epistemic responsibility is consistent with and helps to explain intuitions about cases suggests that the arguments are best read in tandem. The principle of epistemic responsibility both explains those intuitions and their relationship to the larger normative picture. If intuitions stem from a true moral premise, this provides further reason to accept them on reflection. The following cases, in other words, can read in conjunction with the principle of epistemic responsibility, which both i) divides moral space in a manner that best accounts for our intuitions below and ii) helps to explain the relationship between two different domains of normativity: ethics and epistemology. One does not need to appeal to the principle for the second, case-based argument for a reasonableness requirement to succeed, but the principle helps make sense of why it may succeed.

Two cases in which the would-be defender has an idiosyncratic belief support the idea that defenders’ beliefs are relevant, but only to the extent that they are reasonable. First consider the case of a would-be defender with high epistemic standards. An account of my intuitions above may suggest that they are confused by the defender’s act of emptying the gun in
Incompetent Bluffer rather than his/her beliefs, but a similar story can be told about a case focused only on beliefs:

*Non-Believer.* A robber comes into a store with a gun. She points a gun at the cashier giving the cashier reasons that may lead many individuals to believe that she must respond with defensive force to save her own life. The cashier has high epistemic standards and does not believe such defensive force is necessary. S/he nonetheless shoots the would-be robber.

If Non-Believer was not a bluff case, the aggressor would be liable under (1a), but even then the epistemic states make many less intuitively inclined to suggest that the Non-Believer did not wrong the would-be aggressor. This is likely due to the fact that the inclusion of epistemic considerations makes us read the case using (1b) criteria and we think the epistemic irresponsibility of the Non-Believer should not allow him/her to be deemed a non-wrongful actor. Where Non-Believer is instead read as a case of bluffing, as it was originally designed, the epistemic irresponsibility seems to demand moral consideration. A comparison of this case with Classical Aggressor will lead many to believe that the aggressor in Non-Believer is merely the subject of moral luck. The aggressor acted in a culpable manner and yet retains his/her right against self-defensive force. Where the wrong reasons for action negated liability in Incompetent Bluffer, it seems odd that the epistemically wrongful actions of the defender here determine whether the aggressor is liable. The risk of moral luck remains. But the right result is reached.

The defender should bear the cost of his/her epistemic wrongfulness and be unable to use force against the aggressor without wronging him/her. When Non-Believer is read as a (1a) case, our intuitive unease with the liability determination there provide reason to share my belief that the

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1 For the sake of at least getting us justified true belief, we can stipulate that the cashier recognizes the robber as someone who has bluffed in the past and, unbeknownst to the robber, is bluffing at present. What is important is that the cashier lacks full knowledge that the robber is bluffing, particularly given the high stakes involved.
epistemic states of defenders are relevant in liability determinations under (1b). Where it is rightly read as a (1b) case, it provides even greater support for my argument.

One may not share my intuitions about Non-Believer. I can understand this position. Indeed, the case almost moved me towards Ferzan’s view when I first constructed it. The defender’s epistemic irresponsibility almost moving me in Non-Believer arguably highlights the necessity of epistemic sensitivity in a rights forfeiture account. Whether the defender is being epistemically responsible in (3) is not, however, the most pressing question. The epistemic requirement that a defender believe that a threat is present in (3) will be fulfilled by a reasonable belief in nearly any (1a) case. There is an objective threat in which s/he believes and s/he is the non-beneficiary of her epistemic irresponsibility if s/he does not believe it. Our focus is instead on (1b), which is why the case was designed as a bluff case. I understand why someone may intuitively sense that the Non-Believer does not wrong his/her bluffing would-be aggressor even in the (1b) case, but I ultimately think that this intuition is the wrong one and any underlying principle that would explains this faulty intuition cannot distinguish Non-Believer from a further case that makes the necessity of a reasonableness requirement clear.

A more extreme case puts tension on Ferzan’s original language and strongly supports the second argument for a reasonableness requirement. Ferzan’s (1b)* applies whenever an aggressor performs an act that s/he is aware ‘may lead’ the defender to believe there is a threat that requires self-defensive force. This ‘may lead’ condition is too broad. It suggests an aggressor is liable wherever an act could lead a defender to believe a threat is present and the defender does believe it. Cases including unreasonable beliefs undermine this claim. Consider:

_Eraserman_. An absurdist knows that it is possible that some person somewhere may believe that they can be erased using a common household eraser and the defender in front of him could be that person. It is a rare belief, but s/he knows threatening an individual with an eraser could cause it. S/he threatens to do this to a defender, who does
believe this is a threat and that self-defensive force it is necessary to combat it. The defender shoots the eraser-wielding absurdist.

If we assume this act is proportionate, it seems like it could result in the aggressor being liable on one reading of Ferzan’s ‘may lead’ locution. Ferzan cannot mean for this to be the case, but it is unclear how she wants to parse the requirement. It is reasonably clear that her general distaste for negligence (evidenced by its omission in both (1a)* and (1b)*) means that she does not want to include a reasonableness requirement, but I believe that this is a mistake. Eraserman provides support for the idea that defenders’ beliefs should only be relevant when they are reasonable. Indeed, it supports the idea that whether aggressors forfeit their rights should not be dependent on whether defenders are epistemically irresponsible and harbor irrational beliefs. If two aggressors act in the same way, one should not retain a right the other lacks based on the idiosyncratic belief of a defender in the latter case. A reasonable requirement on condition (1b) is needed to avoid the apparent arbitrariness of liability determinations on the Ferzan-inspired forfeiture account of liability.

One may limit the application of the (1b) or (1b)* criterion to cases where the aggressor knows the defender does have this uncommon belief. This would only be the case in purposeful intention cases, but there is cause for concern even there. As controversial as it is to suggest that liability is partially determined by defenders’ beliefs, it is even more so to suggest it is dependent on idiosyncratic beliefs. Virtually any action could cause someone to believe there is a threat. Further, the limited plausibility in the idea that aggressors who purposely prey on idiosyncratic beliefs may forfeit their rights is undermined as we move down the culpability chain towards recklessness. More importantly, while some (including Ferzan) suggest recklessness is attentive to details about the pervasiveness of beliefs, aggressors’ rights being determined by idiosyncratic beliefs simply seems problematic in principle. This provides reason to adopt a reasonableness
requirement to our account of liability to self-defensive force by why of self-defensive force in light of intuitions here rather than adopting a more narrow account of (1b) and bracketing consideration of the unreasonable for future debates; the latter view seems to demand an account of unreasonable beliefs in a new (1c) while the view on offer provides a more economical account of liability that does not require this additional component.

My intuitions about these cases can be partially explained if the principle of epistemic responsibility is true. This fit could support both the principle and my intuitions. One may argue that arguments based on arbitrariness are unavailable to me based on previous arguments, but the principle of epistemic responsibility explains why arbitrariness concerns remain relevant when faced with the Eraserman. Above I suggested that two individuals can perform the same act with only one being liable based on whether the defender believed in the presence of a threat. My critics may suggest I am committed to that view here too and cannot appeal to the arbitrariness of beliefs as a reason not to distinguish between cases. Even if this is the case, my argument can still be used to demonstrate the hypothetical that if defender beliefs are relevant, it is only to the extent that those beliefs are reasonable, which is the primary aim of this piece. There is, however, an important difference between the cases that may support the stronger claim that defenders’ beliefs are actually relevant, but only to the extent that those beliefs are reasonable. This difference is the presence of rights that makes the principle of epistemic responsibility particularly salient in the present case and helps our intuitions about the case and the role of arbitrariness therein. Recall that the principle holds that the epistemically irresponsible alone should be affected by their irresponsibility and should not be able to negatively affect the rights of others. In Incompetent Bluffer, the distinction allowed one individual to retain a right when otherwise no one would be able to do so. In Eraserman, an individual loses a right when
otherwise both individuals would do so. If the principle of epistemic responsibility is true, this is more problematic. This helps explain differing intuitions about whether the aggressors in the two cases are liable to self-defensive force on a (1b) determination. This potential fit between principle and intuitions counts in favor of both.

**Debating the Operative Right: A Response to an Argument against Intuition**

There are, then, good theoretical and intuitive reasons to believe only defenders’ *reasonable* beliefs are relevant for determining if aggressors have forfeited their rights against self-defensive force and thereby become liable to it. Problems obviously remain. I will now address two of the most pressing challenges to the view on offer: i) the difficulty of individuating rights that may undermine our intuitions about self-defense cases in general and ii) the difficulty of identifying the proper standard of rationality to ground the principle of epistemic rationality. The first argument challenges the case-based argument for the Ferzan-inspired account of liability on offer here. The second challenges my modification of Ferzan’s account to include a reasonableness requirement for the relevance of defenders’ beliefs in liability determinations.

First, one may suggest that even if we grant there is a cause for complaint in Incompetent Bluffer, it is not due to the violation of a residual right to self-defense, but the violation of another right. This could be a right to be treated with respect that is violated when one is made the subject of an impermissible action. The aggressor is wronged on this account, but not by virtue of a violation of his right against self-defensive force. From one perspective, this is not an argument against the claim that liability is sensitive to defenders’ beliefs. Once my interlocutor admits that the aggressor would be wronged in some way, s/he admits that the person is not fully liable to self-defensive force since liability just is the property of not being wronged by self-defensive force. To admit there would be a wrong is to admit the aggressor is not liable. Since
we focused on a special case of liability via forfeiture, however, one must show that the cause of non-liability is a residual right against self-defensive harm. This is a more difficult challenge.

I must address this alternative account to salvage my intuitions about Incompetent Bluffer even before moving on to (likely) more controversial cases. Questions concerning how to individuate rights arise throughout the self-defense literature and identifying which rights are operative in particular cases is important for resolving many related debates. Given space limitations, I can only provide a partial response to the particular problem of how to determine if the right against self-defensive harm in operative in Incompetent Bluffer, but I hope it is suggestive of a potential solution to problems of individuating and identifying rights in case-based analyses. One response is to deny that other rights are doing the work. This risks begging the question. Reason giving remains necessary. It is hard to prove that the residual right against self-defense is motivating my intuition that the aggressor can complain when s/he learns about the defender’s disbelief of a threat, but there is reason to think it is the case. One reason to hold this belief and justify my intuition is that any other operative rights actually motivating me on the deflationary account are so closely tied to the right against self-defense that the two causes of complaint are sufficiently similar as to identical grounds for the same complaint. There are at least two ways this may be the case. First, it may be the case that the right against self-defensive force is constituted by other rights critics suggest are doing the work. If this is the case and many of them remain, they may be of a sufficient quantity to compose what we call the right against self-defensive force. This may amount to a mere restatement of the claim that the right against self-defensive force remains operative, but it adds an argument about the nature of the right with

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12 I hope my response in the Incompetent Bluffer case is suggestive of a solution to possible similar problems in the other cases, though I recognize that structural differences between the cases may require some modifications. I focus on Incompetent Bluffer here since it is the primary case used to defend the Ferzan-inspired account that I modified.
some plausibility. Second, it may be the case that the right against self-defensive force is a specification of the right to be treated with respect. When one is subject to self-defensive force that violates the broader right to self-defense, this wrong is closely tied to the wrong that takes place when the specification of the right is violated. This does not maintain the right against self-defensive force of any kind, but it does maintain a sufficiently close analogue, the right not to be subject to self-defensive force that fails to treat the aggressor with respect. To the extent this right is still operative, one could say the aggressor is not liable to be killed because of a residual right against a type of self-defensive force; this may be all I need.

Alternative accounts of my intuitions may provide the strongest charges against my intuition-based argument in favor of Ferzan’s inclusion of defenders’ belief in her account of aggressors’ liability. One may question the success of my response here. I am more confident in the necessity of a correction to her view to account for reasonableness even if this defense of a Ferzan-inspired view succeeds. The defense of a reasonableness requirement above is thus presented as a conditional dependent on the success of the Ferzan-inspired view. Yet the argument for a reasonableness requirement still presents another concern that must be addressed.

**Norm(s) of Belief: Addressing another Concern**

The close connection between epistemological and ethical considerations in the preceding arguments raises a further possible concern that must be dealt with here. In short, the most pressing prima facie challenge to the preceding case for a reasonableness requirement suggests that the principle of epistemic responsibility can be construed in a manner that does not explain or justify our case-based intuitions. The preceding is agnostic on what counts as a reasonable action from the epistemic standard. Yet one may worry that some accounts of epistemic
rationality may lead to different determinations on whether the would-be aggressors in the preceding cases are liable to self-defensive force; these may not accord with basic intuitions.

There is a sense in which this concern is minimal. Both the first and second arguments succeed on their own terms and the preceding can be treated as an argument in the alternative if the two arguments do not accord on all accounts of epistemic rationality. Yet both arguments are stronger if they accord with one another, so the challenge from the plurality of epistemic rationality accounts remains problematic. Some response is necessary.

The easy response suggests that reasonableness standards are imperfect, but remain necessary and this problem is not unique to the self-defensive force context. The law is full of reasonableness standards and courts do a fine job of sorting out the reasonable and the unreasonable. They would likely distinguish the cases above in most cases. Common skepticism towards reasonable person standards may still be well-founded. There are certainly going to be hard cases. Consider a variant on Incompetent Bluffer in which the would-be aggressor briefly leaves the cashier’s sight. The cashier may now believe there is a threat since s/he did not see the aggressor at all times prior to the would-be threatening action. The case may no longer be a bluff. Perhaps new bullets were placed in the gun in the interim. Whether the cashier can reasonably believe that there is a threat may depend on the length of time the aggressor was out of the defender’s sight. A belief in a threat when the aggressor was only out of sight for a short time period may not be reasonable, particularly if the time period was short enough that the bullets could not be placed in the gun during that time. Yet this approach emphasizes the fact that the law has long been able to identify the attributes of the reasonable person and thereby make determinations on culpability. It is not wholly implausible to suggest that it would be able to identify the cognitive attributes of reasonable persons needed to fill out the liability picture. It is
clear that if the cashier could reasonably believe in a threat requiring self-defensive force on the basis of an aggressor’s action s/he is aware may cause this belief and the belief is caused, this is sufficient to ground liability (assuming the absence of a justification or excuse).

Unfortunately, this approach may not satisfy epistemologists or ethicists. The conditions above are not offered as legislative provisions that can be interpreted by courts, but as possible necessary and sufficient conditions for liability. Punting to courts is unlikely to satisfy those working in either normative domain that is relevant here (and certainly will not satisfy those who are skeptical about courts’ abilities to make reasonableness determinations in practice, such as Ferzan). Greater precision on what counts as reasonable remains necessary.

There are a variety of other methods for approaching this challenge. One could adopt a theory of rationality that best explains our intuitions. After all, the inability of an account of rationality to account for widely-held intuitions counts against it all-else-being-equal in any case. All-else is not, however, equal and it is unlikely that these intuitions outweigh other reasons for adopting different views, so this approach is unlikely to succeed. Alternatively, one could attempt to show that several leading accounts of epistemic rationality provide the link between the first two arguments that strengthens each. If we assume that a few leading accounts are true, we can provide a (limited) proof by disjunction that the principle of epistemic responsibility explains our intuitions about the cases above (at least on several leading accounts of rationality). Even prima facie arguments for the consistency of the epistemic norms or our intuitions may suffice. Others can take this approach. This section adopts a third strategy. In short, if the principle of epistemic responsibility merely holds that one is epistemically responsible insofar as his/her belief is reasonable, debate on whether the individuals are epistemically rational in their beliefs only occurs in a single case above. There ought to be general consensus on whether the
actions in the cases are justified given the epistemic states on which the would-be defenders acted. The relevant criticism simply does not apply to most of the cases on offer.

From a pure epistemic rationality perspective, the most general dominant views on epistemic rationality only appear to disagree in any interesting way on the rationality of the belief in a threat is Ferzan’s case, Unloaded Gun. In *The Norm of Belief*, John Gibbons suggests that the most interesting tension between objectivists and subjectivists stems from the fact that they subscribe to prima facie compelling premises that disagree on the rationality of holding justified false beliefs (Gibbons 2013, 17). This tension does not appear in all but one of the cases above. The defenders in Classical Aggressor and Non-Believer have justified true beliefs in a threat, the defender in Incompetent Bluffer has a justified true belief in the lack of a threat and Eraserman has an unjustified false belief in the presence of a threat. Only Unloaded Gun presents problems. While subjectivists and objectivists may have differing accounts of epistemic rationality, the accounts are unlikely to change our decisions on whether the defenders are epistemically responsible in holding their beliefs about potential threats.\(^{13}\)

This focus on the Non-Believer’s different beliefs raises the important question of which belief is the operative belief in the actions in each case and whether acting on those beliefs is necessary. Regardless of how one parses the epistemic responsibility of holding the beliefs in the above cases, the cases have been constructed in such a way that the epistemic responsibility of acting on the beliefs is likely to remain uncontested on most standards views. On any account that does not suggest that any belief is justified and that one is thereby justified in acting on any subjectively held belief, we accept that Classical Aggressor is responsible when acting on a justified true belief (likely constituting knowledge) and Eraserman is irresponsible for acting on

\(^{13}\) A more radical subjectivist view may suggest that all subjectively held beliefs are justified, but it is difficult to see how a helpful legal framework can be built from this view.
an unjustified false belief. Incompetent Bluffer and Non-Believer are irresponsible for not acting on justified true beliefs (likely constituting knowledge). Again, only Unloaded Gun is problematic. If the belief is irrational, it is likely irresponsible to act on it. If not, acting on a justified false belief appears to be justified and our intuitions about the case remain justified.

Certain standards of epistemic rationality will challenge intuitions about these cases. Some, such as the radical subjectivism mentioned above, are independently implausible. Rather than deal with even an influential subset of potential views and examining how their treatment of epistemic rationality would change our determinations on whether our intuitions about cases are relevant, this section showed that the pertinent debates about responsibility do not radically alter our views on the aforementioned cases. The principle of epistemic responsibility can account for our intuitions about these even if we disagree about the most pressing epistemological concerns. More precision on what will count as rationality would be necessary if this standard were to be adopted in practice, but then either i) further work can specify the best form of the principle and/or the implications of different epistemic views for the principle’s applicability to particular cases or ii) the legal standards may again operate.\textsuperscript{14}

\textbf{Conclusion}

\textsuperscript{14} A third challenge, raised by an audience member at the University of Windsor and an anonymous reviewer, questions the value of Eraserman. One may question i) my intuitions about the case and ii) whether any intuitions about the case generalize, particularly where the case is so unique. I have little to say in response to i) beyond my defense of the principle of epistemic responsibility above. I have not done any experimental surveys to confirm that my intuitions about the case are widely shared and instead attempted to explain why they should be. ii) is also partially solved by the principle of epistemic responsibility, but the question of whether we can learn anything from unique (or, as an uncharitable reader might phrase it, ‘outlandish’) cases remains. I cannot defend the use of thought experiment-based reasoning in general and/or unique case thought experiment-based reasoning here. The debate is too complex to resolve in the short space provided and there is a vast literature on the topic elsewhere. At worst, I believe that if any case-based intuitions are relevant, these cases and the principle of epistemic responsibility are helpful for guiding one’s study. If one is unconvinced by Eraserman and wants to ground his/her view in real cases, accept this work as a starting point of analysis and explore if its findings explain intuitions about common reasonableness cases. If one does not quarrel with my case but worries about even more ‘outlandish’ cases, s/he may instead analyze whether the intuitions in Eraserman generalize to those cases, but s/he should remain attentive to if and how the principle of epistemic responsibility operates in them. I may revise my view if other cases provide sufficient reason to do so. I also retain the right to bite bullets headed my way.
Appealing to the mental states of defenders to determine whether aggressors are liable to self-defensive force makes liability determinations difficult. The simplicity of a view that only appeals to aggressors’ actions gives one a theoretical reason to accept it, but case-based intuitions bolstered by theoretical reasons to hold them provide overriding reasons to suggest a rights forfeiture model of liability should appeal to defenders’ beliefs to determine if they can use self-defensive force against an aggressor without wronging them. If this position is to be plausible, however, it should only be sensitive to the reasonable beliefs of defenders. The best account of liability to self-defensive force via rights forfeiture that is attentive to the role defenders’ beliefs may play in determining such liability accordingly takes the form on page 1.15

References


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