

The Status of Aggressive Necessity/Emergency

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Abstract

Aggressive necessity/emergency means the assault, for the purpose of avoiding state of emergency, on the legal goods of the third-parties, who did not create this state. An aggression could be justified, if the third-party has a duty to endure the assault. In the author's opinion, the duty to help others or the duty to sacrifice for others is by nature a pure moral duty, or an unilateral and arbitrary requirement for resources, which are transferred from an individual to another one in a given community. Such requirement is illegitimate and therefore it could not be deemed as a "right". In light of the concept of law based on freedom, a person undertakes only negative duties not to infringe rights of others. He does not bear positive duties to help others. In other words, one should assume the risk of daily life. The risk could be transferred only in rare circumstances. In the case of aggressive necessity/emergency, there is only the basic relationship, namely the negative duties, between the victim and the assailant. The assailant forces the victim to take the risks that should have been attributed to the assailant. The victim actually has been instrumentalized and the offense has thus come to existence. In order to restore the right of the victim, he could resort to self-defense.

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