

THE WEIGHT OF AUTHORITY IN WAR

COMMENTS ON RENZO

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EVEN THOUGH many wars are unjust, they can sometimes be projects whose terrible success all should earnestly hope for. There we should hope that those legitimately in command have what they need at their disposal, including the obedience even of soldiers who disagree about the war's justice. When the war is wrong, the deaths are wrongful, so does this not show that obedient soldiers kill wrongly? Disputing this, one view—in some ways traditional—holds that it is not the soldiers' business "to reason why," and they ought morally to carry out the ordered fighting and killing. Each death is still a wrong, but not a wrong by the obedient soldier. Critics of that traditional view, often known as *revisionists*, argue that an obedient soldier in an unjust war commits the wrong of murder, even if the relevant superiors are in the wrong as well. (I use the term 'revisionist' narrowly here in this way.)

In his 2019 article "Political Authority and Unjust Wars," Massimo Renzo defends a nuanced version of the traditionalist view that it is not (always) for the soldier "to reason why."¹ He argues that legal directives from a legitimate state can convert lethal acts by a commanded soldier that would otherwise be morally impermissible into permissible ones. The picture is less clear than that makes it seem though, since Renzo also holds that the soldier is still "wrong" to kill in that case (342). I begin with a critique of Renzo's implication that an act can be both wrong and permissible, morally speaking. While his formulation is problematic, Renzo's main points can be captured without it. A second interpretive problem comes up, but here too it can be overcome. Renzo appears to misstate his position in several places, as if it were simpler than it is. Clearing that up allows us to see the subtle nature of his actual position by starting with that simpler view and criticizing some arguments offered in its favor—siding, in that way, with Renzo's real view. After, I hope, resolving those interpretive challenges, I raise and then address an important limitation of his argument that derives from the nature of authority: even if he is right about

1 Hereafter, Renzo's article is cited parenthetically.

political authority that it presumptively brackets certain considerations from the soldier's proper deliberation, surely some bracketed conditions can still be compelling enough that the authority lapses. From there, however, I side with Renzo (or at least what I argue is an implication of his position) in holding that the taking of innocent human life, as weighty as that is, is not enough—or more specifically, not obviously enough—to nullify political authority even in an unjust war.

1. FORBIDDEN AND PERMITTED

Here are two relatively simple positions in a dispute about following orders in an unjust war. (It is a helpful simplification to suppose that one side is just, the other unjust.)

Permitted Obedience: In certain cases, a military command can render permissible (i.e., not wrong) a soldier's act of killing that otherwise would be a wrong by them, even if the military command itself is wrong and the targeted soldier ought morally not to be killed.²

Forbidden Obedience: Where a commanded war and its killings would be serious injustices by the commanding state, whatever general moral reasons a citizen has to obey legal state orders, those are outweighed or overridden, and a soldier must, all things considered, not obey.

An important formal point that Permitted Obedience exploits is this:

Permitted Obedience's Formal Point Against Forbidden Obedience: That the state would be wrong to kill and yet orders its soldiers to kill, rendering the killing a wrong to the victim, *does not imply that it is a wrong by the soldier.*

This is formal in the sense that it does not say anything about what is right or wrong but makes a logical observation. It is “against” Forbidden Obedience only in the sense that it denies one argumentative route to Forbidden Obedience, though there may be others.³

There is a second formal point, this time available to Forbidden Obedience and raising a question about Permitted Obedience:

2 I will (with notice) start calling this position *Authority* later in the article, for reasons to be explained then.

3 I can steer clear of the question whether collectives can be blameworthy, so I always mean to refer to individual agents who are involved in the decision-making in whatever way the context would require for the point at hand.

Forbidden Obedience's Formal Point Against Permitted Obedience: That there is a duty to obey that is enough sometimes to render even killing permissible and sometimes to require and permit obeying wrongful orders *does not imply* that the duty of obedience is *not outweighed in the case of the unjust side in a war*.⁴

A duty to obey the state *could*, as this says, be outweighed in such cases, though it might not be. Renzo defends this formal point with a close look at the difference between two views of the reasons that arise from practical authority, arguing that they are not “exclusionary” but “presumptive.” The details of that argument do not matter for my purposes, and we concentrate here on its normative upshot and some challenges to it. Broadly speaking, I defend Renzo's support for Permitted Obedience against some instructive challenges that are in a revisionist spirit. But I start with some preliminaries.

2. PERMISSIBLE WRONGS?

I normally use the terms ‘morally wrong’ and ‘morally impermissible’ interchangeably, as I believe most do.⁵ Renzo, however, does not. He writes that his article's conclusion

grants combatants on both sides a *permission* to fight (under the conditions specified ...), while acknowledging at the same time that combatants fighting on the just side are *wronged by* those fighting on the unjust side (since the former have done nothing to lose their right not to be killed). (356)

That helps to explain why Renzo does not seem to think that it is tendentious or question begging—even while the question at hand is whether the soldier's act of killing is a moral violation—to employ, as if they were neutral in the dispute, such wrongness-implying descriptions of what the soldier does as “to commit something wrong,” “acting unjustly” (343), “doing something unjust” (345), being an “accomplice” to serious injustice (346), and “perpetrating an injustice” (350). I would expect him to argue that these are not question begging at all, since a given act at a given time can, he thinks, be both morally wrong and morally permissible. The idea seems to be that there is a standing duty not to kill soldiers on the just side, and even when one is, all things considered, permitted

4 Like Renzo, I use the terms ‘duty’ and ‘obligation’ interchangeably.

5 Sophia Moreau, however, organizes things roughly as Renzo does (*Faces of Inequality*). In “Moreau on Discrimination and Wrong,” I argue, along lines complementary to what I say here—that this leads her view into trouble.

to do so, one violates that duty (a *pro tanto* duty, he says, meaning that it “maintains its original force” even when it is “overridden”) and thereby “wrongs” the soldier on the just side (341). The killing soldier kills wrongly—but permissibly.

I think this is unnecessarily paradoxical. Fortunately, Renzo’s main normative points can be captured under a modest reformulation that drops the paradox. We can cast overridden duties as not duties at all in the instant case. Based on *pro tanto* reasons, they were only *prima facie* duties, which are not a species of duty but only what might seem at first to be duties. There is a *prima facie* obligation not to contribute to unjustified killings and a *prima facie* obligation to obey commands under certain specified conditions.⁶ More fully (in my words, not Renzo’s):

Renzo’s View Adjusted: If a soldier’s state is reasonably just and legitimate, then even as its war effort is unjust, there is a moral presumption that the decision to go to war is the state’s to make, which takes the weighty reasons not to kill others out of the soldier’s consideration with respect to the decision whether to obey. That presumption is rebutted if the soldier, having duly inquired, not only believes but also has sufficient justified confidence that the state’s order to fight is unjust.⁷ (Call this Renzo’s *special epistemic exception*.) Barring that, even if the soldier believes, even correctly (but not sufficiently confidently), that the order is unjust, the all-things-considered duty is still to obey. The soldier thereby participates in unjust killing, but the wrong is not the soldier’s.

This formulation avoids the awkward idea of permissible wrongdoing. On my best interpretation, then, Renzo’s view is more opposed to the revisionist view—the view that such obedience is a moral violation, all things considered—than might appear from his saying that an obedient soldier wrongs the victim, etc. It is, it turns out, a qualified version of Permitted Obedience.

There is a second way in which Renzo’s view is not what it might seem to be. Renzo appears to endorse what I call a certain *complicity principle*, but the

6 This is consistent with W.D. Ross, who first introduces the terminology of *prima facie* duties. They are not a kind of duty but a kind of reason. *Prima facie* duties are nothing but a certain set of *pro tanto* reasons that have lasting weight in the direction of what might or might not, all things considered, be a duty of any kind. This point about Ross’s view is explained by Anthony Skelton, “William David Ross.”

7 Renzo states the condition as depending on the soldier being “justified in believing that the authority has made a mistake that will lead to serious injustice and we are sufficiently confident about this belief” (“Political Authority and Unjust War,” 349).

appearance is misleading.⁸ He says that we have a duty to “disobey if complying would lead to the perpetration of serious injustice” (349). I believe he has not stated his position carefully. That would be Forbidden Obedience, which Renzo actually rejects. His view, which is laid out at length in the article, is better conveyed by these compact formulations:

In those cases where the epistemic threshold is not met . . . our reasons to act as the authority requires are undefeated, and thus we are under a duty to obey, even if the authority has made a mistake and complying will lead us to perpetrate a serious injustice. (350)

My view is close to the orthodox account [i.e., roughly, Permitted Obedience] in that it acknowledges that there will be at least some combatants who will have an all-things-considered duty to obey the order to fight an unjust war. (354)

What explains the several statements seeming to imply Forbidden Obedience? It appears to be an artifact of the formulation I criticized earlier—that the same act can be wrong and permissible and, relatedly, that we can have a duty not to do something and be permitted or required to do that same thing. In particular, the problem stems from the problematic “wrong and permitted” formulation we have just discussed and adjusted—in particular, the very idea of *pro tanto* rather than merely *prima facie* duties. So when Renzo says we have a “duty” not to obey when that would be to participate in serious injustice, he does not (even though he calls it “wrong”) take this to imply that obeying is impermissible. On his view, it might be morally permissible or even required.

Here, then, is a complicity principle that he might have seemed to endorse but does not and that does indeed imply Forbidden Obedience, which he rejects:

Forbidden Complicity Principle: We are morally required never to participate in the perpetration of serious injustice.

This is a tempting and widely held view in its own right and serves as a foil for Renzo’s below.

3. AUTHORITY-FAVORABLE CONDITIONS

Before considering a family of objections to arguments from political authority such as Renzo’s, let us specify the substantive—not merely formal—question

8 I use the term ‘complicity’ in its ordinary, nontechnical sense, and it picks up on Renzo’s use of the cognate term ‘accomplice’. The *Merriam-Webster Dictionary* gives a typical definition: “association or participation in or as if in a wrongful act.”

between Permitted Obedience and Forbidden Obedience. Some may hold that a soldier's actions are covered by Forbidden Obedience even under the following conditions but laying them out exposes several attractive aspects of Permitted Obedience. We limit ourselves to cases that meet the following authority-favorable conditions:

1. *Conscientious Authority*: The commanding state authority has done all that can be expected (e.g., taken some procedural prelude) to refrain from prosecuting war unjustly, and the mistake is, in that sense, an honest one, or in "good faith."⁹
2. *Informed Authority*: The authority has access to and has taken the measure of whatever relevant and significant arguments or evidence are available to the commanded soldier. (The soldier has no extra reasons in this sense.)
3. *Credibly Wrongful and Lethal Threat*: The enemy soldier is believed by the defending soldier and is justifiably (even if erroneously) believed by the commanding authority to be in the wrong and to be part of a great threat.
4. *Only Death Removes the Threat*: It is known by all that the only way to prevent that ostensible danger is to incapacitate many enemy soldiers and that this can be done only by seeing to it that they are killed.
5. *Permitted when Accurate*: Killing enemy soldiers to remove the threat would be permissible by the commanding state if, as the state mistakenly believes, the enemy state were unjustly in the war.

Thus, the substantive question, going beyond the two formal points is this: is it morally permissible for a soldier to obey lethal orders in war in these conditions?

4. KILLING'S WEIGHT

As we have seen, Renzo argues that except in the case of the special epistemic exception whereby due inquiry gives the soldier sufficient warrant and confidence that the command is unjust, the reasons that the authority provides can prevail even when the command in question is understood by the commanded soldier to be wrong. The weight of the reasons against the permissibility of the commanded action is not to be brought to bear. That is in the formal nature

9 Renzo uses the term 'good faith' throughout (346), interchangeably with the term 'honest mistake', which I introduce in Estlund, "On Following Orders in an Unjust War."

of authority, Renzo argues. They do have countervailing weight as reasons, we might say, but they are to be left off the scale.

However, even if this is correct about the structure of authority, that cannot by itself show that a command from a legitimate authority can be morally binding, all things considered, regardless of how severe the wrong would be that one would thereby be contributing to. Renzo's epistemic exception gives no antecedent weight to the severity of the wrong—only to warrant and confidence in the soldier's belief that it is wrong. What if the allegedly bracketed consideration was instead the fact that if the soldier were to obey, they would be contributing to the imminent collapse of civilization? Renzo's view suggests that even if there were little risk or cost from disobeying, unless the soldier not only believes the truth with good reason but also has some additional quantum of confidence, then obedience is required. No one should bite that bullet just because authority has a certain formal bracketing structure. Even if it is correct, that whole structure of authority must surely be within the scope of certain exceptions, at least partly on grounds of great severity. And then the revisionist can fairly ask: Why would the killing of innocent people not be within the class of exceptions (and antecedent severity threshold), thus preempting Renzo's epistemic exception requiring warrant and confidence? This is an important concern, as far as it goes.

The question is how far it does go. The central claim at issue here is what I call the Permitted Obedience principle, discussed in section 1 above. Going forward, it is useful to call the principle the Authority View.¹⁰

The Authority View (hereafter *Authority*): In certain cases, a military command can render permissible (i.e., not wrong) a soldier's act of killing that otherwise would have been a wrong by the soldier, even if the military command itself is wrong and the target ought morally not to be killed.

Authority implies that someone may, in specific circumstances, permissibly kill or injure another on the basis of a command known to be erroneous. That, as stated, intuitively rankles. My modest aim is not to fully address arguments against Authority. Rather, it is to show that even though it has intuitive costs, so does the salient alternative. Authority might, given the choices, be a reasonable position in spite of its intuitive cost. The relevant more restrictive alternative view might also be a reasonable (and questionable) position in light of its cost, given the intuitive cost of Authority. If an intuitive price must be paid on either

10 This is because the question of authority takes center stage and because its foil is no longer Forbidden Obedience as before but what I will shortly define as the Restrictive View, which is more specific.

view, neither view decides the case in its own favor by trumpeting the other view's particular intuitive cost.¹¹

A first step is to challenge a natural and more specific version of the thought that authority cannot be enough because the following may seem obvious: nothing can have the weight to justify inflicting death and injury except countervailing appeals to death and injury of certain kinds.

The Restrictive View (hereafter *Restrictive*): Given the great moral weight of killing or severely injuring someone, nothing but appeal to death and injury can weigh in its defense, such as legitimate self-defense/other defense against death or injury, or the attacker's guilt or responsibility for contributing to wrongful death or injury, or the prevention of a lot more death or injury down the road.¹²

That last clause is ambiguous. It would seem especially in the spirit of the rest if it meant that killing or injuring that one targeted soldier would prevent those later bad consequences. It could be that for some set of combatants, while each of them is more likely than not to kill no one, it is virtually certain that between them, they will kill many. For example, to take a number we will come back to, it could be that each soldier only has a .45 chance of killing anyone, but a set of one hundred such soldiers will almost certainly kill dozens of people. So in a relaxation that is favorable to Restrictive in the present dialectical situation, suppose it allows that a soldier may be targeted not only if they are themselves liable or an imminent threat but even if they are (in certain ways) merely part of such a set whose removal (but no smaller subset's removal) from the battlefield would prevent a lot more death and injury down the road.¹³

- 11 I am not suggesting that critics of the Authority sort of view never say more than that it violates the strong intuition about the moral weight of killing. That is far from true. But more fulsome arguments do seem to me often still to bottom out in appeal to roughly that same broad intuitive assumption. I cannot take up a full assessment here, so I settle for calling attention to that possibility in light of what I argue here would be its dialectical implications.
- 12 This is not meant to reflect every view that is called revisionist, which is a family of views rather than a single view. See Lazar, "Just War Theory." Rather, this is meant to be what is at first a highly intuitive position as stated, based on the moral weight of death and injury. If it has counterintuitive implications after all, revisionists can consider whether it can, still in a principled rather than ad hoc way, be relaxed to remove the conflict. It bears pointing out that in doing so, they absorb one intuitive cost (death and injury may be permitted by considerations having nothing to do with death and injury) to avoid another, seeking, in effect, what is, in light of additional arguments, intuitive on balance.
- 13 Helen Frowe treats "contributors" to a threatened harm as liable to defensive harm in certain cases (*Defensive Killing*). But as I understand her view, "contributing" does not

This kind of exception to limiting permissible killings to liability or self/other defense is widely called a “lesser evil” provision. It can reasonably be asked how it is still in the spirit of Restrictive. It might be replied that the goal is a broader one than it might seem at first: to let considerations make only the same kind of moral difference they would make in ordinary non-war contexts, and the (even broad, aggregating) lesser evil provision may pass that test. It is also still in the spirit of Restrictive insofar as still it does not count anything other than causes, contributions, or complicity around harms to persons.

The following position, however, conflicts with Restrictive even so construed:

Due National Defense: Sometimes intentionally killing an attacking soldier on an unjust side is permissible even if that soldier is neither relevantly responsible nor relevantly dangerous (imminently or down the road), if the attack is in defense of the survival of a just attacked society’s basic sovereignty, and by way of an appropriate structure of command.¹⁴

Let “relevantly responsible” mean that the attacking soldier is either culpable or at least relevantly responsible for fighting on the unjust side, and let “relevantly dangerous” mean that they either represent an imminent threat of death or severe injury to someone or are a linchpin whose—or on the less restrictive version yet, are part of a set whose—removal from the battlefield might plausibly prevent a much greater evil of deaths and injuries.

Restrictive must deny what I expect many people find very implausible to deny, as illustrated in the following case. There are available credibly reported numbers about the Russia-Ukraine war that highlight the intuitive attraction of Due National Defense. But the numbers are constantly evolving and have only limited reliability anyway. For that reason and also for one other, I concentrate instead on a similar but hypothetical case of the countries Nukraine and Crushia, stipulating that the cited numbers and assumptions are accurate for them. The most important difference in the hypothetical case is that we assume that the vast majority of those fighting for Crushia are forced to do so in ways

cover non-difference-making agents but rather means those affecting circumstances so that they result in a direct threat from a person who will harm someone.

- 14 I do not mean to suggest that an unjustly attacked country is morally permitted to do whatever is necessary to save itself. McMahan is surely correct that “Ukraine and its supporters are ... also bound by moral constraints ... that Russia can exploit to its advantage, perhaps making it impermissible for Ukraine to fully achieve all of its just aims” (“Just War Theory and the Russia-Ukraine War”). Other authors have discussed issues around whether views roughly like Forbidden Obedience and Restrictive have implausible implications about national defense. See, for example, Rodin, *War and Self-Defense*; and Frowe, “Can Reductive Individualists Allow Defence Against Political Aggression?”

that prevent them from being culpable or otherwise responsible for fighting on an unjust side. There is evidence that many of those fighting for Russia in its war against Ukraine are forcibly conscripted and unable to refuse to fight, but it is unknown what fraction this might be.¹⁵ We put these questions aside by moving to the case of Crushia and stipulating that most have unjustly been given no reasonable choice but to fight.

Recall that I assume that Restrictive permits killing a soldier if the soldier is, in certain ways subject to certain conditions, a part of a set of soldiers the killing of whom is sufficiently likely to prevent the evil of much greater death and injury. But let us add the assumption, again not unrealistic, that if Nukraine thoroughly obeyed the ethics of war according to Restrictive, there would be no such prospect of a great evil of death and injury perpetrated by Crushia.¹⁶ That said, let us import into our hypothetical example some numbers similar to what has actually been reported, with some simplified rounding in a way that does not skew them in my favor. According to some estimates of the deaths and severe injuries to soldiers and civilians on the Ukrainian side, as of early 2025, rounding up for our purposes, the number may be put somewhere around 450,000.¹⁷ How many Russian combatants have done that much harm? The total number of combatants on the Russian side over the period of the war is surely more than the number of Russian military deaths and severe injuries,

15 See Schwartz and Gorenburg, *Russian Military Mobilization During the Ukraine War*.

16 The case of “bloodless invasion,” where no blood is shed if there is no resistance, is widely discussed to a similar purpose. For a recent example, see Lazar, “National Defence, Self Defence, and the Problem of Political Aggression.” Some discussions focus on a question I do not address: how to take moral account of additional violence triggered by violent defense.

17 Let the relevant period of war in the hypothetical case correspond to the period from roughly early 2022 to early 2025. See Croft, “More than 46,000 Ukrainian Troops Killed Defending Against Russian Invasion, Says Zelensky.” (To be clear, the article’s title estimates troops “killed,” which is not the question for which I am citing the article.) The article cites reports last year that suggest from 200,000 to over 300,000: “Last year, *The Economist* reported anonymous US officials as estimating that at least 70,000 Ukrainian soldiers had died and up to 120,000 wounded. In October, another US official estimated to the *New York Times* that more than 57,500 had been killed and 250,000 wounded.” For a rough estimate for early 2025 and to further round up (against interest), suppose soldier casualties (death or injury) from the battlefield on the Ukrainian side are about 350,000. As for civilian casualties on the Ukrainian side, see Statista Research Department, “Number of Civilian Casualties in Ukraine during Russia’s Invasion Verified by OHCHR from February 24, 2022 to May 31, 2025”: “46,085 civilian casualties . . . as of May 31, 2025.” Rounding up a lot, against my interest, suppose this is 100,000. Added to the 350,000 assumed Ukrainian soldier casualties, this gives us a working assumption of 450,000 Ukrainian military and civilian deaths or injuries. These empirical observations guide our hypothetical example of Nukraine and Crushia.

and the latter has been reported as around one million.¹⁸ Set the estimate for total Crushian combatants at one million or more.

On those suppositions, the expected killings or severe injuries of combatants or noncombatants by a Crushian combatant over the course of a violently contested war comes to something less than .45. Now, if you were confronted with an aggressor with a known .45 chance of intentionally killing or severely injuring you, lethal force may or may not be permitted in self-defense by the appropriate standard of sufficient certainty of the threat. Suppose that it would be. But we are supposing the Crushian soldiers are mostly forced to fight and kill, which raises further doubts about whether self-defense against them is permitted.¹⁹ But even bracketing all that, Crushian soldiers are permissibly killed or injured by Nukrainian forces in self/other defense only at such time as the Crushian soldiers are an *imminent* threat—roughly, reasonably likely to directly kill or harm more or less immediately. Assuming that no such limits on targeting are in place in practice in Nukraine’s war against Crushia (as they are not in Ukraine’s war against Russia), we assume that any combatant is, in practice and erroneously, treated as a legitimate target at virtually any time (subject to other rules of *jus in bello*). Suffice it to say that, with that .45 chance of killing or injuring anyone, the average Crushian soldier in combat is likely to be an imminent threat to life and limb only a tiny fraction of their time in combat. The majority of Crushian military casualties inflicted by Nukrainian soldiers is thus mostly if not overwhelmingly impermissible. Almost none of the cases on its own is a permitted killing according to Restrictive. Given those not unrealistic numbers, so long as Crushia’s soldiers are forced to fight, Nukrainian soldiers are effectively required to surrender their country to Crushia without a fight. I am claiming no more than that, for many, this implication counts intuitively against Restrictive View, just as Restrictive View may have intuitive appeal that counts against Due National Defense.

Even if it has weight against Restrictive’s plausibility, the national defense case might not seem helpful to the case for Authority in particular, since it

18 The number of Russians in combat roles over the course of the war is surely greater than their military casualties, for which estimates in the first part of 2025 range from 750,000 to one million. I conservatively estimate the total number of combat soldiers at one million or more, though it could well be much more, which would favor my argument. According to *Nesweek*, “more than 800,000 Russian soldiers have been killed or severely wounded” (deJong, “How Many People Have Died in the Russia-Ukraine War?”). See also Edwards, “Russia Nears 1 Million War Casualties in Ukraine, Study Finds.” The text clarifies that these do not include civilian casualties but “Russian soldiers . . . killed or injured.” See also Office of the Director of National Intelligence, *Annual Threat Assessment of the US Intelligence Community*: “750,000-plus [Russian military] dead and wounded” (22).

19 For more on these matters see, Frowe and Parry, “Self-Defense.”

seems only to introduce a kind of lesser evil justification for avoiding bad consequences other than death or injury—perhaps framed in terms of massive violations of individual rights to participate in collective sovereignty, for example—which can permit targeting innocent nonthreatening combatants.²⁰ That possible further relaxation of Restrictive raises important questions. Not only does it jettison the focus on personal harms; it is also far from clear that the test of not going beyond ordinary interpersonal morality is being respected. Where in ordinary interpersonal ethics are we to look for a similar significance for collective sovereignty? And even if there were a good answer, what prevents the relevant moral weight of authority from also meeting that test of being found in nonwar contexts, such as in the case of a legal system of punishment?

However, letting those concerns pass, consider, with an eye to the question of authority, the question whether a person acting as a vigilante—either a nonsoldier or a soldier without any relevant orders—may also kill innocent Crushian combatants on those expansive “lesser evil” grounds around national defense? It may be that defending oneself or others from death or severe injury does not depend on an official command structure, but that is less clear in this case of defending a society’s independence and basic sovereignty, where no death or injury is at stake. One reason might be that in that case, the society or state should get to decide whether a violent defense is to be mounted or not. If that is right, and a vigilante Nukrainian partisan would not be permitted to kill or severely injure the same Crushian soldiers that duly commanded Nukrainian soldiers may kill or severely injure, the fact of following the official command would make a signal moral difference. In the circumstances, for the Nukrainian soldier, the ground of their act’s permissibility, even given the moral gravity of killing an innocent and nonthreatening person, is, in short, that they are following orders.

This is enough, or so I believe, to put into some question Restrictive (which is far from refuting it, which I am not attempting)—and on grounds that are congenial to Authority. But so far, of course, this is not fully the case we want to consider. In this case, the defending side is correct in thinking that standards of defensive *jus ad bellum* are met—especially that there is in fact an unjustified effort to invade and annex the country. By contrast, our topic concerns a side

20 Lesser evil justifications in the ethics of war normally concentrate on avoidable harms to persons, though general statements of the idea normally do not build that in as a constraint. Helen Frowe, for example, writes, “Lesser-evil justifications invoke the disparity between the harm that one will inflict on an agent, and the harm that one will prevent by harming her” (“Lesser-Evil Justifications for Harming,” 460). She then goes on to consider only preventable harms to persons. But we can easily understand a broader idea of lesser evil as well, such as committing a wrong to prevent far greater wrong, though not necessarily harm.

that is mounting a war in defense against what it reasonably but mistakenly takes to be an effort at unjust annexation. So we suppose that the principles of *jus ad bellum* are not in fact met. What we carry over from the discussion above is the crucial point that because the answer to the vigilante question (in the nonerror case) is not obvious, it is not obvious that Authority is false—that authoritative commands can never convert from wrongful to permissible what would otherwise be a wrongful killing of a relevantly innocent person. Allowing that authority might have that perhaps surprising moral weight in some cases, we now turn specifically to the case of erroneous command. In changing over now to that error case, we can drop the assumption that the attacking soldiers are nonliable and nonresponsible, since we want a case in which the defensive counterattack, which is objectively wrong, *would be* permissible if conditions were as the defending state reasonably takes them to be. So I now step back from the case of Nukraine and Crushia.

Here is an example designed to have all the elements we need:

Credible Hapless Invaders: Suppose invading soldiers are willingly carrying out a war of aggression, and the invasion begins as a patently unjust but nonviolent incursion with infantry, tanks, and drones. Commanding agents on the attacked side have significant reason to believe that without defensive military response, they will lose their country. Suppose, though, that this is incorrect, and the invading country, even if not resisted with violence, would find itself too incompetent or ill supplied to remain for long. Any deaths or injuries ensuing from a violent defensive attack would be wrongs by (at least) the commanding agents, if perhaps excusable.

Consider, now, a soldier who is commanded to use lethal force against the invaders but who disagrees with the commanders and believes (correctly) that this defensive war effort is unnecessary. If the command lacks justifying authority because it is erroneous, in which case those enemy soldiers in fact ought not to be killed, then by obeying, the soldier commits murder morally speaking.

There are two ways an anti-authority advocate might try to soften this harsh verdict under pressure from contrary intuitions, but neither of them accomplishes much in the end. The first way to accommodate that thought is to say that the erroneous command is still wrong to obey, but the command partly excuses compliance—the nonvigilante soldier is still wrong but less blameworthy than the vigilante would be. But what might the excuse stemming from being commanded be? As always, if disobeying is very risky or burdensome, that might be excusing, but a command itself does not impose any obstacle, cost, or burden for disobeying. If the soldier reasonably believed that the chain

of command is their best evidence about the justice of the defensive war and so of the legitimacy of this target, then their nonculpable ignorance would be an obstacle out of their control and potentially excusing. But our example is defined by the assumption that there is no such ignorance and so no such excuse available to the soldier. It is unclear, then, what excusing but not justifying circumstance is generally available to soften the implication for the anti-authority view that the soldier following the good-faith erroneous command is guilty of murder and fully blameworthy for it. Some are comfortable with this, but that, of course, is not an argument that one ought to be.

A second way to soften the harsh verdict against the mistakenly commanded soldier is to grant that the erroneous command does have some moral force in the direction of permitting—presumably from moral force of authority—but that it is outweighed or overridden by the severity of the wrong that would result. As a result, the commanded killing is a lesser wrong than the uncommanded one. Blameworthiness is indeed lessened, not from any excuse but only from the blameworthy act being a lesser wrong. However, this tells us nothing about whether or not it is any less severely wrong than murder and indeed whether it might even still be a case of murder, leaving the harsh verdict in place. On the other hand, the permitting power of the command might in principle nearly reach permission. Pending some argument (beyond reporting an intuition) that this is not so, the authority view could grant the general point and allow (if only for the sake of argument) that the killing would be somewhat more wrong and blameworthy if there is no command. This leaves the dialectical situation unchanged. Neither the possibility of excuse nor of lessened degree of wrong is enough to show that the duly commanded soldier is not at least nearly as wrong and blameworthy as if there had been no command at all. Some are comfortable with that, as we know, but that difference from those who find that implication highly implausible is just that—a difference, not an argument against them. I return to this point in the next and final section.

5. INTUITION AND ARGUMENT

After clearing up some terms and distinctions about duty and wrong, I have argued in defense of what I think Renzo's view implies—that the moral severity of someone being wrongly killed does not obviously trump the moral authorizing weight of properly conducted commands. He may well be right that unless a soldier is in some further special epistemic situation, they are not permitted to disobey orders simply because their best evidence suggests the command is mistaken. They should (and so at least may) impose those great but erroneous burdens as commanded. I have not insisted that this or any other

argument from authority prevails over contrary views like Restrictive. Rather, the modest aim has been to guard against a temptation to exaggerate the force of objections anchored in the great moral weight of killing an innocent and nondangerous person. In this final section, I pull together some main points in a summary way, now with an eye especially to my methodological subtheme about competing intuitions.

It is helpful to introduce an analogy between a jailer and a soldier, both of whom receive commands from agents participating in legitimate good-faith procedures, to impose terrible burdens.²¹ Each believes with reason that the orders are mistaken, aimed at people who ought not to have these burdens imposed. In the jailer's case, assuming a fair and procedurally legitimate trial and assuming that legally available punishments are morally appropriate for the crimes in question, it seems to many people (which is not to say they are correct) that a jailer ought not to set a convict free (if they somehow could) because the jailer believes the verdict is mistaken. As it might be commonly expressed, the jailer is not to, in effect, appoint themselves judge and jury as well as jailer. Even if the verdict is mistaken, the error is, morally speaking, the judge's and/or the jury's error. Those agents might be morally wrong to convict and sentence the defendant (even if this might be excusable given their best efforts). But, so this common view says, the jailer would be misusing their position if they were to disobey and preempt the judgment of the court and free the convicted person. It is fair to suggest, then, that similar reasoning should apply in the case of a good-faith procedure that yields a military order, eventually reaching the soldier, to engage in lethal violence to defend against what is reasonably thought to be unjust aggression. This common view embeds an argument from authority.

The cases might be distinguished by arguing that the jailer has this duty to obey only if the trial procedure is not only fair and so on but also so accurate, at least in cases like the present one, that the best evidence overall is that, contrary to the jailer's initial view, the convicted party is guilty after all. That is a fair distinction, but it may not satisfy the purveyor of the analogy. The view of many, I suspect, is that it is simply not morally up to the jailer to act on their own assessment of guilt, and this applies even if their overall evidence, even after factoring in whatever epistemic value the trial procedure has, is that the person is in fact not guilty.

21 I have discussed this analogy previously in "On Following Orders in an Unjust War." For my purposes here, I follow Renzo in not relying on any particular account of the ground of political authority such as the one I sketched there, having to do partly with the potential epistemic value of a well-functioning democratic decision to go to war.

This reasonable view has a form that Renzo's view of the weight of authority purports to vindicate: the considerations for or against the imposition of the burdens are, in effect, morally removed from the commanded party's legitimate deliberations and remain the business of the commanding deciders. The parallel in war is a legitimate procedure for a society's decision to go to defensive war, conducted in good faith, and concluding that defensive war is necessary and justified. The military order reaches the soldier; in light of all of his evidence, including whatever epistemic value the decision procedure has (though neither Renzo's view nor my present argument relies on any assumptions about that), the soldier's evidence might still, on balance, indicate that the defensive war is wrong because, say for reasons sketched above, it is actually unnecessary. But even so, on this view, it is not the soldier's legitimate place to preempt the society's good-faith decision simply because the soldier judges it to be a mistake.

Now, as against this argument from authority, others might find it morally implausible that either the jailer or the soldier is morally permitted, simply by the fact of good-faith command or even the supposed bracketing structure of practical authority, to jail or even kill an innocent person. That is also an understandable position. However deeply that conviction is held, it cannot be treated as obvious if that means any right-thinking person would agree. Each side is only as obvious as the opposing side is absurd, which is to say, not very. Renzo does grant, however, that it would go too far to say that the jailer or soldier may obey even if their belief is not only supported by the best epistemic reasons but in addition obvious to them. He carves off a special epistemic exception whereby the soldier or jailer not only believes, all things considered, that the order is a mistake but also has an objectively warranted extra degree of confidence about it—some significant degree of warranted confidence over and above what is entailed by believing it. In simple terms: if, despite a procedure's good-faith efforts, it has patently made a mistake, then the procedure's authority may lapse, and the soldier/jailer is permitted or even required to disobey.

Restrictive must deny this overall position. What forbids the jailer and soldier to follow the orders is simply whether the orders are in fact mistaken or not; the best they can do is assess the overall balance of evidence. Authority, which says by contrast that this would be an abuse of their position, is not compatible with that. Restrictive might ask how obviousness, or warranted confidence, can be allowed to make this difference unless the aim is actually to simply figure out as best one can whether the command is correct or not. I do think this feature of Renzo's view requires some explanation, but there are a number of ways to provide it. I cannot speak for Renzo, but one explanation might be that the only considerations that can permit disobedience are

ones that the commanded agent has reason to believe that the procedure did not consider (maybe because it was not available to them), *plus*, if they had been able to consider them, they would have had no justification or excuse for making the decision they did. Short of that, even if the commander or judge/jury is mistaken, it remains their decision to make, and the soldier or jailer is not permitted to take over their role. There might be other ways to explain the nature of the special epistemic exception to similar effect.

With the special epistemic exception built in, Authority is neither obvious nor absurd. From the camp of Restrictive, some will still not think authority can have that much moral weight. My modest point is that such a report has zero weight as an argument against the other side's own argument. They can themselves report that, even on such grave matters, they do not think that a soldier or jailer may interfere with a legitimate and good-faith procedural effort to implement urgent national defense or justified criminal punishment. Restrictive is itself not somehow an argument that every reasonable person should take to refute that intuition. Restrictive is, it seems to me, just the working out of certain contrary intuitions: ones that the Authority side does not share—but also, it seems to me, ones that it does not have arguments against.

My point is not the frivolous one that neither side can establish itself conclusively or with certainty. It is that it is not clear that either side even so much as favors itself—never mind conclusively establishes itself—by argument against the other side's argument. Rather, each argues against the other side's conclusion but does so based on intuitive premises that are not shown by argument to be favored over those of the other side. Doing better than this is not impossible in principle, whether or not there is a way here. In principle, one side could show that the other side's view has implications that would lead even the other side to withdraw, at least unless they are irrational or morally obtuse. Sometimes views similar to Restrictive in particular are thought to have that kind of force: upholding the clarion moral principle that, since war is not special, innocent and nonthreatening people may not be killed (well, except as a lesser evil of death or injury ... so, clarion-ish). I have argued that this would seriously misrepresent the dialectical situation. That principle is not shown to be relevantly clarion—clear to all right-minded people—unless no right-minded person could think that such killing is sometimes permitted, for example in Due National Defense. But that further thing is not offered any support; the principle, rather, is merely reported to have some intuitive force, which is hard to deny but also entirely different.

I anticipate this response: there are admittedly good and hard philosophical questions for both Authority and Restrictive, but in the face of reasonable uncertainty, with life and death at stake, surely a soldier should err on the side of

caution and refuse to obey.²² Whether or not that is so, that putatively cautionary approach changes the subject. It does not offer any help with the question to which Renzo's article and this comment are primarily addressed and which the morally serious soldier (and jailer) would care greatly to answer. While addressing the different and fine question of what one ought to do if one does not know what one ought to do (so to speak), it declines to address our more fundamental first-order question of what one ought to do—that is, whether and when it is permitted or forbidden to follow orders to kill in an unjust war.²³

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- 22 For example, McMahan writes, "When a soldier is uncertain about the morality of a war, the presumption should be that the morally safer course is not to fight" (*Killing in War*, 145).
- 23 I am grateful to Massimo Renzo for valuable discussion about his piece and the issues taken up here, and to Erin Kelly for helpful conversation in the final stages.

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