



# The Moral Importance of Winning\*

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**CSSJ Working Papers Series, SJ015**  
**November 2010**

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\* Although this remains a very sketchy draft, it is better than it would otherwise have been after discussions with Henry Shue and David Rodin, in our war workshop, and a presentation at ANU's CAPPE seminar, where Christian Barry and Shannon Ford made particularly helpful suggestions.

## 1. Introduction

It should be a truism to say that even if war is sometimes a lesser evil, it is always a great evil indeed. Whatever the prospects for constructing morally pure wars in philosophical examples, in practice they will always be marred at least by mistake, and probably by persistent and egregious wrongdoing. If warfare is to ever be justified—if we are not, in practice, to endorse pacifism—then we must attach profound moral importance to victory. And yet, the account of war’s ethics that dominates contemporary philosophical discussion—the liability view—offers few insights on the moral importance of winning. Grounding justified warfare in an ethics of self-defence, it focuses first on the lives saved by fighting, then loosely alludes to the other values being protected.<sup>1</sup> Sometimes this might be enough—at least, when the aggressor we face is embarked on mass murder. But not all justified wars are fought against murderous aggressors. Belligerents are not necessarily genocidal—they sometimes seek political and territorial concessions, not blood. And against adversaries such as these, the best way to save lives is simply to acquiesce to their demands. To justify killing these non-murderous aggressors, we must explain why protecting those political and territorial goods matters so much. Winning a justified war is not only—perhaps not even primarily—important because of the lives thereby saved, but because of the other values that we protect.

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<sup>1</sup> This is most apparent in the unexplained appeals to the value of securing a just cause in Jeff McMahan’s *Killing in War*, e.g. Jeff McMahan, *Killing in War* (Oxford: Oxford University Press, 2009), 50, 196-7. The principal work within the liability view on this topic is David Rodin’s *War and Self-Defense*. Rodin’s agenda, though, is almost wholly critical, as he demonstrates that the doctrine of national defence in international law is morally indefensible. The response to Rodin’s book (e.g. in the *Ethics and International Affairs* symposium) saw some advocates of the liability view seek to address concerns like those in this paper, but the key move was to argue that wars can be justified by the imperative to preserve individual life, as discussed in section 4 below. I don’t know of substantive attempts by advocates of the liability view to account for the political and territorial goods that justify war. There are, of course, arguments for the value of political sovereignty and the justification of territorial rights in the political theory literature, but these do not, to my knowledge, seriously address the question of whether we may justifiably fight and kill in their defence.

My question, then, is can the dominant view provide an account of these values sufficiently compelling to ground reasonable conclusions about national defence? I suspect it cannot. Grounding such conclusions depends, I think, on affirming normative positions that the dominant view is committed to rejecting. Specifically, I think a reasonable doctrine of national defence presupposes a degree of collectivism and partiality, and a focus on institutional rather than interpersonal reasons, that the liability view cannot accept.

Advocates of the dominant view have, I think, three options. First, they can affirm a reasonable doctrine of national defence, and reject their view and its individualist, impartial, and interpersonal focus. Needless to say, I don't expect many to choose this option. Second, they can stick to their commitments, and reject what I take to be reasonable conclusions about national defence. Or they can build arguments consistent with their commitments, which can sustain a reasonable doctrine of national defence. The present paper does not try to force one particular avenue on the liability view, but instead to issue a friendly challenge either to be more open about their radical revisionism, or to do the work required to build a satisfactory account of the moral importance of winning.

In the following I expand on this analysis. I first roughly characterise the dominant view, which I call the liability-based account of war. I then expand on the claim that a theory of justified warfare cannot ignore the moral importance of winning, and cannot reduce it the preservation of the defenders' lives. I then indicate why I think that sustaining sensible conclusions about the permissibility of national defence might require us to affirm collectivist, partial, and institutionalist premises that are at least *prima facie* at odds with key commitments of the liability-based account.

## *2. The liability-based view*

Wars evidently involve the infliction of widespread and massive suffering. The liability-based account of war starts by affirming that all individuals enjoy equal fundamental protections against being harmed in these ways, and especially against being killed.<sup>2</sup> These protections cannot be overridden for the sake of other people's aggregated or collective interests, except when this is necessary to avert a genuine and extraordinary catastrophe. Although wars might sometimes avert catastrophes of this kind, the assumption is that such cases are vanishingly rare. If warfare is to be justified, then, we must show how these protections can be not overridden, but defeated, such that they do not apply in the circumstances. When someone who ordinarily enjoys protection against attack loses that protection, he is liable to be attacked. Liability can arise in a number of ways, of which the dominant view focuses on one. In ordinary life, when one person attacks another, the attacker may become liable to be harmed by the victim in self-defence. It is argued that this liability is grounded in the attacker's responsibility for an objectively unjustified threat—his voluntary actions foreseeably contributed to the threat coming about, so he, not the victim, should be the permissible target of lethal force. Philosophers vary in the degree of responsibility they think required for liability—perhaps requiring a more substantive contribution, or an element of culpability—but most advocates of the dominant view fall within a narrow range of the possible positions. The next step is to affirm that the principles governing the use of force are the same in all contexts—and specifically in the context of war. Wars are no more than complex aggregations of individual interpersonal cases of self- and other-defence, and the same criteria of liability justify killing in war as do killing in ordinary life.

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<sup>2</sup> This awkward locution is necessitated by the discomfort some advocates of the liability view have with the terminology of rights, which I try to avoid except where style and concision demand otherwise.

This is no more than a brief sketch of the dominant view—I am relying on the Oxford War Group’s familiarity with this territory—and there are many subtle variations that I have ignored. But I think the model lies at the heart of work by leading advocates of the dominant view, in particular Jeff McMahan, Cécile Fabre, Tony Coady, Lionel McPherson, Helen Frowe, Seumas Miller, Gerhard Øverland, and with some qualifications David Rodin.<sup>3</sup> Besides these, the view has impressed many newcomers to the debate, both among the hordes of doctoral researchers working on the subject, and those coming to war from different areas of political philosophy (such as Andrew Altman and Kit Wellman, for example).

### *3. Why do we need an account of the moral importance of winning?*

Wars yield a kaleidoscope of death, suffering, and destruction, leaving physical and psychological scars that won’t heal. If such a heinous endeavour is to be thought worthwhile, there must be some powerful argument to explain why fighting and winning matters so much. Not just the liability view—any theory of the ethics of war needs a well-developed account of the moral importance of winning. Such an account is crucial at three levels, at least: when justifying the general risks and wrongdoing of war (besides killing people); when justifying specifically the killing of nonliable people, both intentionally and otherwise; and when justifying killing adversaries who are in fact liable.

The first point is obvious: wars don’t simply involve potentially wrongful killing. A community that goes to war will inflict and invite massive and widespread destruction of

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<sup>3</sup> For example: C. A. J. Coady, *Morality and Political Violence* (Cambridge: Cambridge University Press, 2008); Cecile Fabre, "Guns, Food, and Liability to Attack in War," *Ethics* 120:1 (2010); *A Cosmopolitan Theory of the Just War* (forthcoming); Helen Frowe, *Defensive Killing: An Essay on War and Self-Defence* (Unpublished MS.); Jeff McMahan, "The Ethics of Killing in War," *Ethics* 114:1 (2004); McMahan, *Killing in War*; Lionel McPherson, "Innocence and Responsibility in War," *Canadian Journal of Philosophy* 34:4 (2004); Seumas Miller, "Civilian Immunity, Forcing the Choice, and Collective Responsibility," in *Civilian Immunity in War*, ed. Igor Primoratz (Oxford: Oxford University Press, 2007), 113-35; Gerhard Øverland, "Killing Civilians," *European Journal of Philosophy* 13:3 (2005); David Rodin, *War and Self-Defense* (Oxford: Clarendon Press, 2002).

other goods besides human life—from property and infrastructure to animals and habitats. The decision to fight also involves inviting and imposing profound sacrifices on the members of one's own community. Lives will be risked and lost, property will be destroyed, and all the good causes to which we could put those resources, and that effort, will be foregone. There must be a compelling case for the importance of fighting and winning to justify such sacrifice.

The second point is most compelling if, like me, you think the liability view is overly-optimistic in believing a morally pure war possible, a war in which nobody's fundamental protections are intentionally overridden.<sup>4</sup> My own judgment is that even the best warriors cannot avoid widespread and egregious wrongdoing—specifically, intentionally killing nonliable adversaries. The rights-respecting war is an impossible ideal, so if warfare is ever to be justified, it must be because some profoundly important good justifies overriding the fundamental protections of all the nonliable people whom we must kill, in order to win.

But we need an account of the moral importance of winning, even if you disagree with my view that even in the best case scenario even justified warfighters will inevitably and intentionally kill nonliable people. Many adherents to the liability view, while denying that my objections undermine their account of war's underlying morality, will nevertheless concede that, in practice, that account is inordinately difficult to implement. Some will therefore conclude that we ought in practice to be pacifists. But some will reject pacifism, which they can only do if there is some good worth fighting for that can override this wrongdoing.

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<sup>4</sup> Seth Lazar, "Responsibility, Risk, and Killing in Self-Defense," *Ethics* 119:4 (2009); "The Responsibility Dilemma for *Killing in War*," *Philosophy & Public Affairs* 38:2 (2010); *War and Associative Duties* (Oxford: Oxford University Press, 2012).

Moreover, even if it were not so difficult for even conscientious and skilled combatants to satisfy the liability view, it would remain quite predictable that warfighting will involve both abuses and mistakes. Whether from fear, rage, temporary insanity or sheer bloodlust, we can predict that in almost any wars some of our combatants will commit grave abuses. And we know full well that mistakes will occur—the history of ‘friendly fire’ is proof enough of this. Initiating the sequence of events which enables such errors and outrages to occur can only be justified if winning is truly worthwhile.

And of course even if, miraculously, a war could be fought without intentionally killing nonliable people, only if we fight exclusively at sea or in the uninhabited desert can we be sure that nonliable people won’t be unintentionally killed. These collateral deaths too must be justified by a countervailing value.

Finally, the moral importance of winning also plays an important role in grounding liability itself. Advocates of the liability view generally believe you become liable to be killed in virtue of your responsible contribution to an unjustified threat, which can only be averted by using proportionate force against you. It is very important, then, to establish just how responsible one must be in order to be liable. Either we can assert that even the smallest degree of responsibility can ground liability, or we must make a case for proportionality between some threshold level of responsibility, and the magnitude of the threat. The first option is unattractive, since, as I have argued elsewhere, it would expand liability to the point where few adults in a modern state would escape it. Much depends, then, on developing a viable version of the second approach. And a full explanation of the magnitude of the threat will be coextensive with a proper account of the moral importance of winning.

This is especially important for McMahan, who concedes, in *Killing in War*, that those unjustified combatants who are not culpable for their contribution to their side’s unjustified war might not be sufficiently responsible to be liable to be killed, if it is simply a

matter of life against life.<sup>5</sup> He argues, however, that since achieving the just cause is such a great good, this weighs in the proportionality calculation, and can render them liable. We need to know, therefore, why achieving the just cause matters so much.

Ultimately, setting aside for the moment the intricacies of the liability view, we must surely acknowledge that even in the most justified wars, we will inevitably wind up killing—both intentionally and collaterally—many people who are morally innocent. Complex and subtle theorising aside, the pretheoretical presumption against killing the innocent is the closest thing we have to a universally recognised norm, acknowledged in almost all moral belief systems, probably since the first recorded instance of armed conflict in Wadi Halfa, Sudan, about 13,000 years ago.<sup>6</sup> If warfare involves killing the innocent—as clearly it does—then this is something that has to be positively justified, which means we need an account of the moral importance of fighting and winning.

#### *4. Why winning has to be about more than saving lives*

There is no escaping the imperative to explain the moral importance of winning. But can't the liability-based account simply deploy its underlying model of self-defence here? Can't it just argue that winning matters, because only by winning do justified defenders preserve their own lives—which they are entitled to defend? This is a viable response, I think, if we wish only to justify (with much further argument) wars of humanitarian intervention, and wars of national defence against murderous aggressors. But this reduction of warfare to the aggregated execution of individual rights to defend our own and others' lives will exclude some wars that are reasonably thought justified. Aggressors are not always so murderous; they often seek territorial and political goals, not the blood of their enemies. In an idealised example, we can imagine their tanks rolling in, loudly proclaiming that no lethal force will

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<sup>5</sup> McMahan, *Killing in War*, 196-7.

<sup>6</sup> John Reader, *Africa: A Biography of the Continent* (London: Penguin, 1998), 142-3.



be used, as long as no violent resistance is offered, as they secure the political and territorial advantages that they seek. To defend our lives against such aggressors, we should acquiesce to their demands—they don't threaten our lives, but only the territorial and political goods that they seek. They are only liable to be killed if that threat is sufficiently serious to make killing them proportionate. The wrongdoing inevitable in war, described in the previous section, can only be justified if protecting these territorial and political goods is sufficiently morally important. We must either provide an account of those values, or openly conclude that wars of national defence against non-murderous aggressors are always unjustified.

This is the 'bloodless invasion objection' to the reduction of justified warfare to aggregated acts of self-preserving self-defence, made with particular force by David Rodin.<sup>7</sup> I think it captures an important insight, even when formulated as cursorily as I have done. But some might think that it can be wriggled out of, permitting the liability view to insist both that wars are justified only by the protection of the defenders' lives, and that wars of national defence against non-murderous aggressors can be justified. One wriggle is simply to deride the example as ludicrously unrealistic—asking who can imagine an invasion that did not involve serious threats to life? And is this model of political and territorial aggression even really relevant in a strategic climate more characterised by complex and unpredictable terrorist threats to civilian life, than the prospect of state-on-state (and armed forces against armed forces) violence?

Now, I firmly believe that our arguments about the ethics of war should cleave where possible to plausible examples with practical purchase. But this response is not really

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<sup>7</sup> Rodin, *War and Self-Defense*.

viable for the dominant view. Their methodology relies on many serious abstractions from practical reality, so peculiar counterexamples come with the territory.<sup>8</sup>

Moreover, I'm not sure the example is as utterly implausible as the notional critic imagines. States with aspirations to expand territorially will standardly frame those aspirations in some relatively norm-bound way, and would of course prefer that their adversaries acquiesce rather than fight back. With the caveat that I have no intention of inviting or pursuing a debate over the interpretation of historical cases, one might interpret the early territorial acquisitions of Nazi Germany—in Austria and Czechoslovakia—along these lines, likewise the Argentine invasion of the Falklands, or various Chinese attempts at territorial expansion along almost all their frontiers. And while the invasions of Iraq and Afghanistan were hardly bloodless, who can doubt that if the Iraqis and Afghans had offered no resistance, we would have pursued our goals of regime change (and, in Afghanistan, capturing the architects of 9/11) without taking lives? There is a close enough connection to reality, I think—perhaps somewhat too close for comfort.

I concede that present threats to rich states are not primarily territorial or political. The nature of these threats should not, however, circumscribe our theory of the morality of war. First, because we cannot predict the threats that will emerge in the future. Particularly if the worst predictions about climate change are realised, there may be a strong incentive for unscrupulous states to seek political and territorial gains in the pursuit of rapidly diminishing resources. Second, because the contemporary strategic position of rich states is not universally shared. Weak and poor states do face political and territorial threats, even now—mostly, but not exclusively, from rich aggressors. The enemies of the United States have particular reason to worry, as do neighbours of regional powers like Russia, China, and

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<sup>8</sup> See Jeff McMahan, "The Morality of War and the Law of War," in *Just and Unjust Warriors: The Moral and Legal Status of Soldiers*, ed. David Rodin and Henry Shue (Oxford: Oxford University Press, 2008), 19-43; Fabre, "Guns, Food, and Liability to Attack in War."

Israel, and of course Israel itself. We must not treat our own, present strategic situation as though it were universally relevant, and relevant whatever the future holds. Strategists and ethicists are often accused of fighting the last war—well, it is equally naïve to suppose we and others will only ever have to fight wars like those with which we are currently engaged. Finally, part of the reason why rich states enjoy immunity from political and territorial threats is that they are so well equipped to avert them should they arise. This is hardly a reason for moral theory to ignore such threats.

We cannot get far, then, by simply denying the bloodless invasion objection's relevance. A more promising wriggle suggests that, if we interpose ourselves between the aggressor and the goods they seek, so they can only acquire those goods by threatening us with lethal force, then we can justifiably respond with lethal force to that latter threat, and reasonably claim that we are defending our lives, not merely those goods. If we are entitled to defend the good, it is superfluous to our argument. This is the 'over my dead body' response: suppose you accost me in a dark street, with a knife, and demand that I hand over my wallet. If I kill you in response, there is an obvious disproportionality—we can't justify killing people for the sake of a few quid. However, if I say that you'll only get my wallet over my dead body, and you then try to kill me, to take my wallet, then my use of lethal force is genuinely self-defence: I am defending my life, not just my wallet. Of course, there remains a question of whether I am justified in forcing you to use lethal force in order to take my wallet, but that seems different from whether I am justified in killing you to keep it.

In practice, I think this response is quite important. Realistically, any action to protect ourselves against the aggressor will probably prompt them to start shooting. In ordinary circumstances, as soon as we show any inclination to protect ourselves, aggressors will open fire. But the bloodless invasion objection is not aimed at the practical implications of the liability view—as we have already seen, its adherents don't place a premium on

practical plausibility. The objection is more theoretical, and the ‘over my dead body’ response does not solve that theoretical problem. It succeeds by stipulating that, when you thus interpose yourself, there is no way your adversary can secure what he seeks without threatening your life. In these cases, the response might go through. But suppose when you try to mug me, you are actually much stronger than me, and restrain me while you take my wallet, without doing any lasting harm. Though I’ve declared you’ll only have it over my dead body, you can take it without really threatening me. If I’m justified in using force, it’s because I’m justified in defending my property rights in that wallet, not my person against physical harm. The same goes for aggressive states seeking territorial or political advantage. If we can prevent them from securing their goals without killing us—perhaps by lying down in front of their tanks—then maybe the response would work. But since it remains possible to conceive of scenarios where this is not the case, the bloodless invasion objection stands.

My final objection to reducing the moral importance of winning to the importance of protecting our and our compatriots’ lives relates closely to my other work criticising the application of the liability view.<sup>9</sup> I have argued that unless we set a very low threshold of responsibility for liability, there will be many aggressor combatants whom we have to kill to win a war, who will not be liable to be killed. Moreover, we cannot distinguish between enemy combatants who are and are not liable. So if we may only fight in a manner consistent with our adversaries’ liabilities, we should not fight at all. In arguing for that conclusion, I distinguished between micro- and macro-threats for which aggressor combatants could be responsible. They might contribute proximately to micro-threats to persons, and less proximately to the overall macro-threat posed by their armed forces. I observed that we might affirm that anybody in the aggressor armed forces contributes

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<sup>9</sup> Lazar, "Responsibility Dilemma."

somewhat to the overall macro-threat, since the armed forces are supposed to work as a unit. But it is harder to insist that all combatants proximately contribute to micro-threats. Not all combatants are lethal. Some enjoy non-lethal functions (support and administrative staff, for example). Others, though deployed lethally, pose no micro-threats because they don't get the opportunity to do so, or for other reasons, such as incompetence or fear.

If warfare is justified only by the threats to persons posed by the aggressor combatants, then the macro-threat is identical with the sum of micro-threats that they pose. There is no separate macro-threat. This significantly reinforces my objection against the application of the liability view. First, because it suggests that even more aggressor combatants will not be liable to be killed than I earlier argued, because those who do not contribute to micro-threats cannot be rendered liable on grounds of a contribution to a macro-threat which does not exist.<sup>10</sup> And second, because it significantly increases the complexity of determining whether any individual combatant is actually liable. Since we cannot appeal to their shared contribution to a macro-threat to impugn them, we must identify the specific micro-threats to which each combatant contributes, the degree to which they are responsible for those contributions, and whether killing that particular person is necessary to avert that particular threat to persons. An already inordinately complex operation of judgment has been rendered still more fragmented and opaque. The fact that the combatant is fighting for the aggressor is barely a starting point in establishing his liability. Of course, this is not really news: in their more candid moments, adherents to the liability view concede that the identification of one side as justified, the other unjustified, is only a heuristic.<sup>11</sup> In fact all wars combine just and unjust phases, just and unjust

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<sup>10</sup> Alternatively, we could shift to the second horn of my 'responsibility dilemma', and lower the degree of responsibility required to establish liability still further, thus increasing the difficulty of affirming any limits to liability at all.

<sup>11</sup> McMahan and, in particular, Fabre are explicit about this. McMahan, "The Morality of War."; Fabre, "Guns, Food, and Liability to Attack in War."

operations, just and unjust attacks within those operations. But if warfare is justified by the defence of life alone, then literally every lethal act must be assessed on its own merits, and we can infer little about any one from the conclusions drawn about the others. Warfare is, then, an aggregation of acts of individual self- and other-defence, but the aggregation does not allow any overarching generalisations: each case must be decided on its unique merits. And this reinforces my belief that in these circumstances there is no possible way we could apply the liability view, so if we can't justify risking and killing nonliable people, then we can't justify fighting.<sup>12</sup>

Suppose the aggressors' tanks roll in, and we use force to repel them, before they pose a lethal threat to our lives. If our initial use of force is not justified by the political and territorial threat the enemy poses, then we have acted wrongfully, and we are now responsible for unjustified lethal threats to the aggressor—which is a presumptive basis for us to be liable to lethal attack ourselves. Now, we could argue that the aggressor combatant who I've got in my sights is partly responsible for creating the situation in which I am acting wrongfully, and that could be true. But still I'm responsible for my own actions, and it's quite possible that I'm sufficiently responsible to be liable to be killed—especially if, like most advocates of the liability view, we make a very low degree of responsibility sufficient for liability. In some cases, it will not be necessary for the aggressor combatant to kill me in self-defence, because he can simply down his arms, or retreat, and nobody need be killed at all. But in others this option will not be available, and the liability view must license the unjustified aggressor in using lethal force to defend himself. Not only is this conclusion counterintuitive, it also indicates the degree of complexity required to determine which party is liable, when we cannot appeal to any overarching macro-threat which grants one an

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<sup>12</sup> Or, again, we drop the threshold of responsibility so low that we can assume that everyone will be liable, but then liability becomes so generalised that it is effectively meaningless—there is no fit whatsoever between liability and responsibility.

advantage over the other. Reducing the moral importance of winning to the preservation of individual life, and warfare to aggregated acts in defence of our own and others' lives, really collapses it into disaggregated acts of self-defence each of which must be justified exclusively on its own merits. Perhaps it is right that the chaos of war should be replicated in our moral theory, but my own view is that, if this is the correct account of the morality of war, then that it is impossible to apply means it is impossible to fight wars without risking killing nonliable people. Which means that if the liability view is right about the weight of our fundamental protections against being killed, then unless by fighting we avert a rare and extreme catastrophe, we ought not to fight.

Once wars are underway, killing might often be justified by the imperative to protect one's own life, or that of others. But what justifies initiating this sequence of violence against a non-murderous aggressor must be the moral importance of resisting those political and territorial incursions, not merely the importance of preserving our lives. Some wars of national defence cannot be simply reduced to aggregated acts of individual self-defence against lethal threats, because the threat that justifies fighting is not lethal, but political or territorial.

Of course, perhaps we should respond by rejecting conventional thinking about national defence. This, for example, was David Rodin's conclusion. And he is certainly right that the straightforward conventional view of national defence, which grants any and all states rights of national defence against territorial aggression, is very difficult to justify. But it is harder to reject a more plausible, and more refined version of the national defence doctrine, which grants these rights to at least morally valuable states (perhaps extending them to all but the worst states for practical reasons, or because of reasonable disagreement over what makes a state morally valuable). Rejecting this view is a theoretical cost we might not want to invite. Advocates of the liability view might be tempted, then, to develop a

richer account of the moral importance of winning, than one focusing exclusively on the preservation of life.

### *5. Individualism and impartiality*

I am sceptical about whether advocates of the liability view can produce a plausible doctrine of national defence, consistent with their views about ethical individualism, impartiality, and the primacy of interpersonal over institutional reasons. Three steps together would form an adequate defence of this claim. First, I would have to show that the dominant view, in all its important variants, is committed to these three positions. Then, I would argue against all extant attempts to derive plausible doctrines of national defence, consistent with these positions. And to cement the conclusion, I might defend a compelling account of national defence that depends on collectivist, partial, and institutional reasons, challenging adherents to the liability view to prove its weaknesses. When I prepare this draft for publication in the book to result from this workshop, I will make a stab at least at the first and second tasks, though the third is really the project of the book I am now writing. For now, I can do no more than gesture at why I think a reasonable doctrine of national defence requires premises that are inconsistent with the liability view. The following is not an attempt at conclusive argument, but the sketch of a challenge. I invite my opponent to respond in one of two ways: grant that apparently reasonable conclusions about national defence are indeed based on these (unacceptable) premises, and affirm that we should therefore reject those conclusions; or explain how we can sustain those conclusions without affirming these premises.

My first two doubts are closely connected. I think a plausible account of permissible national defence would clash with two key commitments of the liability view, which I've labelled as its ethical individualism, and its impartiality. Obviously the liability view is a



broad church, and these commitments may not be omnipresent and pervasive within it. But they do seem to be consistent fellow travellers. Their individualism is expressed in their view that individuals enjoy fundamental protections against being harmed for the sake of others, in particular for the sake of the aggregated interests of other people and groups. These protections can only be overridden to avert rare and extreme catastrophes—this grounds the key contention of the liability view that, if wars cannot be fought without intentionally violating rights, we ought not to fight them at all.

Impartiality can mean many different things, but I want to focus on the view that, when vital moral reasons are in play—particularly the fundamental protections just described—they silence any reasons we might have to favour some people over others in virtue of their relationship to us. One expression of this affirms that our most serious general duties (that is, those owed to people simply in virtue of our common humanity) always trump even our most serious associative duties (those owed in virtue of our special relationships).<sup>13</sup> This belief also reflects the overwhelming importance the liability view attaches to individuals' rights to life, and the corresponding duties. I am not sure whether it is a necessary feature of the liability view, but I think it would be affirmed by all of its adherents.

If national defence against non-murderous aggressors is justified, it is because the goods they threaten are worth fighting and killing for. Any argument for the permissibility of such wars needs an account of those goods. The most plausible candidates are political sovereignty and territorial integrity. Each of these are complex concepts, and I can define them only heuristically and stipulatively. Political sovereignty is, roughly, the ability of a group to exercise primary political authority over itself. Territorial integrity is the territorial extension of this sovereignty: a community enjoys territorial integrity when the

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<sup>13</sup> For discussion of possible theoretical foundations for this position, see Seth Lazar, "Do Associative Duties Really Not Matter?," *Journal of Political Philosophy* 17:1 (2009).

land which it inhabits is within its own control. Neither sovereignty nor territorial integrity are binary concepts: each is composed of a range of different powers, and can be realised to greater or lesser degree.

My challenge, then, is this: can we develop an account of political sovereignty and territorial integrity, and warlike threats thereto, which explains why they are worth fighting and killing for, given all the suffering and wrongdoing war brings in its train, without weakening or rejecting the liability view's commitments to individualism and impartiality? My scepticism derives, first, from the thought that political sovereignty and territorial integrity are morally important because of the collectivities that enjoy them. Thus sovereignty provides groups with the capacity to determine the conditions of their collective existence, in accordance with beliefs and values that they share. Territorial integrity affords them a homeland, a stable environment for the realisation and expression of that collective life.

This claim has a weaker and a stronger variant. The stronger variant states that there is something inherently non-aggregative about the justification of political sovereignty and territorial integrity: we cannot simply aggregate up the interest each member of the community has in those goods, to achieve our final account of how much they matter. Instead, what really does the work is the interest of the group as such, which is irreducible to the interests of its individual members. If we are justified in killing to protect these goods, it is because our collective interest, *qua* group, overrides the reasons against fighting. If a reasonable doctrine of national defence depended on this sort of collectivism, the liability view would have to reject it outright. They would not be alone, of course—most liberals reject this idea that anything besides the interests of individuals can really have value.

I'm probably more sympathetic to this strong collectivism than are most, but my doubts about the liability view don't depend on that controversial sympathy. For even if the values of political sovereignty and territorial integrity derive wholly from the contribution they make to the aggregated well-being of the communities that enjoy them, the dominant view should still struggle to justify killing in their defence. For consider: suppose my country is under attack from a non-murderous aggressor, seeking political and territorial goals. My part in averting that threat can be achieved only if I kill the enemy soldier, who I now have in my sights. On strictly individualist terms, I am only justified in killing him if this is a proportionate response to the threat he poses to my interests in my community's sovereignty and territorial integrity. But how weighty, really, is each isolated individual's interest in these goods? What real difference would it make to my life, if the aggressor state achieved its goals? Supposing my adversary is morally innocent—I don't see how it can be proportionate to kill him for posing a threat to what is a peripheral interest. This holds whether our judgment is internal to liability, because innocent people can be liable, or if we think innocence precludes liability, so seek to override his rights. This is equally true when justifying the collateral killing that war inevitably involves: how can it be justified to predictably end other people's lives, even unintentionally, to protect my own interests in my group's sovereignty and territorial integrity?

Perhaps I'm making a mistake here. Maybe instead of looking at my interest on its own, we should look to the aggregated interests of all my fellow citizens in preserving these goods. Though it may only be a small part of each individual's well-being, when they are all added together, they might amount to something worth killing for. On this account, some of our adversaries' rights to life—at the very least, those who will be the victims of mistaken attacks, and abuses, and collateral killing—are overridden by my community's aggregated minor interests in sovereignty and territorial integrity. I can't see how the liability view

could permit these aggregated minor interests to override others' fundamental protections in such a way. This holds, I think, even for the proportionality calculation internal to liability: suppose the threats to my own interests in sovereignty and territorial integrity are insufficiently weighty to render liable an innocent, but agent-responsible threat to those goods. Can we really assert that my community's aggregated interests are sufficient to make him liable, without calling our individualism into serious question?

Appealing to the value of sovereignty and territorial integrity for the members of a community seems to require a degree of collectivism that the liability view could not support. An alternative strategy for justifying national defence simply appeals to the moral value of the community that we are defending. This could be construed in a number of ways, but one likely approach is to argue that a just community is worth defending against aggression, simply in virtue of its valuable realisation of justice. I think this approach would be attractive to adherents of the liability view, but to be rendered consistent with reasonable thinking about national defence, it would lead us away from that view's commitment to impartiality.

Suppose that our political community realises principles of justice, and that this is a good reason for defending it against aggression, other things equal. What if the state we're defending ourselves against also serves justice, and indeed does so better than our own? If fighting is justified by the value, impartially considered, of our political community, then when confronted with an adversary that is more valuable still, we should presumably concede to its wishes, rather than threaten it even in otherwise legitimate defence. Most people would find this conclusion deeply implausible—indeed, most people think that even morally impoverished political communities are justified in defending themselves against territorial and political aggression, and would certainly believe that I'm justified in

defending my own valuable community, even if it is threatened by a more valuable aggressor. Most people think that members of political communities are justified in showing partiality towards their own community—ascribing to the reasons it grounds greater weight than they would have, impartially considered.

So, suppose that Canada is a more valuable political association than the United States—suppose, in fact, that it is much more valuable. Canada proposes to invade Alaska, in order to acquire its natural resources, in particular its oil. It intends to offer all Alaskans full Canadian citizenship, or help relocating to the contiguous United States. It also proposes to honour the property rights of individual Alaskan citizens, and the companies that manage Alaska’s natural resources—it seeks only to supplant the US government in extracting preferential deals, tax gains and so on. If what ordinarily justified national defence were the value of our community, then the US could not justifiably fight against the more valuable Canadian aggressor. If we seek to serve value, we should serve the greater value. And yet ordinary thinking would assert that US citizens are justified in defending *their own* valuable political community, even against a more valuable adversary. They are justified in granting greater weight to reasons grounded in their own community’s value, than would be appropriate were they viewed wholly impartially.

Or, consider the practice of regime change. Without going into specifics, it is easy to imagine a coalition of rich states might wish to overthrow an unfriendly regime, in order to establish a replacement that would better serve their interests, while at the same time enhancing the quality of the institutions the regime leads—for example making them more democratic, or improving public services. Such a regime change could be effected with an initial invasion, which would certainly be less than murderous, if led by the armed forces of rich states, strict in their observance of international humanitarian law. We would, I am sure, be thrilled to achieve our political goals without having to kill anybody. Few people

would think such an invasion could be justified, but I wonder the aggrieved community could be justified in fighting off the invaders, if our account of national defence is wholly individualist and impartial. If their argument is that they are defending their own institutions, their own community—well, the invaders propose to establish a more valuable community in its place. If they appeal to the value of their sovereignty and territorial integrity to them as a community, as a group, then we must deny that the aggregated interests of a group of individuals—or, worse, the non-aggregated interests of a group as such—can override their victims’ interests in not being killed (and their rights against meeting that fate). Indeed, without an adequate account of the goods national defence is supposed to protect, can we even sustain our judgment that such an invasion would be impermissible? Can we plausibly affirm that there are some aggressive invasions which are unjustified, but which we are not justified in repelling?

### *6. Institutional and interpersonal morality in war*

My second hypothesis is a little more radical. I think the dominant view struggles to explain the moral importance of winning because it deliberately occludes a significant portion of the relevant terrain: specifically, it focuses on interpersonal morality at the expense of institutional moral reasons.

What I mean by ‘institutions’ should be clear from the examples described below, but if greater precision is needed we can define institutions, for present purposes, as legally and socially incorporated regimes for the structuring of coordinated human action. By ‘legally and socially incorporated’, I mean that institutions are shaped by both the specific codification of laws, and the shared expectations of those who make up and interact with the institutions. I distinguish between institutional moral reasons—that is, reasons arising from

those institutions—and interpersonal moral reasons, which we would have even in the absence of any institutions. I describe the state of affairs where there are no institutions as the state of nature.<sup>14</sup> I think that one problem with the liability view is that it treats wars as though they were no different from aggregated acts of individual self- and other-defence in a state of nature. They wholly ignore the institutions that structure conflict, and indeed over which wars are fought. This impoverishes their account of war's morality, and prevents them from giving an adequate account of the moral importance of winning.

To support this claim, I need to show that the dominant view indeed ignores institutional morality or at least treats it as morally epiphenomenal. I must then explain why institutional morality should play a big role in both our descriptive and normative accounts of war. Then I should specifically show why it matters to understanding the proper purposes of justified military force. My challenge to the liability view remains much the same as in the previous section: either provide a sensible account of national defence without drawing on institutional reasons, or openly reject the institutional reasons, and advocate serious revision of our considered judgments about national defence. More generally, I think the elision of institutional reasons is a problem in its own right, independently worthy of discussion.

The liability-based account of war starts from a justificatory model in which one person attacks another, who defends himself. The reasons in play are therefore strictly interpersonal, and tightly constrained to the relationship between the two protagonists. Thus Rodin, for example, sees self-defence as grounded in a relationship of reciprocity: when someone is responsible for threatening your right to life, his own right to life is

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<sup>14</sup> In a state of nature there would still be families, and many think that the family is the paradigmatic social institution. My own view is that, while the family has been institutionalised in modern societies, as have other relationships such as that of marriage, underlying these institutions are natural relationships that subsist in a pre-institutional form in a state of nature (and so can generate interpersonal moral reasons).

weakened or forfeit. McMahan's theory is similarly constrained: he operates a form of localised justice in the distribution of harms, which seeks to identify an asymmetry between the attacker and defender, to justify imposing on one of them the imminent unavoidable harm.

Let alone institutions, the basic justificatory model for the dominant view has no space even for other individuals besides the two protagonists. When the model is applied to war, other individuals may become relevant (as we add other-defence to self-defence), but institutions remain out of the picture. The method, as we have seen, is to disaggregate wars into a series of individual cases of self- or other-defence (Rodin calls this the reductive individualist method). Thus wars are no more than a multitude of individuals defending themselves and others. Wars are only different from other forms of self-defence, insofar as they are messier, more complex. This aggregative model allows no room for institutions to come into the picture. It would be identical in the utter absence of political and military institutions—no armies, no states, no borders, just individuals defending themselves and each other. The deep morality of war, for the liability-based account, is pre-institutional. If institutions can generate moral reasons at all, they must be secondary to the fundamental interpersonal reasons that are engaged in warfare.<sup>15</sup> More likely, though, institutions do not

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<sup>15</sup> There is a rich discussion of the use of institutional arguments to justify the moral equality of combatants, in McMahan's *Killing in War* (especially pp. 70-76), which though relevant takes me a little astray from my already somewhat scattered argument. He makes three points: institutional reasons cannot justify knowingly overriding basic negative duties; only just institutions can ground the relevant sort of reasons; and even if we do need to breach such duties to preserve our just institutions, it isn't ultimately justified, because when our institutions malfunction we should bear their costs. These are all good reasons for rejecting the moral equality of combatants as a general thesis. They don't much affect my argument, however. First, although I contend that in all wars we will inevitably intentionally kill nonliable people, I do not insist that we have to do so knowingly—that is, that to win a justified war, we must kill people whom we know to not be liable. Part of the problem with the liability view is that it is so difficult to know whether one's adversaries are liable to attack. The point is that we are intentionally killing people, of whom we know some will not be liable. This is different from McMahan's executioner, who cannot justify executing a prisoner whom he knows to be innocent. I do think that our institutional reasons can justify us in taking greater risks that we will harm nonliable people than would be acceptable on interpersonal reasons alone (I support that observation below). The observation that only just institutions can ground such duties is well taken—though I think what matters is that the institutions be valuable, not specifically that they exemplify the value of justice. On the final observation, about how to distribute the costs of malfunctioning institutions, two thoughts: first, if I'm right, then even the most justified wars will involve killing nonliable people. The institutions are not, then,



generate moral reasons at all—a neat line is drawn between the morality and law of war, such that whatever our institutional conclusions, they are not really moral ones, only pragmatic guides for legislation.<sup>16</sup>

The picture of warfare assumed by the liability view is not wholly inaccurate. We can perhaps conceive of some wars not relevantly different from conflict between aggregated individuals in a state of nature. But this covers at most one part of the moral terrain. Most wars, and most likely future wars, are structured in important ways by institutions, and it is an open question whether constructing models for the justification of war which ignore those institutions can generate plausible principles to apply when those institutions are present.

There are at least three institutional dimensions to conflict: first, the object of attack is institutional. Aggressors target not only lives and well-being, but also the state itself, and its specific institutions (such as its armed forces), and the international society of states of which it is part. Attacking an adversary's political sovereignty and territorial integrity amounts to an attack on the institution of the state. And any attack on one state is an assault on the society of states because that society is held together by a principle of non-aggression.

Second, the agent of attack, and of defence, is itself likely to be institutional. In regular warfare, much of the fighting is by incorporated armed forces. These are qualitatively different from mere aggregations of individuals—their whole purpose is to make their several members more effective than the sum of their parts, through a minute

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malfunctioning. Second, McMahan argues that the preservation of an institution justified by the benefits it brings to an in-group, cannot justify imposing costs on outsiders. But this supposes that the institution is justified by the benefits that it yields, not because it is morally valuable. If it is morally valuable, then this fairness objection has less force.

<sup>16</sup> Fabre, "Guns, Food, and Liability to Attack in War."; McMahan, "The Morality of War."

division of labour and a unified chain of command. Of course, not all wars are fought by regular armed forces. Some are *levées en masse*, where the population, let down by their armed protectors, take up arms themselves to defend their community. Some are prosecuted by disenchanted factions. I am not sure whether guerrilla armies, for example, qualify as institutions—it probably depends on the individual case.

Third, wars are fought in an institutional milieu. There are laws and courts to regulate belligerents' conduct. There are entrenched international norms, such as the principle of non-aggression against sovereign states, which structure and delineate the conflict.

Most wars, then, are descriptively different from aggregated acts of self-defence in a state of nature. The target, agents, and normative milieu are all institutional. It is therefore quite reasonable to ask whether moral principles derived from quite different circumstances will be relevant in these cases.

What relevance, then, do these descriptive differences have for the moral importance of winning? My broad, tentative suggestion is this: when we take institutional reasons into account, as well as the institutional structuring of combat, we will be less inclined to affirm, with the liability view, a near-absolutist view of the fundamental protections individuals enjoy against being victims of harms to which they are not liable. We will be more inclined, I think, to believe that those protections can be overridden—both because we will conclude that their protections cannot plausibly be so decisive in our moral reasoning, and because we will have a better understanding of the countervailing values.

My first thought, then, is that in wars of national defence against a non-murderous aggressor, we are fighting in part to protect institutions, of which a wholly pre-institutional

morality cannot comprehend the value. We fight to protect our armed forces, our state and the several institutions within it that are threatened by war, and the international society of states.

In an ideal world there would be no need for armed forces, as other states (if states exist in an ideal world) would pose no threat. In the world as it is, however, readiness for combat is an unfortunate prerequisite of freedom, justice and prosperity. We cannot be secure in the other goods of citizenship if we are not prepared to defend it against aggression. Thus an attack on our armed forces is an attack on our ability to protect ourselves. Even if the specific strategic objective is less significant, a successful attack on our armed forces weakens them both actually, and in the eyes of the world, making them less able to defend our valuable political community.<sup>17</sup>

I can't say much in the short space available about the moral importance of states; obviously this is deeply contestable, but I think that however inadequate and indeed contingent they are, states are at present the only viable sets of institutions for the delivery of freedom and social justice, and as such they matter a great deal.<sup>18</sup> The same I think goes for the international society of states, conceived as the loose institutional structure through which states relate to one another, and regulate their behaviour. The prime achievement of that society is its ability to keep a lid on conflict; this is no mean achievement. Attacking one state is an assault not just on that state, but on this modicum of peace.

These institutions are worth defending, even if doing so means risking and taking some nonliable lives. But defence requires more than repelling the immediate threat. Winning is not only morally important insofar as it guarantees that repulsion, it must also deter future attacks. The peace of international society, such as it is, must be reaffirmed.

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<sup>17</sup> Cheyney Ryan, "Popular Sovereignty and Military Service: Democratic Duty and the Unjust Soldier," (2009).

<sup>18</sup> I say more about this in Seth Lazar, "A Liberal Defence of (Some) Duties to Compatriots," *Journal of Applied Philosophy* 27:3 (2010).

Again, this is a quintessentially institutional reason—both because deterrence is not really aimed at individuals, but at institutions and their leaders, and because it is clearly objectionable, at the interpersonal level, to harm some innocent people in order to deter others from committing crimes in the future. And yet from the institutional perspective, this does not look so outrageous. Few would deny that states are justified in using force against aggression, both to prevent the immediate threat, and to deter similar attacks in the future.

A wholly pre-institutional account of the morality of war must either ignore these values, or assert that they bring nothing significant to the table, since these institutional goods cannot permit us to override the fundamental interpersonal reasons that protect the nonliable against being harmed.

My next thought is that attention to institutional morality might make us more sceptical about the underpinning moral theory which grants such near-absolute priority to the interests of those nonliable people whose rights must be overridden for war to be justified. Simply put, my thought is that institutional morality might be more consequentialist than interpersonal morality, and therefore less inclined to grant such absolute priority to the rights of individuals.

Let me first illustrate how institutional morality is more consequentialist than interpersonal morality, then suggest why. The key point is that we expect less of individuals, working on their own, than we do of institutions. Institutions are held strongly accountable for their failure to aid, or failure to protect, the people those institutions serve. This is familiar enough in domestic society—the police, social services, even financial regulators, all have strong positive duties to prevent crimes, abuse, financial collapse, and are held accountable when they fail. Even if the crimes, abuses, collapses would have happened in their absence—even been worse in their absence—they are still accused of

failure. Individuals' positive duties, by contrast, tend to be construed quite narrowly. We do not tend to be strongly accountable for our failure to prevent harms and wrongdoings.<sup>19</sup> So: institutions are more accountable for their omissions than are individuals.

Second, and relatedly, where individuals and interpersonal morality are concerned, a sharp line is often drawn between the intended and merely foreseen consequences of our actions (not, of course, by everyone). But where institutions are concerned, this seems considerably less plausible. Perhaps it is marginally worse for an institution to specifically set about inflicting wrongful harm, but the difference is marginal indeed, when compared with pursuing a course of action that predictably leads to the same wrongful harms. It is hard enough to determine what an individual's intentions are in a morally meaningful way—still harder for institutions, which lack mental states. Indeed, institutions are not only held as accountable for the predictable bad consequences of their actions, as for the intended consequences, they are also often accountable for less predictable consequences.

Thirdly, and again relatedly, the excuse of intervening wrongful agency is less salient at the institutional level than at the individual level. If my doing x is justified in the circumstances, the fact that it will lead to you wrongfully doing y is often (though not always) not thought a reason against my x-ing, insofar as you are acting voluntarily, and you're responsible for your actions, not I. Again, this seems less plausible where institutions are concerned—they are responsible for the moral hazards they create, and the predictable wrongdoing they prompt. Take the situation in Iraq after the 2003 invasion, for example. Much of the subsequent violence was perpetrated by terrorists, whose actions were unfathomably, inexcusably wrong. Moreover many of them will have acted voluntarily. But

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<sup>19</sup> Incidentally, this is probably in part because we have these institutions, to carry out our positive duties. I think one reason why people tend to believe that our positive duties are weak in comparison with our negative duties is that we have all these institutions for the performance of the former duties, whereas our negative duties are really up to us. While we might only have weak duties to save the innocent child from drowning—not if it costs us a serious injury, say—this is in part because we live in societies with institutions to protect children from getting into that position in the first place, which is paid for through around half the exercise of our labour power (i.e. taxation).

since it was eminently predictable that the coalition's actions—not just the invasion itself, but also disbanding the armed forces and police—would lead to this wrongdoing, the intervening agency excuse is simply not available. At the institutional level, these eventualities are supposed to be taken into account. Similarly, a government department can be held accountable for a rise in crime occasioned by its policies.

It might be objected that these are all ways in which we expect more of institutions than we do of disaggregated individuals—but they do not suggest that institutions enjoy expanded permissions to override individuals' rights. My first response is that if institutional reasons to do *x* are stronger than interpersonal reasons to do *x*, then if *x* cannot be done without some wrongdoing, it is more likely that the institutional reasons would justify overriding that wrongdoing than that the interpersonal reasons should do so. Stronger reasons are stronger reasons, and should be better able to override other reasons.

More importantly, though, I think we do assign to institutions permissions that we do not assign to individuals (and would not assign to them in a state of nature). Consider the forcible collection of taxes, for example, or the practice of conscription, or child services that take people's children away from them. Of course, in these cases institutions might be enforcing the performance of duties we already have—it enjoys a greater licence to play that enforcing role, but this doesn't necessarily show that institutional reasons have more scope to override other moral considerations than do interpersonal reasons. And yet we do think, standardly, that institutions are justified in making some incursions into our rights—for example, restricting individual privacy and liberty for the sake of overall security. Obviously where the line should be drawn in this balance is a contentious matter, about which I have nothing to say here, but this is clearly an area where the greater permissions of the state extend to overriding individual rights.

More interesting, though, are the circumstances in which individuals performing an institutional role are justified in taking risks with other people's rights that ordinary citizens, who don't inhabit that role, would not be justified in taking. These extended permissions are especially important for the war case, because really what we want to argue is that members of the armed forces can be justified in taking risks with the rights of those whom they kill in order to achieve our justified cause. They know that some of them will not be liable to be killed—they know they will intentionally kill nonliable people. But they can be justified in taking those risks, because of the moral importance of winning. And certainly there are plenty of other cases where institutional functionaries in society are justified in taking risks that others cannot be justified in taking. Doctors, for example, administer drugs and treatments that can be lethal to their recipients. Police officers are permitted to use varying degrees of force, ranging to lethal. In both cases, we know full well that granting these permissions will mean that innocent people will sometimes be harmed and killed. Likewise judges and the officers of courts are permitted to risk wrongly imprisoning the innocent. We conclude, in each of these scenarios, that the rights of the people who will be harmed and killed, or imprisoned, are justifiably overridden by the good that these institutions achieve overall. Obviously if doctors, police officers, judges are negligent, or culpable for harming the innocent, they will be held to account. But when they make mistakes in the reasonable and conscientious pursuit of their duty, they are considered guiltless, and indeed justified.

Now, obviously there are not many cases where institutions permit us to risk killing innocent people. Police officers are permitted, on rare occasions, to take such risks, but they are hardly the bread and butter of police work. For doctors, life and death scenarios are more common, but matters are somewhat complicated by the fact that the doctor is acting in the patient's best interests overall. But I don't think this shows that these exceptional

institutional permissions cannot extend to soldiers, it simply shows what we should already know, that warfare is not much like the other functions of an ordinary society. There simply aren't other occasions when the use of lethal force is necessary to protect important values. So we shouldn't expect there to be directly comparable scenarios in ordinary life, outside of war. Soldiers are, in this respect, exceptional, and they enjoy exceptional privileges.

Institutional morality, then, is *prima facie* more consequentialist than interpersonal morality. Why this should be, and whether this is indeed the right way to characterise the difference between the two sets of moral reasons, are important and interesting questions, but beyond the scope of my present research.<sup>20</sup> But if attention to institutional reasons does indeed incline us to take a more consequentialist outlook on morality, then that undermines the quasi-absolutist inclinations of the liability view, and lowers the burden of justification that our account of the moral importance of winning must meet, to override the wrongdoing inevitable to warfare.

Finally, proper attention to institutional morality might give us further reason to doubt whether we ought to sustain a near-absolutist view of individuals' protections against being wrongfully harmed. Two observations seem especially relevant.

First, if we adopt this near-absolutist view, then we could not justify sustaining standing armed forces. Conversely, if we think such institutions are justifiable in modern societies, we must affirm a less rigorist view of the prominence of individual rights. Second,

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<sup>20</sup> One reason why individuals' responsibility for outcomes is so narrowly constrained is that we often lack sufficient information to know what outcomes they will lead to, and often we lack any power to influence those outcomes. Institutions, by contrast, can coordinate the gathering of information, and the performance of research, to get a much clearer picture of the results of their decisions and omissions. Again, through sophisticated coordination, and the mobilisation of resources, they can have much more influence on those outcomes than any individual working alone could have. Indeed, this is the whole point of institutions, to do more than we can on our own. Contrast this with an individual soldier who believes that the war he has been asked to fight is unjustified. All he can control is ensuring that he does not fight, and perhaps that he persuades some friends to join his protest. He cannot prevent the war going ahead. It makes sense, then, to make him only responsible for what is within his control. Hence the greater information and power that the institution has properly extends the scope of its responsibility.



I think there is something about your being in the institution of the armed forces that makes killing you less wrongful than it would be if you were not in that institution, all other things equal. I'll elaborate on each point in turn.

Sustaining institutions for the use of armed force amounts to taking inordinate risks with the lives of innocent people. First, adherents to the liability view often observe that in all wars throughout history, at least one side has fought unjustifiably, while in many both sides have done so. By sustaining armed forces we increase the likelihood that we will engage in unjustified wars. If the mooted priority attaches to the rights that we will violate should such wars be fought, then how can we justify sustaining this institutionalised capacity for mass murder? At the very least this radically exacerbates the challenge against the liability view, that it lacks an account of the moral importance of winning: that account must justify not only fighting in any putatively justified war, but also maintaining armed forces when we know that this is likely to lead to us fighting unjustified wars. Surely if killing the nonliable is so egregiously wrong, we should do everything we can to minimise our capacity to do so. All the more so, since, as I argued in section 3, even our best, most justified wars, will involve widespread killing of nonliable people.

Even if we could somehow justify sustaining armed forces in a society, despite the wrongdoing they will inevitably engage in, how could an individual justify joining those armed forces, and promising to serve? As they presently operate, the armed forces are structured around imposed obedience, undermining individual autonomy, and developing a sense of camaraderie among troops that leaves them feeling that to abandon the mission is to betray their friends. Not to mention that in order to overcome the natural and understandable aversion ordinary people have to using lethal force, training combatants

means actively undermining their moral sensibilities.<sup>21</sup> Joining the armed forces under these circumstances is an extraordinarily reckless thing to do, on the liability view's account. Could they be changed so that we could still fight our justified wars, without taking these risks? Perhaps, but I don't think so. I think that if we have the attitude to moral risk implied by the near-absolutist commitments of the liability view, we may not, in all good conscience, put ourselves in the position where we might be called upon to kill nonliable people.

So, if we think, as I do, that sustaining armed forces is not intrinsically wrongful, and that those who join the armed forces are not thereby acting with extraordinary recklessness—and if the assessment of the moral risks that service men and women face is correct—then we must conclude that the burden of justification that the moral importance of winning must meet is lower than implied by the liability view.

One reason to think that burden might be lowered, is that many of the nonliable people whom we must kill in war are themselves participants in the institutionalised use of force, and that in virtue of their role, killing them is less wrongful than killing those who do not occupy similar roles. Killing an innocent soldier, the armed representative of his community, seems easier to justify than killing an innocent civilian. Moreover, I think this is true simply because one is a soldier, and the other a civilian, though there are also deeper foundations.<sup>22</sup> This is a very tricky area—McMahan has responded to a similar claim made by Michael Walzer with acid derision, likening it to the sort of collectivisation of liability endemic to genocide and terrorist violence.<sup>23</sup> The idea that someone should become liable to be killed simply in virtue of his membership of a group is obviously very suspect. I am not, however, making that stronger claim—let us set liability aside, for the present. I simply

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<sup>21</sup> David Grossman, *On Killing: The Psychological Cost of Learning to Kill in War and Society* (London: Back Bay Books, 1995).

<sup>22</sup> Elsewhere I argue that the fact that civilians are commonly so much more defenceless than soldiers also makes it harder to justify attacks on civilians. At present I just want to focus on the mere institutional difference between them.

<sup>23</sup> Jeff McMahan, "Liability and Collective Identity: A Response to Walzer," *Philosophia* 34:1 (2006).

think that there are important differences between killing an enemy soldier and killing a self-defender, working outside of that institutional role. When one soldier kills another, his action is not specifically directed against his adversary, but against the institution of which he is part, and the community he represents. There is nothing personal about it—it need not imply any judgment, and is quite consistent with saying that in other circumstances, you could be comrades, even friends. You are each performing institutional roles, and you engage one another within those roles, rather than as individuals. A trivial analogy might help elucidate this idea. Opposing players in a rugby match might tear strips out of each other during the game, using all the dirty tricks they know to undermine and thwart one another. But once the final whistle has blown, they drop their institutional identities, and shake hands, congratulate and commiserate, as individuals. Their ferocious encounters during the game were not personal—they were not, in a sense, being themselves, but rather being their roles. And nothing about their relationship as individuals is undermined by that clash.

Now, some of the strictures of interpersonal morality are explained by appeal to attitudes inherent in our conduct.<sup>24</sup> Using lethal force against a person without justification suggests an abject disregard for his status as a self-authenticating source of valid claims. Killing someone for a benefit to yourself suggests that you see him as a resource, something you can use. When soldiers fight one another, these attitudes are not easily imputed to their actions. Just as you salute the office, not the individual, you fight the adversary as a soldier, but that does not reflect your views of him as a person. Indeed, opposing soldiers often have more in common with, and higher regard for, one another than either does with/for his compatriot civilians. Again, this is not quite the same for autonomous defenders, who do not occupy an institutional role, so killing them means engaging them as individuals, not as

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<sup>24</sup> E.g. Seth Lazar, "The Nature and Disvalue of Injury," *Res Publica* 15:3 (2009).

representatives. This means, I think, that the attitudes expressed therein are somewhat different.

These are inchoate thoughts, intended to lay the foundations of future research, but they sketch, I hope, some plausible reasons for doubting whether the liability view can provide an account of the moral importance of winning adequate to ground plausible conclusions about national defence. The liability view eschews institutional morality, but its focus on interpersonal reasons, and in particular the priority it gives to the rights of nonliable people against being harmed, remove several possible avenues for a more compelling justification of war—it excludes some of the valuable institutions that fighting can protect; it inclines us to a more deontological perspective on morality than might otherwise be appropriate; and it occludes some grounds for scepticism about that near moral-absolutism. Again, none of these objections are conclusive, and I welcome attempts by liability theorists either to show how their view can accommodate institutional reasons, and thereby produce a plausible account of national defence, or to show decisively why the institutional reasons, and the conclusions about national defence, should be rejected outright (or indeed to ground a plausible account of national defence without appeal to institutional reasons).

## *7. Conclusion*

Recent philosophical work on the ethics of war has inadequately accounted for the moral importance of winning putatively justified wars. It has focused on showing when the protection against being attacked is lost, instead of identifying the positive reasons that can justify fighting. This neglect is unsustainable. Even to establish liability, we need to know why winning matters so much. And if I'm right, and warfare almost always requires both intentionally and collaterally killing the innocent, then we need some very strong

arguments for fighting, if warfare is to be justified at all. But the dominant view's neglect of the moral importance of winning is not, I think, merely contingent, but instead seems to derive from some of its strong commitments—in particular, its individualism, its impartiality, and its focus on interpersonal ethics, to the exclusion of institutional morality. Properly accounting for the importance of winning, specifically in wars of national defence against a less than murderous aggressor—may require giving greater weight to less individualistic moral reasons, acknowledging the limits of impartiality, and not basing our assessment of warfare on a model in which unassociated individuals fight in a state of nature. Now, I've only tried to make a start in this paper, not to prove anything decisively. Perhaps the dominant view can develop an account of the moral importance of winning that fits with its individualism/impartiality/interpersonal focus, and I look forward to seeing philosophers committed to this view try to fill that gap. Additionally, perhaps we should reject the conclusion that wars of national defence against non-murderous aggressors are permissible. And again—I'd be happy to see advocates of the dominant view openly concede that radical implication. One thing that must be clear, however, is that there is a problem here that needs to be solved—philosophers assessing the ethics of war can no longer leave the moral importance of winning as a black box, which we assume can be filled at a later date.