

Proxy Battles in Just War Theory:*

Jus in Bello, the Site of Justice, and Feasibility Constraints

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1. Introduction

Interest in just war theory has boomed in recent years, as a revisionist school of thought has challenged the orthodoxy of international law, most famously defended by Michael Walzer [1977]. These revisionist critics have targeted the two central principles governing the conduct of war (*jus in bello*): combatant equality and noncombatant immunity.¹ The first states that combatants face the same permissions and constraints whether their cause is just or unjust. The second protects noncombatants from intentional attack. In response to these critics, some philosophers have defended aspects of the old orthodoxy on novel grounds.² Revisionists counter. As things stand, the prospects for progress are remote.

In this paper, we offer a way forward. We argue that exclusive focus on first-order moral principles, such as combatant equality and noncombatant immunity, has led revisionist and orthodox just war theorists to engage in ‘proxy battles’. Their first-order moral disagreements are at least partly traceable to second-order disagreements about the nature and purpose of political theory. These deeper disputes have been central to the broader discipline of political theory for several years; we hope that bringing them to bear on the ethics of war will help us move beyond the present impasse.

In particular, we focus on two second-order questions.

- *The site question*: Should fundamental principles of *jus in bello* concern institutional design or individual conduct?
- *The feasibility question*: What real-world facts, if any, should constrain the demands of *jus in bello*?

In each case, our analysis comes in two parts. We first summarize the relevant debate in political theory, and illustrate how it underpins the controversy between revisionist and orthodox just war theorists. We then show how this novel framing advances first-order disputes about war. Although we do not advocate a particular first-order view about *jus in*

bello, our analysis points towards a fruitful middle ground between revisionists' moral rigorism and orthodox theorists' fidelity to the laws of war.

Before we start, two caveats. While our approach should illuminate all areas of just war theory, we focus only on *jus in bello*. Furthermore, by saying that orthodox and revisionist theorists have engaged in 'proxy battles' we do not mean that a given approach to the site of justice or to feasibility constraints *automatically* induces a first-order view about war. We only suggest that different second-order stances about the site of justice and feasibility help us both to explain the substantive disagreements between orthodox and revisionist just war theorists, and to move beyond them.

2. The Site of Justice and Just War Theory

In this section, we first outline the political theory debate on the site of justice, and then draw parallels with recent disputes between orthodox and revisionist just war theorists. This novel framing will allow us, in Section 3, to point to a number of important implications for *jus in bello*.

2.1 *The Site of Justice: Political vs Non-political Approaches*

Much contemporary political theory expounds principles of *socio-economic* justice. These set out individuals' entitlements to particular bundles of socio-economic opportunities and resources within a social system. Unsurprisingly, scholars disagree about the content of these principles. For instance, some defend distributive equality, others distributive sufficiency, others still support whichever distribution maximally benefits the most deprived (e.g., Frankfurt [1997]; Parfit [2000]). Although much ink has been spilled on the first-order moral question of what justice demands, theorists of justice have also been sensitive to the equally important second-order question of the 'site of justice': the particular *subject* to which principles of justice apply.

Two competing approaches have emerged, which we call 'political' and 'non-political'.³ Political approaches hold that, at the fundamental level, principles of justice apply to the most important legal, political, and economic institutions within any given social system, and only derivatively to individuals. Non-political approaches, by contrast, hold that fundamental principles of justice apply directly to the conduct of individual human beings.

John Rawls is the most prominent proponent of the political approach (Rawls [1999]; see also Scheffler [2006]; Young [2006]). On his view, justice is the 'first virtue of

social institutions’, and his principles of socio-economic justice—fair equality of opportunity and the difference principle⁴—are meant to guide us in selecting between different possible configurations of the ‘basic structure of society’, namely society’s main institutions. As A.J. Julius puts it, for Rawlsians,

to conclude that a society is just or unjust, I don’t have to know what everyone in the society is doing. It’s enough that I know how the society’s institutions are arranged, or that I understand the basic framework that shapes its members’ interaction over time or the basic mechanisms that distribute them over a range of prospects for living better and worse lives (Julius [2003: 321]).

Justice, on this view, is a property of institutional systems, and its bearing on individuals’ conduct is indirect. The demands of justice binding individuals derive from principles for institutional design. In particular, when institutions are fully just, individuals’ duties of justice are exhausted by the demands institutions place on them (i.e., by the law); when institutions are unjust, individuals have duties of justice to reform them.

To be sure, on the political approach, individuals in a complex social system do face other moral demands besides institutionally mediated ones. That is, they not only face moral demands of justice ‘as citizens’—i.e., as participants in legal, political and economic institutions—but also as friends, parents, workers and so forth (Rawls [1996: 262]). But, at least under ideal circumstances where a just background is in place, these further demands do not conflict with those of justice; instead, justice sets the boundaries within which we may legitimately honor our other moral obligations.⁵

Philosophers like G.A. Cohen [1997] and Liam Murphy [1998] reject the political approach, arguing that, at the fundamental level, justice applies to individuals’ actions and behavior.⁶ Institutions are, in turn, means to achieving ends the worth of which is to be judged by appeal to principles for individual conduct. In Murphy’s words:

any plausible overall political/moral view must, at the fundamental level, evaluate the justice of institutions with normative principles that apply also to people’s choices. We should not think of legal, political, and other social institutions as together constituting a separate normative realm, requiring separate normative first principles, but rather primarily as the means that people employ the better to achieve their collective political/moral goals (Murphy [1998: 253]).

On this view, the particular ‘oughts’ (e.g., laws) embedded in a given institutional scheme derive from moral principles that apply directly to individuals. Non-political theorists are not always fully transparent about how to effect this derivation. Two options are available. The first is to require the demands embedded in institutions to *mirror* the principles of justice that apply to individual conduct.⁷ An obvious difficulty with this option is that so arranging one’s institutions might be counter-productive. For example, if fundamental moral principles are epistemically and/or substantively too demanding, their direct embodiment in institutional rules may result in widespread, perhaps catastrophic non-compliance.

This concern motivates the second option, which consists in developing *principles for institutional regulation*, which are geared towards the realization of the values underlying fundamental moral principles. As G.A. Cohen understands them, principles of institutional regulation do not reflect the moral truth. Instead, they are means to achieving certain results, which should be adopted ‘in light of an evaluation [...] of their] likely effects, and, therefore, in light of an understanding of the facts’ (Cohen [2008: 265]).⁸

To illustrate, we may think that the following ‘luck-egalitarian’ principle is a true demand of justice: individuals ought to act so as to eliminate the effects of brute luck on each others’ lives. However, we also recognize that designing institutions in light of this principle would be a bad idea. First, determining what equalizing the effects of brute luck on people’s lives requires is extremely epistemically burdensome. Second, even if the demands of this principle were institutionalized, due to selfish motives, individuals would refuse to act on them. This renders our principle a poor candidate for institutional regulation. A better alternative could be the Rawlsian principle that one ought to maximize the position of the socio-economically worst off, since this would incentivize the talented to be maximally productive. Arguably, selecting institutions—e.g., a tax scheme—on the basis of this principle would *better serve* the mitigation of the effects of brute luck on people’s lives than selecting them directly on the basis of the ‘true’ demands of justice (Cohen [2008: 286]).⁹

So far, we have outlined two contrasting approaches to the site of principles of justice: political and non-political. To sum up, these approaches crucially differ in how they characterize the relationship between:

- a) moral demands that apply to individuals;
- b) principles on the basis of which to select institutional configurations;

- c) institutional demands that apply to individuals.

On the political approach, fundamental principles of justice are of type (b), and the demands of justice that apply to individuals are exhausted by institutional ones (c). On this approach, demands of type (a) are an empty set in the realm of justice. The most fundamental layer of justice-morality is (b). On the non-political approach, by contrast, fundamental demands of justice are of type (a), and the institutional demands that apply to individuals (c) either mirror moral ones, or are derived from principles for institutional regulation (b) that ‘serve’ the values underlying the moral demands at level (a).

What does the distinction between these two approaches have to offer to debates about *jus in bello*?

2.2 *Jus in Bello and the Site of Justice*

When it comes to *jus in bello*, we care about all normative principles that govern the conduct of war, rather than norms of justice strictly conceived. Still, the ‘site question’ arises all the same and underpins some of the main first-order disagreements between orthodox and revisionist just war theorists. Bringing the distinction between political and non-political approaches to bear on these disagreements can thus help us better frame and understand them.

Political approaches to the just conduct of war hold that, at the fundamental level, principles of *jus in bello* apply to the institutions that govern armed conflict: they allow us to select the ‘morally correct’ laws of war. In turn, whatever set of laws is recommended by these principles exhausts the just-war-related permissions and prohibitions applying to combatants. This fully mirrors the structure of the political approach in relation to socio-economic justice.

Many orthodox just war theorists—who defend combatant equality and non-combatant immunity, in line with the existing laws of war—appear to endorse the political approach. There are two broad camps, each defending a distinctive substantive principle for institutional design. The first justifies the institutions governing armed conflict on rule consequentialist grounds, by appeal to a general principle mandating the minimization of harm. Henry Shue [2008] most prominently advocates this position, which was also defended in Brandt [1972]; Mavrodes [1975]; Buchanan and Keohane [2004]; Buchanan [2006]; Shaw [2011]; Dill and Shue [2012]; Shue [2013]; Jenkins [2014]. The second strand holds that justified laws of war result from a fair and mutually advantageous hypothetical contract. As it happens, the object of the contract corresponds to the existing laws of war,

whereby combatants waive their rights against one another to grant each other the license to obey the military orders of their state. This view is most associated with Yitzhak Benbaji [2008] and Daniel Statman [2014].¹⁰ Independently of these differences, however, these two groups of theorists hold that fundamental principles of *jus in bello* concern the selection of morally justified laws of war.

Non-political approaches to the just conduct of war, by contrast, hold that, at the fundamental level, *jus in bello* specifies moral principles that apply directly to individual combatants, and to their military and political leaders. A war is fought justly only if these individuals adhere to the dictates of the moral principles that apply to them. Like their counterparts in the socio-economic justice debate, non-political just war theorists think that we should derive—in more or less direct ways—the institutional rules governing armed conflict from these fundamental moral principles.

At a first pass, the non-political approach seems to underpin the revisionist critique of orthodox just war theory. Many revisionist arguments challenge traditional principles of *jus in bello* by appealing to the demands of interpersonal morality. As revisionists have argued in detail, according to ordinary interpersonal morality it is very hard to see how combatants advancing an unjust cause could be morally permitted to intentionally kill just combatants, or to kill noncombatants as unintended side-effects of pursuing their unjust goals.¹¹ Combatant equality, as it is conceived in the laws of war, cannot track combatants' interpersonal moral duties. There is more dispute over noncombatant immunity, but most revisionists think that it, too, lacks foundations in interpersonal morality, since noncombatants can be responsible for contributing to unjustified threats, and this responsibility grounds liability to be killed.¹²

Although revisionists discuss the institutional implications of their views only cursorily, they hold that the laws of war should derive, in more or less complex ways, from interpersonal moral demands. In particular, some think the laws of war should *mirror* interpersonal morality. For example, David Rodin [2011] has argued that his rights-based account of permissible killing should be directly implemented in the laws of war: killing is permissible if and only if either the target has lost the protection of his right to life, or killing him is a (rare) justified lesser evil. Helen Frowe [2011: 45] has tentatively endorsed this thesis, arguing against licensing wrongful harm in order to minimize it.

A second set of revisionist theorists hold that the laws of war should be selected on the basis of principles for institutional regulation that take account of the values embedded in interpersonal morality, but also consider 'the consequences of the adoption and

enforcement of [given] laws or conventions' (McMahan [2004: 730]).¹³ Acknowledging that straightforward legal implementation of combatants' interpersonal moral duties and permissions would have bad consequences, Jeff McMahan [2008] concludes that the laws of war should be based on the principle that one ought to minimize *wrongful* harm (note the subtle contrast with Shue and Dill, whose aim is to minimize all harm)¹⁴ Cécile Fabre [2009: 39] also expresses sympathy for this view, on grounds similar to McMahan's.

2.3 Concluding Remarks

As our discussion has shown, second-order disagreements about the site of fundamental principles of *jus in bello* underpin first-order disputes over the moral equality of combatants and noncombatant immunity. The first-order dispute is, at least in part, a proxy battle, fought by theorists whose disagreements run much deeper. Orthodox just war theorists tend to endorse a political approach. Revisionist just war theorists lean towards versions of the non-political approach. For this debate to make progress, we must settle the underlying second-order question. Otherwise just war theorists will talk past each other: political just war theorists might develop the most plausible account of the institutional norms governing war; non-political just war theorists might develop the most plausible account of our interpersonal moral duties; but their proposals would not strictly compete, because each presupposes an approach to the site of normative theorizing about war that the others reject. Indeed, quite strikingly, once we hold a given site constant, orthodox and revisionist just-war theorists appear to largely agree at the level of substance. The following table summarizes the findings of this section.

Table 1: Political and non-political approaches to socio-economic justice and *jus in bello*

| | Moral demands for individuals | Principles for institutional selection | Institutional demands for individuals |
|--|---|--|---|
| Political approach to justice (cf. Rawls) | | Fundamental principles of justice | Demands of justice for individuals (just laws) |
| Non-political approach to justice (cf. Murphy/Cohen) | Fundamental principles of justice | Principles of institutional regulation | Institutional demands for individuals (optimal laws) |
| Political approach to <i>jus in bello</i> (Orthodox theorists) | | Fundamental principles of <i>jus in bello</i> E.g., Minimize harm | Institutional demands for individuals (laws of war) Non-combatant immunity/combatant equality |
| Non-political approach to <i>jus in bello</i> (Revisionist theorists) | Fundamental principles of <i>jus in bello</i> | Principles of institutional regulation of <i>jus in bello</i> E.g., Minimize wrongful harm | Institutional demands for individuals (laws of war) Non-combatant immunity/combatant equality |

3. The Site of Justice and Just War Theory: Implications

So far, we have observed that orthodox and revisionist just-war theorists' disagreement about first-order questions is partly accounted for by their disagreement about what the site of fundamental principles of *jus in bello* should be. In this section, we outline the implications of this observation. We highlight that both political and non-political approaches to *jus in bello* face important challenges, and gesture at possible responses to them. These in turn cast doubt on the plausibility of orthodox and revisionist stances on *jus in bello*, pointing instead to a 'middle ground' between them.

3.1 Challenges to the Political Approach

The political approach underpins orthodox just war theory and, in its purest form, states that one's obligations and permissions in war are exhausted by those set out by the morally justified laws of war, in particular the principles of combatant equality and noncombatant immunity.

The central challenge for the political approach underpinning orthodox *jus in bello* is to explain what happens to basic interpersonal moral demands—such as the prohibition on intentionally killing the innocent—in the context of war. This challenge does not arise for political approaches to justice. There, the typical approach is to use institutions to set a context within which we are permitted to act on our interpersonal moral reasons. Once a just background is in place, there is no further scope for a clash between institutional and interpersonal demands. For example, parents may show special concern towards their children, without worrying about their children being unfairly advantaged as a result. Just

background institutions would in fact prevent such unfair advantage from arising. In the context of war, however, this is not the case. Clashes between institutional and interpersonal demands are endemic.

The challenge is relatively easily met for noncombatant immunity. After all, even the most ardent revisionists are uneasy about their views' radical implications for the permissibility of intentionally killing noncombatants. Everyone recognizes the intuitive pull of noncombatant immunity. So if the political account vindicates that intuitive pull, then that is all to the good.

Combatant equality poses a more serious difficulty. Nobody can plausibly deny that profound moral reasons weigh against intentionally killing people who are justifiably defending their lives and homes, and against collaterally killing wholly uninvolved people in the pursuit of an unjust objective. We ordinarily consider these the weightiest moral reasons that there are. Why should the presence of an institutional scheme that licenses such killings make any difference to their permissibility?

To answer this question in a manner that vindicates existing norms, political just-war theorists must account for the authority of current international law (Christiano [2010]).¹⁵ In other words, they must explain why the mere fact that some act is prohibited (or permitted, required etc.) by morally justified laws of war gives the addressees of these laws a moral reason not to do it, even if it would be permissible at the bar of interpersonal morality. What is more, the substantive tenets of *in bello* orthodoxy could be justified only if the moral reason in question was not merely *pro tanto* but *decisive*, in a large enough set of cases. Vindicating such a strong conception of the authority of international law is a daunting task. Many political philosophers recognize that, even in the best states, accounting for a weaker *pro tanto* obligation to obey domestic law is hard (Simmons [1979]). And international society is a far cry from the ideal liberal state. Yet, short of a convincing account of the conditions under which international law has authority in the strong sense, and an argument showing that the existing laws of war satisfy those conditions, the normative priority that the political approach assigns to institutional demands remains unvindicated.

That said, if political just war theorists fall short of defending the authority of international law, they might still salvage their approach by lowering its ambitions. On this interpretation, the morally justified laws governing the conduct of war apply to individuals only given that they have taken up their role as combatants and state leaders. These institutional demands are silent on whether the roles they attach to may be taken up in the

first place. Considerations external to the morality of the practice of war—e.g., fundamental interpersonal moral demands—determine whether that is the case. On this view, it remains true that combatants who fight unjust wars ought not to fight all things considered. The laws of *jus in bello* only set out necessary, but not sufficient, conditions for the moral permissibility of one’s actions in war. For just combatants, there is no conflict between interpersonal moral duties and the permissions and prohibitions attached to their institutional roles. For unjust combatants, such a conflict exists: the laws of war apply to them conditional on the breach of an interpersonal moral prohibition. Interpersonal morality prohibits combatants on the unjust side from participating in the practice of war. Yet, once they take up their role as combatants, they at least ought to obey the *jus in bello* (for a similar idea, see Dill and Shue [2012]; Shue [2013]).

This reinterpretation of the political approach would make it more defensible, but would also render it less amenable to orthodox substantive conclusions. Indeed, so reinterpreted, the approach leads to first-order views not too far from those of revisionists. Some structural and substantive differences, though, would still remain. Structurally, political just-war theorists’ conclusions would still be reached via a distinctive line of argument, according to which principles for the conduct of war are ‘internal’ to a given practice, and do not adjudicate the question of whether one may participate in the practice in the first place. Substantively, proponents of the political approach might still be able to vindicate the moral significance of the laws of war for unjust combatants, even if abiding by them would not suffice to render their actions morally permissible. For instance, they could point out that, when soldiers from different sides are symmetrically positioned with respect to the laws of war—in that they all endorse and follow them—their moral standing vis-à-vis each other changes. Suppose the soldiers of state A commit some interpersonal wrong—for example, fighting in an unjust war—that is allowed by international law, and that the same international law is also upheld by state B and its soldiers. If so, it would seem that by following the common legal system that binds both A and B, B and its soldiers lack standing to condemn the morally wrongful actions of the A-soldiers, given that they themselves abide by the rules licensing those kinds of actions.

To conclude, our discussion reveals that, unless a compelling defense of the strong authority of international law becomes available, a political approach may fail to offer a plausible basis for vindicating orthodox substantive conclusions. Arguably, the most promising version of the political approach involves making some concessions to revisionists.

3.2 Challenges to the Non-Political Approach

The non-political approach, recall, holds that the principles governing the design of the laws of war are derived from the principles governing the conduct of individual soldiers. On the simplest, purist version of this approach, the laws of war should mirror interpersonal morality (Rodin [2011]). We think that this view about institutional design should be rejected in general, and find it particularly problematic when adopted in conjunction with revisionists' account of interpersonal morality.¹⁶ On this point, we agree with orthodox theorists like Shue, and revisionists like McMahan.

The rejection of this view stems from the simple observation that the answers to the questions 'What are the true moral principles and values?' and 'What institutional rules should be adopted to best realize them?' need not always coincide (compare Cohen [2008: 266]). It is an open question whether directly reproducing fundamental moral principles in the law will best instantiate the values underlying those principles in the relevant circumstances. This depends on both the content of the principles and the nature of the circumstances.

For example, having the laws of war entirely mirror the morality underlying revisionist *jus in bello* is potentially problematic. If, as is often the case, combatants on both sides believe themselves to be justified, they will hold themselves to the revisionist standards applying to just combatants, with the associated reduced immunity for civilians. This will predictably lead to the death of many more innocent individuals than under a different institutional scheme. Mirroring the revisionist morality of war in the laws of war is thus likely to be counterproductive, especially to the extent that the value of innocent lives is central to that very morality (McMahan [2008]; Shue [2008]).

Reproducing interpersonal moral demands in the laws of war would arguably be less problematic under a *more orthodox-friendly account* of what those demands are. Seth Lazar and Adil Haque have defended an account of this kind, according to which interpersonal moral demands are quite close to those embedded in the laws of war: combatant equality and noncombatant immunity (Lazar [2015]; Haque [Forthcoming]). Regarding the former, Lazar and Haque observe that, on the one hand, the moral protections that just combatants enjoy are somewhat *less robust* than those enjoyed by justified self-defenders in ordinary interpersonal conflicts. Unlike justified self-defenders, just combatants have voluntarily exposed themselves to the risk of harm, and as between those who have and have not chosen to put themselves in harm's way, it is morally preferable to harm the former. This judgment derives from a general principle that, when a cost is unavoidable, it is other

things equal *pro tanto* better that it be borne by the individuals who had most opportunity to avoid its coming about. Moreover, most combatants go to war recklessly, without examining the justice of their cause. If they happen to respect their adversaries' rights, they do so only through good fortune. The protections enjoyed by unjust combatants, on the other hand, are somewhat *more robust* than those of unjustified attackers in interpersonal conflicts. Unjust combatants are typically in the same epistemic position as their just counterparts, and they often act out of reasonable partiality for their compatriots. Moreover, on each side of a war, many individual combatants fight permissibly, and many fight impermissibly—all wars involve just and unjust aims and, more narrowly, just and unjust operations. These facts together suggest that, although just and unjust combatants are not always morally on a par, they often are, so combatant equality might be a sensible approximation of the moral truth, given the difficulty of calibrating obligations and permissions to the precise normative standing of each combatant.

Similarly, manifold arguments show that killing noncombatants in war is more seriously wrongful than killing combatants, which, combined with further premises, helps ground noncombatant immunity and other legal doctrines, like proportionality and necessity. In particular, noncombatants are more vulnerable than combatants, killing them involves running a greater risk of killing innocent victims than does killing combatants, and killing noncombatants typically involves an egregiously wrongful mode of agency, in which they are used as a mere means (these arguments are developed and defended in detail in Lazar [2015]).

Embedding this orthodox-friendly understanding of interpersonal moral demands in the laws of war would probably have less deleterious consequences than embedding revisionist moral principles. Indeed, the resulting laws of war would not be too different from those that currently exist, which already approximate—without yet perfectly tracking—what interpersonal morality requires on this account.

Acknowledging this fact, however, does not suffice to address our general concern about the 'mirroring' approach. Whether institutional rules should mirror interpersonal morality should be treated as an open question, to be answered *a posteriori*. Depending on the circumstances, in some cases the answer will be affirmative, and in other cases negative. What we object to is what one might call the '*a priori* mirroring' approach; and nothing in the discussion so far addresses our objection. In light of this, let us turn to the second type of derivation of institutional demands from individual moral ones, namely that mediated by principles of institutional regulation.

Like us, adherents of this approach are concerned that any attempt to mirror interpersonal morality in the laws of war might be counter-productive. On their view, we should develop principles to design the laws of war that are quite distinct from those of interpersonal morality, while still being sensitive to the values underlying it. Taking this kind of view, McMahan [2008] argues that the laws of war presuppose consequentialist foundations—they aim to minimize wrongful harm—while the morality of war is avowedly nonconsequentialist in structure. Yet, at the heart of both is a fundamental concern with the value of the lives of innocent individuals.

This view could potentially let us have our demanding principles of interpersonal morality, without accepting their radical and likely problematic implications if implemented in international law. But of course this view must now explain what soldiers should do when moral and institutional demands for individuals conflict with one another. McMahan briefly argues that, when morality requires what the law permits or prohibits, and when morality prohibits what the law permits, soldiers should obey their moral duties. But when the law prohibits what morality permits, combatants should adhere to the law (McMahan [2008: 37-8]). Problematically, this discussion is neither exhaustive (it is silent on legal requirements, such as the requirement of due care, and obligations to obey lawful orders), nor does it have deep theoretical foundations. McMahan [2008] never explains why legal demands can override moral ones, except by appealing to consequentialist considerations that clash with the deontological approach to interpersonal morality he otherwise endorses (Lazar [2012]).

Like advocates of the political approach, those who invoke principles of institutional regulation must explain *under what circumstances/in what domain* the international law of armed conflict has the kind of authority that can override combatants' interpersonal moral demands. Yet, for the reasons we mentioned in connection with our discussion of the political approach, establishing the authority of international law is a difficult task to accomplish.

However, one avenue for doing so unavailable to political just-war theorists might be open to their non-political counterparts. This consists in appealing to a broadly Razian justification for the authority of international law (Raz [1985]). Following the Razian approach, the authority of international law depends on whether treating its demands as authoritatively binding makes combatants and political leaders more likely to act on the (moral) reasons that independently apply to them. Since, on the non-political approach, institutions are selected on the basis of considerations that ultimately trace back to moral

reasons that apply to individuals, this Razian line of analysis is open to its proponents. On this view, the laws of war have authority when obeying their commands is more conducive to their addressees' acting as morality requires than is following their own judgment.

The difficulty for non-political revisionist theorists is that it is not clear when, if ever, the laws of war meet the aforementioned condition. If the moral reasons individuals ought to act on include a near-absolute prohibition on intentionally killing the innocent, then when they are not sure about the justice of their cause soldiers should simply refuse to fight. This is clearly a more accurate guide to abiding by interpersonal moral reasons than following laws of war that may quite clearly diverge from interpersonal morality. Although, structurally, revisionist adherents to the non-political approach could in principle invoke Raz's justificatory strategy, doing so would probably still not allow them to vindicate the authority of international law.

This strategy can be more fruitfully invoked by theorists who, like Lazar and Haque, defend an orthodox-friendly picture of the interpersonal moral demands applying to combatants in war. For these theorists, it will be true that following the law (as opposed to interpersonal morality directly) will often better allow combatants to comply with their moral duties. In those cases, the laws of war will have authority. By contrast, in cases where it is obvious that combatants may better comply with independent moral demands just by following their own judgment, international law will have no authority.¹⁷ Still, this view would fall short of vindicating *jus in bello* orthodoxy, since it allows for circumstances in which soldiers and leaders ought to act contrary to what international law requires.

Once again, then, our discussion reveals that—in the absence of an adequate defense of the authority of international law—what looks like the most promising version of the non-political approach fails to vindicate just-war revisionism, and involves making some concessions to orthodox views.

3.3 Concluding Remarks

Much of the dispute between orthodox and revisionist just war theorists depends on what the correct account of the relationship between moral and institutional demands applying to individuals is. If orthodox theorists wish to vindicate combatant equality and non-combatant immunity as exhaustive of the permissibility of combatants' conduct in war, they must argue that the existing laws of war have legitimate authority. As we have suggested, this is a hard task to accomplish.

If revisionists wish to uphold the interpersonal moral prohibition on killing the innocent, while not subscribing to the problematic ‘*a priori* mirroring approach’, they must explain why and when obedience to the laws of war affects one’s moral standing. This again requires either developing a theory of the authority of international law or, more modestly, of the normative significance of international law, short of authority.

Without any ambition of solving these disputes, our discussion has suggested that the most plausible versions of political and non-political approaches to the just war vindicate positions that depart somewhat from just war orthodoxy and revisionism, occupying the middle ground between the two.

We do, however, hope that our discussion has shown how progress in the first-order dispute between revisionist and orthodox just war theorists can be aided by considering the second-order question of how the moral and institutional demands applying to individuals relate to each other.

4. Feasibility Constraints and Just War Theory

In this section, we first sketch the political theory discussion on feasibility constraints and the design of normative principles, then draw parallels with the contemporary just war theory debate. Once again, this new framing will help us illuminate that debate and make some substantive advances within it.

4.1 Feasibility Constraints in Theorizing about Justice

When attempting to act on our most cherished moral ideals, we often find that facts about human character and behavior, our empirical circumstances, and the perverse incentives that we face, make those ideals hard to implement successfully. We call these facts feasibility constraints.¹⁸ Political theorists have, in recent years, expended much effort identifying which feasibility constraints should set the parameters for principles of justice that aim to deliver action-guiding prescriptions.¹⁹ Their views can be represented on a spectrum, from what might be called ‘utopian’ theorists at one end, to ‘realists’ at the other (Carens [1996]; Valentini [2012]).²⁰

Utopian theorists think that justice is unconstrained by the demands of feasibility (e.g., arguably, Cohen [2003]); realists think that all facts that render a principle even minimally unlikely to be successfully realized should be taken as parametric—that is, they should limit the scope of that principle’s application. Between these unpopular extremes, many believe that normative theorizing should make *some* concessions to feasibility

constraints, but they differ over the extent of those concessions. Inspired by vocabulary introduced by David Estlund [2008: ch. 14.], we distinguish between weakly and strongly concessive approaches.

Weakly concessive approaches consider only a thin set of feasibility constraints relevant to theorizing about justice. Provided some action enjoined by a principle of justice is physically and psychologically possible for the agent, it can be required of him.²¹ Facts about physical and psychological possibility will depend on (i) the agents in question and (ii) the environment around them. Ascertaining what (i) and (ii) involve may seem relatively straightforward. For example, it may sometimes be physically impossible for a deaf person to act on the obligation ‘you ought to reply when your name is called out’. Similarly, it may be physically impossible for a well-meaning but desperately poor state to provide subsistence for all of its citizens.

Other cases are less clear-cut. Imagine John is standing on the shore of a lake, and sees a small child drowning, not far from him (Singer [1972]). John knows how to swim, and can pull the child out without risking drowning; however, he is paralyzed by what he recognizes as an irrational fear of entering the lake. He developed this fear as a child, after his father died in a boating accident. Is it psychologically impossible for John to walk in and pull the child out? It is hard to say, but weakly concessive theories must explain when psychological debilities count as genuine feasibility constraints.

Strongly concessive approaches emphasize not only facts about physical and psychological possibility, but also facts about what agents are likely to do given their preferences and dispositions (for a critique of these approaches see Estlund [2011]). To appreciate the difference, consider this prescription: ‘Every person ought to donate 50% of their income to the global poor, provided this is compatible with each still satisfying their basic needs’. Weakly concessive approaches could not object to this: though this prescription asks a lot, it is clearly physically and psychologically possible to donate half one’s income to others (barring exceptional circumstances or unusual pathologies). By contrast, on the strongly concessive approach, this prescription is indeed invalid, because it is so unlikely that people will comply with it. Given predictable selfishness and partiality, very few will be disposed to donate so much of their earnings, which is enough to undermine the prescription.²²

4.2 Feasibility Constraints in Just War Theory

The divide between weakly and strongly concessive approaches is again reproduced in the split between orthodox and revisionist just war theorists, and in a rather stark way. The former are strongly concessive, the latter are weakly concessive.

Orthodox theorists defend combatant equality and noncombatant immunity on strongly concessive grounds. The institutions governing armed conflict should not make demands that their addressees will predictably ignore. More specifically, as was briefly mentioned in the previous section, some facts about warfare, human nature, and our predictable moral failings, make revisionist laws of war highly unlikely to be observed.²³

First, the circumstances of warfare mean that combatants are rarely able to find out, given the time and resources available, whether their cause is just, or whether their targets are liable to be killed. Moreover, there may be reasonable disagreement about what makes a war just, so different combatants' judgments will presuppose different standards. Rawls' reflections on the 'burdens of judgment' apply here as elsewhere (Rawls [1996: Lecture II, sec. 2.]). And even if—counterfactually—most combatants could converge on the same standard of justice, find out whether the war they are fighting is just, and distinguish the liable from the nonliable, they would not be able to confine their attacks to the liable, given how the two groups are intermingled, and given how relatively indiscriminate military technology still is.

Second, human nature is such that, arguably, the extreme exigencies of warfare, especially *in bello*, make adhering to strict moral norms psychologically impossible, or at any rate excessively onerous, for many combatants. Their own lives and the lives of their friends are immediately in danger; death and pain surround them; psychological trauma is, for many combatants, inevitable. This extreme stress reduces their ability to deliberate about the right course of action; it also almost certainly inclines them to reason more partially.

Third, and perhaps most importantly, combatants will often convince themselves that they are fighting for a just cause, no matter how much of a cognitive leap that requires. Their leaders will aid this self-deception through propaganda, deceit, and misinformation.

Together, these facts mean that if the laws of armed conflict rejected combatant equality and noncombatant immunity, then those laws would be, respectively, disregarded and brutally abused. If the law prohibits unjust combatants from fighting, they will fight nonetheless, whether because of the difficulty of knowing that their cause is unjust; or because, once their lives are at stake, they will predictably fight regardless of the justice of

their cause; or because they convince themselves that their cause is just despite evidence to the contrary. Similarly, if the laws were to permit just combatants to intentionally kill liable noncombatants, they would predictably be abused. Many unjust combatants would arrogate to themselves the extra permissions reserved for just combatants (believing themselves justified), and many just combatants would take advantage of the additional permissions without adequate justification for doing so—in part, no doubt, because of the psychological exigencies of combat.

If a critical mass of combatants disobey the laws of armed conflict, then those laws cannot minimize the (wrongful) harms involved in war. Laws cannot achieve their goals if they are ignored. So the laws should not make demands of people that they will, predictably, not fulfil. Facts about likely compliance constrain which institutions can justifiably govern armed conflict. Orthodox theorists are strongly concessive.

Revisionists, as already noted, focus primarily on interpersonal moral demands, and, unlike orthodox theorists, they are weakly concessive, as well as highly optimistic about what is psychologically possible for combatants at war. For revisionists, the pervasive uncertainty of war, psychological trauma, and predictable self-deception are at most problems of application. Normative principles are derived from sanitized hypothetical cases with none of these characteristics.

Faced with the objection that their normative theorizing makes epistemic and psychological demands that normal combatants cannot meet, revisionists have a ready response: their demands govern whom combatants may kill, if they kill anyone. They can be satisfied either by killing only those who may permissibly be killed, or by not killing anyone at all. Although, for at least some combatants, it might be impossible to discriminate between the liable and the nonliable in war, it is certainly possible to adhere to the principle ‘kill only the liable’: simply kill no one. This would mean failing to fulfil any duties to defend the innocent. But provided one accepts a substantial asymmetry between doing and allowing harm, as most revisionists do, perhaps this is a tolerable result.

Moreover, although stress and trauma might undermine some people’s agency in war, many combatants overcome their circumstances and oppose unjust actions in war, so why should we assume that all humans are incapable of opposing wars that are unjust simpliciter? Revisionists believe that many human beings can resist the corrupting effects of violence and war, and that, despite their survival instinct, they can adhere to norms that demand sacrificing their own lives, rather than take another person’s life to protect themselves. Since resisting one’s survival instinct is undeniably hard, norms in opposition

to that instinct are unlikely to be universally complied with. But for revisionists, predictable wrongdoing is no ground for removing interpersonal moral obligations we would otherwise have.

5. Feasibility Constraints and Just War Theory: Implications

As with the dispute over political and non-political approaches to the site of *jus in bello*, we again see that the controversy between orthodox and revisionist just war theorists derives, at least in part, from a deeper disagreement about feasibility constraints in normative theorizing. It is another proxy battle, which cannot be resolved without settling the second-order dispute. However, we think that this task is easier for the feasibility question than for the site question, because revisionist and orthodox approaches can be reconciled. Not only are they fighting proxy battles; they are engaged in a phony war. Why? Because there is no uniquely correct set of feasibility constraints.

Which constraints we should recognize depends on the site for which we are issuing prescriptions. Orthodox and revisionist just war theorists—for all their disagreement—actually endorse compatible approaches, and each is broadly right about the role of feasibility for the site that they consider. Orthodox theorists are right that, when designing institutions, we should be strongly concessive. But revisionists are also right that, at the level of interpersonal morality, we should be only weakly concessive.

The key point is simple. When deciding what I, as an individual, ought to do, I cannot use my moral weakness as an excuse, because—setting genuine pathologies aside—I have sufficient control of whether or not I am morally weak, and of how I behave more generally. By contrast, we cannot reasonably expect the same level of control on the part of an institutional system, no matter how effectively enforced its rules are. It is not in the law's power to secure compliance with its content, independently of what that content is. How likely individuals are to obey given rules therefore makes a difference to what a system of rules *can* achieve in any given circumstance Weinberg []; Valentini [Forthcoming]. For this reason, institutional—as opposed to purely moral—rules for individual conduct ought, in the main, to take into account individuals' likely non-compliance.

While the strongly vs. weakly concessive attitudes of orthodox and revisionist just war theorists at the institutional and the interpersonal level are laudable, some objections to both views still arise from thinking about feasibility constraints. In what follows, we set them out in turn.

5.1 Challenges to Orthodox Theorists' Treatment of Feasibility Constraints

Orthodox theorists are arguably *too* concessive in their understanding of which institutional norms might win assent. For example, one might have thought, during the Second World War, that any legal convention prohibiting intentional attacks on noncombatants would be infeasible to implement, and yet over the twentieth century attacks on noncombatants became taboo, at least among liberal democracies (Kahl [2007]). In the same spirit, we should not be too pessimistic about the prospects for further reform of the laws of war. We should endorse and pursue concrete institutional proposals that might materially improve the likelihood of unjust combatants both finding out about the impermissibility of their wars, and acting on that knowledge.

For example, whatever the shortcomings of McMahan's proposal for an international court of *jus ad bellum*, using advances in technology and the increasing reach of international organizations to provide more public information about the proximate causes of war (along the lines already attempted by the OSCE, for example in South Ossetia in 2008) increases combatants' prospects of discovering whether their causes are just (McMahan [2014]). Making greater provision within national armies for selective conscientious refusal could also materially diminish predictable voluntary wrongdoing (McMahan [2013]). New technologies, such as unmanned aerial vehicles equipped with high-powered cameras, promise to make both distinguishing and discriminating between the liable and nonliable more tractable, as well as mitigating at least the antecedent psychological stress that makes conscientious action by soldiers in conventional wars so difficult (Strawser [2010]). Though international law advances glacially, it does advance, and orthodox just war theorists should ensure they guide, rather than hinder, that progress.

5.2 Challenges to Revisionist Theorists' Treatment of Feasibility Constraints

Revisionist just war theorists are too inattentive to real-world constraints characterizing the human condition in war, and to uncertainty and psychological stress in particular. We can indeed always abide by the duty not to kill nonliable people, by simply refusing to fight, but this is like saying that a blind person can adhere to the prohibition 'you must not cross roads when the red man is lit' by never crossing roads. If they give us no more guidance than this as to what to do given the uncertainty and stress characterizing war, then our only option is to endorse pacifism.²⁴

Let us begin by considering uncertainty. Combatants at war are typically unable to reliably distinguish between liable and nonliable combatants and noncombatants; even if

they could do so, they could not discriminate between them; that is, confine their attacks only to the liable (Lazar [2010]; Dill and Shue [2012]). Invariably, they are also uncertain whether their cause is just, and whether it will be proportionate and necessary. If they are told that they may intentionally kill only the liable, when doing so is necessary and proportionate to the service of a just cause, then their only way to avoid risking breaching a near-absolute prohibition on intentionally killing the innocent is to refuse to fight. Although pacifism should remain a live option, most just war theorists want to offer a middle ground between realism and pacifism, to explain why common sense is right, and some wars can permissibly be fought, despite their costs. This means explaining how to apply revisionist just war theory in the context of uncertainty.²⁵

Without aiming to be comprehensive, we can illustrate two approaches available to revisionists who wish to extend their theories in these ways. One involves first identifying all of the objective moral reasons, and then choosing a decision rule that allows us to optimize compliance with our objective moral reasons, given our uncertainty (Lazar [2016]). Paradigmatically, this means applying decision theory to our moral reasons. For any given decision problem, we first identify the options available to the agent, then the possible states that the world might be in, and the outcomes of those options dependent on those states. We assign probabilities to the states given that one acts, and moral worth (e.g., ‘utilities’) to the outcomes, sum the products of those two values for all possible outcomes from the option, and choose the option that maximizes expected moral worth.

On most accounts this is our best tool for decision-making under uncertainty, but it poses distinctive problems for just war theory, given its apparently consequentialist cast, and the avowedly nonconsequentialist approach to ethics of most just war theorists—certainly of those in the revisionist camp. It also raises its own problems—after all, we aimed to provide useful advice in the circumstances of war, but doing expected ‘moral worth’ (e.g., utility) calculations is often no easier than working out the objectively right thing to do. Identifying salient outcomes and states, assigning moral worth to the outcomes and probabilities to the states will often be an inordinately complex task. Some might even question whether we can assign probabilities in an endeavor as unpredictable and complex as warfare.

The second approach is to argue that first-order moral reasons govern what is permissible given our uncertainty, and reject the idea that we need a decision rule to apply our theory of objective morality. On this view, we would need to work out, for example, a theory of recklessness and of negligence, and we might argue that acts with uncertain

consequences are permissible just in case they are neither reckless nor negligent. We might also develop an evidence- or belief-relative theory of rights, according to which my claims against others are in part a function of the evidence available to them, or what they believe to be the case (Ferzan [2005]; Zimmerman [2008]; Frowe [2010]). Or we could perhaps adopt Aboodi, Boorer, and Enoch's suggestion that whether a harm counts as intentional can depend on the agent's beliefs about whether the target was liable to that harm (Aboodi et al. [2008]; see also McMahan [2011]). The challenge for those who favor this approach is to give a detailed account of those reasons, and to explain both why they cannot be simply integrated into the first approach, and what we should do when our first-order reasons governing action under uncertainty must be combined with, or conflict with, our reasons to optimize compliance with objective norms.

Lastly, and as anticipated, revisionist just war theorists should re-examine their views on whether psychological stress and trauma can defeat obligations that we might otherwise have. The standing assumption is that the unique exigencies of war do not diminish the constraints that govern belligerent practice. But in other contexts, we often think of pathological psychological debilities as being, as Estlund puts it, 'requirement-blocking' (Estlund [2011]). Of course, this is easier to explain when the requirements are, as in the drowning case presented earlier, positive requirements to aid others. In war, our central focus is on the ethics of killing, and it is hard to come up with cases outside of war in which a putative duty not to kill is blocked by the psychological stress faced by the duty-bearer.

But the revisionists tell combatants fighting for an unjust cause that they are morally required to lay down their weapons, even if that means sacrificing their lives. Consider a terrified soldier, worn down by weeks or months of near-misses, seeing his friends and enemies arbitrarily cut down one after the other, who now faces attack. It seems relatively easy to think of cases in which it is psychologically impossible for such an individual to lay down his arms and let himself be killed. And we can perhaps go further. Is it psychologically possible, in such a case, to do nothing to defend yourself? Grant the revisionists that mere fear for one's life cannot block the requirement not to kill an innocent person. But could it perhaps block the requirement not to subject an innocent person to a certain level of risk? Perhaps the psychological impossibility of doing nothing might license this combatant to spray suppressive fire in the direction of his adversaries, in the hopes of pinning them down and preventing them from dealing the decisive blow. We do not mean to present a decisive case for this solution here. But we do believe that

revisionist just war theorists should think more carefully about cases like these, which illustrate how the psychological impossibility of adhering to some constraints might block their application in war.

6. Conclusion

In this paper, we have argued that revisionist and orthodox just war theorists have fought proxy battles: their first-order disagreements over substantive questions in just war theory—in particular combatant equality and noncombatant immunity—derive, at least partly, from second-order disputes over the nature and purpose of just war theory. Bringing these debates to the surface shows both how these different camps have been talking past each other, and how we can make advances in the debate and, perhaps, reconcile their views.

In particular, we have argued that normative theorizing about war should concern itself both with the grounds on which the institutions governing armed conflict are morally justified, and with the moral demands that apply to individual actors in war. The interesting question is how the two relate to each other, and we have mapped out the relevant possibilities, and their virtues and vices. We have also argued that implicit disputes over feasibility constraints underpin orthodox theorists' concessive attitude to unjust combatants who fight despite their interpersonal moral requirements not to, as well as revisionists' moral rigorism. In this dispute, we think a happy accommodation between revisionists and orthodox theorists should be possible: when designing institutions to govern war, we should consider all kinds of predictable non-compliance; in the principles governing individual actors, only physical and psychological impossibility should be parametric. Revisionists have not adequately adapted their theories to accommodate these considerations, but there is nothing to prevent them from doing so. And once they do, the gulf between their prescriptions and those issued by orthodox theorists may shrink, pointing towards a 'middle ground' between the two.

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¹ For example, McMahan [1994]; Rodin [2002]; McPherson [2004]; McMahan [2009]; Fabre [2012]; Frowe [2014].

² Appealing to a broadly rule consequentialist framework: Buchanan [2006]; Shue [2010]; Waldron [2010]. Appealing to a contractarian framework: Benbaji [2008]; Statman [2014]. Appealing to a deontological framework that methodologically has much in common with the revisionist approach: Emerton and Handfield [2009]; Lazar [2015].

³ Cf. the distinction between dualistic and monistic approaches to justice in Murphy [1998].

⁴ We are setting aside the equal liberty principle since this does not concern socio-economic justice.

⁵ The specification 'under ideal circumstances' is necessary for the following reason. In cases of justice-deficits, it may well be that one's special responsibilities conflict with justice. For instance, against an unjust social background, a father's duty to give special care to his child may conflict with egalitarian justice, resulting in the child's having an *unfair* advantage later on in life, compared to underprivileged children. But if the underlying social background is just, within the limits imposed by the law, one may attend to one's special responsibilities knowing that this will not be at odds with what justice requires.

⁶ For discussion, see Pogge [2000]; Ronzoni [2007].

⁷ See what Buchanan [2013: 14ff] calls the 'mirroring view' in the philosophy of human rights. Murphy [1998: 254] explicitly rejects this option.

⁸ Note that, for Cohen, principles of regulation may also apply to individuals' conduct directly. Here, we specifically focus on principles of regulation in the context of institutional selection. Thanks to Miriam Ronzoni and Mike Otsuka for discussion.

⁹ For Cohen, principles of regulation should be responsive to concerns beyond justice, also including, e.g., stability, efficiency and publicity. For simplicity's sake, here we do not discuss this further feature of Cohen's view, but only focus on its general structure.

¹⁰ Estlund [2007] has developed a further version of the political approach, grounded in democratic authority.

¹¹ E.g., McMahan [1994]; Rodin [2002]; Coady [2008].

¹² McMahan [1994]; Fabre [2012]; Frowe [2012] For dissent, see Rodin [2008].

¹³ Cohen [2008: 265 n.58] himself explicitly links his distinction between fundamental principles of justice and rules of social regulation to McMahan's distinction between the deep morality and the laws of war. Thanks to Mike Otsuka for the pointer.

¹⁴ Although McMahan clearly thinks that this principle (minimize wrongful harm) would generate the same laws of war as Shue and Dill's principle (minimize harm), that is presumably an open question. Shue and Dill settle on their version because they think that almost all suffering in war—including that of unjust combatants—exceeds what the sufferers deserve to bear.

¹⁵ An alternative approach is to argue not that *international law* has authority, but that the commands of a 'morally acceptable' state do, so that unjust combatants' reasons to obey orders can override their reasons not to kill the innocent. See, for example, Estlund [2007]; Renzo [2015].

¹⁶ Cf. Buchanan's rejection of the 'mirroring view' in relation to human rights specifically, in Buchanan [2013: ch. 2].

¹⁷ It might be objected that, if the most effective way for us to comply with interpersonal morality in the context of war is to follow the laws of war, then, by hypothesis, the latter *always* have authority. This does not seem right. While it may well be true that, *in the main*, following justified laws of war is most conducive to compliance with interpersonal moral demands, this need not always be the case. Consider the following analogy. (For discussion of a similar case, see Smith [1973: 971].) Obeying traffic rules is generally most efficient and safe. But there are exceptions. If I am at a pedestrian crossing at 4am in a deserted village with no person or vehicle in sight, and the traffic light goes red, it is plainly false that not crossing—i.e., obeying traffic rules—would be most conducive to safety and efficiency. In that case, following my own judgment and crossing would be most responsive to considerations of safety and efficiency. Similar situations might occur, *mutatis mutandis*, in the context of war, and when they do, deviation from the relevant laws in direct compliance with morality is required. Cf. the discussions in Raz [1986: 73–75]; Soper [1989: 227–28]. Thanks to Massimo Renzo for raising this point.

¹⁸ For discussion see Raikka [1998]; Gilibert [2011]; Gilibert and Lawford-Smith [2012]; Gheaus [2013]; Lawford-Smith [2013].

¹⁹ For simplicity's sake, once again we focus on the notion of justice. Discussions of feasibility, however, are equally applicable to other ideals, such as democracy.

²⁰ Here by 'realists' we do not mean 'political realists' such as Bernard Williams or William Galston. We use the label 'realism' to denote a particular view about feasibility constraints; not about what counts as politics, and what implications this has for political theorizing. See Rossi and Sleat [2014].

²¹ Estlund [2011] appears to be concerned with physical possibility alone, hence he arguably belongs somewhere in between utopian and weakly concessive approaches.

²² Some forms of so-called 'realism in political theory' may be seen as leaning towards this position. For discussion see Galston [2010]. But see note 19 for clarification.

²³ Buchanan and Keohane [2004]; Buchanan [2006]; McMahan [2008]; Roberts [2008]; Shue [2010]; Waldron [2010]; Shue [2013].

²⁴ As Ralf Bader and Peter Vallentyne have pointed out in discussion, *any* moral theory should give an account of how its principles are to be applied under conditions of uncertainty. We agree, but we also think that the topic is particularly germane to 'feasibility constraints', as understood in this paper: i.e., real-world facts that make it hard for us to act on, or realize, important moral ideals. Specifically, the 'fog of war' means that combatants will predictably fail to do what they objectively ought to do, so revisionists owe us an account of what they ought to do given their uncertainty. This will take one of the two forms outlined in the text.

²⁵ McMahan has some rough advice that combatants are permitted to kill people when it is reasonable for them to presume that their targets are liable to be killed, and Cécile Fabre has alluded to a precautionary principle, which enjoins refraining from the use of lethal force when there is doubt as to the targets' liability.