Journal of Ethics and Social Philosophy
VOL. 30, NO. 5 · AUGUST 2025
https://doi.org/10.26556/jesp.v30i5.4144

WAR, LEGITIMACY, AND DEMOCRACY

COMMENTS ON RENZO

Thomas Christiano

Massimo Renzo's view on the duty to fight in war is an eminently reasonable position.[1] It is one with which I find myself in substantial agreement. The mix of revisionism and orthodoxy is a good one. The basic thesis is that citizens of a legitimate state have a presumptive duty to fight when ordered by the state to fight in a war. The duty is presumptive in the sense that it can be defeated by a justified belief on the part of the citizen that the state is about to engage in a seriously unjust war. There is also a duty for each citizen to figure out whether the proposed war is just or unjust. But if the citizen does not arrive at a justified belief that the war is unjust, then she has a duty to obey the state's command to fight. The presumption is in favor of duty to obey the state's command as long as the state is legitimate. This is meant to contrast with the revisionist view that the citizen has a duty not to do as the state commands if the citizen does not justifiably think the war is just. The revisionist presumption is against the duty to obey.

Renzo's view is said to vindicate a weak version of the moral equality of the combatants. What this means is that some combatants on both sides of the war can be permitted to fight. But this is meant to be a weaker version than the strong classical (or "traditional") version of the argument, which asserts that all combatants are permitted to fight.[2] The difference is that only combatants from legitimate and therefore minimally just states are permitted to fight.

1. MORAL EQUALITY

I do not see how the moral equality idea is supposed to work: the outcome seemingly is that in order to be permitted to fight, one must be unjustified in thinking that the war is unjust. In this case, moral equality holds only between those who fight for a legitimate state and those who are not justified in thinking

1 See Renzo, "Political Authority and Unjust War."

2 See Walzer, *Just and Unjust Wars*.

that the war is unjust. Those who fight yet justifiably think that the war is unjust are not moral equals: they are criminals.

If a legitimate state seems to be attacking a nonlegitimate state, does this imply that the members of the nonlegitimate state are not allowed to fight back under the authority of the illegitimate state? Are they to be thought of as criminals if they fight under the authority of the mostly illegitimate state?

Perhaps the members of an illegitimate state can treat their state's commands as if they are authoritative. Renzo seems to reject this idea. He seems to say that a state is either legitimate or illegitimate.[3] Legitimacy must depend on possessing a complex set of properties simultaneously. Hence, it appears that the legitimacy of the state cannot be piecemeal; it must be holistic. This approach is not adhered to on all dimensions, as far as I can tell, because Renzo does say that people with differing amounts of knowledge or differing access to knowledge might have different obligations.[4] So there is a certain amount of piecemeal legitimacy regarding who is under a duty. But Renzo seems to think that if a state is legitimate in one area, it must be in most or all other areas. But it is not clear that this is consistent with a thoroughgoing instrumentalism. Why not think that a state's commands enable you to act better in accordance with duty in some areas but not others? Suppose there is a state that is mostly illegitimate in the above sense, but that state gives good commands on reasonably just grounds in particular areas. Why not think, on the instrumentalist view, that these commands are authoritative? This might then be applied to war-making authority. Suppose a state is mostly illegitimate because unjust, but it is right for it to resist attack by another normally legitimate state. It is right to resist the overbearing behavior of the legitimate state. It seems not unreasonable to think that the commands of a mostly illegitimate state in wartime can have legitimacy and can bind its citizens in this area.

The notion of moral equality inevitably becomes very messy here. Might we take a political approach to this question, just as Renzo takes a kind of political approach to the question of the justification of an individual's going to war? In light of the messiness of actual assessments of guilt, might we try to construct legal and political institutions that determine this and replace messy moral assessments with legal assessment? Revisionists are not generally unfriendly to legal institutions with more tolerant attitudes toward ordinary soldiers, on the grounds that such institutions have better consequences. But the question becomes more pressing for Renzo since he introduces political institutions in a way that affects the justification of individual behavior.

3 Renzo, "Political Authority and Unjust War," 346.

4 Renzo, "Political Authority and Unjust War," 351n39.

2. INTERNATIONAL LEGITIMACY

The worry, expressed by Jeff McMahan, is that it is unclear how the legitimacy of a state can be relevant to the question whether it is morally justified for a member of that state to go to war against some other society.[5] The problem is that it appears that the relations among members of the state do not seem to justify killing innocent persons of another society, and it seems unnecessary to the justification of defending a society against an unjust attack. Since the legitimacy of the state in question does not affect the justice or injustice of attack, it is hard to see why legitimacy ought to play any role in justifying the decision of a member to go to war.

Renzo argues that an instrumentalist account of legitimacy is uniquely able to answer this question. His instrumentalist account asserts that a political authority has legitimate power over a person to the extent that the authority enables the person to discharge some of her most important duties of justice. It does this by giving content-independent and presumptive reasons for action to the members. Among the most important duties of justice a person has is the duty not to kill innocent persons. The main point is that part of the ground of the legitimacy of a state, on this conception, is that the state does not or is highly unlikely to engage in unjustified wars. And so it is highly unlikely to require individuals to fight in unjust wars. To be sure, this does not imply that the state never makes mistakes or that it never orders persons to fight in unjust wars, but it does imply a significant reduction in such unjust adventures.

The instrumentalist approach to legitimacy looks like a plausible way to respond to the McMahan worry. Some intrinsic approaches focus exclusively on relations among members of states. Associative conceptions of political obligation and authority focus on the qualities of relations among citizens and ground duties to obey on the qualities of those relations. Consent theory, fairness theories, and democratic theories all focus on the relations among members of states. The way they are usually developed ignores the relations between members and nonmembers. This is clearly a kind of incompleteness in the way these theories are usually elaborated.

Let us consider the instrumentalist approach. The thesis is that a state must have authority in order to avoid the perils of the state of nature, and a state must have authority to decide to go to war against other states and impose duties on citizens also to avoid the perils of the state of nature. Renzo argues that when legitimate states decide to go to war, it is in everyone's interests, even those who are not part of these states, that the war-making states are legitimate states. And

5 McMahan, *Killing in War*.

this is because legitimate states usually do not order people to go to war when there is little acceptable reason for it; consequently, people's general interests against unjustified warfare are better advanced and the duties of persons to avoid unjustified war are better fulfilled when legitimate states have the powers to declare or not declare war and to impose duties on their citizens to participate or not.[6] And this authority implies that it is better for a citizen to obey a state that acts in good faith even if mistakenly as long as the citizen does not justifiably think the war is unjust.

The basis for this is that a world in which legitimate states do not have the authority to go to war and impose duties to fight would not be a world without conflict. What would happen is that many other groups would fight with each other without any concern for justice in warfare. Hence, justice would be less well served, and everyone's legitimate interests, including even those who would otherwise have been attacked by a legitimate state, would be set back. But I am not sure what this counterfactual is, and I am not sure whether the counterfactual holds. Does the counterfactual merely refer to many nonlegitimate states fighting each other? How is this a counterfactual, since of course this can occur whether there are legitimate states with war-making authority or not?

A more reasonable counterfactual is that a world in which states do not have the power to require people to go to war is one in which many independent groups would end up fighting with each other: there would be small-scale violence occurring in many places. But I am not sure how this counterfactual makes sense either. Presumably, states would suppress these conflicts just as they try to suppress conflicts between gangs and between individuals. There may be some tendency to want to fight among persons, but a state's police power might well be sufficient to dampen this. This would not require war-making powers on the part of states, just ordinary police powers. Furthermore, if a state could not suppress all warlike actions within its boundaries, why should we assume that these actions would necessarily be worse than those of states? And is there a general answer to this question? Maybe it would be better to have legitimate states without the power to wage war in some important circumstances. So I am not sure this counterfactual supports Renzo's instrumentalist argument.

But there is also a worry that these counterfactuals are not the right ones. Why not consider a counterfactual world in which states have the power to impose duties of soldiering on their citizens—but only in justified wars? There is still authority here: states must decide whether to engage in justified war or not, and they must decide how to do this. But a state has no authority to

6 Renzo, "Political Authority and Unjust War,"352.

engage in unjustified war, and it cannot impose duties on citizens to participate. Instead of looking at a world in which the state cannot go into war at all, we look at one in which the state cannot declare an unjustified war. There are two points to be made here: I do not know why this is not the right counterfactual test, and I do not know what this counterfactual world would likely look like. If it is the right counterfactual test, then we have a view that is closer to McMahan's. Good-faith mistakes are not compatible with the exercise of legitimate authority, and soldiers have no duty to fight in wars that are the result of good-faith mistakes.

The problem of disagreement poses a challenge to this approach. What if too many people think too often that the state is acting in an unjustified way? Would this disable the state's legitimate war-making activities? Or is this unlikely to happen so that the state's war-making capacity would not be unduly jeopardized? In the end, the instrumentalist approach must answer this question, I think.

3. DEMOCRACY WORRIES

Renzo's discussion is a plausible one and balances the considerations backing the orthodox view and those behind the revisionist view. But there is still a puzzle that he does not entertain. This is the result of his official account of legitimacy as being grounded in the instrumental value of the state helping people satisfy their duties of justice.[7] The idea seems to be that the state is legitimate because it helps people fulfill duties of justice that are not inherently connected with the operation of the political system.

Though this is certainly a possible way to think about legitimacy when we think a state is legitimate because it enables people to fulfill their duties of justice, it is not the only way. For the duties of justice that a state enables citizens to fulfill may include democratic duties, and the state may enable people to fulfill these duties by being democratically organized and run. One way of giving an account of this duty is to say that one must treat one's fellow citizens as equals in the context of disagreement and fallibility, and the way to treat them as equals is to respect the outcome of democratic decision-making even when it goes against one's own judgment.[8] Here there is a duty of justice to go along with the democratic decision even when one disagrees with it. And this duty can be among the duties the state helps one fulfill when it is reasonably just. In this case, the democratic state's activity is not instrumentally connected with the

7 Renzo, "Political Authority and Unjust War,"352.

8 See Christiano, *The Constitution of Equality*.

fulfillment of this duty; rather, it is the intrinsic features of the state that generate the duty, which then must be fulfilled. So though this account satisfies the formal account of legitimacy that Renzo announces, it is not instrumentalist. Granted, not everyone accepts the idea that democracy is a requirement of justice, but it is widely accepted as a just solution to the facts of disagreement that are pervasive in societies. That fact alone gives us reason to consider the implications for the context of the duty to comply with democratic decisions to go to war.

The trouble is that this account poses a problem for Renzo's view of when the presumptive reason for obedience is defeated. Recall that the presumptive reason for defeat is that one has a justification for believing the war is unjust and is confident in one's judgment. But it is actually a fairly standard case in democracies that people on different sides of a question have justification for their views and confidence in them. Some proportion of the population disagrees with the majority decision, thinks of itself as justified in this disagreement, and is confident in its belief. They then have reason not to go along. If, however, we think that there is a distinctive democratic set of duties that includes complying with a decision that has been made in an egalitarian way for the reason that there is good-faith disagreement, then it looks like one may have a duty to go along with the decision and comply.

So let us just spell out the case. What if there is disagreement about the question whether a war is justified or not? What if some think it is justified, and others think it is not? Let us suppose that after lively debate, those who think the war is justified win a majority for their point of view. And suppose that they choose war. Do the others have a duty to go along? Suppose that they disagree because of a difference in underlying values. One group thinks that going to war to preempt a probable future attack is justified, while the other thinks that only a near certain future attack can justify preemptive war. After lengthy and lively debate, the majority sides with the probable-future-attack group. The majority and the minority both think they are justified. They may be confident in their views.

Is there no reason here for the minority, which thinks its own view is justified, to go along with the judgment of the majority to participate in the war? Their views have been carefully considered and argued against in good faith (let us suppose). Are they still permitted, indeed required, to disobey? It is not clear to me that they are. But Renzo must think that they are because, by hypothesis, they have justification for their beliefs. This justification must be either belief relative or evidence relative (under the supposition that people have access to different evidence) and not fact relative. But I am not convinced that there is not some kind of duty still to go to war here.

The problem is that a decision to go to war is a collective decision. A democratic conception of authority implies that it must be made in an egalitarian way and that when it is made in an egalitarian way, it must be obeyed on pain of failing to treat one's fellow citizens as equals. We here run directly into the worry that McMahan raises. The question is: How can my relations with my fellow citizens have a bearing on whether it is right to go to war against someone who is not a fellow citizen? The worry is acute here because those one is warring against have not participated in the process of democratic decision, and they are not being treated as equals when we go along with the majority. And in addition, if those the society is planning on warring against are genuinely not liable to be killed, then the killing is wrong. Or so someone might be justified in thinking.

It seems to me that the only way to think about this situation is as a kind of ethical dilemma. This is in contrast to Renzo, who more neatly characterizes the duty to obey as being undercut by any justified and confident belief in the wrongness of the war. On a democratic view, the duty to one's fellow citizens conflicts with the duty to those who are the victims of an unjust war. The duty to one's fellow citizens provides a reason to exclude consideration of the wrongness of the war even if one has lost out in the democratic contest, precisely because it was a contest carried out in a just democratic manner. But this is only in the context of fellow citizens. Once we take into account others who are not part of the democratic society but to whom one owes duties, they too become sources of independent reasons that cannot be excluded by democratic considerations.

There may be resources in many of these theories to help ground an extended notion of legitimate state action in the international realm. To go to war for the sake of conquest looks like a violation of a kind of democratic norm because the conquered, by hypothesis, do not have a say in the process and will likely be killed if they resist. They certainly do not seem to be treated as equals in any democratic way. (Although what if the proposed conquest is of a small community that would be a kind of minority?) And while consent theory may assert that people have consented to the authority that is ordering the attack, it can also say that an unprovoked attack on another society is itself a violation of consent theory. These theories could suggest that when an authority sends persons into an unjust war, it violates the very norm that grounds the legitimacy of the authority and thus cannot be acting legitimately. A consent theorist, for example, might argue that one cannot or may not consent to an action that violates the fundamental rights of another person. And I have argued elsewhere that a democratic approach to international politics, under the conditions in which states are the main actors, implies that the requirement of state consent

on reasonable terms is the appropriate constraint on how states relate to each other.[9] Obviously, invasion for the sake of conquest or other merely self-interested concerns does not satisfy the state-consent norm. War for the sake of self-defense, for the sake of protection of other states, and maybe even for the sake of humanitarian intervention in extreme cases may be defensible on these accounts.

Democratic societies seem to observe these constraints well in relation to each other; they never go to war with each other.[10] But there is substantial disagreement within democratic societies as to whether and when it is permissible to go to war against nondemocratic societies. The above limitations do not solve this problem or guarantee a clear and public answer. In those cases, a moral dilemma arises.

University of Arizona
thomasc@arizona.edu

REFERENCES

Christiano, Thomas. *The Constitution of Equality: Democratic Authority and Its Limits*. Oxford University Press, 2008.

———. "The Legitimacy of International Institutions." In *Routledge Companion to the Philosophy of Law*, edited by Andrei Marmor. Routledge, 2012.

Levy, Jack, and William Thompson. *Causes of War*. Wiley Blackwell, 2010.

McMahan, Jeff. *Killing in War*. Oxford University Press, 2011.

Renzo, Massimo. "Political Authority and Unjust War." *Philosophy and Phenomenological Research* 99, no. 2 (2019): 336–57.

Walzer, Michael. *Just and Unjust Wars*. Basic Books, 1977.

9 See Christiano, "The Legitimacy of International Institutions."

10 See Levy and Thompson, *Causes of War*.