

CRYING HAVOC AND (RE)CLAIMING RIGHTS

HOW THE LIABILITIES OF REVISIONISM AND THE JUST WAR TRADITION ALTER THE MORAL EQUALITY OF COMBATANTS

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IMAGINE a Just War Rip Van Winkle, someone who for one reason or another found themselves temporarily cut off from the theoretical debates on the ethics of war.¹ Unlike the character in Washington Irving's famous tale, such a dreary-eyed theoretician needed to sleep only a little over a decade to miss a revolution, an insurgency in the theoretical rather than the political domain. For in the thirteen years since the publication of Jeff McMahan's *Killing in War*, there has been a seismic shift in debates about the ethics of war, a shift that challenges the foundational assumptions of the just war tradition.² This revisionist project led by McMahan, Helen Frowe, David Rodin, and numerous others begins with the contention that the moral justification for killing in war should be consistent with a broader theory of self-defense.³ In the language of

- 1 This analogy captures, albeit in a rather exaggerated manner, the way I felt after returning to discussions about the ethics of war after more than a decade away. I had served as an instructor of philosophy at the Air Force Academy before separating from the service and then focusing my graduate research not on military ethics, but rather on questions involving claim rights and directional duties. After accepting an appointment at the US Naval Academy, I was momentarily bewildered by the dramatic change in the terminology for debating the ethics of war that had taken place in my absence.
- 2 As Leonard Kahn nicely articulates in "Liability to Deadly Force in War," the claim that unjust combatants have no license to kill in war has its own rich historical roots, going back at least to Pascal's *Pensées* and Voltaire's *Philosophical Dictionary*. Nonetheless, the revisionist view, which had been relegated to the margins of discourse about the killing in war for decades, if not centuries, has ascended to become a viable rival, if not the dominant view among theorists considering the ethical issues of killing in war.
- 3 There are numerous examples within the revisionist tradition. I will consider a number of them throughout the paper. For now, it will be sufficient to note four of the more prominent examples: McMahan, *Killing in War*; Frowe, *Defensive Killing*; Rodin, *War and Self Defense*; and Fabre, *Cosmopolitan War*. Although Rodin's work predates McMahan's, and although some theorists have placed the resurgence in the revisionist tradition at the

the revisionist project, the key question—the only question, really—is whether an agent can be liable to the use of deadly, defensive force.⁴

More recently, the revisionist project has been modestly expanded, from considering how killing could make an agent liable to the use of defensive force to considering how saving or not saving lives could do so as well. With a focus firmly on this new expanded domain, this paper begins fairly modestly. I do not attempt to offer a new theory of liability or even a new principle of liability.⁵ I merely argue for two contentions: that for a principle of liability to be action-guiding, an agent must be violating the claim right of another rather than merely acting unjustly, and that the directional aspects of claim rights will therefore be more significant for settling questions of liability than they are generally taken to be. Within this expansionist project, those moral features imply that saving lives can never, in and of itself, make one agent liable to another.⁶

It is in turning these general insights about liability back on to the core revisionist considerations of killing, however, that those same modest contentions

beginning of the 2003 Iraq War, it was McMahan's work that most radically altered the landscape of the theoretical debates about the ethics of killing in war, turning revisionism from a more isolated project advanced by a few to a genuine—if not even more prominent and frequently considered—alternative to the just war tradition.

- 4 Some theorists classify the revisionist project as any attempt to reconsider any of the traditional just war theory precepts, most notably those put forward by Michael Walzer. Many revisionists, including Frowe and McMahan, are also reductive individualists. They claim that individual liability can be determined by analyzing the actions of those individuals and that the ethics of war is completely reducible to the ethics of self-defense. There are other theorists who are not reductive individualists who are nonetheless often labeled revisionists because they seek to challenge contentions of the current consensus within the just war tradition. The extent to which these theorists ought to count as members of the revisionist project depends in large part on the extent to which they are looking to radically modify the just war tradition, a phrase that, given the ways the principles and their application have changed rather dramatically across time, is better suited to the theoretical history than is the term “just war theory,” the nomenclature often favored by revisionists. In this paper, I am primarily focused on the reductive branch of the revisionist project advanced by McMahan and Frowe. Nonetheless, the arguments contained herein should be equally forceful against any theory that seeks to use the fact that soldiers can be morally responsible for participating in unjust war to conclude the need for different *ius in bello* standards for soldiers on different sides of a war.
- 5 Earlier versions of this paper were, as earlier versions of papers can be, both too bold in their aims and too dismissive of rival views. Several years ago, I presented a paper titled “Claim Rights Based Liability: The Achilles Heel of the Revisionist Just War Project.” To be clear, I am not advancing a principle of liability, nor arguing that this analysis presents an unanswerable challenge for the revisionist project here.
- 6 As I will argue in section 3, there are some rare cases in which saving the life of another could make one agent liable to another, but it is not the saving of the life, in and of itself, that does so. I will have much more to say about these exceptions in section 3.

can have a far more significant impact. Analyzing questions of liability in this new, expanded domain of saving and not saving lives can highlight important distinctions that can be missed when considering the same kinds of actions (i.e., killings) time and time again in cases of self-defense and war. Morally salient elements that would normally be concealed can be revealed, and that insight can be used to consider the paradigmatic case of killing anew. In doing so, it becomes clear that an assumption taken to be so obvious it need not even be acknowledged—that unjust killing necessarily involves the violation of rights—turns out to be false. A more nuanced understanding of rights—the moral element that is meant to be the centerpiece of the revisionist project—ends up exposing a serious limitation with several of its central aims.

To make that argument, this paper proceeds as follows: In section 1, I consider two attempts to expand the core revisionist project, advancing cases from Helen Frowe and Blake Hereth. In section 2, I pause to consider two important theoretical complications necessary to evaluate those claims. In section 3, I argue that since one agent does not have the normative authority to prevent the saving of another's life, saving lives can never, in and of itself, make one agent liable to another. In section 4, I consider how these insights are relevant for analyzing liability in war, arguing that a myopic focus on consent, rather than on the myriad moral authorities possessed by agents, undermines the revisionist claim that soldiers cannot waive, and therefore can only forfeit, their rights in war.

Despite that structure, the central argument of this paper is intended not to serve as an objection to the revisionist project, but rather to offer a critique of both revisionism in its most prevalent form and a particular interpretation of the just war tradition it seeks to replace. By realizing this limitation of the revisionist revolution, a theoretical space opens up in which one could hold on to a significant insight of revisionism, namely that soldiers have significant moral and epistemic responsibilities to avoid fighting in unjust wars, while nonetheless maintaining a significant kind of moral equality regarding the actions of combatants within war. So, in section 5, I analyze how the fact that soldiers can be morally responsible for unjust *ad bellum* wars—even if they turn out to be morally responsible for the very reasons given by revisionists—does not necessitate a change in the moral equality of soldiers embedded within traditional *jus in bello* requirements.

1. EXPANDING THE REVISIONIST PROJECT

In the revisionist project, the key moral question is whether an agent can be liable to the use of deadly force. Trying to unjustly take someone else's life, for instance, can make an agent liable to defensive, coercive, and even violent

actions to thwart that effort. In standard circumstances, for example, if I am unjustly trying to kill you, then I become liable to your use of defensive force. You would be morally justified in using force—even deadly force—against me to try to stop me from doing so, so long as that force were proportionate, necessary, and instrumental in defending yourself against my unjustified attack.⁷ In this first section, I analyze how this broad consensus has led some to consider how a similar analysis could be expanded to cases of saving and not saving lives.

In *Defensive Killing*, Helen Frowe offers an expansion of the revisionist project, arguing that saving lives can make one agent liable to another, with a case involving an attacker, a defender, and a paramedic.⁸

Paramedics Before Police: An Attacker has already killed a Victim's family, but as the Attacker is trying to strangle the Victim, the Victim hits the Attacker over the head, rendering him unconscious. The Victim then calls emergency services, who dispatch both the police (because of the attack) and an ambulance (because the assailant is injured). Unfortunately, the ambulance arrives first, and a Paramedic immediately starts reviving the Attacker. The Victim knows that if the Paramedic is successful, the Attacker will go back to what they were doing before, namely trying to kill the Victim. The Victim warns the Paramedic of her certainty regarding this outcome, but the Paramedic proceeds, noting that it is their job to save lives not to worry about the probable or even the certain outcomes of doing so.

Frowe dismisses the Paramedic's common-sense judgment, concluding that if the Paramedic proceeds in the face of the Victim's objection, the Paramedic is thereby "knowingly contributing to an unjust threat" to the Victim and "renders herself liable to defensive force."⁹ According to Frowe, so long as an agent is responsible for an unjust harm, they then can become liable to the use of deadly force. Frowe concludes that this case helps demonstrate that, in certain circumstances, unjustly saving someone's life could make one liable to the use of defensive force, even deadly force.¹⁰

7 There is some debate in the literature about whether proportionality, necessity, and instrumentality are internal or external to a principle of liability. The argument of this paper is intended to work independently of that distinction; I am focusing here only on cases in which proportionality, necessity, and instrumentality are met.

8 Frowe, *Defensive Killing*, 202. The wording and naming convention are my own, but the case is clearly articulated by Frowe in a case called *Rescue*.

9 Frowe, *Defensive Killing*, 202–3.

10 Cécile Fabre concurs with Frowe's judgments here. See, for example, "Guns, Food, and Liability to Attack in War."

In “Saving Lives, Taking Lives,” Blake Hereth considers a different expansion of the revisionist project, arguing that *not* saving someone’s life can make an agent liable to defensive harm.¹¹

Ruining the Movie Titanic Forever: Rose is in a canoe in the center of an ice-cold lake when she sees Jack, who accidentally fell into the water and is struggling to stay afloat. Jack lacks the strength to pull himself into her canoe, so he asks Rose for help. She refuses Jack’s request but only because she’s always fantasized about seeing someone drown in ice-cold water. (*Titanic* is Rose’s favorite film, but to her great disdain she realizes, “It is only fiction!” Finally, a chance to see it played out before her very eyes, and with a man named Jack nonetheless—quite the lucky day for Ms. Rose.) Yet, as he is about to come to terms with his impending demise, Jack realizes he has just enough strength to flip the canoe, crawl into it, right it, and row it back to shore. He knows he’ll lack the strength to pull Rose back into the canoe, a fact that will ultimately result in her death. Yet he knows as well that Rose could have saved them both and has decided not to do so.

According to Hereth, Rose is liable to the use of defensive force, even deadly force. So, Hereth contends, in at least some cases, unjustly failing to save someone’s life could make an agent liable to the use of deadly force.

2. THEORETICAL BACKGROUND FOR EVALUATING THE EXPANSIONIST PROJECT

Frowe seeks to expand the revisionist framework by claiming that saving another could make an agent liable to the use of deadly force. Hereth seeks to expand the revisionist framework by claiming that *not* saving another could do so as well. Before analyzing those contentions directly, however, it will be helpful first to consider some of the theoretical tools required for that task. In this section, I analyze two such complications. First, I argue that since Frowe and Hereth seek to alter the debate from the possibility of taking lives to the possibility of saving (or not saving) lives, their analysis shifts to a distinct moral domain, one with its own rich and complex normative history. So, as Hereth explicitly and quite insightfully notes, it seems at least prudent, if not necessary, to pause and consider the lessons from the ethical subfield focused on the

11 Hereth, “Saving Lives, Taking Lives.” The wording and naming convention are my own, but the case is clearly articulated by Hereth.

complications involved in saving and not saving lives.¹² Most notable, for our purposes, is the fact that in biomedical ethics the requirements of justice placed upon those giving care do not always correlate to the normative authorities of those who can demand care. Second, building off that distinction, I consider the purpose a principle of liability is meant to fulfill and whether there may be an important difference between the question of how one agent could become liable and the question of how one agent could be liable *to another*.

2.1. Lessons from Biomedical Ethics: Acting Unjustly vs. Violating Claim Rights

In this section, I consider two important lessons from biomedical ethics that will be relevant to considering contentions about liability in this new, distinct domain. First, biomedical includes questions of prioritization—who ought to get priority in the allocation of often scarce resources.¹³ Second, in part because of that fact, in biomedical ethics, the requirements of justice placed upon those giving care do not always correlate to the rights of those who can demand care.¹⁴

Some may be initially skeptical about the claim that acts of injustice need not correspond to rights of others. After all, one of the distinguishing features of duties of justice is that they often correspond to the rights of others.¹⁵ When an agent has been wronged, there may be some who would want to say that situation necessarily violates a right. That may well be true with a broad enough category of rights, yet considerations of prioritization seem to reinforce an appropriate skepticism about the possibility of an absolute correspondence between duties of justice and the existence of a certain kind of right.

When professors prioritize their students for awards or special recognition, for example, there will be all kinds of rights the students have against the professors with respect to how they choose. The students might be able to demand that the professors do all they can to mitigate the systemic and sometimes unconscious influences of race, gender, and culture on their decisions. Students might be able to demand that professors deliberate about such prioritizations

12 Hereth, “Saving Lives, Taking Lives.” Hereth uses their adroit recognition of the overlap of cases of saving lives and biomedical ethics to consider what defensive liability can tell us about biomedical ethics. Here, I take the alternative approach that builds on the same insight, considering what the findings of biomedical ethics can teach us about defensive liability.

13 See, for example, Beauchamp and Childress, *Principles of Biomedical Ethics*, 300–313; Veatch, “Physicians and Cost Containment”; Singer, “Why We Must Ration Health Care”; and Daniels and Sabin, “Limits to Health Care.”

14 See, for example, Beauchamp and Childress, *Principles of Biomedical Ethics*, 300–313; Benner, “Honoring the Good Behind Rights and Justice in Healthcare When More Than Justice Is Needed”; and Peel, “Human Rights and Medical Ethics.”

15 Broome, *Climate Matters*, 52.

in the appropriate manner (e.g., professors should not do so while drunk). It does not seem, however, that even a professor's best student has the kind of right that would allow them to demand an award, if, through some error of judgment, the professor mistakenly chose someone else. After all, the professor's decision is meant to be *constitutive* in some way. The professor's choice is meant to determine who the winner *actually is*, as opposed to the independent background facts that dictate who the winner *ought to be*. None of that ought to imply, however, that the decision is no longer one involving considerations of justice. It would be an injustice to favor a less qualified candidate over a more qualified one, even if the more qualified candidate lacked the normative authority to demand the award.

The same reasoning would apply even more forcefully for decisions regarding the allocation of scarce medical resources. Patients might be able to demand that medical professionals do all they can to mitigate the systemic and sometimes unconscious influences of race, gender, and culture on their decisions. Patients might be able to demand that medical professionals deliberate about such prioritizations in the appropriate manner. It does not seem, however, that any patient has the moral authority to demand that they be seen before someone else. After all, medical decisions during triage are meant to be *constitutive* in some way; they are meant to set a default order of care on which countless medical professionals working together must rely to save as many lives as they can. None of that ought to imply, however, that the decisions of medical triage do not involve important considerations of justice. It would be unjust to prioritize a patient over one more in need of care. The appropriate beneficiary of a distributed good does not necessarily have the kind of right that allows them to demand those goods, the way they might be able to demand other behavior regarding their rights.

By choosing a less qualified candidate or by prioritizing the wrong patient, both the professor and the medical professional are acting wrongly, and they are wronging the person who has been unjustly denied some benefit.¹⁶ Those wronged could, and often do, protest such missteps of judgment. Nonetheless, because these decisions are meant to be constitutive in some way (i.e., the decision itself is supposed to create *pro tanto* reasons for action), the patient and the student lack the kinds of normative authorities they have with respect to other rights they possess, rights that do not require those kinds of acts of constitutive authority in order to provide precise, demandable content. They do not have the same kind of authority over the teacher or medical professional they would if they were *exercising* their rights to refuse medical treatment or to

16 See Thomson, "What Is It to Wrong Someone?"

be addressed respectfully, for example. They may well be able to *complain*, but they cannot *demand as their due*.¹⁷

At issue here is a morally salient feature of a particular kind of right: the normative authority a rights bearer has over a duty bearer. Oftentimes, rights bring with them certain normative powers. A rights bearer can waive their right, they can enforce their rights, they can prioritize their rights, they can demand as their due, and, when rights are violated, they can either waive or enforce duties of compensation.¹⁸ There is a rich and long-standing debate about the source and normative significance of those authorities, with some contending that these normative authorities are the essential element to the existence of rights, and others holding that they are far less significant.¹⁹ Luckily, we need not wade into that disagreement in order to see a clear consensus: there are duties of justice (and not merely beneficence) that do not correlate to a claim that gives a rights bearer normative authority over a specifically addressed agent or agents.²⁰ When they do exist, however, such normative authorities are incredibly important, and exercising those authorities is undoubtedly a way in which agents alter the moral domain. So, without taking a stand on the foundational significance of those kinds of rights, it would be helpful to distinguish them from other, broader considerations of justice. For ease of allocation, we can refer to rights that correspond to such normative authorities as Hohfeldian rights, rights with normative authorities, or simply claim rights.²¹

17 For more on the distinction between complaints and demands, see Hedahl, "The Significance of a Duty's Direction."

18 Hohfeld, *Fundamental Legal Conceptions*; Hart, *Essays on Bentham*; Darwall, "Bi-Polar Obligation."

19 This is typically referred to in the rights literature as a debate between will theorists and interest theorists. Prominent interest theorists include Raz, *The Morality of Freedom*; MacCormick, *Legal Right and Social Democracy*; and Kramer, "Getting Rights Right." Prominent will theorists include Hart, *Essays on Bentham*; Wellman, *A Theory of Rights*; and Steiner, *An Essay on Rights*. As noted previously, thankfully, we need not wade deep into the debate about the source and ultimate significance of normative authorities to grant that when they do exist, they are, in fact, normatively significant.

20 Elizabeth Ashford nicely captures the significance of such duties when she says that one of the important aspects of our duties of justice is to seek institutional reforms that would, "make more determinate the content of [our obligations of justice] by tightening up the allocation of responsibility" ("The Inadequacy of Our Traditional Conception of the Duties Imposed by Human Rights," 220). In other words, we often have duties of justice to create more specific duties (and the corresponding more specific rights) that would endow people with the ability to engage in these kinds of exercises of moral authority, an authority they do not currently possess.

21 When I use the term "claim rights" for the rest of the paper, I intend to imply that these are claim rights with some sort of corresponding normative authority. There may be some

Once that distinction is made, it becomes clear that in cases of saving and not saving lives, violations of justice will necessarily be a broader category than violations of claim rights with corresponding normative authorities.²² In summation, a quick analysis of the domain of biomedical ethics demonstrates what ought to be obvious from the start, that violations of justice and violations of claim rights need not co-travel. In some cases, at least, a rescuer could have a duty of justice to aid another without the existence of corresponding normative authority on the part of the agent who ought to be helped.

2.2. *Why Directional Liability Matters*

Before analyzing whether saving or not saving another could make an agent liable to the use of defensive force, it will also be helpful to pause and consider the more foundational question of what makes one agent liable to another. To

who hold claim rights that can exist without any normative power, or even those who use the term to simply be synonymous with the term “right.” There may even be some subset of those theorists who are engaged in bioethical research who would be skeptical that claim rights and justice do not cut at the same joints. For any such reader, I would encourage them to read any use of the term “claim rights” as the much more cumbersome “claim rights that are accompanied by a corresponding normative authority.” I do not believe that any of the contentions in this paper would hang on that distinction.

- 22 Two things are worth noting here. First, as I will argue more elaborately in section 3.1, this distinction does not rule out by stipulation that saving or not saving another can make an agent liable. An agent may well have these kinds of normative authorities in cases in which other agents have a duty to save them. In cases in which medical resources are not scarce, for instance, patients very likely have the requisite normative authority to demand care from those who are in a position to provide it. Second, prioritization is not the only area of bioethics where considerations of justice do not cut at the same joints as considerations of claim rights and normative authorities. Climate change is, for instance, another public health domain that challenges the possibility of complete correlation between duties of justice and the existence of Hohfeldian claims. When Tuvalu’s 11,000 citizens are forced to leave their flooding country, for instance, it would be an outrage to deny them refugee status, even though there is presently no UN provision for climate refugees. (See McAdam, *Climate Change, Forced Migration, and International Law*.) In fact, we will almost certainly owe them much more than refugee status, for those harmed by anthropogenic climate change have a clear right not to be, and when they are, some form of restitution would be required. (See Buxton, “Reparative Justice for Climate Refugees.”) Unfortunately, however, for those most vulnerable to the most adverse effects of climate change, there simply are not yet sufficiently specific and specifically addressed directed obligations to prevent those harms. Yet that fact deepens rather than diminishes the sense in which justice is not being properly considered and climate victims are being wronged. If the world is aligned such that some duties of justice do not correspond to another agent’s normative authorities, in some cases, at least, we should regard that fact as a further normative failure rather than a reason to be skeptical about the existence of a right at all. I will discuss this complication more in section 4.2.

do so, we should begin by noting that there are a variety of ways in which one agent could be liable to another: liable to monetary compensation, liable to be punished, or liable to defensive harm, to name just a few. In this paper, I am focused exclusively on the liability to defensive harms, arguing that even with that more specific focus, before we can consider the *content* of a principle of liability, we must first consider its *function* and *structure*. More specifically, I argue that it is important to distinguish between principles of defensive liability that seek to determine when an agent is defensively liable full stop, and ones that seek to determine when one agent is defensively liable *to another*.

Now, it is perhaps only a slight exaggeration to say that there are as many principles of liability as there are liability theorists. In broad strokes, however, one can categorize principles of liability as either *purely objective, culpability*, or *agent responsibility*.²³ *Purely objective* principles of liability focus solely on states of affairs. In a purely objective principle of liability, an unjust outcome could make an agent liable to defensive violence, regardless of their level of responsibility for creating that particular state of affairs.²⁴ *Culpability* principles of liability, on the other hand, focus on an agent's moral responsibility. An agent is liable only if they have acted wrongly. An unjust attacker, for instance, could be liable to defensive harm only so long as they are morally responsible for the risk to another.²⁵ Finally, *agent responsibility* principles of liability focus on the actions that stem from exercises of moral agency. People can be agentially responsible (and therefore liable) for threats that result from actions they have performed, so long as those actions are ones that could be foreseen to possess some level of risk of unjustly threatening others.²⁶

- 23 This categorization is not meant to exclude more complicated principles of liability. Frowe, for example, distinguishes between direct threats and indirect threats, and therefore advances a hybrid model that ultimately classifies a broader class of people to be liable than even proponents of purely objective principles of liability do. For more on this, see, Frowe, *Defensive Killing*, 72–87; and Skerker, *The Moral Status of Combatants*, 43–47.
- 24 Examples here include Thomson, “Self-Defense”; Fabre, *Cosmopolitan War*; and Bomann-Larsen, “Licence to Kill?” Although McMahan has since changed his position, in 1994 he defended an objective principle in “Self-Defense and the Problem of the Innocent Attacker.” Some of these theorists explicitly build off of G. E. M. Anscombe’s “War and Murder.”
- 25 The best example here is Rodin, *War and Self-Defense*. Although there is some debate on how best to categorize Rodin’s principle of liability (see, for example, Skerker, *The Moral Status of Combatants*, 37–52), his focus on defensive rights and the particular actions that lead to violating them makes Rodin’s theory best classified as a culpability theory of liability, even if one needs only to commit a *pro tanto* wrong. Two less controversial examples of culpability theories of liability include Alexander, “Recipe for a Theory of Self-Defense”; and Ferzan, “Forfeiture and Self-Defense.”
- 26 The most prominent example is McMahan, *Killing in War*. Other examples include Strawser, “Walking the Tightrope of Just War”; Bazargan, “Killing Minimally Responsible

For the purposes of this paper, rather than simply pick a given principle of liability—or even one from each camp—it will be helpful first to pause and consider the structure and purpose of a principle of liability. In other words, it would be useful to begin not by focusing on the content of any given principle of liability, but by delineating principles by their putative function. Here, revisionists have much more widespread agreement. The purpose of a principle of liability can be summed up as follows: If an agent *A* is liable to the use of defensive force, then any proportionality calculations can have the effects on *A* (either positive or negative) diminished by some factor because *A* is liable.²⁷ Moreover, due to that diminished impact in proportionality calculations, *A* is generally not wronged when harmed.²⁸ The purpose of a principle of liability is, on this approach, to determine what state of affairs would be most morally appropriate from an agent-neutral point of view.

Of course, in order to be action-guiding, any agent neutral conception of liability will—at times, at least—have to incorporate agent relative elements as well. There are surely cases, for instance, in which it would be inappropriate for *B* to treat *A* as if they were liable even if *A* could be considered liable from a purely objective point of view. The most obvious place where those two functions come apart is when one agent does not know that another agent is, in fact, liable. A significant amount of ink has been spilled over how to analyze

Threats”; and Otsuka, “Killing the Innocent in Self-Defense.” Unlike a purely objective principle of liability, an agent responsibility principle would not determine that an agent could be liable if, through absolutely no choice of her own, their continued existence constituted a threat to others (e.g., if they were taken in their sleep and launched toward someone else). However, unlike culpability principles of liability, agent responsibility principles of liability hold that an agent can be responsible (and therefore liable) for putting others in danger, even if the agent had done nothing morally wrong—not even *pro tanto* wrong—by doing so, such as by driving a car.

27 As Rodin nicely puts it, “Proportionality and liability, far from being independent factors, are two manifestations of the same underlying normative relation” (“Justifying Harm,” 79). See also McMahan, *Killing in War*, 15–22. There is, of course, much more we could say. For instance, McMahan helpfully distinguishes between questions of narrow and wide proportionality, in which narrow proportionality only looks at the impact to the defender and the liable party, while wide proportionality looks at all the impacts. As liability theorists disagree in the principles of liability, so too will they disagree about the precise relationship between liability and proportionality, as well as the extent to which the impacts to an agent can be diminished (see *Killing in War*, 20–21). Nonetheless, there is widespread agreement at the level of generality considered above. For more on these complications at a lower level of consideration, see the excellent analysis in Quong, “Proportionality, Liability, and Defensive Harm.”

28 How often *A* could be wronged even though they are liable will depend in large part whether proportionality, necessity, and instrumentality are internal to a principle of liability or external to it.

cases in which agents have limited epistemic access to others' liability.²⁹ In this paper, I am not attempting to offer any new insights on that very long and complicated score.

Instead, I want to focus on another possibility, a possibility not yet considered within the liability literature: cases in which the relational elements between *A* and *B* are morally relevant. Recognizing these elements encourages us to envision another, distinct structure and purpose of a principle of liability: an agent *A* is liable to another agent *B* for the use of defensive force if *B* has some normative authority to amplify or diminish the factor by which the effects on *A* (either positive or negative) are diminished because *A* is liable to *B*.³⁰ Rather than solely trying to determine what state of affairs would be most morally appropriate from an agent-neutral point of view, this approach also considers when it would be morally acceptable for agents to alter their moral deliberations about *A* because of *B*'s moral authority.³¹

While the inclusion of a directional element may be initially resisted by some, doing so actually better aligns with the moral concept at the heart of the revisionist project: liability. In the legal domain in which the concept is most familiar, an agent is always liable to another. In civil law, an agent is liable to another legal person; in criminal law, an agent is liable to the state. Moreover,

29 See, for just a small subset of the examples here, Strawser, "Revisionist Just War Theory and the Real World" and "Defensive Interrogational Torture and Epistemic Limitations"; Guerrero, "Don't Know, Don't Kill"; Lazar, "In Dubious Battle"; Tomlin, "Subjective Proportionality"; and Frowe, "A Practical Account of Self-Defence."

30 There is an interesting metaethical question about what makes self-defense a permission rather than an obligation. One possibility is that agents are allowed but not required to diminish the impacts on others in any proportionality calculations. Another is that an agent ought to diminish the impact to any liable parties but they also have the normative authority to voluntarily diminish the impacts to themselves as well, such that the proportionality calculation ends up being the same as it would be if the other agent were not liable. A third is that an agent should diminish the impact to any liable parties, but because of demandingness considerations, they cannot be obligated to take violent action even if proscribed by an appropriate proportionality calculation. While that metaethical debate is interesting, I do not intend anything in this analysis to rely on its resolution, so I have framed these purposes of liability with the phrase "can be diminished" rather than "should be diminished." Thanks to an anonymous reviewer for helping clarify this point.

31 Although it would take us too far afield from the current analysis to demonstrate, I suspect that this difference (between focusing on what is right from a fully objective point of view and what is morally appropriate from the view of a deliberative and contentious moral actor) is the largest reason why theorists in the ethics of killing and practitioners concerned about the possibility of morally permissible killing have simply stopped engaging with one another. Philosophers engaged with the objective project have much less to learn from the moral complexities faced by those on the ground, and those facing those complexities have little to learn from a novel and detached ideal theory.

with liability, the kinds of normative authorities that often accompany such directional elements are extremely important as well. If the counterparty to one's legal obligation releases one from liability, then the agent is no longer liable. If, for example, a particular US citizen reaches a settlement agreement with the properly authorized IRS agent about their back taxes, they need not concern themselves with whether each and every of her fellow citizens also releases them from their duty to pay the original amount or whether the settlement meets some particular, objective principle of justice. They are simply no longer liable for the debt.

Some may remain skeptical, believing that directionality has no place in considerations of moral, defensive liability. For any such readers, it may be helpful to quickly consider a few variants of another case, Bernard Williams's famous example of Jim and Pedro. After a recent spate of protests, Pedro wants to demonstrate the dangers of such "revolutionary measures."³² He has rounded up twenty protestors to be publicly executed. At the last minute, however, Pedro notices Jim. Since Jim is considered an honored visitor, Pedro offers him the opportunity to participate. If Jim accepts Pedro's offer, Jim will have to kill only one prisoner, but if Jim refuses, Pedro will kill all twenty.³³ Consider first an iteration of this case in which all the prisoners implore Jim *not* to accept Pedro's offer. Although in his original case Williams takes the prisoners' preference for Jim's participation to be "obvious," surely with some imagination and a denial of a Hobbesian worldview, we can conceive of a number of reasons why the prisoners might demand Jim decline.³⁴ They might believe that Jim's participation would make a revolution less likely, they might believe that Jim's complicity would validate the atrocities of the government, or they might believe that Jim's actions would change the very meaning of their deaths. Consider as well a different iteration, one in which one of the prisoners steps forward and volunteers to become a sacrificial lamb. Christine Korsgaard imagines this scenario as one in which the volunteer says, "Go ahead, participate—I forgive you."³⁵ In these two iterations, regardless of how the all-things-considered judgments turn out, many might consider it be more deontically appropriate, or more morally justifiable, for Jim to participate after a prisoner volunteers and says, "Go ahead, participate—I forgive you," and less deontically appropriate, or less morally justifiable, for him to participate after all of the them demand that he refrain. The reason is that Jim does not merely have a duty not to kill;

32 Williams, "A Critique of Utilitarianism," 98.

33 Williams, "A Critique of Utilitarianism," 98.

34 Williams, "A Critique of Utilitarianism," 99.

35 Korsgaard, *Creating the Kingdom of Ends*, 296.

he has a directed duty *to the prisoners* not to do so. Not only can Jim wrong the prisoners by violating their rights, he can further wrong them by acting contrary to their expressed prioritization of the duties owed to them.³⁶ He can wrong them by disrespecting their ability to decide for themselves what matters most to them and their way of life.

Of course, neither Jim nor any of the prisoners are liable to defensive force, but in any plausible principle of liability, Pedro would be. The prisoners would be justified in using force to free themselves from Pedro; and, under certain circumstances, Jim would be justified in coming to their aid. We need not completely unpack the important caveat “under certain circumstances” to realize that just as in the iterations previously considered, the moral authority of the prisoners has some role to play. We also do not need to fully unpack that caveat to see that this directional aspect could contain several morally relevant agent-relative components, not merely because different groups of prisoners may express different prioritizations, but also because they may also have different prioritizations about different people—some may want Jim to refuse to participate but welcome the participation of a fellow villager, for example. Regardless of how the all-things-considered judgments turn out, it would be less deontically appropriate and more difficult to justify Jim’s use of force against Pedro if the prisoners all make it clear that they do not want him to do so, and more deontically appropriate and easier to justify if the prisoners all make it clear that they want him to do so. An easy way to capture that moral significance is to hold that it is not merely the case that Pedro is liable for the use of defensive force; Pedro is liable *to the prisoners* for the use of defensive force.³⁷

36 For a more detailed analysis of the directional aspects of this case, see Hedahl, “The Significance of a Duty’s Direction.”

37 Part of the lack of attention to this distinction can be seen in the revisionists near total focus on *self-defense*. As we saw in section 1, revisionists offer any number of different elaborate cases in which an agent *A* could defend themselves against another agent *B* without pausing to consider that our moral intuitions in cases of self-defense may have as much to do with the limits of morality as with the requirements of morality. If *B* commits an extremely minor moral misdeed, which through some highly unusual set of circumstances makes it the case that *A* will die unless they kill *B*, one may well share the intuition that to deny *A* the moral authority to defend themselves could well be asking too much of *A*. Yet in that particular case, the fact that *A* has the moral freedom to defend themselves need not imply that *C* would also have the authority to intervene on *A*’s behalf. It is quite possible that only a proper subset of cases of legitimate self-defense would permit other agents to intervene on their behalf. This focus on self-defense also provides an interesting contrast with the historical just war tradition. Augustine argues in *Contra Faustum Manichaeum*, for instance, that Christians should always be pacifists with respect to attacks against themselves. It is the duty to aid others who are being attacked, however, that could, in

Let us take a moment to be explicit about what the phrase “A is liable to B” in a directional, action-guiding principle of liability does and does not imply. It does *not* imply that B is the only one who can use force against A, nor that if C uses force against A without B’s consent that C necessarily *wrongs* A. A’s actions may well make it the case that they cannot be wronged. Liability, however, does not merely undercut existing directional duties, i.e., it does not merely highlight the fact that C does not wrong A by harming them. Liability undercuts those directional duties *via* altering the effects on A (either positive or negative) in proportionality calculations.³⁸ If those threatened have some authority over their rights and some authority over whether another can act in defense of them, then they must have some authority—even if it is limited—over the factor by which the effects on A are diminished in proportionality calculations. In this case, the prisoners can make it more or less morally appropriate for Jim to intervene by exercising that authority. The prepositional phrase “to B” in the claim “A is liable to B” is merely meant to capture that particular authority, one generally overlooked in considering the structure and purpose of a principle of liability. The directional elements of a principle of liability imply that in order for agent-neutral liability to become normatively action-guiding, one needs to consider not only the limitations of knowledge, but also any potential exercises of normative authority by those who are unjustly threatened.

At this point, that omission may seem fairly benign. Many may remain skeptical about how frequently these kinds of directional aspects are relevant to appropriately analyzing cases of liability. Regardless of how widespread these considerations may be, returning our focus more specifically to the possibility of defensive liability in cases of saving or not saving lives, it seems prudent to at least consider whether agent-neutral liability would need to be augmented with directional elements in order to become normatively action-guiding. After all, within the domain of saving and not saving lives, those kinds of relational considerations are widely regarded to be extremely normatively significant. Doctors used to lie to patients about their diagnoses, particularly cancer diagnoses.³⁹ Doctors also used to perform painful procedures on competent patients

rare circumstances, require intervention. Defense of others rather than the defense of self was taken to be the foundational moral case on which just war was traditionally built. If an analysis of liability is going to start instead with considerations of self-defense, then a liability theorist has to at least pause and consider whether any cases exist in which an agent could justifiably defend themselves even though others could not justifiably intervene on their behalf.

38 See note 27.

39 See, for example, Beauchamp and Veatch, “Truth Telling with Dying Patients.”

even against their violent objections.⁴⁰ Both of these practices were justified, in large part, because they were believed to bring about the best outcomes from a purely objective point of view. The revolution in biomedical ethics in the latter part of the twentieth century, a revolution that has been embraced by theorists and practitioners alike, is based on considering the duties owed by a given doctor to a given patient in addition to larger questions of justice.⁴¹ In effect, in cases of saving and not saving lives, unless allowances were made for the possibility that agent-neutral liability could be augmented with some directional elements, there would be a serious risk of running afoul of a host of other common-sense contentions of biomedical ethics.

Despite its critical tone, the analysis in this section is not intended to provide an objection against liability theory in general, nor to even begin to settle questions about content. There is no commitment about what makes one liable to defensive harms from either an agent-neutral point of view or a directional, action-guiding point of view. This section is also not meant to undermine the moral significance of agent-neutral liability. It is merely intended to highlight the morally significant directional aspects our relationships with one another will at times possess, a fact that should not be surprising given that this facet of morality is important in countless everyday encounters, and one that is even more important when assuming the moral authority to place another person's life in danger.⁴²

3. LIABILITY IN CASES OF SAVING AND NOT SAVING LIVES

The previous section established two contentions: first, that there is a difference between acting unjustly and violating someone's claim right, a distinction that is particularly salient in cases of saving and not saving lives, and second, that directional action-guiding defensive liability need not rise and fall with agent-neutral defensive liability. In this section, I build on these findings, arguing that directional action-guiding liability requires a violation of claim rights with corresponding normative authority rather than merely the creation of an unjust state of affairs. One agent cannot become defensively liable to another if

40 There are numerous examples here, but Dax Coward is a paradigm case. For more on this case, see Parsi and Winslade, "Why Dax's Case Still Matters."

41 I will return to consider these issues more robustly in section 3.

42 For the remainder of the paper, unless I am considering the views of another author, when I use the term "liability," I am referring to directional action-guiding liability. While I will not always use the phrase "action-guiding liability," I will strive to use wording to emphasize the central component of directional action-guiding liability on which I am focused here, namely that one is liable *to another*.

the latter lacks the moral authority to require the former to alter their behavior. This seemingly straightforward requirement implies that saving someone's life cannot, in and of itself, make someone liable in the way Frowe contends.

3.1. *Not Saving Lives, Normative Authority, and Directional Action-Guiding Liability*

Let us consider first the possibility that *not* saving someone's life could make an agent defensively liable to another. Here, it will be helpful to shift the focus slightly, moving away from Hereth's original question of whether not saving someone's life could make an agent liable to the use of defensive force and toward a conditional contention more significant for the claims considered in this paper: if not saving someone's life could make one agent defensively liable to another, then it is only when doing so violates claim rights. As I argue below, considering cases of not saving lives reveals that the violation of a claim right with corresponding normative authority is a necessary condition for directional action-guiding liability, a finding that has rather significant impacts for the revisionist project.

As we saw in section 2.1, in cases of not providing aid to others, not all acts of injustice involve the violation of a claim right with corresponding normative authorities. It will be helpful, therefore, to begin not with Hereth's case, but with a more straightforward case of medical ethics. Consider, for example, a nurse practitioner who acts unjustly when they misprioritize one patient over another. The nurse, the doctor who relies on their triage, and all the rest of the medical personnel involved in carrying out that prioritization may well be liable if the unjust prioritization involves a clear violation of claim rights, if it were widely known that the hospital never prioritized a non-white patient over a white patient, for example. But some lingering skepticism may well be warranted regarding the question of whether one could treat all of those complicit in an unjust prioritization as action-guiding liable if that unjust prioritization were due to some minor misjudgment that could have and should have been overcome with a little more attention to the particular symptoms of each patient.⁴³

43 Some may believe that in cases like these, agents are liable to a miniscule amount of defensive harm, and so we cannot conclude anything from our intuitions in cases like these since "S is liable to miniscule harms" and "S is not liable to any harms" are nearly indistinguishable. That possibility does raise important questions of agent-neutral liability, but it should not trouble us here. For in considering the question of how liability can become action-guiding, the question becomes, "Can the patient act *as if* the nurse is liable (in any, even minimal way)?" That difference will not be incremental, even if the nurse's responsibility and culpability could be. This distinction in the functional representations of agent-neutral liability and directional action-guiding liability serves as another reason

The primary reason to contend that directional, action-guiding liability requires a claim right violation with corresponding normative authorities is not, however, based on any intuition. The reason to do so is much more straightforward and theoretical. Once the focus has been shifted squarely to action-guiding liability, the requirement that liability to another requires a claim right violation with corresponding authorities ought to follow rather straightforwardly and uncontentiously. It stands to reason that one agent (*A*) cannot be defensively liable to another agent (*B*) for ϕ -ing if the latter (*B*) lacks the moral authority to require the former (*A*) to refrain from ϕ -ing. In other words, it cannot be morally permissible for *B* to use physical force to compel *A* to $\sim\phi$ if *B* lacks the more foundational moral authority over *A*'s actions to demand that they $\sim\phi$. The authority to physically compel someone to act a certain way requires, at the very least, the moral authority to require them to do so.⁴⁴ The cases in which *B* has the moral authority to physically compel *A* to take a given course of action must necessarily be a subset of the cases in which *B* has the moral authority to demand that *A* do so. This analytical insight ought to be at the core of any analysis of action-guiding defensive liability, a requirement that has profound implications.

Before examining those implications more thoroughly in the following subsections, however, we should first pause, noting we are now in a position to see that in Hereth's case Ruining the Movie Titanic Forever, Rose may well be liable to Jack. Given the fact that Rose is the only one who could rescue Jack, and given that she could do so with so little cost to herself, Jack may well have a normative authority to demand that he be saved. While I suspect Hereth's case is one in which not saving another's life could make one agent liable to another, more argumentation would have to be provided to demonstrate that Rose not saving Jack would violate a claim right with normative authorities rather than simply being unjust.⁴⁵ While settling that question would take us

to distinguish between these two different modes of defensive liability. Thanks to an anonymous reviewer for this helpful point.

- 44 Alternatively, one must be able to demand for another who has the moral authority to require them to do so. As noted earlier, when third party interventions are warranted is an interesting complication, but they too at least require the violation of *some* claim right, even if not one's own.
- 45 In order to analyze this particular case, much more would have to be said both about the correlativity between claim rights and the duties of other agents. Even granting a particular solution to the correlativity problem would not accomplish the underlying task, however, because the question is not merely when others have a directed duty that corresponds to a claim right, but when an agent has normative authorities associated with a given right. Given Jack's vulnerability and the fact that Rose is in a unique position to save him at little cost to herself, I suspect that, in this case, Jack would have the necessary normative

too far afield from the aims of this paper, we need not do so to notice an equally significant finding: even if, in some cases, not saving could violate a claim right with corresponding normative authorities, the situations in which that would be the case will be limited to cases in which specifically addressed directed obligations exist—whether because of the existence of circumstances (e.g., there are a limited number of people who could save the other), previously accepted obligations (e.g., one is a lifeguard for the area), or obligations that have already been specified and institutionally assigned (e.g., by a government, or by previous agreement). Given Hereth’s attempt to demonstrate merely that an unjust failure to save another *could* make an agent liable to defensive harm, this clarification should not be taken as a repudiation of their central aims. Instead, my hope is that it can be taken simply as a clarification: if an agent could become liable to defensive harm for not saving another, the agent would not merely have to act unjustly, but would also have to violate a claim right with corresponding normative authorities.

The contention defended in this subsection, namely that that the violation of a claim right with corresponding normative authority is a necessary condition for action-guiding liability, is meant to be a rather modest one. It need not settle the question of whether not saving someone can make an agent action-guiding liable to defense force. This argument is also not meant to advance any particular principle of action-guiding liability. There may well be other necessary or sufficient conditions. It does not, for instance, settle the debate between *purely objective*, *agent responsibility*, and *culpability* principles. For although the vast majority of claim right violations involve moral responsibility, one can violate a claim right without being culpable for doing so. There’s still plenty of room for debate about whether being morally culpable or agentially responsible is also a necessary condition for action-guiding liability.⁴⁶ Even given those limited

authority over Rose. Demonstrating that fact, however, would take us far too afield from the purposes for this paper. For more on the correlativity between claim rights and duties see, Hedahl, “Directional Climate Justice.”

46 Some may be worried that merely providing a necessary condition for action-guiding liability is insufficient to the task at hand. Whether that concern is reasonable, however, will ultimately depend upon the purpose the condition is meant to serve. To wit, it will be helpful to recall that this analysis is not attempting to offer a new theory of liability, a new principle of liability, or a demonstration that the project of grounding the justification for killing based on a principle of liability is somehow fundamentally flawed. Merely providing one necessary condition might well be insufficient for any of those tasks. The goal here, however, is different: to demonstrate that a better understanding of this requirement will lead to a more nuanced understanding of the limitations of the proposed expansion of the revisionist project—and, ultimately, a more nuanced understanding of the limitations of revisionism itself.

aims, however, this finding has rather considerable consequences: any case of purported liability in which the existence of injustice need not imply the violation of a Hohfeldian claim right would require careful reconsideration to determine whether one agent could be action-guiding liable to another. This would be true regardless of whether an incredibly large number of agents were involved (a possibility I consider in sections 4 and 5) or only a small handful of agents were, as in Frowe's illustrative Paramedics Before Police, the case we turn to consider next.

3.2. *Saving Lives, Normative Authority, and Directional Action-Guiding Liability*

The lesson for defensive liability in cases of not saving lives, namely that violation of a claim right with corresponding normative authority is a necessary condition for directional action-guiding liability, has even greater significance for cases of saving lives. In Frowe's Paramedics Before Police, for example, the Defender clearly has a claim against both the Attacker and the Paramedic not to be killed. Equally clear, however, is that the Defender's claim right does not imply that she has authority over any and all ways in which the Paramedic might aid the Defender. What needs to be analyzed, therefore, is what the Defender's moral authorities entail in this particular case. As I argue in this subsection, a more complete analysis of the relational aspects involved demonstrates that saving lives, *in and of itself*, cannot make one agent action-guiding liable to another.

It would be prudent to begin, however, by noting explicitly that Frowe offers a nuanced and comprehensive theory of liability, distinguishing between direct causes of unjust threats and indirect causes of unjust threats, and between bystanders and observers, to name just a few. Yet as nuanced as her theory is, it is focused exclusively on the injustice of a given threat, rather than on the threatened right of the victim.⁴⁷ For the moment, let us simply grant that Frowe's intricate and detailed arguments are veridical: for individual threats outside of the context of saving lives, Frowe's nuanced account focused on injustice is appropriate—perhaps even superior to accounts focused on rights.⁴⁸ Even granting that fact, however, it becomes quickly evident that in the vast majority of individual cases, the link between violating claim rights and acting unjustly is rather tightly bound, if not complete. In the vast majority of cases in which *A* is defensively liable to *B*, *A* is *both* contributing to an unjust state of affairs *and* violating *B*'s claim right to life. Frowe herself, in fact, motivates the move

47 Frowe, *Defensive Killing*, 1–18.

48 *Defensive Killing* offers a detailed and lengthy criticism of the limitations of Judith Jarvis Thompson's account of self-defense, an account grounded in the rights of the defender.

to analyzing liability in terms of injustice by noting the tight link between injustice and rights, stating, “When the threat [a person] poses is unjust—when it threatens harm to [another] person who has a right not to suffer a harm—such moral responsibility renders the agent liable to defensive force.”⁴⁹ It might be reasonable, therefore, to move more cautiously when transitioning to other domains, especially those in which the links between claim rights and injustice are not so tightly bound.

Returning to the specific case of Paramedics Before Police, it is worth noting what Frowe says in condemning the actions of the Paramedic: “If Paramedic has indeed sworn to do no harm, she must refrain from contributing to the unjust harm that Attacker will pose. The prohibition on causing harm trumps the prohibition on allowing harm.”⁵⁰ Here, we see a consideration of the standard medical injunction of nonmaleficence, but significantly without a citation from a single biomedical theorist or even a philosophical analysis of what nonmaleficence implies in medical contexts. Given the consequent of her conditional, Frowe seems to assume that nonmaleficence requires that medical professionals never engage in activity that would contribute to an all-things-considered unjust harm. Within medical contexts, however, that assumption is simply misguided. In biomedical ethics, while broader considerations of justice always warrant some consideration, the requirement to first do no harm is universally and unequivocally read as “do no harm to *the patient*.”⁵¹ Frowe’s radical and wholesale alteration of the medical principle of nonmaleficence would not merely have implications for the real-world case she has in her sights, but for a host of other cases as well, implications one would assume Frowe would wish to avoid. If the requirement of nonmaleficence required medical professionals to never engage in activity that would contribute to an all-things-considered unjust harm, doctors for tyrants, autocrats, and even the occasional leader of democratic states may well be morally required to refuse to treat their patients because of the all-things-considered unjust harms those leaders would perform if they were to survive.⁵² Doctors of patients who ask for blood transfusions despite the objections from their large, caring family of Jehovah’s Witnesses may well have to weigh all the harms at the all-things-considered level before deciding to proceed. Those possibilities ought to strike

49 Frowe, *Defensive Killing*, 10.

50 Frowe, *Defensive Killing*, 202.

51 See, for example, Beauchamp and Childress, *Principles of Biomedical Ethics*, 155–216; and Pellegrino, “The Moral Foundations of the Patient-Physician Relationship.”

52 More precisely, doctors should refuse treatment if they knew that injustice performed by the current leader would be greater than those that would be performed by their successors.

us as problematic; and, in part, for that reason, biomedical ethicists analyze nonmaleficence, beneficence, and autonomy as ethical considerations *regarding the patient*, considerations that need to be analyzed within a framework that includes larger questions of justice for the rest of us.⁵³ That fact does not imply that larger considerations of justice can never overrule the significance of autonomy, beneficence, and even perhaps nonmaleficence.⁵⁴ It does imply, however, that in considering the ethics of saving and not saving others, one cannot merely look to questions of all-things-considered injustice.

Frowe's case is, of course, more complicated than any standard biomedical case: it involves the possibility of defensive liability, a possibility not generally considered in biomedical ethics. It would be a mistake, therefore, to believe that standard medical ethics could simply provide an answer without any further analysis. Yet it would be a similar kind of mistake to believe that since the vast majority of individual cases of self-defense can be analyzed merely by considering broader questions of injustice, this case can be analyzed that way as well. The ethics of saving lives involves complex directional, relational elements, elements not generally present in other, more standard cases of self-defense. In effect, *Paramedics Before Police* involves a tension, a tension between the action that appears to be required from Frowe's principles of liability, principles that seem extremely well suited for cases of individual self-defense outside of medical contexts, and the action that appears to be required from the dictates of medical ethics, a well-established subfield devoted to analyzing the ethical complications involved in saving lives. Frowe does not merely fail to resolve that tension—she fails to recognize it all. This approach ought to strike us not merely as misguided, but as deeply problematic: it risks a kind of epistemic colonialism, a hubristic determination that decades of debate within a distinct domain of practical ethics has nothing to teach theoretical newcomers on the scene.

How, then, to proceed? How to build off of Frowe's excellent analysis regarding individual self-defense in more traditional cases of killing without

53 One need not endorse Beauchamp and Childress's principles to endorse the conclusion that doctors must consider the harms to their patients in particular and not merely the all-things-considered impacts. See, for example, Pellegrino, "The Moral Foundations of the Patient-Physician Relationship."

54 One of the most classically cited examples of how broader considerations of justice can override patient interests involves the cost of the sixth stool guaiac test for detecting colon cancer (Neuhauser and Lewicki, "What Do We Gain from the Sixth Stool Guaiac?"). Although the analysis of Neuhauser and Lewicki has come under criticism at times (see, for example, Brown and Burrows, "The Sixth Stool Guaiac Test"), the broader philosophical point nonetheless remains: larger questions of justice will, at times, influence ethically appropriate patient care.

simply disregarding the broad consensus of medical ethics? How to determine what the Defender has the moral freedom to do in this situation if the Paramedic were to provide medical aid to the Attacker? The answer seems obvious enough: given Frowe's original analysis about threats that are unjust *and* that threaten rights, given that biomedical ethics has demonstrated that in cases of saving lives the requirements of justice placed upon those giving care do not always correlate to the claim rights of those who can demand care, and given the fact that directional action-guiding liability requires the violation of a claim right with corresponding normative authorities, one should analyze *Paramedics Before Police* not by considering if the case involves any unjust threat, but rather by considering if the Defender has directional normative authority over the Paramedic given the Defender's claim rights.⁵⁵

In terms of the Defender's right to life, it should be obvious that it prohibits the Paramedic from joining the Attacker in a joint intention to kill the Defender. Of course, saving the Attacker's life would almost never fit that description. One obvious exception would be if the Paramedic were to save the Attacker only if he could kill the Defender before the police arrive. In those kinds of rare cases, the Paramedic would be saving the Attacker not *in spite of* his plan to kill the Defender, but rather *because of* it. In that case, the Defender's claim right would give her the authority to stop the aid, justifying her use of force—even deadly force—against the Paramedic.

In more standard circumstances, however, the content of the Defender's claim right does not include prohibiting aid to the Attacker, even if that aid would be ultimately useful to the Attacker's plan to violate the Defender's rights. For if the moral principles of nonmaleficence, beneficence, and patient autonomy are to play any role at all in a medical practitioner's moral deliberations, they must be able to differentiate cases in which the harms are relatively equivalent. Notice that Frowe's case lacks the structure typically present when relational elements of morality are swamped by vastly more significant objective considerations: legal cases in which the negative impacts of violating confidentiality are vastly outweighed by the positive ones that can be achieved by violating it, medical cases in which questions of justice take precedence precisely because the benefits to the patient are so minimal and the benefits to the rest of us are so large.⁵⁶ This is not a case in which were the Rescuer to

55 Victor Tadros has related but distinct concerns about linking self-defense merely with acts of injustice. See, for example, Tadros, "Duty and Liability."

56 Consider again the sixth stool guaiac test in cases of colon cancer. Larger questions of justice take precedence there precisely because the benefits to the patient are so miniscule (the percentage of new patients that are identified with each successive test as having colon cancer decreases exponentially) and the benefits to others are so large (the cost of

forgo lifesaving care, hundreds, dozens, or even several more will be saved; it is merely one in which a more culpable life may be saved.⁵⁷

In other words, this is precisely the kind of case in which the relational aspects of medical care are meant to play a pivotal role in moral deliberation. Medical professionals are not medical professionals full stop. They also have a relational role as medical professionals *for their patients*. If one has the ability to save the life of their patient by providing standard medical care while lacking the ability to save someone else by providing standard medical care, then they should save the life of their patient. No one other than the patient or their proxy has the authority to demand that the Paramedic refrain from doing so. Given these limits of the contents of the Defender's rights, the Paramedic's actions cannot, in general circumstances, make her action-guiding liable to the Defender. In other words, it would not be appropriate for the Defender to use deadly force against the Paramedic. Saving someone's life cannot—in and of itself—make someone liable in the way Frowe contends. The reason ought to be straightforwardly evident: no one has a claim right against the continued life of another.

In order to better understand the claim that saving someone's life cannot—in and of itself—make someone defensively liable to another, however, a few important clarifications are in order. First, nothing in the argument above implies the that the Attacker is no longer liable to the Defender while the Attacker is incapacitated.⁵⁸ Second, there could be similar cases in which it

the tests does not decrease). If the impacts are anywhere near equal, then the obligation to the patient prevails.

57 One could have the strong intuition that, given the parameters of the case involving individual agents, the Defender must possess the moral freedom to save her own life. I do not share this intuition, but for those who do, one could certainly argue that for morality to demand that the Defender not have the moral freedom to do so would be to demand too much of her. Such an argument, however, would not be based on the Paramedic's liability, but rather on the limits the demands of morality can make on the Defender. That kind of argument would save the intuition that the Defender would be permitted to act to save their own life in this particular case. However, it would not imply that it is permissible for others to come to the Paramedic's aid, nor that such "defensive" actions would be justified when one's *own* personal life were not in obvious and immediate danger (as, for example, in cases in which soldiers fighting an unjust war are receiving medical attention).

58 I believe part of the difficulty with analysis in cases like these lies in conflating two different traditional prohibitions in combat: not attacking incapacitated combatants, including those currently receiving medical attention, and not attacking doctors themselves. While both of these restrictions are important, the philosophical foundations for them are quite different. Killing a culpable attacker while temporarily startled, confused, sleeping, or even while incapacitated is different in kind from stopping them from receiving medical aid, or taking the doctor who administers that aid to become liable by doing so.

would be morally appropriate to kill the Rescuer (if one could save dozens by doing so, perhaps). Third, as is true with most interesting philosophical claims, appreciating the scope the qualifier “in and of itself” is extremely important. As noted earlier, one way saving another could make an agent liable to the use of deadly force is if doing so were their part in a collective endeavor to violate another’s claim rights.⁵⁹ Some might also believe that when one agent thwarts the justified self-defense of another, the former could become action-guiding liable to the latter.⁶⁰ The central claim under contention here, that saving someone’s life cannot—*by itself*—make someone liable, has no direct relevance to possibilities like that. For, if anyone wanted to argue that an intervener could become liable, they could more carefully consider the Defender’s moral authorities in any specific case: given an Attacker’s liability to a Defender, a Defender could at times have the moral authority to prevent people from entering the fray—either on the side of her Attacker or as a neutral third party. Regardless of the ultimate judgment about cases like these, however, we can notice that in such an analysis, it is *not merely* saving another that would make an intervener liable to the use of defensive force, but rather *the manner in which* they did so. Regardless of whether a Defender may have those kinds of rights, however, that kind of justification is simply not available in Frowe’s case. The Rescuer is not thwarting the Defender’s attack. The Rescuer is not inserting themselves into a justified fight. The Defender is not even thwarted from harming the Attacker during the medical intervention.

While perhaps not representative of all possible cases that would fall under the broad colloquial description of “saving the life of another,” Paramedics Before Police is nonetheless an extremely significant one for considerations of liability—for it demonstrates the limits of examining unjust states of affairs to determine action-guiding liability. In standard cases of individual self-defense, the overlap between cases involving injustice and cases involving a violation of a claim right is extremely high—if not complete. In most, if not all, individual cases, if the threat *X* poses to *Y* is unjust, then *X* is also threatening *Y*’s right to life, a right with a host of corresponding normative authorities. As we have seen, however, Frowe’s case is different, and it thereby shows what liability theorists have been doing all along: in considerations of action-guiding liability, the analysis of injustice is merely a stand-in for the existence of normative authorities that generally accompany those unjust states of affairs. In individual cases of self-defense, that difference is almost always inconsequential.

59 For more analysis about the cases in which motives can be inculcating for professionals, see Skerker, *The Moral Status of Combatants*, 74–114.

60 Thanks to an anonymous reviewer for pointing out this possibility.

Nonetheless, being clear about what precisely makes one agent action-guiding liable to another is significant, for there will surely be exceptions to the tight link between injustice and claim rights, exceptions that may well be much more expansive than we might initially realize.⁶¹

There are also important practical implications of Paramedics Before Police. For in the real-world cases with which Frowe's fantastic case are rather loosely aligned, the conclusions have the implication that the corpsman medic who is explicitly treating his fellow countrymen and his fellow countrymen alone could be action-guiding liable to the enemy.⁶² The doctor, who would treat those from either side of a conflict could not be—even if at the moment they are only treating those from one side, and even if the doctor knows that by doing so, the soldiers will eventually go back to the fight. This fact about defensive liability for doctors applies regardless of what country a given doctor calls home and regardless of whether in their heart of hearts, they would prefer for one side to win over the other.

For many, the moral distinction between soldiers who happen to be providing medical care and doctors who happen to be treating soldiers from only one side aligns nicely with their preconceived moral intuitions. This distinction also happens to coincide with more than a century of international law.⁶³ Significantly, however, the alignment with our moral intuitions and laws is the consequence of the argument, rather than one of its premises. Moreover, the defense for this ethical distinction is grounded not in any kind of consequential considerations (e.g., the argument is not that war would be more gruesome if we did not follow this convention), but rather in a more nuanced appreciation of rights: what claim rights do and do not allow rights bearers to demand of others.⁶⁴

Ultimately, Frowe's contention that it could be ethical to kill a paramedic if it were the only way to save your own life may have an initial intuitive appeal for some, but the consequence of the argument's ultimate failure ought to cause a moment of reflection for us all. For if in this case a more nuanced and meticulous understanding of individual rights—the moral element that is meant to be

61 I will return to this contention in section 4.1.

62 The term "could" here is an important qualifier. Most revisionists would contend that only the corpsman medics on the unjust side will be liable to others. I consider this possibility in more detail in section 4.3.

63 While the *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* only went into effect in 1950, the protections for medical personnel were also central to the treaty from the First Convention in 1864.

64 Consequential considerations were certainly at the fore historically, but this argument demonstrates one can defend the practice by focusing solely on claim rights.

the centerpiece of the revisionist project—can provide a defense rather than a criticism of traditional just war conventions, then perhaps, just perhaps, there's reason to consider if there are broader lessons lurking here as well.

4. THE LIMITS OF LIABILITY IN WAR

At this point, many may suspect that regardless of how successful the argument has been so far, it offers no problems for the core revisionist project. They might simply assume that intentionally killing someone who has done nothing wrong necessarily involves violating their claim rights. As I argue in this section, however, such initial suspicions would be misguided. Recognizing that directional action-guiding liability requires violating a claim right with corresponding normative authorities rather than merely acting unjustly constitutes a serious challenge for any attempt to use liability to determine the morality of actions within war.⁶⁵ To make that case, I first consider how acting unjustly with respect to a right of bodily autonomy does not necessarily imply that one is violating a claim right. I then build off that contention, investigating how acts of normative authority can be ethically significant even in the face of grave injustice.

4.1. *Unjust Killing Need Not Violate Claim Rights*

It will be useful to begin by considering a right related to the right to life: the right to bodily autonomy. Consider, for example, the case of boxing. As noted countless times before, standard cases of boxing are not analogous to war, because, in boxing, there is typically no underlying act of injustice. In boxing, both parties come to the ring as normative equals, desiring to conditionally waive their right to be assaulted so long as the other party does so as well. In the colloquial parlance, both parties consent to box.

So let us add an underlying injustice to a standard case of boxing. While one professional fighter comes to the ring willing and excited (she would box even if there were no money on the line), her opponent is only there because of underlying issues of systemic injustice: there are simply no other opportunities for employment or meaningful activity for people of her race and socio-economic class. If she did not box, her ability to support herself and family would be severely limited. So she chooses to box rather than to beg, sell herself, or rely

65 The argument in the previous sections was based upon an analysis of why a claim rights violation is an essential element of action-guiding liability for cases of saving and not saving lives. While some elements of that argument are obviously not germane to the question of action-guiding liability for taking lives, a foundational aspect remains: that to be granted the moral ability to stop an agent's actions through force, one must first possess the moral authority to require them to stop.

on the fickle generosity of those with means. She understands the risks, but her options are severely constrained by issues of systemic injustice. She chooses to box, but only over other, even more problematic options.

Unjust Boxing: A and B agree to box one another, but B only got into boxing because of background systemic injustices.

In this case, the proper analysis appears to be that although there are injustices involved, the boxing itself has not changed its normative status. The reason is perhaps clear: the opponent of the boxer who has been forced into the ring has not herself committed any injustice. In a case like this, no plausible principle of liability would suggest that one of the boxers is liable to the other.⁶⁶

Some may initially suspect that Unjust Boxing has not changed its normative status for another reason: that in Unjust Boxing, just like in the standard case of boxing, both A and B *consent* to box. While there may be some colloquial truth to this framing, any robust analysis of consent demonstrates rather quickly that B does not, in fact, consent to box. To see why, we only need to imagine a case in which all of the injustices suffered by B are caused by a single actor. One can imagine a late-in-life, broken, and battered B chastising this miscreant for the lack of opportunities in her neighborhood, the demeaning behavior people had to endure just to survive. B will likely add to the tally of injustices the fact that she herself was forced into a life of boxing, perhaps even adding her post-boxing physical ailments to the list of injuries for which this villain is responsible. If the sole cause of all these injustices tried to reply, “Ahhh, but, B, you consented to box,” our aged, deeply wronged pugilist would almost assuredly respond with, “Consented?! It was box, beg, or steal. You gave me no choice!”

When consenting, one agent (B) sanctions another agent’s (A) ϕ -ing to, on, or with B. Consent makes A’s ϕ -ing morally permissible, and it makes ϕ -ing morally blameless for all involved. These features are clearly evident in any traditional case of consent, cases in which the same descriptive actions that would constitute theft becoming borrowing, or the same descriptive actions that would constitute assault becoming a loving embrace. In Unjust Boxing, on the other hand, while B chooses to box in a way that makes A’s actions morally permissible, B certainly does not knowingly and freely select a given course

66 Some may contend that purely objective principles of liability would entail that A is, in fact, liable to B in this case. For example, Michael Skerker seems to imply that kind of conclusion would be required of any *purely objective* principles of liability (*The Moral Status of Combatants*, 43–47). I take that implication to be less obvious, but if any purely objective principles of liability did have that implication, that would surely count as a strong reason against such a principle.

of action. Nonetheless, there is an important truth captured in the colloquial framing that *B* “consents to box.” After all, *B* does something very much like consent to box *A*. Because *A* was not responsible for the injustice, *A* gets to treat *B* in the boxing ring *as if* she has consented. *A* does not have to take the background systemic social injustices that got *B* into boxing into account while boxing. Those injustices do not make *A* guilty of assault, in part because *A* is not responsible for them. Yet those features of the case do not imply that, in actuality, *B* consents, nor do they imply a problem with the philosophical notion of consent. Rather, these features demonstrate that, even in the face of widespread injustice, agents generally retain certain normative authorities over their claim rights. They still have the authority to exercise those normative powers, and those exercises can be still be normatively significant. These exercises of normative authority can turn *A*’s potential assault into an acceptable form of sport. Our normative authority regarding our claim rights is much broader than our power to consent, a fact that turns out to be extremely important for analyzing morally complex situations involving claim rights, liability, and the use of force.

Of course, not all injustices will be the fault of others. So, let us alter the case of boxing again to one in which one boxer treats the other unjustly. Consider, for example, a title contender who is offered patently unjust terms by the champion to split the purse of a potential upcoming bout. Perhaps a fair split of the purse would be sixty percent for the champion, forty percent for the challenger. But *A* is the champion and has money already, while *B* does not. While *A* could get another fight for almost as much money as she could for fighting *B*, *B* could not get one for $\frac{1}{100}$ the size. So, *A* pressures *B* into an exploitative ninety-five percent to five percent split of the purse.

Unjust Boxer: A acts unjustly toward B before A and B get into the ring.

Does this unjust state of affairs change anything about the claim rights *A* and *B* have against one another once the bout begins? It appears it would not. Neither is violating rights in the ring itself. We do not have the case of an attacker and a defender, even if considerations of justice would dictate who fans of morality should champion. Of course, in this case, while *A* is acting unjustly toward *B*, she is not acting unjustly *qua* pugilist; her injustice has to do with finances, not fighting. So one might worry that the reason *A* has not violated *B*’s right to bodily autonomy in this case is because *A*’s injustice is tied to rights other than the right to choose to fight.

So let us combine these two cases. In this case, right after a boxer becomes the world champion, she personally goes in and destroys the only business in a particular neighborhood so that those from this neighborhood will be forced to box—perhaps because the new champion knows that bouts between her

and those from this rival neighborhood would have a built-in narrative appeal that would boost ratings, regardless of who the fighter will ultimately prove to be. She knows that people will pay more money to see her fight those from this neighborhood, perhaps because of a history of bad blood between that neighborhood and her own. Just as our villainous pugilist had hoped, someone who got laid off on their first week at that business did, in fact, take up boxing, and, several years later, is now about to fight the unjust world champion.

Unjust Boxer Unjust Boxing: *A* is personally responsible for the systemic injustices that got *B* into boxing. *A* is responsible for the underlying injustice that made *B* box at all.

What to say about this case? Those who consider defensive liability only from an agent-neutral point of view may well think the answer is simple: *A* is liable to defensive force, just as she would be in a case of unjustified assault. Equating Unjust Boxer Unjust Boxing to a standard case of assault, however, inappropriately oversimplifies the moral terrain, in part because it proves woefully inadequate for providing action-guidance for *A*. For those who might be initially skeptical, consider the advice that would be appropriate for a suddenly repentant *A*. If *A* suddenly realized the incredible brutality of their old self, if she recognized her own culpability the night before the fight and came to you saying,

I am done with all that repugnant behavior, but how can I even box *B* knowing what I know now? I am responsible for her and countless others whose lives are even worse. I should not get in the ring with *B*. She had no real choice. To box her would be nothing more than piling on a direct assault after years of indirect ones.

Now, I have no idea how I might respond to someone who realizes they are responsible for an injustice of this magnitude, but it does seem that, in some cases at least, to not honor the choices of another because past injustices so severely limited their options does not respect their autonomy, but rather serves as a way to undermine it further. If *A* were to become suddenly repentant, she would have much for which to atone, but it is at least possible that it would be *worse* to fail to respect *B*'s choice to fight, even given *A*'s past injustices.⁶⁷ *B*'s

67 Some might contend that *A* must first withdraw the coercion and ameliorate any past systemic injustice, or at least commit to doing so, before determining if *B* still wants to box. Perhaps that would be true in some cases, but once the relational aspects of the case are recognized, it becomes clear that those cases will have their limits. To see why, we can begin by noticing that *A* cannot merely make a *personal* commitment to ameliorate past systemic injustices; she is required to make that commitment *to B*. However, given the adversarial nature of the fight and the practical significance on *B* of winning (if she wins,

choices can be normatively significant, and *B*'s exercise of normative authority can be normatively significant, even if those choices do not exculpate others of their moral responsibility for placing *B* in that position to begin with. Even if *A* were not merely responsible for coercing *B* into boxing but also morally responsible for coercing *B* into boxing in this particular match, the boxing match does not become one of attacker and defender merely because *A*'s injustice caused *B* to fight. *B*'s choice to fight can be normatively significant; it can be an exercise of *B*'s moral authority even if the world is aligned such that consent (i.e., a choice that exculpates others from the moral responsibilities regarding that choice) is impossible. If *B* were to get injured in the ring or even if she were to die from her injuries, that would be a tragedy but it need not be murder, or even manslaughter. Not all acts of injustice, even those that lead to violence—even those that involve killing—are associated with the violation of claim rights.⁶⁸

4.2. *Claim Rights, Moral Authorities, and War*

There are many—including the author of this paper—who will worry about the moral nuances that are necessarily eliminated whenever one equates individual cases of violence with the destruction of war. The point of the boxing cases in the previous section is easy to misconstrue. As I argue more fully below, however, the previous subsection is not intended to provide a competing narrative, nor to offer yet another consent-based justification for the moral equality of combatants. Unjust Boxer Unjust Boxing is not about consent; it is about normative powers. It is intended not as a model of war but as a way of recognizing

she can make much more money on future fights than she can if she does not), there will likely be some period of time immediately before the fight in which communicating such an interpersonal commitment would be inappropriate. *B* would rightly regard such a commitment the night before the fight with deep skepticism, for example, fearing it to be disingenuous at best and one of the most perverse forms of gamesmanship at worst. The challenge then becomes how one ought to advise *A* if she has her Road to Damascus moment in which she realizes her own failures during a period in which such interpersonal, directional interactions may themselves be all-things-considered inappropriate. In some cases, to simply refuse to fight may well demonstrate an even *further* disregard for *B*'s autonomy, rather than a first of its kind moment of respect for it. Thanks to an anonymous reviewer for raising this issue.

68 I should note that this is line of argument is not intended as a criticism to any broader conception of liability. It may well be that *A* would be liable to help *B* out of their precarious situation, and that if someone has to suffer to get *B* out of that situation, it should be *A* who does so. That fact does not imply, however, that *A* is liable to *defensive force* if *A* appropriately judges the most morally appropriate course of action, even given all the past injustices, is to box *B*. *A*'s moral culpability does not remove the moral complications created by the boxing match. As I argue in the next section, that claim has much broader implications than one might initially suspect. Thanks to an anonymous reviewer for this point.

more refined requirements for any analysis of liability. The argument does not imply that combatants are blameless, but rather that their exercise of moral authority is nonetheless morally significant—a moral significance that poses a distinct, significant, and to this point unconsidered challenge for applying the concept of liability to the ethics of war.⁶⁹

Let us begin with the most likely misreading of the examples of the previous section: that they are intended to advance a competing analogy. Walzer has the domestic analogy. The revisionists have provided the self-defense analogy. This is an attempt to provide a boxing analogy: soldiers are like boxers. Unsurprisingly, proponents of revisionist theory would likely balk at any analogy to boxing. Or, more accurately, they would balk at the use of such an analogy to describe the vast majority of wars. McMahan actually considers the rare possibility of “a war in which none of the combatants on either side were compelled to fight, either by their adversaries or by their commanders. . . . Wars of this sort are perhaps analogous to situations in which two men agree to ‘step outside’ to settle a dispute by fighting.”⁷⁰ In fact, McMahan even calls this model “The Boxing Model of War.”⁷¹ As the revisionists rightly note, however, this conception of war does not come close to fitting most wars. McMahan puts the point this way, “But many wars are analogous to a different kind of individual combat, in which an unjust aggressor attacks an innocent victim, who is then compelled to defend himself or herself.”⁷² Given that background, a revisionist may read the cases in the previous subsection as advocating that war is best explained by something like the boxing model, or, perhaps more broadly, as advocating that like boxers, soldiers consent to be targeted by those on the other side. Here, I wholeheartedly agree with McMahan and the revisionists: both those possibilities should be soundly rejected.⁷³

Yet Unjust Boxer Unjust Boxing does not involve consent. As mentioned previously, informed consent requires an agent to knowingly and freely choose a given course of action. But Unjust Boxer Unjust Boxing does not do anything like that. It involves coercion and systemic injustice. In Unjust Boxer Unjust Boxing, *A* is deeply culpable for a host of wrongs. Yet even without consent, Unjust Boxer Unjust Boxing does involve the exercise of moral authority. *B*'s decision to box *A*—even if not free—is still normatively significant. It still

69 Thanks to an interaction with Joe Chapa at the International Society of Military Ethicists for elucidating these concerns.

70 McMahan, “The Morality of War and the Law of War,” 25.

71 McMahan, *Killing in War*, 51–58.

72 McMahan, “The Morality of War and the Law of War,” 25.

73 McMahan, *Killing in War*, 60.

changes the way in which one would analyze the moral complexities of the case. It still changes both where the moral misdeed is located and its moral character. The blame for *A* is high—extremely high—but that fact need not imply that what *A* is morally culpable for includes assault and battery.

Some may resist this distinction because they might assume that it necessarily involves letting a coercer off the moral hook—at least somewhat. Many would rightly want to resist that implication when considering cases in which one agent is putting the life of others in danger. But the contention that normative authority is still significant—even when coerced—does not imply that those involved in such coercion are less blameworthy than they would be in more straightforward cases involving claim rights violations. On the contrary, in many cases, it could be far worse to coerce someone to use their own normative authority against their interests than to simply violate their rights.

Consider, for example, a powerful racketeer who realizes that a peasant possesses a rare artifact that the racketeer desperately wants but that the peasant is unwilling to sell. The racketeer knows that, given the corrupt local government and police force, he could easily send his goons to steal the artifact without any fear of repercussion. But, after the racketeer learns that the peasant's sister relies on him for her meretricious existence, he demands that the peasant make a public display of selling the artifact to him. The racketeer tells the peasant that if he refuses to do so, his sister will be cut off from any possible means of employment and it will become publicly known that the peasant cared more for things, mere trifles, than his own family. In this case, one could argue that the act of selling the art—even if it is not free—is still normatively meaningful, for it alienates the peasant from his claims over the possession in a way stealing the artifact would not.⁷⁴ It is precisely the perversion of the peasant's moral

74 For anyone who is skeptical about this contention, consider what would happen if the government were simply overthrown and a perfectly just government were installed. That new government could very well work to restore stolen goods unpunished by its corrupt predecessor, but the return of items that had been sold would be harder to justify. There is actually an interesting historical analogue here. While much of the artwork that had stolen by Nazi officials in the mid-twentieth century has been returned to the heirs of its rightful owners, the situation is far more complicated in cases in which the art was sold rather than stolen. For example, after realizing that the World War II-era sale of the painting was not freely made, the French government has recently voluntarily returned a Klimt painting it had purchased for the Musée d'Orsay. Yet courts in the Netherlands have held that the Stedelijk Museum does not have to return a Kandinsky sold in 1940 when Holland was under Nazi occupation. Regardless of what anyone may conclude about the appropriateness of either decision, they help illustrate the significance and complexity of normative authority—even in cases in which consent may not be possible. See Breeden, "France to Return Klimt Painting to Rightful Heirs After Nazi-Era Sale"; and Siegal, "Dutch Court Rules Against Jewish Heirs on Claim for Kandinsky Work."

authorities, authorities that are meant to serve the interests of those who possess them, that makes the case so repugnant—perhaps even more repugnant than simply stealing the item would be.

Even more vividly, consider the events of Terrence McNally's *Sweet Eros*.⁷⁵ Early in the play, a disturbed young man kidnaps a complete stranger. Soon after, he rapes her. He then makes her completely dependent upon him, not sleeping with her again until she submits to him completely—that is, until she believes that doing so is what she actually wants. McNally's play was extremely controversial—even for the late 1960s at the Gramercy Arts Theatre—and it remains so to this day. One may question the appropriateness of the play for a number of different reasons, but its artistic power lies in its overt challenge, a challenge to consider where the worst evils of violence lie: in cases in which violence overcomes the most intimate parts of ourselves, or in cases in which violence becomes so pervasive that even our autonomy and moral authority no longer function to protect our own interests but instead serve to protect the interests of those who would do violence upon us. I am sure many will have competing intuitions when considering cases like *Sweet Eros* and the racketeer, but the mere fact of that disagreement ought to demonstrate that the task of determining the location of significant moral transgressions is one that can be severed from the task of determining their severity. In fact, it is only by contending that moral authority matters even in cases such as these, it is only by recognizing that these cases are distinct from more common-place cases of rape and theft that one can begin to capture all of the multifaceted elements of their moral repugnance.

Moreover, Unjust Boxer Unjust Boxing is not intended as a model for understanding war. In fact, the case stems from a deep skepticism about analogies between actions involving individual antagonists and actions within war. Regardless of whether an individual analogy is used to argue in favor or against traditional just war precepts, it must necessarily minimize, if not erase altogether, the magnitude and variation of the destruction inherent in war. War has always been and will always be more than mere fighting; it has always been and will always be more than killing. Nations spend lifetimes trying to heal those whose lives are scarred forever by injuries, both martial and moral. The argument in the previous section does not seek to minimize these distinctions. On the contrary, it seeks to shift our focus and our analyses from our incomplete models back onto war itself by demonstrating that even unjust killing need not involve a rights violation. Since action-guiding liability requires a claim rights violation, those seeking to demonstrate how a principle of liability can

75 McNally, *Sweet Eros*.

be helpful to considering the morality of war must be able to demonstrate how, within war, soldiers violate the normative authorities of soldiers on the other side.

So, Unjust Boxer Unjust Boxing is decidedly not offering a model or a metaphor, nor is it an attempt to demonstrate that soldiers killing in war is somehow less morally blameworthy merely because the killing was done in war. Rather, the case is meant to serve as an indication that the burden of proof for those who appeal to principles of liability in warfare is much higher than has generally been assumed. In order to demonstrate that someone is liable to another to be targeted in warfare, one would need to demonstrate how that person is violating the rights of others. Moreover, because action-guiding liability requires a claim rights violation, in doing so, one cannot merely point to the injustice of the war itself, or to a soldier's complicity for that *ad bellum* injustice.

The most obvious place to find that violation would be in targeting and killing others in war, but the revisionist challenge becomes even more difficult once we recognize that a threatening nation does not use its soldiers to unjustly threaten the lives of the soldiers of the threatened nation. Rather, the threatening nation uses their combatants to unjustly threaten the lives of the combatants of the threatened nation. Even more importantly, so long as the rules of *jus in bello* are followed, in war, that threat, regardless of how unjust it may be, is to combatants *de dicto* rather than combatants *de re*. An unjust mugging involves a *de re* threat, the threat is against a *particular* individual, while an unjust *ad bellum* war that seeks to follow the rules of *jus in bello* involves a *de dicto* threat; it is a threat against a class of individuals one can enter or leave at any time. The threat is still unjust, levels of magnitude more so even than in an unjust mugging, but because it threatens a chosen normative class that any particular individual can leave at any time—even in the middle of battle—it does not involve a violation of individual claim rights.⁷⁶ To notice this fact does not require an appeal to a professional role-based duty that revisionists find so problematic. Uniforms are, in this conception, targets one wears (and can take off) rather than licenses to kill.

Here, too, many would be tempted to misread the claim that war threatens a chosen class that one can leave at any time. This is not a descriptive claim, for as the revisionists rightly note, many are coerced into service with threats to themselves or those they love. Moreover, once at war, nations need not and often do not provide any and all conceivable opportunities to surrender before taking the lives of the combatants. Before an unexpected attack, for instance,

76 The threat may well involve a violation of a collective claim right, but that possibility should not impact this argument.

soldiers do not first announce their presence in order to give their adversaries one last chance to surrender, the way police are generally required to do. Nonetheless, in the right circumstances, individuals have the moral authority to enter the class of combatants, an action that often requires focusing not on the most immediate threat to them as an individual, but rather on the most significant threat to all of them together. Even more significantly, they also have the authority to leave the class of combatants at any time. They have the *moral authority* to lay down their arms, to surrender, to take off their uniforms, to disassociate themselves from any collective violent endeavor.

Neither states nor soldiers consent to war. War is not even the kind of thing to which a nation or a soldier could consent. So it is important to be clear as possible: highlighting the possibility of this kind of normative authority in war does not imply that either states or soldiers consent, nor does it entail an absolution for soldiers on the unjust side of the war who would force others to fight. Forcing others to become combatants is a grave moral misdeed, perhaps one even worse than simply violating their right to life would be. Nonetheless, soldiers may well exercise normative authority through becoming combatants, and, if so, the exercise of that normative authority would itself be normatively significant. Understanding the full complexity of normative authority allows us to recognize the fact that soldiers cannot and do not consent to war does not in any way imply that soldiers cannot waive, and therefore can only forfeit, their rights in war.

5. TWO DIFFERENT WAYS COMBATANTS CAN BE MORAL EQUALS

At this point, some might wonder what the significance might be of denying that soldiers violate claim rights by killing one another in war if the method of doing so grants that soldiers on the unjust side of a war may well commit grave moral offenses, offenses as bad as—if not perhaps even worse than—they would commit if they were violating claim rights. As I argue in this final section, the answer lies in the way this particular argument offers a distinct, and I believe important, way to (re-)consider the moral equality of combatants. Doing so allows the theoretical space to open up in which one can share with the revisionists the contention that soldiers who fight in unjust *ad bellum* wars can be morally responsible for doing so, while maintaining that individual rights often strengthen, rather than undermine, many traditional claims about morally appropriate *jus in bello* rules.

Although that term “the moral equality of combatants” gets bandied about in debates in a way that makes it seem that everyone who argues in favor of it and everyone who argues against it are talking about one unified and universally

recognized principle, there are, in fact, several ways in which combatants could be morally equal in war. McMahan, for instance, states the principle of the moral equality of combatants this way:

Combatants on all sides in a war have the same moral status. They have the same rights, immunities, and liabilities irrespective of whether their war is just. Those who fight in a war that is unjust (“unjust combatants”) do not act wrongly or illegally when they attack those who fight for a just cause (“just combatants”). They do wrong only if they violate the principles governing the conduct of war.⁷⁷

Yet after considering the arguments of the previous sections, it becomes apparent that there are (at least) two separate claims involved in McMahan’s unified definition.

Moral Equality of Combatants:

1. Soldiers are equally blameless for fighting in just and unjust *ad bellum* wars, so long as they follow the rules of *jus in bello*.
2. In general, whether one is fighting a just *ad bellum* war does not influence what actions *in bello* would exacerbate the moral atrocities of an immoral war (i.e., at least some questions of morality *in bello* are distinct from questions of morality *ad bellum*).

Walzer, in *Just and Unjust Wars*, famously argued in favor of both forms of moral equality.⁷⁸ The revisionists have countered by vehemently arguing against both. Recognizing that a claim rights violation is required for directional action-guiding liability, however, allows for a theoretical space to open up between these two all-or-nothing possibilities, a space in which soldiers on one side could be morally responsible for fighting in an unjust war even though the rules of *jus in bello* restrict those fighting on both sides in a relatively similar manner.⁷⁹

77 McMahan, “The Morality of War and the Law of War,” 21.

78 Walzer, *Just and Unjust Wars*, 34–40. It is worth noting, however, that even within Walzer’s framework, there is a significant exception to the second kind of moral equality, namely cases of supreme emergency. Although never explicitly stated as an exception to the principle of the moral equality of combatants, supreme emergencies are, by definition, going to relax the *jus in bello* requirements *only* for those on the just side who are fighting to maintain their political independence.

79 Some may worry that this possibility is self-contradictory; they may believe that it is incoherent to ask what actions could be permissible in an impermissible war. A full consideration of this objection and a reasonable reply would take us too far afield from the current investigation, but we could offer three quick responses to those who may be so concerned. First, some soldiers could be excused rather than justified for participating in unjust wars (a situation to which revisionists frequently appeal—see, for example, McMahan, “The

It is worth noting that like Walzer's argument in favor of both kinds of moral equality, and like the revisionist rejection of them, the possibility of being able to blame soldiers for participating in an unjust war while maintaining that the rules within war possess an important kind of moral equality is also one with a rich and storied theoretical tradition.⁸⁰ In *De Indus*, for example, Vitoria grapples with questions of complicity and permissibility when the military is used for a host of complex reasons, many of which were unjustifiable.⁸¹ Despite its many faults, the Lieber Code signed by President Lincoln, a document that dictates how the Union forces should conduct themselves in a war against their fellow citizens, is essentially framed around trying to come to terms with this essential moral tension.⁸² Perhaps the most memorable example can be found in Cannon Three of Saint Basil, in which he advised that those returning from morally complicated wars, "whose hands are not clean . . . abstain from communion for three years," a recommendation followed for centuries by the Eastern Orthodox Church.⁸³

Morality of War and the Law of War," 26, 42). Second, if some soldiers could be excused rather than justified for participating in unjust wars, then a theory of morality for war ought to be able to provide them with moral guidance, both about how to deliberate (e.g., whether the justness of the war should factor into their deliberations) and what actions would still be morally impermissible even though their participation in the war is excused. Third, that case would be strengthened if one also believed (as many do) that one could morally participate in a war in which there were some element of doubt about whether the war was, in fact, just.

80 Walzer's historical analysis of a defense of Moral Equality of Combatants 1 and 2 can be found *Just and Unjust Wars*, 34–40. For a historical analysis of the rejection of Moral Equality of Combatants 1 and 2, see Kahn, "Liability to Deadly Force in War," 13–32.

81 Vitoria, "De Indus."

82 Hartington, *Military Rules, Regulations, and the Code of War*.

83 Basil of Caesarea, *Canonical Letters (Letters 188, 199, and 217)*—more specifically, Letter 188, #12. Of course, St. Basil was not advancing the kind of third way considered here; he was not contending that soldiers could bear some responsibility for participating in an unjust *ad bellum* war without changing the *in bello* actions that would be permissible within war. This particular provision may well stem instead from the Old Testament laws that equate contamination with bodily fluids with being ritually impure. (See, for example, Thomas, "Unjust War and the Catholic Soldier.") Regardless of the foundations for the dictum, depriving someone of communion is a significant restriction, an acknowledgement that the penitent remains unworthy in the eyes of the church. Therefore, regardless of its ultimate purpose, St. Basil's requirement provides a helpful reminder of a venerable, historical tradition that held that while soldiers were not murderers, their hands could still be dirty. It is up to more modern scholars to determine if there's good reason to maintain that tradition focused on a more figurative, rather than a more literal, interpretation of the moral issue at hand. Thanks to Michael Skerker for this clarification.

While much more analysis than space allows would be required for a full-throated defense of the possibility that Moral Equality of Combatants 2 obtains while Moral Equality of Combatants 1 does not, it would be helpful before closing to briefly consider a few reasons why some might find such a possibility worthy of further analysis.⁸⁴ First, denying Moral Equality of Combatants 1 implies soldiers are morally required to do all they can to avoid fighting in an unjust war, for their participation would be a moral taint of unimaginable proportions. One can thereby capture the underlying moral truth of Voltaire's famous quip, "It is forbidden to kill; therefore, all murderers are to be punished unless they kill in large numbers and to the sound of trumpets."⁸⁵ Denying Moral Equality of Combatants 1 captures a significant and fundamental truth of the revisionists project: it is folly to believe that the mere mention of the term "war" somehow magically absolves those who participate in it from deep moral inquiry about the tragedies they help unleash on the world.

Yet recognizing that questions about soldiers' responsibility for unjust *ad bellum* wars need not rise and fall together with questions of who is a legitimate target within war allows theorists to accept that central revisionist insight without committing to all revisionist *jus in bello* conclusions.⁸⁶ While there is a wide variety of revisionist views regarding *in bello* rules, many revisionists have argued that the concept of liability creates a significant problem for the traditional distinction between combatants and noncombatants.⁸⁷ Some have

84 While it is my hope that this paper can serve as a sketch of such an argument, I do not believe that one can both argue why this option is possible and why it is preferable in a single paper.

85 Voltaire, *Philosophical Dictionary*, 322. This passage is quoted by Kahn, "Liability to Deadly Force in War," 18.

86 To be clear: if Moral Equality of Combatants 2 obtains while Moral Equality of Combatants 1 does not, that would not imply that those fighting on the unjust side get to consider those fighting on the just side to be liable to being killed. On the contrary, this analysis implies that while those fighting a just *ad bellum* war are not liable, killing them would nonetheless not exacerbate the moral atrocities of engaging in an immoral war because the soldiers on the just side of the war exercise their own moral authority by joining a war that seeks inherently collective ends, rather than merely fighting for themselves as individuals. In short, this possibility requires a return to considerations of who can be treated as a combatant rather than considerations of who is liable in order to determine what actions would be morally permissible *in bello*.

87 For an excellent analysis of the wide variety of revisionist views regarding *in bello* rules, see Lazar, "Evaluating the Revisionist Critique of Just War Theory." For an example of the analysis of the tension created by liability on the distinction between combatants and noncombatants, see McMahan, "The Morality of War and the Law of War," 21–22. Even those revisionists who deny this principle in practice, however, will still have issues of parsimony. For more on this issue, see note 91.

argued more specifically, for instance, that the list of those who can be targeted by those fighting a just war ought to be radically expanded.⁸⁸ Now, many will take avoiding these possibilities as a benefit in and of itself.⁸⁹ Others will counter that being less revisionary cannot, by itself, be considered an advantage when the question under consideration is whether those traditional practices are, in fact, justified.⁹⁰ Yet even for those who would take the latter position, the possibility of avoiding the revisionists' *ius in bello* conclusions still offers at least four important potential theoretical advantages.

The first advantage is parsimony. If one grants that the current international legal regime regarding the prohibitions of actions during war has some moral benefit, then, all things being equal, it would be preferable to be able to defend both that legal regime and our ethical judgments about liability for defensive force with a single, unified philosophical framework.⁹¹ The second advantage

88 See previous note. With those caveats, however, a good example here is Frowe, "Intervening Agency and Civilian Liability."

89 A good example here would be Skerker, *The Moral Status of Combatants*.

90 See Frowe, "CEPPA Chats - Helen Frowe Talks Just War Theory."

91 The antecedent of this condition is itself debatable for some revisionists. Nonetheless, many will grant the usefulness of some current legal protections. See, for example, McMahan, *Killing in War*, 203–13. Even those who grant the truth of the antecedent, however, may object to this characterization, contending that there's a straightforward sense in which McMahan is using a single framework focused on minimizing rights violations and injustice. To do so, the framework distinguishes between simple, first-order moral problems (which can be framed without worrying about how to build institutions to handle them), and second-order institutional moral problems where more complex factors of evidence, reasonable disagreement, methods for solving those disagreements, allocating authority to make tough calls, and worries about the misuse of authority have to be taken into account. While that is a reasonable characterization of McMahan's account, the framework remains less paraspinous and unified than the alternative being proposed at both the theoretical and practical level. In McMahan's account, at a theoretical level, the authority of intuitions is indirectly and epistemically grounded. Any framework with that structure would have to do more—much more—to demonstrate the grounding for that very different kind of authority, epistemic authority. That is an activity that, to be done appropriately, would require much more analysis into much deeper questions of epistemology and more empirical work into investigating under what conditions that kind of epistemic authority turns out to have any kind of veracity. All things being equal, it would be better to ground that authority, if possible, on the kinds of moral authorities that are a significant element of claim rights themselves. Regardless of the parsimony on the theoretical level, however, an approach that seeks to demonstrate how Moral Equality of Combatants 1 and Moral Equality of Combatants 2 need not rise and fall together has an immense advantage in simplicity at the practical, action-guiding level. After all, McMahan's theory holds that soldiers often should act as if the distinction between combatants and noncombatants matters—even in some cases in which it does not. This would place an extreme epistemic moral burden on those already susceptible to immense moral decision fatigue. All things being equal, it would be better to

lies in avoiding the possibility that morality would have to conceal itself. If there is evidence to suggest that it is easier to convince soldiers that there ought to be moral limits on their behavior even in a just war than to convince them that their country is engaged in an unjust war even when it is, then in order to avoid even greater moral tragedies, revisionism runs the risk of having to become self-effacing.⁹² In other words, even if the revisionists are right that there is no difference between combatants and noncombatants, morality may nonetheless require us to tell soldiers that there is, in fact, such a difference. A moral framework that could justify the central revisionist insight about soldiers' moral responsibility for engaging in unjust wars without having to do so offers another theoretical advantage. Third, the conception of moral authority that underlies the distinction between the Moral Equality of Combatants 1 and the Moral Equality of Combatants 2 can capture the normative significance of countless activities that men and women fighting against obviously unjust wars of aggressions, such as those fighting for Ukraine in 2022, take to be morally meaningful: their military training (regardless of how truncated or rudimentary), their uniforms (regardless of how haphazard), their placement within a military hierarchy (regardless of how federated), and, most particularly, their authorization to fight *for* their nation, not merely in pursuit of its collective ends but as part of its authorized and justified defense force.⁹³

Finally, and perhaps most notably, a distinction between different types of moral equality could offer its own important insight about a particular subset of *jus in bello* rules. Consider, for example, the numerous moral prohibitions against targeting soldiers who are not *currently* combatants even though they have been in the past: one should not target soldiers in hospitals, soldiers who are surrendering, soldiers who are prisoners of war, etc.⁹⁴ Recognizing that war ought to target only combatants, a category that agents must maintain the moral authority to enter or leave, helps elucidate why the commando order, why crying havoc and releasing the dogs of war, why the pardoning of war crim-

be able to present a unified moral framework that can be presented to soldiers as a unified, action-guiding theory for recognizing their actual epistemic and moral responsibilities. Thanks to an anonymous reviewer for helping me make these distinctions more precise.

92 For an excellent analysis of how and why this happens, see Luban, "Integrity."

93 I am thankful for an anonymous reviewer for this point.

94 If these prohibitions are justified merely because of instrumental reasons, they cannot maintain their necessary deontic force, for soldiers will rightly recognize countless exceptions when targeting prisoners or hospitals as both necessary and proportionate. Although it would take too long to demonstrate, I suspect that for this very particular subset of *in bello* rules, those kinds of problematic, instrumental kinds of justifications are the only ones available to both the revisionists and those with a Walzer-inspired interpretation of the just war tradition.

inals who kill prisoners, all strike us as so deeply morally abhorrent—regardless of whether they are done in support of a just cause.⁹⁵

Many have analyzed the ways in which these rules make war less gruesome, the ways in which nations have agreed to follow these rules, and the ways in which the codified nature of these rules makes it easier to find soldiers culpable of any wrongs they may commit. Yet none of these moral considerations highlight the deeper, underlying moral issue: why do so many believe not merely that those rules and agreements make war less horrific, but also that they capture an inherent underlying moral requirement of warfare, such that any system that gave combatants the ability to simply “Cry Havoc,” publicly announcing that they were no longer following war conventions, and that therefore their adversaries were no longer required to do so either, could be criticized morally and not merely prudentially?⁹⁶

An argument based on the moral authority of combatants can answer that challenge. As argued in the previous section, one way to avoid the revisionist claim that actions that contribute to an unjust war would necessarily violate claim rights is to highlight the moral authority agents possess to leave the category of those threatened by an unjust war. Given that argument, if enough combatants were to deny their adversaries this moral authority, they would thereby irrevocably taint all those who fight alongside them. If those soldiers were on the unjust *ad bellum* side, they would *all*—not merely those who violate the rules of *ius in bello*—*all* become no better than thugs, mobsters, and murderers, turning their uniforms and medals into nothing more than ignominious window dressing.

6. CONCLUSION

This paper began by considering how saving or not saving another could make an agent liable to the use of deadly force. That was not some extraneous endeavor, for it is in these cases that important but generally overlooked moral requirements for defensive liability become recognizable and distinct; it is in

95 The Commando Order was a 1942 communiqué from the Nazi government ordering its soldiers to kill any captives caught behind enemy lines. For more, see “Commando Order” in *The Oxford Companion to World War II*, edited by I. C. B. Dear and M. R. D. Foot (New York: Oxford University Press, 2014). “Cry Havoc and let slip the dogs of war” is a famous line from Shakespeare’s *Julius Caesar*, act 3, sc. 1, l. 273. In the Middle Ages, the order “Havoc” was given to soldiers to encourage them to pillage, create chaos, and—most relevant for our purposes—take no prisoners. Finally, for a powerful criticism of President Trump’s pardoning of Chief Petty Officer Eddie Gallagher, see Kaurin and Strawser, “Disgraceful Pardons.”

96 I am thankful for an anonymous reviewer for this point.

these cases that the difference between acting unjustly and violating a claim right becomes most vividly clear. Only after recognizing the varied and rich complexity contained within those distinctive cases of defensive force can we consider the even more complicated case of killing in war, armed with the recognition that the cases in which an agent has the moral authority to physically compel another to take a given course of action must necessarily be a subset of the cases in which they have the moral authority to demand compliance. Those findings do not merely imply that saving a life can never make one agent liable to another, they also highlight a significant limitation for any theory that seeks to employ the concept of liability for analyzing the ethics of war.

Like actual revolutions, this revolution in the ethics of war has been exciting for many, troubling for others. Perhaps the greatest reason for excitement, the greatest promise of this particular insurgency, has been its challenge to the soldiers who actively participate in war, a challenge for them to reconsider their own complicity in the massive, often incalculable injustices of war. Yet this very promise lies in tension with its overidealized approach. Sadly, one of first casualties in the revisionist rebellion has been the ability for theorists and practitioners to listen to and to engage with one another, a wound that is doubly tragic given the fact that until very recently, that kind of engagement was a genuine strength of considerations in the ethics of war.⁹⁷

My lasting hope is that this paper has done enough to demonstrate that this promise of revisionism can be achieved while avoiding the schism it has created between practitioners and theorists. One need not simply assume that the duties of the soldier are necessarily distinct from the duties of a civilian to believe there is a need for taking the moral complications of war—as they are experienced—as an important input to the theoretical work of unpacking the ethics of war.⁹⁸ One need not beg the question on role responsibilities to analyze the way warfare often requires the exercise of normative authorities in ways that individual killing does not.

While the arguments in this paper have been, in many ways, critical of the revisionist project, my hope is that it can nonetheless be read as deeply respectful of one of its central aims. The just war debate cannot and should not return

97 Notably, this is a strength that has been admired and even attempted to be replicated in most of the successfully robust subfields of practical ethics (e.g., biomedical ethics, environmental ethics, etc.).

98 It is certainly true that this kind of analysis has been sadly missing from this paper as well, but I believe that to best demonstrate the limitations of thought experiments and individual cases to discern the ethics of war, it was necessary to highlight the limitations of that approach through a kind of *reductio*, taking on board as many of the assumptions, methods, and theoretical maneuvers of the revisionists as possible.

to where it was in when our Just War Rip Van Winkle first dozed off a little over a decade ago. There is another way forward: one can hold on to one of the core aims of the revisionist project, its weary skepticism of the blank pass given by some traditional just war theorists to those who fight in unjust wars, while maintaining that individual rights often strengthen, rather than undermine, many of the traditional *in bello* rules.⁹⁹

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REFERENCES

- Alexander, Larry. "Recipe for a Theory of Self-Defense: The Ingredients and some Cooking Suggestions." In *The Ethics of Self Defense*, edited by Christian Coons and Michael Weber, 20–50. New York: Oxford University Press, 2016.
- Anscombe, G. E. M. "War and Murder." In *Nuclear Weapons: A Catholic Response*, edited by Walter Stein, 43–62. New York: Sheed and Ward, 1961.
- Ashford, Elizabeth. "The Inadequacy of Our Traditional Conceptions of the Duties Imposed by Human Rights." *Canadian Journal of Law and Jurisprudence* 19 (2006): 217–35.
- Basil of Caesarea. *Canonical Letters (Letters 188, 199, and 217)*. Translated by Andrew Raddle-Gallwitz. In *The Cambridge Edition of Early Christian Writings*, vol. 2, edited by Ellen Muehlberger, 143–67. Cambridge: Cambridge University Press, 2017.
- Bazargan, Saba. "Killing Minimally Responsible Threats." *Ethics* 125, no. 1 (October 2014): 114–36.

99 This paper has benefited more from critical feedback than any I have written, in part because of the length of time it has been in development. The genesis for this analysis stems from 2003, when I was serving on active duty and teaching military ethics during the commencement of an unjust *ad bellum* war. I am thankful for my colleagues at the Air Force Academy and those at the Joint Services Conference on Professional Ethics in 2006, both of whom helped highlight the complex ways in which individuals might be responsible for unjust *ad bellum* wars. I am also extremely grateful for engagement with Blake Hereth, without whom this paper would not exist in this current form. Finally, I am indebted to those who helped improve this paper over the last several years, including those at the US Naval Academy, especially Mitt Reagan, David Luban, Ed Barrett, and Michael Skerker, those at the 2019 International Society of Military Ethics, especially Joe Chapa, those at the 2019 Rocky Mountain Ethics Congress, especially Ryan Mott and Patrick Smith, and several anonymous reviewers at *JESP* who made significant contributions to the final product.

- Beauchamp, Tom L., and James F. Childress. *Principles of Biomedical Ethics*. 8th ed. New York: Oxford University Press, 2019.
- Beauchamp, Tom L., and Robert M. Veatch. "Truth Telling with Dying Patients." In *Ethical Issues in Death and Dying*, 2nd ed. New York: Pearson Press, 1995.
- Benner, Patricia. "Honoring the Good Behind Rights and Justice in Healthcare When More Than Justice Is Needed." *American Journal of Critical Care* 14, no. 2 (March 2005): 152–56.
- Bomann-Larsen, Lene. "Licence to Kill? The Question of Just vs. Unjust Combatants." *Journal of Military Ethics* 3, no. 2 (2004): 142–60.
- Breeden, Aurelien. "France to Return Klimt Painting to Rightful Heirs after Nazi-Era Sale." *New York Times*, March 15, 2021. <https://www.nytimes.com/2021/03/15/arts/design/france-klimt-painting-restitution.html>.
- Broome, John. *Climate Matters: Ethics in a Warming World*. New York: W. W. Norton and Company, 2012.
- Brown, Kaye, and Colin Burrows. "The Sixth Stool Guaiac Test: \$47 Million That Never Was." *Journal of Health Economics* 9, no. 4 (1990): 429–45.
- Buxton, Rebecca. "Reparative Justice for Climate Refugees." *Philosophy* 94, no. 2 (April 2019): 193–219.
- Daniels, Norman, and James Sabin. "Limits to Health Care: Fair Procedures, Democratic Deliberation, and the Legitimacy Problem for Insurers." *Philosophy and Public Affairs* 26, no. 4 (October 1997): 303–50.
- Darwall, Stephen. "Bi-Polar Obligation." *Oxford Studies in Metaethics*, vol. 7, edited by Russ Shafer-Landau, 333–67. Oxford: Oxford University Press, 2012.
- Fabre, Cécile. *Cosmopolitan War*. Oxford: Oxford University Press, 2012.
- . "Guns, Food, and Liability to Attack in War." *Ethics* 120, no. 1 (October 2009): 36–63.
- Ferzan, Kim. "Forfeiture and Self-Defense." In *The Ethics of Self-Defense*, edited by Christian Coons and Michael Weber, 233–53. New York: Oxford University Press, 2016.
- Frowe, Helen. "CEPPA Chats - Helen Frowe Talks Just War Theory." University of St. Andrews, April 29, 2020. YouTube video, 14:23. <https://www.youtube.com/watch?v=bhy8Za7fhpA>.
- . *Defensive Killing*. New York: Oxford University Press, 2014.
- . "Intervening Agency and Civilian Liability." *Criminal Law and Philosophy* 16 (2022): 181–91.
- . "A Practical Account of Self-Defence." *Law and Philosophy* 29, no. 3 (May 2010): 245–72.
- Guerrero, Alexander. "Don't Know, Don't Kill: Moral Ignorance, Culpability,

- and Caution." *Philosophical Studies* 136, no. 1 (October 2007): 59–97.
- Hart, H. L. A. *Essays on Bentham*. Oxford: Clarendon Press, 1982.
- Hartington, Richard. *Military Rules, Regulations, and the Code of War: Francis Lieber and the Certification of Conflict*. New York: Routledge University Press, 2010.
- Hedahl, Marcus. "Directional Climate Justice: The Normative Relationship between Moral Claim Rights and Directed Obligations." In *Choosing a Future: Social and Legal Aspects of Climate Change*, edited by Anna Grear and Conor Gearty, 35–49. Northampton, MA: Edward Elgar Publishing, 2014.
- . "The Significance of a Duty's Direction: Claiming Priority rather than Prioritizing Claims." *Journal of Ethics and Social Philosophy* 7, no. 3 (September 2013): 1–28.
- Hereth, Blake. "Saving Lives, Taking Lives." Unpublished manuscript.
- Hohfeld, Wesley Newcomb. *Fundamental Legal Conceptions, As Applied in Judicial Reasoning*. Edited by Walter Wheeler Cook. New Haven: Yale University Press, 1919.
- Kahn, Leonard. "Liability to Deadly Force in War." In *Who Should Die: The Ethics of Killing in War*, edited by Ryan Jenkins, Michael Robillard and Bradley Jay Strawser, 13–32. New York: Oxford University Press, 2018.
- Kaurin, Pauline, and Bradley Strawser. "Disgraceful Pardons: Dishonoring Our Honorable." *War on the Rocks*, November 25, 2019. <https://warontherocks.com/2019/11/disgraceful-pardons-dishonoring-our-honorable/>.
- Korsgaard, Christine M. *Creating the Kingdom of Ends*. Cambridge: Cambridge University Press, 1996.
- Kramer, Mathew. "Getting Rights Right." In *Rights, Wrongs and Responsibilities*, edited by Mathew Kramer, 28–95. London: Macmillan, 2001.
- Lazar, Seth. "Evaluating the Revisionist Critique of Just War Theory." *Daedalus* 146, no. 1 (Winter 2017): 113–24.
- . "In Dubious Battle: Uncertainty and the Ethics of Killing." *Philosophical Studies* 175, no. 4 (April 2018): 859–83.
- Luban, David. "Integrity: Its Causes and Cures." *Fordham Law Review* 72, no. 2 (2003): 279–310.
- MacCormick, Neil. *Legal Right and Social Democracy*. Oxford: Oxford University Press, 1982.
- McAdam, Jane. *Climate Change, Forced Migration, and International Law*. Oxford: Oxford University Press, 2012.
- McMahan, Jeff. *Killing in War*. New York: Oxford University Press, 2009.
- . "The Morality of War and the Law of War." In *Just and Unjust Warriors: The Moral and Legal Status of Soldiers*, edited by David Rodin and Henry Shue, 19–43. New York: Oxford University Press, 2008.

- . “Self-Defense and the Problem of the Innocent Attacker.” *Ethics* 104, no. 2 (January 1994): 252–90.
- McNally, Terrance. *Sweet Eros: Acting Edition*. New York: Dramatist Play Service, 1968.
- Neuhauser, Duncan, and Anne Lewicki. “What Do We Gain from the Sixth Stool Guaiac?” *The New England Journal of Medicine* 233, no. 5 (July 31, 1975): 226–28.
- Otsuka, Michael. “Killing the Innocent in Self-Defense.” *Philosophy and Public Affairs* 23, no. 1 (Winter 1994): 74–94.
- Parsi, Kayhan, and William Winslade. “Why Dax’s Case Still Matters.” *American Journal of Bioethics* 19, no. 9 (2019): 8–10.
- Peel, Michael. “Human Rights and Medical Ethics.” *Journal of the Royal Society of Medicine* 98, no. 4 (April 2005): 171–73.
- Pellegrino, Edmund D. “The Moral Foundations of the Patient-Physician Relationship.” In *Military Medical Ethics*, vol. 1, edited by Thomas E. Beam and Linette R. Sparacino, 3–22. Washington, DC: Office of the Surgeon General, 2003.
- Quong, Jonathan. “Proportionality, Liability, and Defensive Harm.” *Philosophy and Public Affairs* 43, no. 2 (Spring 2015): 144–73.
- Raz, Joseph. *The Morality of Freedom*. Oxford: Oxford University Press, 1986.
- Rodin, David. “Justifying Harm.” *Ethics* 122, no. 1 (October 2011): 74–110.
- . *War and Self Defense*. New York: Clarendon Press, 2005.
- Siegel, Nina. “Dutch Court Rules against Jewish Heirs on Claim for Kandinsky Work.” *New York Times*, December 16, 2020. <https://www.nytimes.com/2020/12/16/arts/design/kandinsky-stedelijk-museum-restitution.html>.
- Singer, Peter. “Why We Must Ration Health Care.” *New York Times Magazine*, July 15, 2009. <https://www.nytimes.com/2009/07/19/magazine/19healthcare-t.html>.
- Skerker, Michael. *The Moral Status of Combatants: A New Theory of Just War*. New York: Routledge Press, 2020.
- Steiner, Hillel. *An Essay on Rights*. Oxford: Blackwell, 1994.
- Strawser, Bradley. “Defensive Interrogational Torture and Epistemic Limitations.” *Public Affairs Quarterly* 27, no. 4 (October 2013): 311–34.
- . “Revisionist Just War Theory and the Real World: A Cautiously Optimistic Proposal.” In *The Routledge Handbook of Ethics and War: Just War Theory in the 21st Century*, edited by Fritz Alhoff, Nicholas G. Evans, and Adam Henschke, 76–90. New York: Routledge, 2013.
- Tadros, Victor. “Duty and Liability.” *Utilitas* 24, no. 2 (June 2012): 259–77.
- . “Walking the Tightrope of Just War.” *Analysis* 71, no. 3 (2011): 533–44.
- Thomas, Ward. “Unjust War and the Catholic Soldier.” *Journal of Religious Ethics*

- 35, no. 3 (September 2007): 509–25.
- Thomson, Judith Jarvis. “Self-Defense.” *Philosophy and Public Affairs* 20, no. 4 (Autumn 1991): 283–310.
- Thomson, Michael. “What Is It to Wrong Someone? A Puzzle about Justice.” In *Reason and Value: Themes from the Moral Philosophy of Joseph Raz*, edited by R. Jay Wallace, Philip Pettit, Samuel Scheffler, and Michael Smith, 333–84. New York: Clarendon Press, 2004.
- Tomlin, Patrick. “Subjective Proportionality.” *Ethics* 129, no. 2 (January 2019): 254–83.
- Veatch, Robert M. “Physicians and Cost Containment: The Ethical Conflict.” *Jurimetrics* 30, no. 4 (Summer 1990): 461–82.
- Vitoria, Francisco de. “De Indus.” In *Vitoria: Political Writings*, edited by Anthony Pagden and Jeremy Lawrance, 231–99. New York: Cambridge University Press, 1992.
- Voltaire. *Philosophical Dictionary*. Edited and translated by Theodore Besterman. London: Penguin Press, 1984.
- Walzer, Michael. *Just and Unjust Wars*. New York: Basic Books, 1977.
- Wellman, Carl. *A Theory of Rights*. Totowa, NJ: Rowman and Allanheld Press, 1985.
- Williams, Bernard. “A Critique of Utilitarianism.” In *Utilitarianism: For and Against*, by J. J. C. Smart and Bernard Williams, 77–150. Cambridge: Cambridge University Press, 1973.