

Cosmopolitanism, just war theory and legitimate authority

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The just war tradition is divided into three sets of principles: *jus ad bellum*, which sets out the conditions under which an entity may resort to war; *jus in bello*, which prescribes how soldiers may fight in war; and (a more recent addition) *jus post bellum*, which delineates the rights and duties which belligerents have *vis-à-vis* one another once the war is over.¹ At the bar of *jus ad bellum* traditionally understood, a war is just if, and only if, the harms it causes are outweighed by the goods it brings about, and if it is waged for a just cause, to just ends and by a legitimate authority.

The requirement of legitimate authority, though central to medieval and modern interpretations of the tradition, has received less attention in the contemporary literature than other conditions for a just war. It stipulates who can judge whether the war is just (whether it has a just cause, would be a proportionate response, etc.), as well as who can act on the basis of that judgement. Those two stipulations need not coincide. Thus, it is entirely coherent to say on the one hand that anyone can reach a judgement on the justness of the war, and on the other hand that only some actors can resort to war. In fact, very few philosophers take the view that no one except legitimate war-wagers can judge whether the war is just. Accordingly, the requirement of legitimate authority applies in practice to the right to wage war, rather than the right to express a judgement about the war. Although it pertains to the decision to wage war, it has a crucially important role *in bello*: members or agents of a legitimate authority, typically uniformed soldiers, can kill with impunity (provided they abide by the other requirements of *jus in bello*) once the war has started, and this precisely because they kill on behalf, and at the behest, of a legitimate authority. On the standard interpretation of the requirement, it is enough, for soldiers to be allowed to commit acts of killing in the course of a war, that they belong to the army of a legitimate authority, and

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¹ For a fourth set of principles, which regulates the ending of wars, see D. Moellendorf, 'Jus ex bello', *Journal of Political Philosophy* 16: 2, 2008, pp. 123–36.

this even if the particular war which that authority is waging is unjust at the bar of some other requirement(s) of *jus ad bellum*.

What counts as a legitimate authority is of crucial importance here. As standardly interpreted in the modern European era, the requirement of legitimate authority confers the right to resort to war on states and coalitions of states—to wit, on sovereign political organizations with the power to enforce laws within a given territory. It is true that, in the aftermath of colonial wars, the status of lawful belligerent has been conferred on political movements engaged in so-called ‘wars of liberation’, which have typically been fought against oppressive foreign rulers.² In so doing, however, the tradition does not depart from one of its central aims, to wit, justifying states’ right to resort to violence in defence of their territorial integrity and political sovereignty. Rather, it strengthens the principle by widening its scope, since it now implies that colonial wars, fought as they are by national communities which are wrongfully denied the attributes of state sovereignty, ought to be regarded as a kind of interstate war. Moreover, although wars of humanitarian intervention are regarded as morally permissible in some cases by a growing number of scholars, the presumption still is that in the overwhelming majority of cases, a state, *qua* state, holds the right to defend its interests by resorting to war.

In contrast to the still rather statist overtones of the just war tradition, the literature on the ethics of international relations has been characterized over the last two or three decades by a revival of the cosmopolitan tradition, whose central tenets, across its many variants, are the following: (a) individuals are the fundamental units of moral concern and ought to be regarded as one another’s moral equals; (b) whatever rights and privileges states have, they have them *only* in so far as they thereby serve individuals’ fundamental interests; (c) states are not under a greater obligation to respect their own individual members’ fundamental rights than to respect the fundamental rights of foreigners. According to cosmopolitans, individuals’ basic entitlements are independent of political borders, and states have authority to the extent that they respect and promote those entitlements.

Interestingly, the principle of legitimate authority has been criticized in some recent writings on war for not taking on board the implications of (independently defended) cosmopolitan accounts of state legitimacy. If states are subject to stringent legitimacy conditions as outlined above, the criticism goes, then they do not hold the right to wage war simply by virtue of being a state. Rather, the right to resort to war should be vested in supranational institutions as well as (or indeed, rather than) states: on that view, war becomes a mechanism for enforcing cosmopolitan moral norms, rather than a mechanism for resolving interstate disputes.³

As should be clear, this cosmopolitan account of legitimate authority urges us to widen its scope to include supranational institutions. While I do not deny that

² See articles 1(4) and 44(3) of the 1977 Protocol Additional to the Geneva Convention of August 12, 1949 Relative to the Protection of Victims of International Armed Conflicts.

³ See e.g. M. Kaldor, *New and old wars* (Cambridge: Polity, 2006); D. Rodin, *War and self-defence* (Oxford: Oxford University Press, 2002); Simon Caney, *Justice beyond borders* (Oxford: Oxford University Press, 2005), pp. 204ff.

such institutions have the (moral and legal) right to wage war, my aim in this article is to cast doubt on the cogency of the requirement of legitimate authority itself—on cosmopolitan grounds. From a cosmopolitan point of view, I argue, there are very good reasons for dropping the requirement altogether. After sketching out a plausible cosmopolitan account of justice in the next section, I show in the following section that a war need not be waged by a legitimate authority in order to count as a just war. I then defend my argument from some objections before setting out some of its implications.

Before proceeding further, I should stress that the article does not purport to examine the principle of legitimate authority as articulated in positive law. In so far as it aims to contribute to just war theory, its focus is firmly and unambiguously on belligerents' moral rights and obligations. Moreover, although some of the claims which I defend here have Lockean undertones, others differ substantially from Locke's remarks on state legitimacy, conquest through war, and revolutionary wars, as found in the *Second treatise of government* (chapters xvi and xix). With Locke, I will argue (a) that a state is legitimate to the extent that it protects its members' fundamental rights; (b) that a people may resort to war to overthrow an illegitimate state; (c) that individuals acting alone have the right to go to war against unlawful foreign belligerents. Unlike Locke, however, I do not claim that a state is legitimate if, and only if, it rests on the people's consent. Nor do I restrict the conferral of the right to wage a (civil) war on a whole people, through a *levée en masse*. Finally, my arguments in support of my Lockean conclusions are drawn from the contemporary literature on cosmopolitanism, to which I now turn.

Cosmopolitanism

Cosmopolitanism admits of several variants. One can, for example, be a utilitarian, consequentialist or deontologist cosmopolitan. Whichever kind of cosmopolitan one is, however, one will subscribe to the view that human beings are the fundamental units of moral concern and have equal moral worth, irrespective of group membership (cultural, familial, ethnic and national). Cosmopolitan morality is thus individualist, egalitarian and universal.⁴ Clearly, that does not tell us much about the specific political principles which a cosmopolitan must endorse. In this article, I shall assume (rather than fully defend the view) that all human beings have rights to the freedoms and resources they need in order to live a minimally flourishing life. Those rights are properly regarded as human rights, are thus held by all wherever they reside, and, more controversially, are held *against* all, wherever they reside. In order to lead a minimally flourishing life, I submit, individuals must be autonomous: that is, they must be capable of, and have opportunities for, making meaningful, identity-conferring choices as to how to lead their lives. They must also have well-being, where well-being means not being subject to constant

⁴ Cosmopolitanism has received considerable attention in the last few years. My account of it owes much to, among others, Caney, *Justice beyond borders*; C. Jones, *Global justice: defending cosmopolitanism* (Oxford: Oxford University Press, 1999); D. Moellendorf, *Cosmopolitan justice* (Boulder, CO: Westview, 2002).

or severe physical or psychological suffering, being well fed, being warm, etc., independently of the fact that to be in such states might help us achieve our goals. According to cosmopolitan morality (as understood here), individuals have rights to the resources and freedoms necessary for them to have well-being and to implement the meaningful choices which they make as to how to conduct their lives.

Note that the justification for conferring those rights is some universal property of human beings, namely what counts as a minimally flourishing life for such beings, for which some freedoms and resources are needed. As a result, it would be incoherent to exclude some individuals from the category of human rights bearers on the grounds that they belong to a particular race or gender. By the same token, it would be incoherent to exclude some individuals from the category of human rights bearers on the grounds that they live in one country rather than another. In other words, it would be incoherent to deny individuals those freedoms and resources on grounds that are irrelevant to their need for them. Moreover, although an individual who is responsible for lacking the resources he needs in order to lead a minimally flourishing life may well, on some accounts of distributive justice, lack a (human) right to receive help, someone who is not responsible for his predicament clearly does have such a right.⁵ Human rights, thus, are held by all agents against all, irrespective of political borders.

The foregoing account of human rights clearly allows for their ascription to groups as well as to individuals. Broadly speaking, group rights are of two kinds. Corporate rights are conferred on a group as a whole, on the grounds that the group as such has moral status, and has interests of its own which warrant protection. By contrast, collective rights are conferred on individual group members on the grounds that, as such members, they have interests which warrant protection.⁶ The difficulty, here, is to construct an account of collective rights which clearly differentiates them from individual rights. I shall assume that collective rights secure communal goods, to wit, goods which can only be enjoyed by several people, and whose worth for any one member of the group depends on their worth for other such members. Those goods cannot be the subject of individual rights, since what grounds the right is not the interests of individuals taken singly. At the same time, those rights can be human rights precisely because they protect interests which are fundamentally important to (most) human beings.

Contrast, for example, individuals' fundamental interests in not being tortured or in being free to practise their religion, and their interest in political self-determination. The former two are interests of individuals as such, in that their worth

⁵ Whether or not individuals should bear the costs of their bad choices is a central debate in the literature on distributive justice. For the view that they ought not, see e.g. E. Anderson's spirited critique of luck egalitarianism, 'What is the point of equality?', *Ethics* 109: 2, 1999, pp. 287–337. For the view that they ought, see e.g. R. Arneson, 'Luck egalitarianism and prioritarianism', *Ethics* 110: 2, 2000, pp. 339–49. For a nuanced treatment, see A. Mason, *Levelling the playing field: the idea of equal opportunity and its place in egalitarian thought* (Oxford: Oxford University Press, 2006).

⁶ For the distinction between corporate and collective rights, see P. Jones, 'Group rights and group oppression', *Journal of Political Philosophy* 7: 4, 1999, pp. 353–77. My account of group rights closely follows Waldron's, in his 'Can communal goods be human rights?', in J. Waldron, *Liberal rights* (Cambridge: Cambridge University Press, 1993), pp. 353–4.

for each individual can be understood without reference to the worth of those very same interests for other individuals. Political self-determination, on the other hand, is a paradigmatic example of a communal good. Clearly, it is of value to individuals only if their fellow community members also value it. Suppose that my community is recognized as a state by the international community and that elections are being organized in it for the first time. If I am the only one to participate in those elections, the fact that my community is in a position to determine its own future is of no value to me, since those elections cannot result in anything which one would regard as an expression of popular sovereignty. Moreover, it has that kind of value *to me* only in so far as *I* am a member of this particular community. However—and this is crucial—political self-determination is of value to individuals to the extent that it enables each of them to have a say in the way the social and political environment in which they live is shaped. In turn, it is of value to them to the extent that having such a say makes it more likely that their human rights will be respected, and thus contributes to their prospects for a minimally flourishing life. It is precisely because it is instrumentally valuable to the promotion of such prospects that political self-determination on the one hand can be protected by a collective *human* right, and on the other hand is fully compatible with the cosmopolitan ideal of *individual* human rights.⁷ With those assumptions in hand, let us turn to the requirement of legitimate authority.

Non-political actors and the right to wage war

According to this requirement, only an organization that has the authority to make and enforce laws over a given territory, and has a claim to be recognized as such by other comparable organizations, holds the right to go to war. That view gained ascendancy, at least in Europe, over a long period of time lasting from about the fourteenth to the end of the eighteenth century, prior to which the right to make war was gifted, not merely to the sovereign, but to any prince who had the wherewithal to raise an army and buy its loyalty.⁸ It found its clearest expression in the writings of, among others, Augustine, Aquinas and Pufendorf. As Augustine avers in *Contra Faustum* (XXII, 74–5), war must be declared by a legitimate authority,

⁷ The instrumental defence of political self-determination which I sketch out here mirrors instrumental defences of *national* self-determination such as found in e.g. Caney, *Justice beyond borders*, pp. 177–81; A. Buchanan, *Justice, legitimacy, and self-determination: moral foundations for international law* (Oxford: Oxford University Press, 2004); Moellendorf, *Cosmopolitan justice*. It is worth noting that Moellendorf, unlike Caney, claims that a war of humanitarian intervention can be just even if it is not sanctioned by a legitimate authority. The principle of legitimate authority might indeed make for a better-ordered world, he claims, but in so far as order is instrumental to the justice, it is trumped by it. Accordingly a war of intervention which would restore justice can be just, precisely for that reason, even if it has not been waged by a legitimate authority. Though his claims mostly pertain to humanitarian wars, he believes that they hold for any kind of war (*Cosmopolitan justice*, pp. 121, 142, 158ff.). I agree with his conclusion (that from a cosmopolitan perspective, legitimate authority is not necessary to the justness of a war) but deploy a different argument for it.

⁸ As did the principle of state sovereignty, by virtue of which the state, and only the state, was entitled to exercise potentially lethal force within its territorial borders. For a good account of this process, see B. Coppieters, 'Legitimate authority', in B. Coppieters and N. Fotion, eds, *Moral constraints on war* (Lanham, MD: Lexington, 2002), pp. 41–4. For a general discussion of the *ad bellum* requirement of legitimate authority, see A. J. Coates, *The ethics of war* (Manchester: Manchester University Press, 1997).

so that a soldier, acting as he does under orders from the prince, does not violate God's proscription against killing. Likewise, Aquinas insists in *Summa Theologiae* (II-II, Q. 40) that war should be waged by a legitimate authority—to wit, the ruler—as a precondition for its being a just war. In a similar vein, Pufendorf insists in *On the duty of man and citizen* that 'the right of initiating war in a state lies with the sovereign' (paragraphs 16–18).

The rationale for restricting the conferral of the right to wage war to public, sovereign authorities is the following. Wars are normally fought in defence of communal, state interests, such as sovereignty and territorial integrity. Whether or not such interests are under threat, and thus warrant resorting to war, is a matter for public judgement on the part of the agent which has been entrusted with the task of defending those interests. Moreover, killing is generally wrong and its occurrence must be restricted as far as possible. This in turn dictates against private wars, and in favour of vesting the authority to wage war in the prince, particularly in those cases where communal political interests are at stake.

As we saw in the first section of this article, the status of lawful belligerent is now conferred on national liberation movements.⁹ Those non-state actors are thus regarded as states, on the grounds that they defend 'state values' such as national sovereignty and territorial integrity from, typically, foreign, colonial powers. Interestingly, a people need not be organized into a national liberation movement in order to be regarded as a lawful belligerent: the law of war, and the just war tradition in general, confers legitimacy on a *levée en masse* of a people against its foreign conqueror. By that token, on cosmopolitan grounds, the same legitimacy can easily be conferred on a people which rises up against its own tyrannical state. For a cosmopolitan, states' rights are derived from and constrained by the fundamental rights of their individual members. In so far as a tyrannical state fails to respect those fundamental rights, it has lost its claim to obedience, and thereby its claim that the people not overthrow it by military force.

The troublesome question, for cosmopolitanism, is whether or not it is a necessary condition for an agent to have the authority to wage war that it be a political community of some kind, organized around communal political ends. I shall argue here, on cosmopolitan grounds, that non-political groups, as well as individuals themselves, can have the right to go to war. In other words, a cosmopolitan account of the just war must renounce the requirement that a war be declared by a legitimate authority in order to be just.

As we saw above, the force of the requirement of legitimate authority partly depends on the soundness of the view that war is the exercise of lethal force in defence of communal, political ends—paradigmatically, national sovereignty and territorial integrity. That is, state B is standardly thought to have a just cause for waging war against A if A launches a military attack against it, such as to threaten its sovereignty and territorial integrity. A cosmopolitan can happily endorse that

⁹ Throughout this article I shall call a legitimate authority engaged in a war a lawful belligerent—as a parallel to the term 'lawful combatant', which refers to uniformed soldiers who fight at the behest of a legitimate authority.

view, on the grounds that violations of B's political sovereignty and territorial integrity threaten its members' fundamental human rights. However, not all such rights are rights to communal goods; most such rights, in fact, are rights to goods and freedoms the provision and protection of which are of central importance to individuals *qua* individuals. Accordingly, there is every reason, at the bar of cosmopolitan morality, to broaden the range of just causes for waging war to include violations of individual basic rights, as well as violations of collective, political rights. If both kinds of rights protect central aspects of individuals' prospects for a minimally flourishing life, then the violation of either can constitute a *casus belli*.

The principle of legitimate authority is thus the weaker for that particular reinterpretation of the just cause requirement. But there are further reasons for doubting the cogency of the principle. Consider the following example. State A is guilty of gross human rights violations against religious group B. It has closed all of B's churches, maintains surveillance operations on suspected religious leaders, and routinely sends henchmen to kill and torture individual members of B. B's members are denied any kind of protection—either from their own state A, if they are a minority within A, or from their own government, if they belong to a different political community from A. As we have just seen, B does have a just cause for using lethal force against A. A cosmopolitan who insists that war, in order to be just, must also be waged by a legitimate authority such as a state or supranational institution is thus committed to the following view: that B cannot wage a *just* war against A, but that it would have been able to do so had it been a state. And yet, so to deny B the status of a lawful belligerent is misguided, *on cosmopolitan grounds*. Cosmopolitanism, you recall, is committed to the view that all human beings have human rights to the goods and freedoms they need in order to lead a minimally flourishing life—irrespective of residence, gender, race and so on. Put differently, individuals ought not to be denied those goods and freedoms on the grounds that they belong to a particular group, race or gender, when their membership in that group is irrelevant to their need for the goods and freedoms which those rights secure. I submit that the right to protect oneself from violations of one's human rights by others is a *human* right, in the sense that it is a right to a freedom (to wit, the freedom to defend oneself, without interference, against others) which we need in order to lead a minimally flourishing life. By extension, the right to wage a war in defence of one's human rights should also be conceived of as a human right. If that is so, it cannot be denied to some groups of individuals on the grounds that they lack some characteristic or other, when lacking or possessing those characteristics is irrelevant to their fundamental interest in being able to protect their rights. Whether or not a group is a national liberation movement or a state, or is organized into a supranational institution, is precisely one such characteristic.

To recapitulate, it is not necessary, for an entity to have the right to wage a war, that it be a legitimate authority. Is this to say, then, that the right to wage war can be held by individuals acting alone? At first sight it seems not, at least by definition. For war, if we are to rely on the *Oxford English dictionary*, is defined as 'hostile contention by means of armed forces, carried on between nations, states,

or rulers, or between parties in the same nation or state; the employment of armed forces against a foreign power, or against an opposing party in the state'. That definition seems to rule out the possibility that an individual can have the right to wage war, for the obvious reason that one person makes neither a party nor armed forces. It is not entirely clear, however, that war must, by definition, oppose armed *groups* of individuals. Suppose that one individual detonates a very powerful bomb in the underground, thereby releasing lethal chemicals and killing thousands of commuters, on the grounds that the government is guilty of violating the basic rights of some minority, and with a view to overthrowing that government. It would seem odd to maintain that he is *not* committing an act of war. The question, rather, is whether, acting alone as he does, he can have the right to commit that act. Put more generally, the question is whether, *if* all other requirements of *jus ad bellum* are satisfied, the mere fact that a lone individual is destroying property and human life warrants the conclusion that his war is unjust. That is a substantive, normative issue, which cannot be resolved by definitional fiat.

Interestingly, the thought that individuals, in their private capacity, have the right to wage war draws support from both Vitoria and Grotius. Thus, Vitoria claims that 'any person, even a private citizen, may declare and wage a defensive war' (*On war*, Q. 1, 2–3). When his act of war is a response to an imminent threat to his life or property, he needs not obtain permission for it from a public authority. Similarly, Grotius is quite clear in *The rights of war and peace* that a private man may wage war against his own state if no legal recourse is available (I-3), as well as against a sovereign other than his own (I-4, I-5). This is not to say that private and public wars do not differ in morally important ways. According to Vitoria, for example, a commonwealth may, but a private individual may not, wage a punitive war (*On war*, Q. 1, 2–3). According to Grotius, when a war endangers the state itself, the sovereign authority alone has the right to start it (*The rights of war and peace*, I-III-IV). Still, the fact remains that, on principle, individuals may sometimes go to war, without permission from the sovereign, in defence of their fundamental interests in life and property. In an age—ours—where the primary targets of belligerents are civilians who can expect little by way of protection from their state, Vitoria's and Grotius's point is worth bearing in mind.¹⁰

And in fact, the very reasons which militate against conferring the right to wage war on political communities only also tell against conferring it on groups only. Consider. As we saw above, whether or not a given entity is a political community cannot dictate whether it has a right to wage war in defence of its members' basic rights. By the same token, whether or not an individual is a member of a group cannot dictate whether that individual has a fundamental right to protect his own basic rights. Moreover, as we also saw in the previous section, cosmopolitan morality holds that individuals' prospects for a minimally flourishing life ought not to be jeopardized for reasons beyond their control. Accordingly, conferring

¹⁰ For convincing accounts of the changing character of wars, and in particular for defences of the view that contemporary wars are fought mostly against civilians, see e.g. Kaldor, *New and old wars*; H. Münkler, *The new wars* (Cambridge: Polity, 2005), esp. ch. 1.

the right to wage war on groups only, and not on individuals, is to penalize the latter for something for which they are not responsible, to wit, not belonging to a group which, for example, has a just cause for going to war, or is able and willing to go to war. In a nutshell, why grant B as a group the right to wage war on A, and deny that right to its individual members? To be sure, if a single individual were to wage a war against a state on the grounds that the latter has violated his fundamental human rights, he would in all likelihood fall foul of the requirement that war should have a reasonable chance of success. This would lead us to deny him the right to wage that particular war. But it would not, in and of itself, rebut the radical claim that he can hold the right to wage war in general.

Three objections

In the remainder of this article, I rebut three objections to my claim that a war can be just even if it is not fought by a legitimate authority.

First objection

To begin with, let me dispose of a three-pronged cosmopolitan argument against the view that a lone individual can hold the right to wage war against a political community.¹¹ First, it is sometimes argued that a lone individual generally cannot take the law in to his own hands whenever a political community commits a wrong against him (whether or not it is *his* political community): he should, instead, go through legal channels. Second, in so far as there is considerable disagreement as to when, and how, war can or should be waged, we need a legitimate authority such as a political community—and preferably a state or supranational institution—to make such decisions. Third, in so far as war can only be conceived of as an operation of law enforcement and punishment, and in so far as only legitimate authorities such as states or unions of states can enforce the law and punish wrongdoers, only legitimate authorities of that kind can have the right to wage war.¹²

This argument in favour of the collectivist interpretation of the legitimate authority principle is cosmopolitan in that it need not—and in fact, as articulated by its proponents, does not—vest the right to wage war in states only. Rather, it vests that right in supranational, democratic, institutions or, indeed, a global state, the legitimacy of these bodies being in turn defended by appealing to their ability to protect and promote human rights. However, it remains unconvincing. For a start, insisting that individuals go through legal channels rather than take the law into their own hands will not do in those cases where they do not have access to such legal channels—either because their aggressor is their own state, or because

¹¹ For the first and second prongs, see Caney, *Justice beyond borders*, p. 206; for the third prong, see Rodin, *War and self-defence*, pp. 174–88.

¹² The second point highlights an interesting difference between the account of the just war defended here and that given by Grotius: Grotius, you recall, holds that individuals can have the right to wage war, unless the war concerns state interests. As for the third point, it brings out yet another interesting contrast, this time between Rodin's account and Vitoria's: the latter, as we saw above, is open to granting individuals the right to wage war, unless the war is punitive.

their state, which is supposed to defend them against their foreign aggressor, is unable or unwilling to do so. If they could go through legal channels, they would indeed lack the right to wage war against their state *in that particular instance*, since they would fall foul of the *jus ad bellum* principle of last resort.¹³ However, here again, this would not, in and of itself, rebut the claim that they may, as individuals acting singly, have the right to wage war in general.

Relatedly, assuming for the sake of argument that war is indeed an operation of law enforcement and punishment, to insist that only legitimate authorities can enforce the law and punish offenders, and thus have the right to wage war, does not work in cases where the offender is, precisely, that organization which claims such authority over its victims. In addition, to insist that individuals entrust a legitimate authority with the right to decide on such controversial issues such as when and how to wage war will not do in cases where there is disagreement as to what counts as such an authority. The point is particularly apposite in the case of civil wars, which arise precisely because insurgents deny that their state has the authority to make and enforce laws over its territory.

Finally, as applied to the case of interstate wars, the objection fails to cater for cases where there is no organized institution which can exercise the right to wage war on behalf of those who have been the victims of unjust aggression. To be clear, my claim is not that an individual has the authority to wage war against a foreign aggressor whenever her country is attacked, irrespective of what her own state might do. In fact, to the extent that she would be better off by transferring the meta-right to protect her human rights to an organization like the state, it is in her interest that she should do so. Should the state fail to protect those rights, however, I submit that the meta-right to protect fundamental human rights reverts to individuals.¹⁴ On that view, and in line with the cosmopolitan account of state legitimacy articulated in the second section of this article, the state's right to wage war is one which it has precisely in so far as it is better than individuals at protecting their fundamental human rights through the use of lethal force. If the state is unable or unwilling to wage war on behalf of its individual members, the right to do so reverts to the latter.

Second objection

A second objection to the view that individuals can have the right to go to war might go like this.¹⁵ Let us return to the example of A's religious persecution of

¹³ The principle of last resort has been criticized for being impossible to follow (strictly speaking, the war is never the option of last resort) and for being at odds with the principle of proportionality (waiting until one has reached the point of last resort before resorting to war might lead to far more casualties in the longer run). Those difficulties notwithstanding, the principle has a point—namely, that one must at the very least explore other, peaceful, options, or coercive options falling short of war, before resorting to war.

¹⁴ For a similar account of state legitimacy, see e.g. Buchanan, *Justice, legitimacy, and self-determination*; Caney, *Justice beyond borders*; R. Gargarella, 'The right of resistance in situations of severe deprivation', in T. Pogge, ed., *Freedom from poverty as a human right: who owes what to the very poor?* (Oxford: Oxford University Press, 2007).

¹⁵ It was presented to me at the LSE's Government Department seminar on 15 March 2006.

B. Imagine that an individual member of B has the wherewithal to wage a war, on his own, against A, and let us accept that the violation of his fellow members' basic right to religious freedom provides him with a just cause. Notwithstanding the justness of his cause, the objection would go, this particular individual cannot hold the right to go to war against A. For in so far as he would act on behalf of his fellow victims, he would, on their behalf, inflict significant damage, suffering and death on some other individuals. Moreover, his actions would in all likelihood lead A to inflict greater harms on B, for example by way of reprisals. Even if the harms occasioned by this particular war would not violate the principle of proportionality, the objection would press, a lone individual does not have the authority, and thus lacks the right, to bring about either of these consequences, at least if he does not have the consent of the individuals on whose behalf he acts—a consent which, as a lone individual, he is not in a position to secure.

This putative objection to the view defended here has intuitive force, but ultimately proves too much. For if it applies to the view that individuals alone can have the right to wage war, then it must also apply to the view that a government can have that right. This is because any government which wages a war does so (or at least claims to do so) on behalf of its people, and in turn risks subjecting its people to lethal retaliatory measures taken by the enemy. However, in many cases, neither groups nor governments might be in a position to secure the consent of those on whose behalf they act. Ought we to insist, though, that they should do so on pain of lacking the relevant right?

At this juncture, a proponent of the requirement that a war be fought by a legitimate authority might insist that such an authority is in a position to secure the consent of its members, by having the latter's elected representatives formally endorse the decision to go to war.¹⁶ Clearly, however, the fact that those representatives support the war is no reliable indication that their constituents—those very individuals on whose behalf the government claims to fight, and who will pay the costs of the war—actually approve that decision as well. Thus, on 19 March 2003 the British House of Commons voted by 412 to 149 votes in support of Mr Blair's decision to go to war against Iraq alongside the United States—a decisive parliamentary victory for Mr Blair's government; and yet it is far from clear that a correspondingly sizeable majority of the British people approved of the war at the time.¹⁷

More importantly, perhaps, the requirement that a war-wager should secure the consent of those on whose behalf it fights as a condition for deeming the war just seems impossibly demanding, in so far as it would deem unjust wars of which we surely would want to say that they are, or were, just wars. Thus, in the

¹⁶ See e.g. O. O'Donovan, *Just war revisited* (Cambridge: Cambridge University Press, 2003), pp. 25–7. A proponent of that move thus argues not merely that individuals cannot hold the right to wage war, but also that non-political groups lack that right as well.

¹⁷ Polls conducted from January 2003 up to the invasion of Iraq in March 2003 in the UK, most notably by ICM, suggest that about 40% of those polled opposed any invasion undertaken without a UN mandate, while about 40% opposed it with or without such a mandate. On 20 March Anglo-American forces invaded Iraq, without a UN mandate. For the relevant sources, see <http://www.icmresearch.co.uk>, accessed 28 July 2008.

immediate aftermath of the attack on Pearl Harbor, all members of the United States Congress, bar one, voted in favour of declaring war against Japan, Italy and Germany: this too was a decisive victory for the administration in power which, on this occasion, had the support of the majority of the American people.¹⁸ It would seem unreasonable to insist, however, that this particular war, as fought by the United States, would have been unjust had Roosevelt dispensed with the approval of Congress, or indeed with the approval of the American people: if any decision to go to war is to be deemed just, this one surely is.

If, then, it is not necessary that a state be able to secure the consent of its people in order for its war to be just, it is not necessary that an individual acting alone, or a group, be able to secure the consent of those on whose behalf they go to war, in order for their war to be just. This particular objection to the view that just war theory ought to jettison the principle of legitimate authority thus fails.

Third objection

A third objection might succeed, however, along the following lines: individuals and groups who go to war are more likely to act in breach of the (*jus in bello*) principle of non-combatant immunity than states are when waging war against other states, so that we ought to view the claim that non-state actors can rightfully wage war with extreme caution. The reasons why that is so are twofold.¹⁹ First, individuals and private groups typically are weaker, from a purely military point of view, than the state which they are fighting (be it their own or not). As a result, they more often than not invoke the requirement of necessity ('we must do whatever is necessary to win the war') to justify acts of killing non-combatants which would not be necessary, and thus would not be permitted, in wars whose actors have comparable military strengths and weaknesses. Second, wars which are fought by private actors are more often than not justified by belligerents on the grounds that the whole order which they seek to overthrow is oppressive. That, in turns, leads them to identify as combatants anyone who acts for, and supports, that order, including those who would be regarded as non-combatants in interstate wars.

The foregoing points in support of the principle of legitimate authority do not strike me as persuasive. For a start, measured in millions of lives lost, and if the history of the twentieth century is anything to go by, it is unclear that more non-combatants have been killed in wars involving private actors than in interstate wars.²⁰ In any event, even if the objection's central claim is correct—namely, that

¹⁸ For a fascinating account of American public opinion and the United States' war against Nazi Germany, see S. Casey, *Cautious crusade: Franklin D. Roosevelt, American public opinion, and the war against Nazi Germany* (Oxford: Oxford University Press, 2001).

¹⁹ See Coates, *The ethics of war*, pp. 131–4. Although Coates makes his point in the context of civil wars, it can easily apply, *mutatis mutandis*, to transnational conflicts.

²⁰ My point is compatible with the well-established fact that civil wars kill more civilians than they kill soldiers (see e.g. Kaldor, *Old wars and new wars*). Death tolls in twentieth-century wars are a matter of dispute, not least because of the difficulties inherent in acquiring reliable data. For a list of available sources and estimated death tolls in post-1945 conflicts, see M. Littenberg, 'Deaths in wars and conflicts between 1945 and 2000', Cornell University Peace Studies Program, occasional paper 29, at <http://www.cissm.umd.edu/papers/display.php?id=153>, accessed 28 July 2008.

private belligerents violate the principle of non-combatant immunity more often than states or supranational institutions do—its lesson is limited. For it merely suggests that we are more likely to arrive at the conclusion, *ex post* and in specific instances, that private belligerents in a particular case have breached the principle, and thus that their war was unjust, than we are to do so in cases where wars are fought by public belligerents. But it does not support the conclusion that the right to wage war should be conferred only on states, coalitions of states or supranational institutions.

Conclusion

To conclude, I have argued that, at the bar of cosmopolitan justice, the right to wage a war can be vested in groups of individuals and in individuals acting alone, and not only in political organizations with the authority to make and enforce laws on a given territory. In a nutshell, we should dispense with the requirement of legitimate authority. At this stage, let me highlight three of the issues which both my conclusion and my defence of it raise. First, one might wonder how the justness, or lack thereof, of a war could be assessed, without a legitimate authority. As we saw, the requirement does not merely pertain to the right to wage war; it also finds its justification in the perceived necessity of entrusting someone with the task of reaching judgements about the war. However, if cosmopolitans must jettison the requirement, as I have argued that they must, are they not committed to endowing all and sundry with the right to reach such judgements? If so, many would regard that implication as worrisome, particularly if those judgements are to form the basis of *post bellum* criminal convictions (e.g. for the crime of aggression). Now, I cannot, within the scope of this article, provide a full account of the implications of abandoning the requirement of legitimate authority for the activities of war crime tribunals which have to judge the justness of an authority-less war. Let me simply note, by way of reply, that we generally do not need a state, or a state-like entity, to judge the permissibility of a particular act of force. Thus, the fact that a British court found against defendants who, while lost at sea, had killed and eaten a cabin boy, is irrelevant to the determination of that act (murder and cannibalism in the face of necessity) as permissible or not.²¹ Likewise with war. Judgments about its justness, or lack thereof, can be reached independently of state-defined standards. Moreover, nothing I have said here denies that the existence of a legitimate authority to determine the resort to war is on the whole preferable to a state of affairs where private actors resort to force. In fact, both my argument and the conclusion which it supports are compatible with the view that, *all things considered*, individuals ought not to resort to war against some enemy, when there is such a thing as a legitimate authority which is in a better position for reaching, and acting on, judgements as to the justness of the cause, the appropriateness of the means, and so on (if only because, as we saw, such a war is more likely to stand a reasonable chance of success). More modestly and plausibly,

²¹ *R. v. Dudley and Stephens* ([1884] 14 QBD 273 DC).

I have shown that the fact that a war is not waged by a legitimate authority, such as a state, a coalition of states, international institutions or a political liberation movement, is *not* sufficient to deem that war unjust.

Second, as I noted at the outset of this article, the requirement does not merely serve to identify lawful belligerents *ad bellum*. It also serves to confer on their uniformed soldiers the permission to kill other soldiers, once the war has started, with impunity—and this even if the war is unjust. If the requirement is unsound, then whether or not uniformed soldiers are lawful combatants solely depends on the war's conformity with other requirements of *jus ad bellum*, particularly the just cause principle.

Third, my argument for conferring on non-political groups and individuals the right to wage war relies heavily on the claim that group membership is morally irrelevant to individuals' fundamental human rights, which include, precisely, the right to go to war. On the face of it, that would seem to allow for the conferral of that right on economic actors, such as multinational corporations—a point which Grotius would accept, but which many would find deeply unpalatable. Taken together, those two thoughts seem to imply that mercenaries and private military corporations can, if the war in which they fight is just, have the right to take part in it—again, not a particularly attractive stand for many.

I lack the space here to deal with those admittedly controversial issues. Let me simply caution against the urge to condemn and reject cosmopolitan justice on the grounds that it does seem to have those difficult implications. To reject it is, in effect, to deny that individuals are one another's moral equals irrespective of political borders, and that they have the right to defend, by force if necessary, their fundamental human rights. To my mind, such a move would be tantamount to throwing the baby out with the bathwater.