

SOLDIERS AND MORAL TRAGEDY

COMMENTS ON RENZO

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IT HAS BEEN a great pleasure to enter into dialogue with Massimo Renzo regarding his prize-winning article on the individual moral culpability (or not) of soldiers called to do violence by their states.¹ Whether individual soldiers enjoy an individual moral excuse for that violence—outside the morally clear context of immediate defensive war and so long as it remains within the bounds of the law of war—has been a central question in debates about the morality of war since America’s Vietnam War, resurging with the dubious if not criminal coalition war in Iraq. As Renzo says, much of the current popular and philosophical discussion takes one of two polar positions: the conventional position, reflected in the actual law of armed conflict (LOAC), puts the moral onus of unjust wars solely on national leaders, not soldiers; on the other hand, the radically democratic position assesses the liability of each soldier one by one, based on the information available to and pressures on them. Such positions are typically driven by a range of complex moral intuitions and pragmatic concerns, including concerns for the integrity and character of soldiers, a reciprocal interest in sparing the lives of captured soldiers who might otherwise be executed for illegal war, and a desire to unify the domestic morality of violence (with its strict limits on lethal self-defense) with the capacious permissions convention grants to soldiers in war.

Renzo’s promising strategy is to bypass the immediate moral inquiry into killing and self-defense (both individual and collective)—or at least to delay that inquiry. Instead, he turns to the logic of law and legal normativity, taking inspiration from the work of the late Joseph Raz. The result is a genuinely new, subtle, and persuasive account that shows why we have to treat as distinctive our moral judgments of individuals acting through the collective technology

1 Renzo, “Political Authority and Unjust Wars.” That article was the subject of an American Philosophical Association (Pacific Division) symposium discussion with me, David Estlund, and Thomas Christiano on April 5, 2021. This article reflects the remarks I made on that occasion, when I also benefitted from the thoughts of my co-panelists. See also the articles in this issue by Renzo, Estlund, and Christiano.

of law. In what follows, I probe Renzo's position, not so much to challenge it as to note its nuances and the questions it does not (yet) answer. I impose a narrative frame because discussions of legal authority, especially in a Razian vein, become abstract very fast, even though their subject is the most concrete possible embodiment of state power—in this case, a state that commands its young people to kill and die for their country.

So let us consider as moral agent a volunteer soldier of a reasonably just state, sent to fight and kill in a country not his own, whose leaders insist that their war is lawful, and who has conducted himself consistently with the *jus in bello* rules of legal combat, targeting only combatants and inflicting only proportionate harm on noncombatants. As a result of the deployment, the soldier—let us call him *Jose*—has killed other combatants, at least some of whom posed a direct threat to Jose himself, as well as killed or displaced a larger number of civilians, rendering their lives substantially worse.

At the time of enlistment and then deployment, Jose was aware of a debate in the public sphere about the legality and morality of the war, perhaps even aware that a number of other just and democratic states regarded the war as illegal. But the soldier accepted the view of the civilian government, transmitted through the military authorities, that the war was legally permissible because it was being waged pursuant to some international legal authorities—and also that the war was morally righteous. Years after the deployment, with the war no longer a live issue, most jurists have now come to believe that many of the factual predicates for the war were false and/or invented and that the war was in fact illegal and manifestly unjust. Indeed, Jose himself accepts this verdict.

Theorists have asked a number of questions about situations like this, questions pertaining both to the time before Jose engaged in any acts of violence and to the time after, in retrospect. Some of these questions are:

1. Was Jose rationally justified in acting in obedience to the orders of the military, specifically in following an order that was (in the circumstances but not as known to Jose) morally impermissible?
2. Was Jose morally *obligated* to follow this order?
3. Is Jose morally culpable for engaging in acts of violence, assuming that the war was in fact illegal and unjust?
4. Would it be morally legitimate for some actual or possible juridical body, domestic or international, to try and punish Jose for what he did?
5. Are the answers to the questions above determined just by first-order moral facts (e.g., who posed an illegitimate threat to whom?) or are they at least partly determined by the further political fact that Jose

was a member both of a free and just state (when he volunteered for service) and of its military (when he followed orders to kill)?

1. THE POWERFUL TRUTH IN RENZO'S ARGUMENT

According to Renzo, philosophers' views on these questions fall into two groups: traditional and revisionist. Traditionalists, represented for Renzo principally by Michael Walzer, offer a philosophical view that coincides with the legal status quo as manifested in the law of armed conflict—a status quo that exonerates any uniformed soldier of a sovereign state who fights consistent with the *ius in bello*, regardless of the justice of the war.² Thus, to the questions of moral permission and obligation (1 and 2), traditionalists answer yes and yes; and to the questions about Jose's culpability, liability, and the relevance of his political membership (3, 4, and 5), they answer no, no, and yes. Traditionalists often add the judgment that different, nonpolitical answers would decrease compliance with the *ius in bello*, for instance by removing the incentive offered by prisoner-of-war status, on the grounds that if soldiers were subject to punishment if captured merely for fighting, then they would lose any reason to fight within the rules. For traditionalists, Jose's political membership is fundamental and creates, as it were, a moral division of labor: while leaders of his state may be judged culpable and punished, Jose himself is responsible only for his personal conduct on the battlefield and has a claim to be freed if captured at the end of hostilities.

Revisionists, represented for Renzo principally by Jeff McMahan and Cécile Fabre, press a different view.³ They begin with an opposed answer to question 5 and hence potentially to question 1: if the war was in fact unjustified, Jose's being a member of a political group alone cannot turn a homicidal act into one that is permissible, much less a proper object of duty. If the war was unjust, then Jose's conduct in its pursuit cannot be justified, no matter how many people are accompanying him in the pursuit. Moreover, revisionists give possible answers of no and yes to questions 2 and 3, respectively: if the war was illegal, and Jose should have been aware of that fact, then it is morally irrelevant that his political authorities took a contrary view; Jose could not be obligated to obey, is morally culpable, and could, in an ideal world, be subject to punishment. One cannot be rationally justified, much less duty bound, in killing the innocent. Revisionists grant, however, that the answer to 4 is more complicated: even if Jose is morally culpable for killing, his liability to be punished is a complicated question,

2 See Walzer, *Just and Unjust Wars*.

3 McMahan, *Killing in War*; and Fabre, *Cosmopolitan War*.

involving Jose's particular epistemic position with regard to the legality of the war, as well as consequentialist considerations of the sort I mentioned above.⁴

An especially fine feature of Renzo's article is how he threads the needle between the traditionalist insight that political membership matters to responsibility and the revisionist insight that killing and dying under orders needs a much less causal justification than traditionalists typically offer. His argument works by coupling a Razian account of the nature of rational authority with a Kantian account of the justification of state authority. The basic element of the view is grounded in the individual rationality of relying on forms of epistemic or practical technology—investment schemes, autopilots, and so forth. On Renzo's view, Jose—and all citizens of legitimate states—are properly under a duty to comply with state authority because state authority is the only feasible means of avoiding the turmoil and destruction of the state of nature in which each follows her own counsel. The authority of legitimate states serves to connect citizens to first-order values and reasons better than they could do by deliberating themselves in first-order terms. We therefore have a duty as social beings to follow the dictates that are constitutive of the political institutions that make that sociality not only possible but valuable.

But Renzo's view is not purely Razian. Its key difference is that the duties we have, *qua* members of generally just, functionally successful polities, is that the duties they impose are only *pro tanto* and are subject to being overridden by strong counterclaims. Raz, by contrast, regards the category of authoritative reasons as categorically exclusionary.⁵ Though Renzo is clear that his is a practical, not epistemic conception of political authority, I think of this as a "Wikipedia model" of authority—general reliance is rational and appropriate, but when stakes are high, we should verify separately and be open to deviation (for instance, before publishing or betting big in a bar argument).

The Wikipedia/*pro tanto* model makes better sense of the specific context of political duties because it acknowledges two plausible truths about citizenship in legitimate states. The first is that the benefits of state authority, including over soldiers, are substantial for both their own citizens and outsiders. Concretely, one might think that the sanctity of borders, especially of smaller states, is valuable in minimizing interstate violence and ensuring investment and production.

4 Although Renzo does not say so directly, there is something half-hearted about the standard revisionist position, which insists on moral responsibility but denies any express political expression of that responsibility because it would be generally unfair to punish people acting on even misguided orders in the fog of war. My own view is that this aspect of the revisionist view is coherent, and indeed, we need to make room for conceptions of responsibility that do not entail permissions to punish.

5 Raz, "Postscript."

Such borders are practically guaranteed by systems of alliance. If the soldiers who are asked to defend allied borders were invited to consider on their own the justice of interstate conflicts, the security guarantees that alliances offer would be weaker, and the status of smaller states much more vulnerable. Global turmoil would follow—as indeed it has in Ukraine, which was unable to rely on alliances to deter Russia’s attacks. It is only because a small state can reliably count on both its own soldiers and those of its allies following orders that it can hope to deter larger, hungry neighbors. And this arguably preserves lives and productivity all around.

The second truth is that even generally legitimate states can act wrongfully in pursuit of their own interests, in straightforward contravention of international law. Exaggerated (and politically rewarded) conceptions of national self-interest, jingoistic politics, and groupthink are all parts of legitimate state politics and practice. And when states act wrongfully, it cannot also be the case that those they command do wrong to question their orders. Given the stakes, Jose cannot be justified in following any order to deploy, any more than he would be justified in following any tactical order. Even in a just war, Jose is morally obligated to refuse an order, say, to shell a position where he knows civilians are sheltering. Superior orders are a limited defense and do not apply when a given order is manifestly illegal, by intent or by effect. Taking both truths together, Renzo’s view rightly permits Jose to regard himself as primarily morally responsible for following orders and thus not subject to the kind of moral responsibility that attends purely individually; but it also crucially makes room for complicity and personal responsibility in those circumstances when the presumption of legal orders is overcome, and Jose obeys rather than resists.

These seem to me not only to be inherently sensible philosophical considerations but also to account for phenomenology thoughtful soldiers in the midst of war—namely, though they are duty bound not to second-guess orders as a matter of course, they perform what Renzo, quoting Fred Schauer, calls a “peek” at the underlying reasoning.⁶ Peeking done, they feel they can reconcile their identities as free and rational citizens with their roles as soldiers, at least until their threshold of moral justification is breached.

2. BUT ARE THEY REALLY JUSTIFIED?

Renzo’s view, I have suggested, accounts for the feeling of justification that soldiers in a legitimate state have (at least at the outset of their service) and makes

6 Renzo, “Political Authority and Unjust Wars,” 348, quoting Frederick Schauer, “Rules and the Rule of Law.”

for a satisfying reconciliation of moral autonomy with political membership (contrary to the philosophical anarchists who say this cannot be done). But is it more than a feeling? Are the soldiers individually genuinely doing what “they have moral reason to do, all things considered” when they kill in an unjustified war, so long as their “peek” does not reveal a serious injustice?⁷ In what follows, I suggest that this model of justification is unstable, and because it is unstable, it leaves open powerful dimensions of blame and regret. In that sense, Renzo’s argument may veer from one side to the other in the traditionalist-revisionist debate rather than forming a sturdy middle way.

In Raz’s standard service conception of authority, justification is one-dimensional: if a political authority is justified, it is because those who follow its dictates generally do better by following them (by reference to underlying reasons) than those who try to deliberate for themselves.⁸ This can generate a kind of paradox or local-general inconsistency when the authority is occasionally wrong: in this instance, I may actually make the situation worse even though following an authority’s dictates overall makes the situation better. The paradox is only apparent, though, because the reasons that support my following the (incidentally) wrong dictate track overall reasons and are not cancelled out by occasional error. So my justification is solid, even if I have reason to wince about the local costs.

The problem for war, as Renzo notes, is that the “costs” of error are too high to simply be assimilated into the calculus of net political benefit. They are the deaths of innocents, as well as moral harm to the soldiers themselves. This is why Renzo requires a “peek” at war’s justification, while trying to preserve the overall justification for following political authority. The result is a more complex form of hybrid justification than in Raz’s is simple model—hybrid because it combines a subject-relative judgment about whether Jose came to a reasonable conclusion on the basis of his “peek” with an objective judgment about the justification of the war as a whole (and, beyond that, of an authoritative political structure). This hybrid justification is thus both the promise and peril of Renzo’s model.

Here is a familiar example of a hybrid justification: in the United States, when prosecutors ask whether a police officer was reasonable in using deadly force, they begin with as many facts of the situation as they can assemble and then ask whether the ways in which the officer’s perceptions or beliefs departed from how an objective officer would have viewed the same situation.⁹ The

7 Renzo, “Political Authority and Unjust Wars,” 355.

8 Raz summarizes his view in “The Problem of Authority.”

9 The standard I describe here is that laid down by the US Supreme Court in *Graham v. Connor* 389 U.S. 486 (1989).

theory is that a fully relativized view—Did this particular officer perceive a need to use force?—vindicates all uses of force and results in no standard at all. But a purely objective standard—Would a reasonable officer knowing everything about the situation have used force?—makes no room for the particularities of the situation and so would be unfair to the actual officer. The justification must therefore be both relative and objective.

Renzo's standard similarly has two components, relative and objective, that combine for him into a judgment of the soldier's justification. Here is how I understand them as combining, first at the extremes and then in the problematic (and more realistic) middle case.

1. Relative and objective justifications line up in support: any person in Jose's epistemic position would have concluded that following orders to fight was justified in light of the character of justifications surrounding him. From the perspective of history, the war seemed clearly just.

Traditionalists and revisionists would both endorse exoneration, as would Renzo: this is a just war, and Jose has performed his moral duty to obey, to inquire, and to fight. (Think: a war of clear national, territorial, self-defense fought by a legitimate state.)

2. Both relative and objective justifications line up negatively: no person in Jose's epistemic position could have reasonably concluded that fighting was justified, and that view is objectively correct. Jose himself did not regard the fighting as justified but did so anyway. This category is again unproblematic: Jose's actions were unjustified.

Here traditionalists and revisionists divide on the question of moral culpability, though most revisionists might argue against punishing Jose on grounds of fairness. Renzo sides with the revisionist here: the moral error was apparent, and no one can take moral refuge in a defense of superior orders. (Think: a soldier who doubts his state's propaganda endorsing invading a neighbor but does so for the adventure.)

3. The relative and objective justifications divide: the war was locally and internationally controversial; the government and its allied news agencies provided a great deal of prowar propaganda; some individuals concluded that it was wrong to fight, others that it was a patriotic duty; individual views were mostly to follow political identification with or against the party in power. The balance of internal expert juridical and moral opinion was similar in being mainly a product of

polarized identification, but most objective outsiders regarded the war as illegal and wrongful. Jose decided that although his duty to double-check the state's justification was triggered by the fact of the debate, there was enough apparent epistemic support around him to justify him, and so he fought and killed.

Traditionalists and revisionists split here. Traditionalists say that Jose ought not to be faulted for having followed orders, period, regardless of any later verdict of history. Revisionists suggest that Jose had a duty not to fight in these circumstances and can be faulted and perhaps punished, given good objective reason to doubt the justice of the war.

It would be ideal if Renzo's position could lead us out of the impasse. What he says is that whether traditionalists or revisionists have the correct answer depends on the specifics of Jose's epistemic position—whether Jose was reasonably in a position to see that the case for disobedience was met.¹⁰ Otherwise, even in an objectively unjust war, Jose is justified in fighting, as traditionalists say (although not, Renzo, emphasizes, for quite the same reason).

To generalize: the problem is that it is very hard to imagine circumstances in a generally just state that provides its rationalizations to its soldiers, in which they could come to see the presumption of obedience as overcome. For every criticism voiced by war critics, the state has a response. And this means, in turn, that soldiers virtually always regard themselves as justified, simply by pointing to the systemic benefits of political order, even postwar when the mistakes of the war get out (which might include packets of lies wrapped up in others' good faith acceptance of those lies). But if this is so, then Renzo's account puts Jose in an extraordinary situation: Jose must accept that he was justified in fighting and killing in an unjustified war, even as he comes to realize that information about that injustice was available to him.

Is this the same merely apparent paradox of Razian authority, which sets short-term error against long-term benefit? It seems to cut deeper in Renzo's view, and Jose in retrospect experiences Renzo's position as paradoxical, as a matter of being both justified and unjustified: Jose justly fought an unjust war. He killed wrongly, and it was possible for him to have recognized the wrongness of his act at the time. It was his own failure to make more from the "peek" that led to this failure. This is quite different from following traffic directions or a construction code that in the circumstances are less than optimal.

The traditionalist position can avoid the paradox because Jose is justified, period—there is no demand for individual justification. But Renzo cannot avoid it because of this individual, relative dimension. Once Jose had reason

10 Renzo, "Political Authority and Unjust Wars," 355.

to question his duty to fight, he could either have regarded himself as justified, because in fact he regarded the reasons apparent to him as sufficient, or have regarded himself as unjustified. But the epistemic middle ground, where he regarded himself as still justified even though, in his own view, he did not see sufficient reason to conclude that the war was either just or unjust, is at the verge of incoherence. Compare a case with much lower stakes, where I must make a guess about some future outcome, knowing that I do not know enough to assess the probabilities thoroughly. I might decide that I have to make the guess anyway, but I do not regard my guess, in respect to its content, as itself justified. Jose's case is more serious: he is supposed to regard himself as justified in killing, even though he also (in retrospect) regards those he killed as innocent victims of a wrongful war. The idea of justification here strains at the edge of coherence.

The policing example shows this. If the hybrid standard is understood as justifying the objectively unjustified use of deadly force, then it is incoherent. The best that can be said for the *Graham v. Connor* doctrine is that it might protect police from unfair liability and thus might be necessary in order for them to have the right incentives to intervene in ongoing criminal activity. But that is just a matter of consequentialist justification and of little solace to either the police officer or the victim killed wrongfully—and it appears to be tied to the distinctly American problem of excessive police violence, especially against members of disadvantaged groups. Once we introduce the individual perspective, we can offer excuses from punishment, but we cannot create a justification unsupported by the facts.

In the case of policing, we can (arguably) afford to ignore the incoherence of the idea of individual justification because police departments and their political overseers have ways of turning up or down the level and intensity of police intervention, as well as a system of courts and disciplinary boards that can help individual officers determine the proper scope of their right to use force. War is not like that, at least for the *ad bellum* issues here. These are usually profoundly difficult, both in their international dimensions and in their domestic ones, and they are very rarely resolved. Witness, for example, the quixotic 2016 lawsuit by Army Captain Navy Smith contesting his orders to attack ISIS in Iraq, which were purportedly authorized by the 2001 Authorization for Use of Military Force, which was aimed at Al Qaeda in Afghanistan.¹¹

11 The basis of the lawsuit is described in Ackerman, "How to Stop Trump Blowing It Up." The suit was dismissed in district court on the philosophically curious but legally predictable grounds that a soldier contesting unconstitutional orders lacked standing or distinctive injury as a basis for the suit and that only political institutions, not courts, can answer such questions. *Smith v. Obama*, CV 16-843 (CKK), 2016 WL 6839357.

Further, since legal positions do not determine moral positions, the moral questions are broader yet—witness the debates about humanitarian intervention as “illegal but legitimate,” in the phrase of the UN Independent International Commission on Kosovo.¹² If Renzo’s vote is to have bite, then there must be a basis amidst moral debate for Jose to regard himself as unjustified. But since all wars beyond direct homeland defense are deeply contested, it is hard to imagine situations that do not simply collapse into the traditionalist/Tennysonian position on justification—that “theirs is not to reason why.”

3. BLAME MAKES IT WORSE

I do not mean to suggest that soldiers should never regard themselves as having made difficult but reasonable choices to fight, even in the wake of history’s negative verdict on their cause. I do, however, mean to contest the promise of righteousness in these cases that Renzo offers. In the last section, I discussed the problematic notion of justification as applied to individuals and suggested that the semi-Razian approach to authoritative justification makes the concept unstable because the situation of a soldier in the midst of fraught debate cannot be treated as simply justified or unjustified, lest we lose sight of the fundamental tension between individual and objective perspectives.

Perhaps you are comfortable with the idea of an individual being justified in killing relative to his perspective, though unjustified objectively. If so, the character of blame may make my concern more vivid. We need to consider, I suggest, that many of these situations have the character of an Antigone-like tragic situation: Jose faces both a duty to obey and a duty to resist, neither overriding the other. This tragic dimension of individual political membership (perhaps like the so-called “dirty-hands” duty of leadership) may simply be an irreducible fact of life even in a generally legitimate state so long as that state exists in a confusing and unjust world. We disguise it by pretending that the duties can be ranked and thus reconciled, as Renzo does. But they cannot be.

There is a hint that Renzo is aware of this possibility, reflected in the often passive and acontextual language in which he frames his position:

My argument is that when a legitimate state wages an unjust war, we are under a duty to comply with its order to fight *unless* the presumption in favor of obedience *is rebutted*.¹³

12 IICK, *The Kosovo Report*. The commission concluded that the NATO intervention in Kosovo was illegal because a Security Council resolution had been vetoed by Russia but legitimate because it was sustained by a regional coalition and in defense of human rights.

13 Renzo, “Political Authority and Unjust Wars,” 351 (emphasis added).

And:

They are morally innocent not simply in the sense that *they are blameless* but in the sense that *they are justified* in so fighting.¹⁴

Such impersonal language rings natural in a philosophy article, but it is misleading in an account of actual moral reflection and judgment. The best way to see this point is to return to our narrative frame, abjuring the perspective of the philosophical writer. That is, instead of asking questions of blame and permissibility from the point of view of a Walzer or Fabre, for example, let us ask the question from, say, the perspective of a villager whose corrupt and undemocratic government has agreed to the presence of Jose and his fellow soldiers or who simply has suffered in a war that, from her perspective, has always been an obvious assault on her land. Speaking of Jose's justification or blameworthiness from this perspective seems different because it reflects the specific, individual claims of those who suffer from the unjust violence, not just the abstract judgments of third-party observers.

There is an obvious analogy to cases of downside risk or to the moral cases Bernard Williams famously labelled *agent-regret*.¹⁵ When we take a gamble that is rationally justified in advance by the information available, and that gamble turns sour, we may find some solace in its intrinsic reasonableness. But we regret having been stupid enough to take the gamble in the first place, especially when the loss is severe. *Ex ante* rationality cannot cancel out *ex post* loss, at least for human beings with limited resources and finite time horizons. And when there is a moral cost to our acts—when we cause an accident even though we could not anticipate a darting child or a slippery road—the recriminations are even more severe. The philosophical story we might tell about culpability always stays at a distance from the moral reactions that are a necessary part of human agency. As Williams remarks, while punishment or harsh judgment—certainly by bystanders—will be inappropriate, there is nothing inappropriate from the first-person perspective about offering apologies and regrets. Nor should we insist that victims accept the impersonal perspective either.¹⁶

Let us imagine Jose's encounter with a villager widowed by his actions or whose house was destroyed. Call her Hana. By hypothesis, Jose can say, "You realize, my state was generally legitimate, my president ordered me to go, and when I read the papers, I saw that we were invited by your government. I realize now that the conflict was founded on lies, that the inviting government was

14 Renzo, "Political Authority and Unjust Wars," 354 (emphasis added).

15 Williams, *Moral Luck*, 20–40.

16 I discuss the relevance of nonblameworthy moral regret in *Complicity*, ch. 1.

corrupt, but I did not know that at the time.” But what comes next? Can he say to Hana, “So while I sympathize with your loss, I must insist that I was rationally justified at the time, and so I bear no moral culpability here, much less liability to punishment. You will need to direct your objections to my president”?

I think the answer is clearly no—and not because I have manipulated rhetoric to make such a response seem heartless.¹⁷ The problem, rather, is that such a response would recognize only one side of Jose’s agency—namely, his role responsibility as a soldier. Being a soldier does not absolve him of his further humanity. Such a response would fail to acknowledge the agency behind Hana’s loss by treating it as a collateral harm to the task of having legitimate but fallible political institutions. And it would fail to acknowledge the first-personal responsibility that Jose must feel at the fact that his actions were a component of the causal storm that overtook Hana’s life. Hana might well feel sympathy at the same time for Jose’s position, and she may even choose to forgive and to urge him to forgive himself. But the very fact that forgiveness is relevant here underlines the fact that there is something to forgive, a moral residue of the authorized act. Even the *pro tanto* version of the Razian view makes no room for this because it looks at justification only as an exercise in the space of reasons, not as an interpersonal relation. It makes no space for tragedy.

4. WHERE THE *PRO TANTO* MODEL WORKS: IN *BELLO* JUSTIFICATION

I have suggested that the Renzo model of justification is unlikely to work for plausible cases of *ad bellum* debate. But this is to sell it short in one respect. As my analogy to police use of force suggests, the model offers promise with questions about justification that are more easily resolvable both *ex ante* and immediately *ex post*, when individuals can correct their future actions be reflecting on good-faith errors. This is the situation of *in bello* conflict, where indeed, something like the model is already structurally incorporated through the “obedience to orders” defense.

On Renzo’s view, recall, Jose has a duty to obey all orders that are not manifestly illegal—that is, orders that would be regarded as illegal by a person of ordinary sense and understanding. Compare, on the one hand, a (mistaken) order to shell a building that is known to have served before as a hospital but is now said to be used also as a weapons cache with, on the other hand, an order to shell a facility that is known to be used now as a hospital. In the latter case, Jose would commit a prosecutable war crime if he does not reject the order, as

17 We can be rightly suspicious of this technique in philosophical argument. But I think here its role is defensible.

he would be expected to do, given that anyone in his position would have been taught rules of engagement and principles of LOAC relevant to the context in which he operates. That standard is fair because he can be expected to have mastered the relatively clear standards of *in bello* conflict and to apply them against the presumption of obedience.

What about the former case, of an order to attack a purported dual-use facility? Jose would be permitted and indeed duty-bound to follow the command provided that he does not see anything to contradict the intelligence that weapons are present and that, at least for US armed services, legal officers have agreed that the military advantage was sufficient to offset the collateral deaths of hospital patients. Assuming these conditions are met, Jose would be exonerated even if it turns out that the target is in fact only a hospital, and he could be court-martialed for refusing the order unless it is on the basis of a good-faith belief that the intelligence is false. Jose would of course feel moral regret for the deaths he causes—indeed, he would likely feel regret whether or not the order was factually mistaken—but he would not likely feel the sort of guilt that I suggested would be present in the *ad bellum* case. The Renzo model here works well both in theory and in practice.

A lesson one might extract, as some revisionists have, is that we should try to make *ad bellum* rules as clear as *in bello* rules.¹⁸ And certainly some international lawyers think we could prohibit almost any use of force that is not an immediate defense of one's own or one's allies' territory of military facilities.¹⁹ Renzo's model of justification would work better with bright-line rules that can be internalized as easily as rules of engagement and the Geneva Conventions, and for which a jurisprudence exists. But for a variety of reasons, this seems to me highly unlikely. First, strong states—and therefore international law—will continue to claim discretion over uses of force far outside their territories in retaliation, prevention, and humanitarian intervention. Preserving the ambiguity of international law and principle over the use of force is key to their power. Second, the veto privileges of the permanent members of the Security Council mean that its dictates are unlikely to mirror general consensus, even in the clearest of cases, such as the Russian war on Ukraine. Third, the inherent vagueness of the concept of self-defense as applied to national interests means that justifications can almost always be sought for putatively defensive wars.

18 See, e.g., Rodin, "The Moral Inequality of Soldiers." Rodin proposes an international tribunal to resolve *ad bellum* issues against individual soldiers, which would require similar clarity.

19 This is the hope expressed in Hathaway and Shapiro, *The Internationalists*. They explore and defend the project of the Kellogg-Briand Pact to make war illegal except under extraordinary circumstances.

These ambiguities mean that no individual soldier of a generally just state is ever likely to have clear enough rules for the standard to have any bite.

5. A HALF-HEARTED ENDORSEMENT OF THE TRADITIONALIST VIEW

I worried above that the difficulty of overcoming the presumption of obedience means that Renzo's view collapses into traditionalism in practice. But would that be a bad thing? Renzo says he prefers his view because it does not require belief in a distinct and less demanding political morality of violence, as he thinks traditionalism requires. But the view that political violence is justified differently from individual, interpersonal violence need not be as mysterious as that, even if Walzer's presentation in *Just and Unjust Wars* might lead one to think otherwise.

Certainly, one way of endorsing traditionalism is very close to Renzo's own view, and that is to see the "war convention" (as Walzer calls the impunity of line soldiers who fight lawfully) as simply justified in consequentialist terms. I mentioned above the advantage it is thought to provide in giving individual soldiers a reason to adhere to *in bello* rules, so that they can be protected under POW status. Other reasons, specific to war, arguably include a greater likelihood of a peace treaty, because the issue of individual *postbellum* justice is off the table and the increased deterrence of international uses of force provided by a system that can more reliably call up soldiers to defend against them, since those soldiers will not fear post-conflict reprisal. These may all be specious, but they are not very far from Renzo's own view, which insists on the Kantian value of good international order, even if that Kantian value is not itself exhausted by the gains it provides to aggregate welfare. So Renzo's desire to distinguish his account from consequentialist traditionalism probably needs more justification than he provides.

However, Renzo is of course correct that Walzer, in particular, grounds his view not in welfare but in the distinctive value of loyalty as constitutive of a political community. We can call this the Romantic view, rooted as it is in a nineteenth-century conception of the importance of nationalism, as expressed by Johann Gottfried von Herder and others.²⁰ The view makes supremely important collective self-determination and expression, and it demands the subsumption of individual moral personality. A view that treats politics as purely instrumental, as a Razian liberal view does, cannot make much sense of these values except to see them as individual interests protected by an international system that generally protects self-government. This is to say that

20 See, e.g., Berlin, "Alleged Relativism in Eighteenth-Century Thought."

it cannot make sense of a people's moral interest in acting against perceived threats, except insofar as the system of liberal states is threatened. Walzerian traditionalists, by contrast, want to grant absolution even to law-abiding Wehrmacht or Russian soldiers, not because their obedience furthers liberal values but because they are properly subsuming their identities to their illiberal states.

Most people—certainly most liberals—no longer regard state membership as valuable as such. Membership in corrupt, pathological states has no redeeming value. But we should recognize two strands of Romantic, collectivist thought that do play anchoring roles in political morality for at least moderately decent if not liberal states. The first is how our actual moral and legal systems tolerate violence visited on persons as justifiable in a substantially different manner than we do from a purely individual, moral framework. Revisionists challenge this at one level, even though they (mostly) accept a system of individual excuses from punishment for wrongful killing that they reject in ordinary, interpersonal cases. In this, they are conceding to how we view almost all goal-directed political history, including revolutions, civil wars, and territorial wars, where many of the interests at stake, if they have an interpersonal analogue, come up short against the toll of death and destruction. A traditionalist who incorporates this different way of viewing and weighing violence need not be blood thirsty—only realistic in recognizing the lived moral and political values of most people over most time.

A second reason for recognizing the force of a distinct, political perspective on soldiers' duties is to see that they rarely reflect in purely individual terms (What are my duties?) but instead reflect in terms of "we" (What should I do as part of my membership in this army and this political community?). Raz himself endorses a highly individualistic liberalism, and so in his model, an agent asks simply, "What should I do, given norm *X*?" But even with a correction, we do not end up with a collective, political view of the rights and permissions of warfare. This is because the collective aspect of the Romantic view underlies the permission structure of war. Just as the Razian view does not make room for the we, the Romantic view has trouble making room for the reflective, individual citizen half of a citizen-soldier.

I mentioned in my brief discussion of blame that many situations of war have an Antigone-like, tragic structure. Jose is caught between the demands of personal and political morality, between liberalism and Romanticism. This is why loyalty remains both prized and suspected in modern societies. Renzo's view attempts to make sense of that dual capacity, but unless it can take on the kind of inherently collective values at the root of national belonging, it provides a traditionalist resolution of the problem of obedience, without the moral ontology to support it. This brings us back around in a circle. We should

celebrate Renzo's attempt to capture the insights of both traditional and revisionist views. But the middle ground he sketches seems neither individualistic enough to capture the moral horror of fighting a wrongful war nor collective enough to support the moral comfort it offers its soldiers. We may need to settle for a less than satisfactory resolution.

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