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RIGHTS, JUSTICE AND WAR: A REPLY*

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ABSTRACT. I offer a response to Rodin's, Statman's, Stiliz's, and Tadros' papers on my book *Cosmopolitan War*.

I should begin by recording my gratitude to Jonathan Quong, who organized the workshop (at the University of Manchester's MAN-CEPT centre, which I thank for funding it) where all four papers were initially presented. Victor Tadros, Daniel Statman, Anna Stiliz and David Rodin all make penetrating criticisms of the arguments I deploy in *Cosmopolitan War* and of many of the controversial conclusions I reach therein. While I still stand by most of what I wrote then, their papers each in their own ways have led me to qualify some of my views, and in so doing to clarify for myself what I actually think about both justice and war. I could not have hoped for more incisively constructive critics, and can only apologise for not being able to do full justice to their contributions. In this reply, I discuss each paper in turn, starting with Rodin's and Stiliz's discussions of the account of cosmopolitan morality which is at the heart of my theory of war, before moving on to Statman's and Tadros' criticisms of the latter. I conclude by identifying what I think are the most promising lines of inquiry raised by those four papers.

I. RIGHTS

In *Cosmopolitan War* (as in my other works) I endorse a variant of the so-called interest theory of rights (henceforth, ITR), whereby rights protect some interest(s) of their holders'. By this, I mean to make a

* I am grateful to Jonathan Quong for his comments on the first draft of this paper.

conceptual point about how to define the word ‘right’ and to advance a normative thesis on the best way to think about rights normatively speaking. Now, in his thought-provoking paper, Rodin rejects ITR in favour of a reciprocity theory which, he claims, is better able to explain some important intuitions about rights. In particular, the reciprocity theory explains why duties not to kill are more stringent than duties to save lives and thus why we may not kill another person on the grounds that he fails to fulfil his rights-correlative duty to help those in need, even if the latter will die as a result of that failure. If the reciprocity theory is correct, then it is not true that, as I argue in the book, the affluent’s failure to fulfil their duties of justice to the poor provides the latter with a just cause for war. My defence of what I call subsistence wars is subject to thorough scrutiny in Tadros’ contribution, so I shall say very little about it until Sect. IV. In this section I reject Rodin’s reciprocity theory. If I am correct that the theory should be rejected, my defense of subsistence wars survives his critique.

According to the reciprocity theory, ‘agents can come to possess rights when they comply with the obligations generated by the rights and status of others...Thus, I have the right that you not kill me *because and to the extent* that I comply with your right that I not kill you. Similarly, you have the right that I not kill you *because and to the extent* that you comply with my right that you not kill me’ (p.??).¹ The reciprocity theory allegedly has two advantages over ITR: to repeat, it is better able to account for intuitions about the relative stringency of duties not to kill and duties to save lives; in addition, unlike ITR it provides a unified account of the justification for rights and duties as well as of the conditions under which we possess and lose rights.

Let me take those claims in reverse order. As Rodin notes, justifying a right is not the same as setting out the conditions under which we possess or forfeit it. I agree with him on this point. When we seek to justify Andrew’s right not to have his gun taken away from him, we provide a set of reasons as to why third parties ought not to take Andrew’s gun (my example, not Rodin’s). For example, we might say that we are under an obligation not to harm others’ fundamental interests, which flows from the concern and respect

¹ Page numbers in the text which are *not* prefixed with CW refer to the contributors’ papers in this issue.

which we must show to all persons. That deeper obligation is in turn instantiated by a more specific obligation not to take from persons possessions which they have rightfully acquired. But once we have provided that justification for Andrew's right, we must establish whether he really does have a right not to have his gun taken away from him here and now. And perhaps he does not. For perhaps he is in a great deal of pain, operates under the mistaken belief that he will never recover, and is about to shoot himself. Or perhaps he has acted in such a way as to forfeit his right to his gun, for example by using the gun to pose an unwarranted lethal threat to Barbara which she cannot parry other than by forcibly taking it from him. In the former case, having the gun does not promote his interests; in the latter, he uses it wrongfully to maim another person. In neither case, thus, does he meet necessary conditions for possessing a right to the gun.

In this particular example, the justification for the right also provides one of the conditions for its possession. Moreover, those two necessary conditions for possessing the right are also singly sufficient conditions for its forfeiture. However, in other cases, the justification for the right will not also serve as a condition for possessing it. For example, we might be able to justify Andrew's right not to be killed by appealing to the fact that remaining alive is a fundamental interest of Andrew's. But as Rodin notes, Andrew forfeits his right not to be killed if he poses a wrongful threat of lethal harm to Barbara, even though he still has a fundamental interest in remaining alive. Even if remaining alive is a fundamental interest of his and a necessary condition for his possessing the right not to be killed, what explains his having forfeited that right is not the absence of that interest, since *ex hypothesi* he still has it, but the fact of his attack on Barbara. According to Rodin, this is seriously problematic for ITR. For if ITR unhinges possession conditions from forfeiture conditions, then it can no longer say that (in Raz's canonical formulation) an agent X has a right 'if an aspect of X's well-being (his interest) is a *sufficient* reason for holding some other person(s) to be under a duty'.² To repeat, Andrew's interest in remaining alive is the same before and after he attacks Barbara. Either his attack causes him to forfeit the right, in which case that interest is not sufficient for

² J. Raz, *The Morality of Freedom* (Oxford: Clarendon Press, 1986), p. 166. My emphasis.

possessing it, or the attack does not cause him to forfeit the right, which would preserve the sufficiency claim but be wildly implausible.

I agree with Rodin that Andrew still has an interest in remaining alive once he has attacked Barbara. I also agree that, by wrongfully attacking Barbara, he has forfeited his right not to be killed. But I am not persuaded by Rodin's claim that ITR should find the conjunction of those two claims troubling. As Rodin himself notes, Raz's canonical statement is not meant to provide a *justification* for X's having a right but rather to *define what we mean* when we say that X has a right. And it seems to me that we can on the one hand accept that definition, and on the other hand embark on the separate task of elucidating when X's interest is important enough to warrant imposing duties on others. Proponents of ITR need not wed themselves to the sufficiency claim as made by Raz. All they need to say, in order to endorse ITR, is that rights protect interests and that justifications for rights and arguments in favour of possession conditions must appeal to interests.

Rodin has another reason for preferring the reciprocity theory, which is that under ITR, forfeiture conditions do not share the same deeper rationale as possession conditions and as a result are *ad hoc*. The reciprocity theory avoids the charge of arbitrariness, since it holds that agents have rights only if they are or would be willing to acknowledge reciprocal duties to others, and forfeit those rights just if they are or would be unwilling to reciprocate. Rodin's argument takes the form of an example. We give a gold medal to an athlete who wins the race and take it away from him if he fails the drug test. Passing the drugs test is a necessary condition for possessing a right to the medal, which implies that failing the test is a sufficient condition for forfeiting the right. True, passing the drug test is not the most salient explanation as to why we give a gold medal to the race winner: the salient explanation is that he won. But upon closer inspection, Rodin argues rightly, those two conditions – winning and passing the drug test 'are in fact integrated at a deeper level: they are both complementary aspects of prevailing in a fair competition' (p. ?).

Rodin provides an elegant explanation of the ways in which justificatory reasons, possession conditions and forfeiture conditions

weave together into a unified account of this particular right. However, the right to an Olympic medal is different from the right not to be killed, or indeed the right to assistance, in one crucial respect: whereas individuals have a non-conventional, pre-institutional right not to be killed or a similar right to receive assistance (or so I submit), they do not have a non-conventional or pre-institutional right to get a medal whenever they run 100 m drug-free, for example in a friendly impromptu race between friends at the local park. They have a right to receive a medal for running a 100 m race drug-free only if they take part in a practice – such as the Olympics – whose rules justify the granting of medals and establish conditions for both the possession of the right and its forfeiture. Given that those tasks are carried out by the same set of rules, it is not surprising that possession and forfeiture conditions should be integrated in the way Rodin suggests. By contrast, given that the right not to be killed and the right to receive assistance are not justified by unified conventional rules, and given moreover that (as we have just seen) the fact that an agent should have a given interest is not a sufficient condition either for justifying the right or establishing its possession, it is not surprising that possession conditions should differ from forfeiture conditions. Moreover, it is not clear at all why proponents of ITR should be troubled by this particular kind of ad hocness.

I mention this example for two reasons. First, in so far as I agree with Rodin that more work needs to be done on the notions of rights forfeiture and possession, it is worth noting that, if I am right, conditions for possession and forfeiture will function differently depending on the character of the right as conventional or non-conventional. Second, and as we shall now see, Rodin's reciprocity-based views on rights to assistance draw on conventional accounts of rights, which in turn helps explain two of his central theses: (a) rights not to be killed (which are not conventional) are more stringent than rights to receive assistance (which are partly conventional), so much so that we may kill in defense of the former but not in defense of the latter; (b) rights-correlative duties of assistance to our compatriots (with whom we share a relationship which is strongly mediated by political institutions) are more stringent than rights-correlative duties of assistance to distant strangers (with whom we do not have that kind of relationship).

I have two general worries about the reciprocity theory. It holds that I have a right that you not kill me because I am complying with your right that I not kill you. In addition, 'if it is counterfactually true of a person in need, X, that he would have assisted Y were their circumstances reversed, then this can generate an obligation for Y to provide comparable assistance to X' (p. ?). If I fail to acknowledge my duty to you not to kill you, then you may kill me; if I would fail to acknowledge my duty to assist you were you in need, then you may deny me assistance if I am in need. Thus, when causing harm is concerned, it is reciprocity in actual compliance that matters; when providing assistance is concerned, it is reciprocity in counterfactual reciprocal compliance that matters.

My first worry pertains to the distinction between actual and counterfactual compliance as it is used by Rodin. Going counterfactual, as it were, enables him to block the familiar objection that those in greatest need of assistance are also quite often the least able to reciprocate and so would not have the relevant rights; it is also compatible with the claim that actual failure to reciprocate can also cause the agent to forfeit his right. But Rodin's view has the following implication, namely that if I act at time t_1 in such a way as to wrongfully deny you life-saving assistance were you to need it at t_5 , and if I suddenly need saving myself at t_2 , you may refuse to save me, even if I would die as a result (pp. ??). Rodin accepts this implication, but the difficulty is that there is no suggestion in his account that the failure to save the wrongdoer should be instrumental in securing the victim's survival. In other words, you may refuse to save me even if your failing to save me at t_2 would not stop the causal chain of events which I started and at the end of which you would die at t_5 . I find this troubling. For by the same token, if you subject me to unwarranted lethal force, I may kill you even though (I know that) your death would not in any way enable me to survive. This strikes me as coming very close to justifying killing, and letting die, for punitive purposes – a long way off Rodin's insistent claim in his earlier work that forestalling a threat is the only justification for killing.³

³ At issue here is the question of whether an attacker is liable to being killed only if killing him will be instrumentally successful in thwarting the threat. See, e.g., J. Firth and J. Quong, 'Necessity, Moral Liability, and Defensive Harm', *Law and Philosophy* 31 (2012): 673–701.

Turning now to rights against harm, their possession is conditional upon one's ability and willingness *actually* to reciprocate. By implication, those who are not capable of being duty-bearers such as the comatose or the incompetent cannot possess those rights. In response to this objection Rodin avers that one may be deemed to fulfil a duty without exercising intentional agency. Thus, I fulfil my duty not to kill you at t if I am asleep at t and thus am not exercising any agency at all at t (p. ??). Likewise with the comatose. In so far as they fulfil their duty not to harm, those individuals retain their right not to be harmed.

But this is problematic on two counts. For a start, the claim that exercising intentional agency is not a necessary condition for being deemed to fulfil a duty is in tension with Rodin's characterization of the basic moral-psychological root of reciprocity, namely 'the requirement to give respect and consideration to those who manifest appropriate respect and consideration towards us' (p. ??): clearly, I show no respect or consideration to anyone while I am asleep. Moreover, it is simply not true that, as Rodin avers (p. ??) human beings *qua* human beings display the capacity for moral and rational agency. Many do not and never will, such as the severely mentally disabled, the permanently comatose, and children who will not grow beyond the age of five. Furthermore, to the very best of our knowledge, nonhuman animals are not capable of bearing duties, and hence would not have rights on Rodin's view. Of course, Rodin could bite the bullet. But I wonder how he would justify the common sense intuition that when we (e.g.) subject a cat to a prolonged torture session just for the fun of it, we actually wrong the cat itself – and are not merely displaying the vice of sadistic cruelty.

My second general worry about reciprocity is this. If the reason why I am under a duty not to kill you, or a duty to assist you, is that you (would) acknowledge your own duties towards me, then the *justification* for *your* duties cannot be the value of reciprocity on pain of the argument being circular. To avoid the charge of circularity, the reciprocity theory should say 'I do x for you, so you are under an obligation to do x for me'. The problem, of course, is that if I am not under a (independently justified) duty to do x for you, or if we have not explicitly agreed that we would reciprocate, it is hard to see how my mere doing x for you generates an obligation for you to do x for

me. At the most, thus, reciprocity can only provide an account of forfeiture and possession conditions for rights. *Justifications* for the latter must be found elsewhere.

Still, let us accept the reciprocity theory. Does it show that rights against harm are more stringent than rights to assistance, as per thesis (a) above? I do not think so. As we saw above, there is a crucial difference in the way reciprocity operates in those two cases: 'rights against harm arise from reciprocity in *actual compliance* – I have the right that you not kill me because I am at this moment complying with your right that I not kill you. Rights to assistance, on the other hand, arise from a judgement concerning *counterfactual reciprocal compliance*' (p. ??). This explains why rights against being harmed are more stringent than rights to receive assistance. It is objectively the fact that you are not attacking me right now, and I can know that fact with near certainty: it is thus objectively the fact that you are fulfilling your duty to me not to attack me, and I can know that fact with near certainty, from which it follows that I have no justification for (deliberately) killing you. Contrastingly, it is not objectively the fact that you would help me were I to need your help, and so I do not know with near certainty that you would help me and acknowledge your duty to me, and I am not therefore under as stringent a duty to help you as I am under a duty not to kill you.

However, as Rodin himself acknowledges, sometimes agents have in the past fulfilled their duties of assistance to those in need, on the basis of which their right to receive such assistance themselves is as stringent as their right not to be harmed. To my mind, this is an absolutely crucial concession. Rodin says 'sometimes'. I say 'more often than not'. In fact, in welfare states, taxpayers on-goingly contribute to helping others – every month, one might say, in the course of their taxable working life. Moreover, I know with near certainty of most of my fellow taxpayers that they are contributing. Rights to assistance are thus as stringent as rights against harm in many more cases than Rodin acknowledges.

To be clear, I am not denying that rights against harm are more stringent than rights to assistance: in fact, I explicitly endorse that claim. My objections are to Rodin's argument in favour of it, and (incidentally) to his view that it follows from differential stringency that we may not kill in defence of the latter whereas we may kill in

defence of the former. I develop the latter point in *CW* (pp. 110–112) and will return to it when discussing Tadros' essay in Sect. IV. Meanwhile, let me end with some remarks about Rodin's rejection of cosmopolitanism (thesis (b) above). In a nutshell: we are locked in reciprocal relationships with our compatriots, and those relationships are mediated by political, legal institutions which '[make] it the case that my compatriots would contribute to assisting me in moments of need'. And '[once] a duty to assist is legally enforced (for example through a compulsory social insurance scheme), that very fact provides a strong reason, that would otherwise not exist, to expect that others within the regime would contribute towards assisting me should I be in need' (p. ?). Contrastingly, 'for strangers who are not compatriots within a shared legal framework, the basis of future reciprocity rests on something more tenuous – a shared presumptive understanding of common humanity' (p. ??). Whilst we ought to assume that those strangers would be willing to help us should we need it – which assumption grounds our duty to assist them – the lack of legal structures to enforce their duty to help us means that they are not at the moment providing us with life-saving resources, and that we have weaker grounds for expecting that they will comply in the future than we do in the case of our compatriots. Those considerations in turn explain why our duties to distant strangers are more stringent than our duties to our compatriots.

Rodin's argument echoes the view, espoused by T. Nagel and M. Blake, that agents owe stronger obligations to those with whom they coexist under the coercive apparatus of the state than to outsiders. Of the many arguments which can be and have been raised against that view, let me extract three which are particularly strong against Rodin's reciprocity variant thereof.⁴ First, it is not clear why subjection to the same mechanisms for legal enforcement provides agents with an additional reason to fulfil their duties to one another. Consider the following case. Marital rape (of a woman by her hus-

⁴ T. Nagel, 'The Problem of Global Justice', *Philosophy & Public Affairs* 33 (2005): 113–147; M. Blake, 'Distributive Justice, State Coercion, and Autonomy', *Philosophy & Public Affairs* 30 (2001): 257–296. For criticisms, see, e.g., A. Abizadeh, 'Cooperation, Pervasive Impact, and Coercion: On the Scope (not Site) of Distributive Justice', *Philosophy & Public Affairs* 35 (2007): 318–358; A. Julius, 'Nagel's Atlas', *Philosophy & Public Affairs* 34 (2006): 176–192; A. Sangiovanni, 'The Irrelevance of Coercion, Imposition and Framing to Distributive Justice', *Philosophy and Public Affairs* 40 (2006): 79–110. In another paper, Sangiovanni endorses a reciprocity-based account of duties of justice, which somewhat differs from Rodin. See A. Sangiovanni, 'Global Justice, Reciprocity and the State', *Philosophy & Public Affairs* 35 (2007): 3–39. My point about immigration below draws on Abizadeh's article.

band) was criminalized in England and Wales as recently as 1991. Sexual assault of a man by any other person (including, presumably, his wife), such as non-consensual anal penetration with an object, was a criminal offence then (under the terms of the 1956 Sexual Offences Act), as it is now. On Rodin's view as I understand it, the current law on rape (via the Sexual Offences Act of 2003, which incorporates the 1991 decision) makes it the case that men can be relied upon not to rape their wives, which in turns generates a stronger obligation on the part of women not to sexually assault their husbands by penetrating them with an object, than they had before 1991 absent the legal prohibition on marital rape. I simply do not see why that would be the case: individuals are under very stringent moral duties not to sexually assault other people, period – irrespective of what the law may or may not say. I believe that Rodin would agree with my verdict regarding this particular example. If so, he needs to show why duties of assistance differ in this respect from duties not to harm. He might be tempted to argue that duties to assist, unlike duties not to harm, have a dual source in morality and in the institutions which specify and allocate them. I shall cast doubt on this suggestion in response to Stiliz's paper presently.

Second, although there is no institutional-legal framework which enforces our moral duties of assistance to non-compatriots and their similar duties to us, there is an institutional-legal framework which enforces a raft of other moral duties – most notably the moral duty not to cross into the territory of another country at will. By Rodin's lights, this can be seen as a reciprocal duty: I, a French citizen, am under a *prima facie* moral duty which the Indian legal system enforces, not to force my way into India, and *vice versa*.⁵ As a matter of fact and *pace* anti-immigration rhetoric, the world's poor are not surging in their millions at the borders of affluent countries, and thus do comply with the duty not to invasively emigrate. They also comply with local laws which enable multinational companies to pay them a fraction of the value of the labor they put into making our clothes, electronic gadgets, and so on, as a result of which many of us can afford to buy more of those goods than we will ever need. Finally, in their overwhelming majority they comply with criminal prohibitions (domestic and international) on terrorist violence,

⁵ I am not in favour of wholly open borders, though I believe that current immigration restrictions as imposed by, e.g., France and Britain are far too tight at the bar of justice.

whose victims are not for the most Westerners, thanks to which we enjoy a higher standard of living than we would otherwise.⁶ In the light of the ways in which they benefit us, we need to assess what our duties of reciprocity are. On a narrow understanding of those duties, they do x for us (they do not invasively emigrate into our countries), in exchange for which we ought to do x for them (we do not invasively emigrate to their countries). On a wide understanding, they do x for us, as a result of which we derive further benefits y , in exchange for which not only ought we to do x for them, but in addition we ought to provide them with y . Rodin seems to rely on narrow reciprocity without providing a defence of it. To the (extremely limited) extent that I am drawn to reciprocity, I would lean in favour of the wide interpretation: given how much the distant poor do for us, indeed given that they do at least as much for us as our own, domestic poor, the very least that we can do is to treat them as well (which is not that well anyway) as we do the latter.

II. BORDERS, JUSTICE AND STATES

Rodin is no cosmopolitan. Nor is Anna Stilz, whose rich paper articulates three serious concerns with my cosmopolitan theory of justice, all of which have important implications for the account of the just war which the theory is meant to support. First, she argues that my conclusions with respect to what justice requires across borders are not demanding enough in the light of common sense intuitions about the requirements of justice within borders. In *CW*, I endorse a sufficientist theory of cosmopolitan justice, whereby justice requires that the well-off help the badly-off secure opportunities for a minimally decent life, and whereby, once they have fulfilled their obligations of assistance so defined, they enjoy the prerogative to confer greater weight on their own projects and attachments than on other people's similar interests. Now, the overwhelming majority of countries, if not all, are internally ridden with inequalities, most notably class inequalities between those born from wealthy and educated parents and those born in struggling families. The former enjoy enormous social, economical, and educational advantages, for example in the form of fulfilling jobs, security of

⁶ It is far from clear, of course, that they do so in acknowledgment of the relevant duty – but this would not rescue Rodin's argument since (as we saw above) he thinks that one may be deemed to fulfil a duty without exercising intentional agency to do so.

employment and a relatively high and stable income; the latter do not. And yet, it would be inaccurate to say that the disadvantaged lack opportunities for a minimally decent life. If sufficientism is correct, then it is hard to see how one can regard the aforementioned inequalities of opportunities as unjust. Given that those inequalities really are unjust, one ought either to reject sufficientism both as a theory of domestic and global justice – in which case the theory of justice which underpins my account of war is too ‘thin’ – or to accept sufficientism as a theory of global justice but not as a theory of domestic justice – in which case it is not true that political borders are irrelevant to individuals’ basic entitlements at the bar of justice.

I share Stiliz’ moral rejection of a state of affairs whereby the very few enjoy enormous advantages which the very many do not. Moreover, upon further inspection, I agree with her that holding the wealthy under a duty to ensure that the needy merely have a *minimally decent life* is not demanding enough: rather, they are under a duty to ensure that all have opportunities for a flourishing life. I shall elaborate on this last point in a moment. In the meantime, it matters why those inequalities are objectionable. On the one hand, we might think that they are intrinsically objectionable. On the other hand, we might think that they are objectionable only in so far as those who have much less than others are also very likely not to have enough.⁷ I have been torn on this point for the last twenty years and have not managed to make up my mind either way. But even if we endorse the view that inequalities are morally objectionable per se, at least in so far as they arise for reasons which are beyond the control of the worse-off, there are values other than equality whose realisation is important as a matter of justice. One such value resides, precisely, in individuals not putting their existence wholly to the service of helping others and being able to attach more importance to what matters to them than to what matters to others – what Samuel Scheffler, whom I follow here, calls the personal prerogative.⁸

⁷ For a first cut at a voluminous literature (to say the least), see E. S. Anderson, ‘What Is the Point of Equality?’, *Ethics* 100 (1990): 287–337; P. Casal, ‘Why Sufficiency is not Enough’, *Ethics* 117 (2007): 296–326; R. Crisp, ‘Equality, Priority, and Compassion’, *Ethics* 113 (2003): 745–763; H. Frankfurt, ‘Equality as a Moral Ideal’, *Ethics* 98 (1987): 21–43; D. Parfit, ‘Equality and Priority’, *Ratio* 10 (1997): 202–221; L. Temkin, *Inequality* (Oxford: Oxford University Press, 1993).

⁸ S. Scheffler, *The Rejection of Consequentialism: A Philosophical Investigation of the Considerations Underlying Rival Moral Conceptions*, Revised ed. (Oxford: Clarendon Press, 2003). There are serious complications pertaining to the delineation of justice. One can hold that a just society is one in which the personal prerogative is respected, or one can counter that a just society is one in which equalities are redressed, but that justice (understood as equality) conflicts with the personal prerogative. See Sect. IV below.

Is this to say that class-based inequalities do not warrant redress at the bar of justice? Not at all. It is to say, either that they are intrinsically objectionable and thus do warrant redress *but* subject to the limits set by the personal prerogative, or that they do warrant redress, subject to the prerogative, because they are instrumentally conducive to a state of affairs where the worse off do not have opportunities for a flourishing life. I do not, in the book, take a stand on the question of whether inequalities matter intrinsically or instrumentally. In this sense, my use of the word ‘sufficientist’ differs from accepted usage, since it does not denote that (in the words of Harry Frankfurt), ‘economic equality is not, as such, of particular moral importance’.⁹ Rather, it denotes that what matters is that people should have opportunities for a flourishing life – irrespective of whether this is so because equality as such does not matter, or because it does but we must nevertheless honor the personal prerogative.

The foregoing points raise two questions – that of what counts as ‘flourishing life’ and that of the role played by equality in my sufficientist account of cosmopolitan justice, both of which (I think) partly inform Stiliz’s discussion of putative responses I might make against her objection. On the first point, individuals have a flourishing life (it seems to me) to the extent that they are autonomous – that is to say, able to frame, revise and pursue a conception of the good which they genuinely regard as theirs, and which ‘contributes to shaping their identity over some period of time’.¹⁰ This in turn requires that they have the personal capacities required to pursue such conception of the good, the means to deploy those capacities, and an adequately wide range of opportunities to choose from. What constitutes an adequately wide range is defined, at least in part, by the kind of society in which they live. To return to Stiliz’s worry about equality of opportunity, it is scandalous, at the bar of justice, that the very few have the kind of opportunities which the very many, by dint of the social class into which they are born, do not. It is scandalous partly (but not necessarily only) because the life of the

⁹ Frankfurt, ‘Equality as a Moral Ideal’, p. 21.

¹⁰ C. Fabre, *Social Rights Under the Constitution: Government and the Decent Life* (Oxford: Oxford Clarendon Press, 2000), p. 11. Chapter 1 of that book, notably Sect. 1.1, develops the points I make in this paragraph. The conception of autonomy at play here draws on and expands upon Joseph Raz’s. See Raz, *The Morality of Freedom*, Chaps. 14 and 15.

very many is very often not, by my rough account, flourishing, marred as it is by the necessity of having to take on repetitive, menial, uncreative work over which they have little control in contexts of chronic and growing job insecurity and its attendant stresses; by their vulnerability in the face of an increasingly frayed welfare safety net; by their lack of exposure to the rich cultural fabric of their society; by (in some cases) a much shorter life expectancy due in part to chronic malnutrition, itself due to lack of means; and so on. Considerations of that kind, albeit in a different vocabulary, are developed at length by, *inter alia*, proponents of the capabilities approach such as Martha Nussbaum, and I shall not pursue them here.¹¹ Let me simply note, to conclude on this point, that what I now call a flourishing life does in fact impose much more demanding requirements on the well-off's exercise of their personal prerogative than they currently are willing to shoulder, and that my sufficientist account of justice is not, on the contrary, 'too thin'.

I see no reason, therefore, to adopt a two-tiered, and therefore *un*-cosmopolitan account of justice, whereby we would have extensive obligations to help our compatriots and not-so-extensive obligations to help distant strangers. Nor do I see any reason to withdraw my claim, which is central to my theory of the just war, that our obligations to the former do not necessarily trump our obligations to the latter. However, Stilz's probing scepticism invites us to assess the extent to which one can (a) claim to be an egalitarian and thus be wary of the demands of special obligations to compatriots, (b) yet make some space for special obligations to friends and family, (c)

¹¹ See, e.g., M. C. Nussbaum, *Women and Human Development: The Capabilities Approach* (Cambridge: Cambridge University Press, 2000). It has been objected to me that sufficientism cannot explain the intuition that restricting access to the upper echelons of the higher education system to the wealthy (as governments and universities do when they fail to provide scholarships), or indeed to those of a particular race or gender, is profoundly unjust. Regarding discrimination by wealth, the fully egalitarian alternative (provide everyone with the same opportunities so that no one at any point in their life is unable to do something of their liking through lack of money) is the loss of the personal prerogative. This, I think, is too high a price to pay, so that we might have to compromise on equality and provide graduate scholarships for some – though not for all. However, sufficientism can account for the claim that sexual and racial discrimination is always unjust, even if those who are discriminated against have other valuable options to choose from. For that kind of discrimination – unlike discrimination by wealth – is inherently disrespectful of its victims. PhD programmes are expensive to run: the basis for discrimination (whether one has money or not) is not arbitrary in relation to the benefit so provided. Not so with discrimination on grounds of race or gender. (See CW, pp. 20–21 for a discussion of the notion of arbitrariness in this context.)

whilst at the same time affirm that, although a wrongdoer and his victim have in some important sense equal moral worth, they ought to be treated very differently. To be an egalitarian as I use the word is to hold, *inter alia*, that all individuals, whoever they are, irrespective of birth, gender, race, class or nationality, are equally worthy of respect, which in turn means that there are certain things that one may never do to them, and certain goods from which we must never unilaterally deprive them, *just* on the basis of those factors. This view is the bedrock of cosmopolitan morality. At the same time, to deem individuals equally worthy of respect is also to hold that it is appropriate to treat them differently on the basis, not of who they are, but of what they do. Thus, while the rapist and his victim are both equally owed what some have called ‘recognition respect’ as persons (such that the rapist still and always has a claim not to be (e.g.) killed by a mob outside the courtroom), they are not equally owed the evaluative respect which agents warrant on the basis of what they do.¹² Finally, to be an egalitarian is also to hold that one may refuse to treat oneself as a mere instrument for the good of others – hence the personal prerogative. One way in which we exercise that prerogative is by entering in personal relationships which are characterised by preferential treatment (within limits). As I claim in *CW*, ‘we have a shared, personal, intimate history with our family members or other close associates such as friends, and it is that which generates special permissions or even obligations’ (*CW*, p. 38). Those relationships are very different from our relationships with compatriots *qua* compatriots, with whom we lack that intimate, shared history and to whom we therefore do not have constitutive associative obligations.

This leads me to Stilz’s second concern about the book, which is that cosmopolitanism as I defend it cannot justify wars of national defence in a range of cases where common sense morality permits them. As Stilz correctly points out, on my account, membership in a

¹² For the distinction between those two kinds of respect, see, e.g., S. L. Darwall, ‘Two Kinds of Respect’, *Ethics* 88 (1977): 36–49. I borrow the example of the rapist from Uwe Steinhoff’s review of *Cosmopolitan War* in the *NDRP*. Incidentally, this long paragraph can be read as a reply to Steinhoff’s entirely misconceived criticism of my account of cosmopolitan justice. See U. Steinhoff, ‘Cecile Fabre, *Cosmopolitan War*’, *Notre Dame Philosophical Review* (2013), <<http://ndpr.nd.edu/news/38635-cosmopolitan-war/>> (accessed 09.24.2013).

political community has value only to the extent that it enables us better to enjoy our rights and fulfil our obligations of cosmopolitan justice and, once we have done so, to exercise of freedom of association. It seems to follow, then, that we may kill in political-national self-defence only if the aggression of which we are victims as a political collective threatens our individual rights to life and limb (for this is when as individuals we have the right to kill in self-defence).

Stilz is absolutely right: in a separate paper, which she briefly discusses, I argue that cosmopolitanism allows national defensive wars only in those cases.¹³ In her example of the 1893 invasion of the Kingdom of Hawaii by US-troop backed American plantation owners, it does mean that, even if the Kingdom had had the means to defend itself, it would not have had the right to do so if (a) the invasion had been bloodless (which it was), (b) Hawaiians had continued to enjoy a flourishing life (which they did), and (c) Hawaiians had been able to resist the invasion by force short of war without being at risk of losing their life as a result. Condition (c) is absolutely crucial: as I argue in that paper, if an agent can protect her sovereignty rights, for example her right to vote, through less-than-lethal force, then this is what she ought to do. However, if she knows that should she resist (even less violently) her attacker will then attempt to kill her, and if she also knows that she will not survive the encounter other than by pre-emptively killing her attacker, then I maintain that she may so act.

Stilz accepts pre-emptive lethal force as a response to threats on 'extremely vital interests of mine, like the right to life', but doubts that 'a threat to a non-vital interest like free association, even when joined with the risk of escalation, can justify the pre-emptive use of lethal force' (ft 16). She does not offer reasons for her doubt, so let me try and fill the gap. She might claim that, given that we can give the attacker what he wants and that what he wants is not vitally important to us, we would wrong him by killing him. *Ex hypothesi*, however, he violates two rights of ours – our right to freedom of (political) association and our right not to be subject to an unwar-

¹³ C. Fabre, 'Cosmopolitanism and Wars of Self-Defence', in Fabre and Lazar (eds.), *The Morality of Defensive War* (Oxford: Oxford University Press, forthcoming 2014). In her paper Stilz refers to that collection of essays as *Why We Fight*. Lazar and I have since changed its title.

ranted actual threat of a future harm. And so it is not clear to me why, exactly, we would wrong him by refusing to give him what he wants, *given that at this particular point he would have the option to desist and walk away*. Alternatively, Stilz might counter that we have a general, impersonal obligation not to kill wrongdoers, even very serious wrongdoers, unless we have to do so as a means to save our life. To whom, though, would that obligation be owed? To ourselves? To the value of life? To all other human beings? I do not have answers to those questions. But to the extent that my account of cosmopolitan justice is rooted in a deeper view of morality as governing a set of relationships between beings endowed with moral status, I am deeply sceptical of this second putative defense of the view that we may not respond to conditional threats of lethal harm with lethal force. That said, and to reiterate, I accept that cosmopolitans have good reasons to reject as unjust wars of national defence which meet the aforementioned three conditions. Does this mean that we should reject cosmopolitanism on the grounds that it fails sufficiently to accommodate the common sense intuition in favour of national defence? No, for the simple reason that wars which meet those conditions are few and far between (in fact, I cannot think of a single example).

Let me finally turn to Stilz's third criticism, which echoes Rodin's argument about reciprocity-based institutional duties of assistance. On her view, my account of the role which state institutions play in authoritatively articulating and implementing the requirements of justice is oversimplified, and a more plausible account would lead us to disallow the kind of private wars which I endorse. I have no objection to her description of my own account: institutions have authority over us to the extent that they enable us to fulfil our duties of justice better than if we were left to our own devices. They do so in so far as they solve coordination problems and offer a fair and transparent conduit for specifying the content of some of our duties – notably the duty to provide assistance. On that account, institutions are of instrumental value. Contrastingly, on Stilz's view, which draws on Kant's political philosophy, institutions 'are themselves *constitutive* of what justice requires' (p. ??). For example, assuming that each individual should enjoy property rights over the resources she needs to lead a flourishing life, we must still settle upon a system

of property rules (which will, for example, include taxation rules) amongst many such systems. You and I are likely to disagree over which system is the best. Moreover, we do not have over each other the authority which would grant us, acting singly, the power to impose such a system on the other: were I to arrogate that power and enforce my chosen rules on you by, for example, taking from you what I believe belongs to me, I would fail to treat you as my equal – and *vice versa*. For both reasons (disagreement over indeterminate duties, and equality), only political institutions can, first, adopt a system of property rights and, second, enforce it. The same goes with duties of assistance and the many ways in which we can fulfil them.

In denying that institutions are constitutive of the requirements of justice, Stilz argues, I misguidedly downplay the fact of disagreement and the necessity of solving those disagreements in a way that recognizes agents' equal standing. This in turn leads me (she claims) to regard the exercise of private violence as a means to enforce justice on a par with the exercise of public violence to that same end – and in so doing to open the door to vigilantism. In one respect, the contrast which she highlights between her view and mine is superficial; in another respect, it is extremely deep. Let me explain. On the former count, she approvingly records my claim that 'to the extent that [agents] would be better off by transferring the meta-right to protect their human rights to an organization like the state, it is in their interest that they should do so' (CW, pp. 115, 148). But she is absolutely right to insist (as I mistakenly did not) that if agents not only better enjoy their meta-right to defend themselves by transferring to an institution like the state but in addition better fulfil their duties pertaining to the use of defensive force, then they *ought* to transfer it. On this point, I am in agreement with her, and happily accept that (in her own words), 'when no such institutions are in place, or where institutions fail to be legitimate, then one may be temporarily justified in using private force as a second-best option' (p. ??). In fact, my discussion of the requirement of legitimate authority in Chap. 4, notably pp. 154–156, is entirely of a piece with this claim.¹⁴

¹⁴ I would also add (and there she might disagree) that even broadly legitimate institutions can on occasion fail to respect individuals' fundamental rights. To insist that individuals may *never* use force in such cases strikes me as overly restrictive. I am grateful to Jonathan Quong for highlighting this point.

However, our views differ in the following, fundamental way: whereas she seems to hold that it is inherent in properly designed and thus authoritative public institutions to promote justice, on my view, it is only contingently so, so that institutions are valuable subject to their ability to promote justice. That difference itself flows from a deeper disagreement about the nature of justice. On her view, the rules which institutions enact to specify and allocate duties of justice themselves partake of justice *qua* those rules. On my view, they are extraneous to it. This particular debate is at the forefront of recent developments in theories of justice which I lack the space to scrutinise here.¹⁵ In defense of my position, let me simply note the following. First, just as there are deep disagreements about, e.g., the contours of the duty of assistance and the limits on the right to kill, there are deep disagreements as to what counts as an authoritative institutions. Appealing to authoritative institutions as a means to solve disagreements is thus unlikely to work in the many cases where the locus of disagreement is precisely where such an appeal should be lodged – a critical difficulty in the context of *civil wars*. Second, being able to judge whether this or that institution is unjust presupposes that one can appeal to a standard of justice which is not itself institutionally mediated – as Stilz herself seems to recognise when she writes that human rights are ‘threshold criteria we use to assess a state’s legitimacy’ (p. ??). That said, I agree that there is more work to be done, within cosmopolitanism, on the normative role which states, or state-like institutions, ought to play in developing and interpreting what justice requires of us.

III. MORAL PURISM, JUSTICE AND WAR

War is hell, it is often said. I wholeheartedly concur. And yet, Statman’s central and incisive contention is that I embrace an unacceptably permissive view of war – unacceptably permissive precisely because I cannot but endorse a highly demanding view of morality. As Statman notes, permissiveness and demandingness are relative to a certain moral baseline. Here, the baseline is both common sense morality (particularly when he discusses my account of duties of justice) and orthodox just war theory (when he refers to

¹⁵ See, e.g., G. A. Cohen, *Rescuing Justice and Equality* (Cambridge, MA: Harvard University Press, 2008), Chap. 7.

my account of war). This supposes a high degree of consensus within both common sense morality and orthodox just war theory: as we shall see presently, I am not persuaded by his interpretation of the latter, particularly with respect to subsistence wars.

Setting that point aside for now, in what way, then, is my account of justice demanding? I claim that all individuals wherever they reside have fundamental human rights, not just against their compatriots but also against distant strangers, to the freedoms and resources which they need in order to lead a flourishing life. I also 'posit that justice does not require of individuals in their purely private capacity that they should try to remedy their society's institutional failure to implement the sufficiency principle' (*CW*, p. 28), where the sufficiency principle refers to aforementioned rights to resources and their correlative duties. Thus, for reasons to do with coordination problems and epistemic uncertainty, individual French farmers cannot be expected to do for Kenyan farmers what justice requires, and so it is not incumbent on French farmers unilaterally to raise the price of their products so as to give Kenyan farmers a fair chance to compete with them on Western markets (*Ibid.*). It is however incumbent on them (as on any other French citizens) as voters to vote for political parties which credibly promise to lower protectionist tariffs (assuming that this is what justice requires). It is only when someone clearly and urgently needs help and we know clearly and decisively that we can help, that we are under a duty to do so in a purely private capacity. Or so I state.

Statman takes me to task for narrowing the site of positive duties of justice to individuals acting in a public capacity – as citizens and officials. On his view, my account of justice in fact commits me 'to the conclusion that 'the farmers' real, or 'deep' moral duty was to assist their Kenyan counterparts, while conceding that their practical ability to do so was limited under the circumstances' (p. ?). Let me come clean: he is right. But I did not want to take that view in the book because, as I in fact say therein (*CW*, p. 28), it is a very controversial view, and I wanted to start from as uncontroversial (though cosmopolitan) premises as possible. His central claim, that my account of war is unduly permissive for being underpinned by the overly demanding account of morality which I should have endorsed, does not impugn (I believe) the account of war which I

claim flows from the less demanding account of morality which I seemingly espouse.

The interesting question, then, is whether I can in fact endorse the demanding account of cosmopolitan justice, and if so, whether the account of war that flows from it is indeed too permissive. Statman argues that I cannot endorse that account, on the grounds that, by rejecting pacifism as too demanding of agents, I endorse a non-demanding view of the morality of war. In other words (as I understand his criticism), I cannot have it both ways: either morality is demanding with respect to assisting others and defending ourselves from wrongful harm, or it is not.

Now, it is true that, on my view, agents cannot be expected 'to submit to a regime which, after all, is willing *ex hypothesi* to invade them by force unwarrantedly, and which will in all likelihood unwarrantedly impose its unjust rule by force' (CW, p. 90). For Statman's criticism to go through, however, it must be the case that submitting to invasion by an unjust regime is less demanding than giving the lion's share of one's wealth to distant strangers. Whether this is so is contingent on the facts of the case. I would much rather have to do the latter than to live under certain kinds of dictatorial regimes. In any event, and as I noted in Sect. II above, I do take the point that, as a cosmopolitan, I would have to reject more wars of national defence as unjust than orthodox just war theory would endorse.

It remains to be seen, then, whether a demanding account of distributive obligations yields too permissive a theory of war. Statman's argument to that effect (which I found immensely thought-provoking) takes the following form. I make the following two claims, which he labels *Purism* and *Force* respectively: (1) all human beings wherever they reside have rights to the freedoms and resources required to lead a flourishing life; the duties which correlate with those rights are held by all human beings wherever they reside (subject to the proviso that helping the needy would not jeopardise their own prospects for a flourishing life); (2) moreover, rights-holders are permitted to use force in defence of those rights and to authorise third parties to do so on their behalf; in fact, third parties are sometimes under a duty to victims of rights-violations to honour their request for help. This, according to Statman, leads to

The Scary Conclusion Since many millions of human beings lack the resources to lead a flourishing life,¹⁶ all of those who are significantly above the threshold for such a life are permitted, and most probably are under a duty to use force – even to go to war – to protect the rights of the poor and the deprived. (p. ??)

In fact, there is an *Even-Scarier-Conclusion* (my label), namely that whenever an agent suffers a right-violation at the hands of another person or institution, third parties are permitted, nay are sometimes under a duty, to act in such a way as to redress the injustice: prison guards must help escape prisoners whom they know have been wrongfully convicted, those who are able to do so are permitted to hack into the online bank accounts of the wealthy to give to the poor, and so on.

I do not think that I am committed to this view.¹⁷ *Purism* is misleading, and *Force* is too strong, though I concede (as I did above in response to Stilz) that I was not clear enough on this point. To reiterate, although individuals *qua* individuals are under duties of justice to another, and to the extent that they are better able to fulfil those duties by entrusting the task of allocating and specifying the latter to some institution(s), then they are under a duty (at the bar of justice) to do so. Likewise, although individuals have the meta-right to protect their fundamental human rights by force, as well as the power to transfer that meta-right to other individuals, they are under a duty (again, at the bar of justice) to entrust the exercise of that meta-right to some institution(s) if the latter does a better job than them at protecting those fundamental rights. ‘Better job’, here, means that by complying with the institution’s directives, individuals are better able to get what is rightfully theirs without violating other agents’ similar rights.

The claim that there is a duty to transfer the exercise of meta-rights and duties to institutions under certain conditions draws strength from my account of cosmopolitan duties. Whether or not individuals in a private capacity are under a duty of justice towards other individuals depends on the facts of the matter, their access to

¹⁶ Statman deploys his objection against the conception of justice I defend in *CW*, which refers to a ‘minimally decent life’. As I now adopt a more demanding requirement of justice (as imposing a duty to provide one another opportunities for a flourishing life), I rephrase Statman’s objection accordingly. I am not being unfair to him as a result, for as he would undoubtedly point out, his objection is even stronger against my newly-more-demanding conception of justice.

¹⁷ In so far as I reject capital punishment as unjust, I clearly need not accept the view (which Statman seemingly worries that I should endorse (see p. ?) that if one knows that someone committed a first-degree murder for which he was not punished, then one may execute him here and now.

those facts, and absent knowledge of and access to the fact, what the best available evidence is. The facts which are relevant to what justice requires and permits of us are often extraordinarily complex; the best available evidence is often very hard to access. Quite often, institutions are better placed in those respects than we are, which in turn gives us a reason and holds us under a duty to comply with the directives which they issue on the basis of those facts and/or the best available evidence. Moreover, in many cases, duties are effectively discharged, and rights are effectively and appropriately exercised, thanks to the coordinated efforts of multitudes of agents. It is a familiar defense of the authority of (certain) institutions that they enable and facilitate such coordination. Thus, to the extent that complying with directives issued by the department of justice enables prison guards better to fulfil their duties to all prisoners than if they took matters in their own hands, then they should do so. Likewise with computer hackers, who ought to comply with governmental directives as to the best way to compel the well-off to honour their obligations to the poor; and, indeed, likewise with anyone of us who is ever tempted unilaterally to use force for the sake of mitigating injustice. Crucially, there are ways of not complying which fall short of actually doing the opposite of what we are asked to do: it is thus open to a prison guard to leave his job instead of helping a wrongfully prisoner escape; it is open to a soldier to resign from the army instead of fighting, to an IT hacker to mount online information campaigns via social networks about tax dodges, etc.¹⁸

At first sight, this claim is incompatible with one of the book's central theses, namely that soldiers ought not to kill enemy soldiers in prosecution of an unjust war, for that thesis presupposes that it is incumbent on them to exercise private judgement on the moral status of the war they are asked to fight in (*CW*, pp. 71–81, esp. 74). By way of reply, my point is not that we ought never to act in a private capacity to protect the rights of others. Rather, if on the

¹⁸ Two points. First, my claim is compatible with my earlier point (in Sect. II) that the duties which are imposed on us by institutional rules whose aim is to allocate and specify pre-institutional duties are not duties of justice *qua* institutionally-defined duties. Second, conscripted soldiers do not have the option of leaving and might end up in jail for refusing to fight if there is no provision for draft exemption on grounds of conscience or if their exemption request was turned down. Given that conscripts are not justified in obeying wrongful orders to kill innocent civilians once the war has started, it is hard to see why they would be justified in obeying a wrongful order to deploy on a battlefield before the war has really begun.

balance of the best available evidence, we have decisive reasons to believe that complying with institutions' directives would enable us to do better at the bar of our rights and duties overall than we would in the absence of feasibly alternatives, then we must do so; conversely, if on the balance of the best available evidence we have decisive reasons to believe that compliance would *not* enable us to do better at the bar of our rights and duties overall, then we are permitted not to comply. Either way, it is incumbent upon us to exercise our judgement on the evidence which institutions present to us – in other words, not to obey blindly.

Statman is unlikely to be moved. For (he will likely press), *if* in a particular case it really is true that someone's rights are being violated, and *if* the best way for private third parties to comply with their duties to her is to use force in defense of those rights, then they may, indeed (sometimes at least) must, do so. My response to *this* putative objection is unlikely to persuade him either. True, I concede that in these particular, highly stylised cases, third parties may, perhaps must, so act. But in relatively well-organised political communities, we have decisive reasons to believe on the basis of the best available evidence that individuals do better at the bar of their rights and duties *vis-à-vis* other individuals in general by (non blindingly) abiding by the directives of their governmental institutions. The reason why Statman will likely reject this move is this. I am in effect saying that it would be permissible in one sense for individuals to take justice in their own hands, but that given factual conditions, they ought not to do so all things considered. But Statman rejects this particular kind of reasoning – 'in principle yes, but...' –, on the following grounds. When we say that a given course of action is justified on the grounds that *a*, subject to conditions *b* and *c*, we confer on *a* a privileged status which it does not have. We can say equally easily that this course of action is justified on grounds *c*, subject to conditions *a* and *b*. And so to say (in the example of resource wars, which Statman finds particularly worrisome) that resource wars are permissible on the grounds that the affluent are derelict in their duties and thus liable to attack by the very poor (*a*), subject to conditions of necessity and proportionality (*b* and *c*) is to arbitrarily privilege the liability condition over the other two conditions. We can as easily say that such wars are permissible in so far

as they are proportionate, provided that they meet the liability and necessity conditions, or at they are permissible in so far as they are necessary, provided that they meet the liability and proportionality conditions. The problem, then, is that by privileging one necessary condition for the truth of some conclusion, we create the false impression that the conclusion is a 'respectable one', and hence that we should consider it seriously in our practical deliberation about what to do in circumstances C (or at least consider it more seriously than we would have done prior to recognizing its 'in-principle' nature). But often the conditions that must be satisfied in order for the conclusion to hold true are very far from being so, and the above impression is not only misleading, but potentially dangerous (p. ??). For example, the last thing the very poor need (as I myself concede) is more destruction. But by merely saying that in principle subsistence wars are permissible even though in the real world they are not (for they are unlikely to meet the requirement of proportionality, for one thing) I am 'opening the door to violent initiatives which, in the real world, [I myself] would almost always regard as disastrous' (p. ??).

Statman raises deeply interesting questions as to what I, and others such as Jeff McMahan mean when we say 'in principle soldiers ought to do x but all things considered ought not to' or, 'at the bar of the deep morality of war, x is permitted but all things considered it is not'. In particular, the claim that a fact is relevant to the overall moral status of an act itself presupposes a moral judgement. (Thus, I regard the fact of having white skin as irrelevant to my right to food, but that is because I regard it as morally wrong to allocate (life-sustaining) food on grounds other than need.) Given that moral judgements, and thus moral norms, constrain what we may or must do all things considered, we need to know what really is the difference between a claim at the bar of the deep morality of war (or an in-principle claim) and an all-things-considered claim. I confess not to have firm views on this. More work needs to be done in that area, and urgently so given how crucial the task is of institutionalising and implementing principles for just war. That said, I suspect that Statman's criticism is overstated, not least because it presupposes a causal connection between making a philosophical point and the point being acted upon in real life which is less tenuous than is

normally the case (perhaps unfortunately in some cases, though admittedly not in this one).

More importantly, he mistakenly conflates a justification for a course of action, and constraining conditions on embarking on that course of action. (Recall Rodin's isomorphic distinction between justifying a right and imposing conditions on its possession and forfeiture.) The conflation is central to his criticism of subsistence wars, but the distinction between justification and constraining conditions is crucial to my defense thereof. To say that a given war, or act of killing, is justified on the grounds that some party has committed the relevant wrongdoing and is thus liable to defensive force is to say that this party is not wronged by our going to war or killing him. Notwithstanding condemnable ambiguity on my part regarding the precise meaning of 'in principle' in my argument for subsistence wars, that argument's central conclusion is that affluent individuals who are derelict in their obligations of justice towards the very poor can sometimes be deemed liable to defensive harm (broadly understood along the lines sketched out in *CW*, Sect. 3.2). That conclusion is controversial, and yet worth defending – as in fact those founding fathers of orthodox just war theory, to wit Grotius, Vattel and Wolff did, at least partially. For (as I note therein) they held, first, that appropriating resources in such a way as to leave others destitute is an injustice, and, second, that failure to retribute wrongfully taken property is a just cause for war. While their defense of wars to the end of taking property that is rightfully ours for the fact that we need it to survive is less permissive than my account, it is permissive enough to impugn Statman's claim that the latter is wildly at odds with orthodox just war theory. To be sure, this is not to say, at this juncture, that my defense of subsistence wars is without flaws. In fact, Victor Tadros finds plenty to disagree with it, and so to his contribution I now turn.

IV. RESOURCE WARS

Interestingly, Tadros does not dispute the thesis that subsistence wars, which he calls resource wars, are sometimes justified. But he thinks that defending that thesis requires greater discussion than I provide in the book of a range of deeply difficult problems. Once

those problems are brought into view, he claims, resource wars are justified in far fewer cases than I argue.

Readers familiar with Tadros' writings will recognise his trademark intellectual creativity in the many hypothetical *scenarii* he imagines to illustrate his main points. Rather than discuss each of those *scenarii* in detail, I will concentrate on the main four, from which it is possible to extract his central claim – that killing the rich who are derelict in their duties of justice to the very poor is permissible only if their dereliction of duty can be plausibly characterised as *causing* the very poor's predicament. Wrongfully taking property to which the poor are entitled, or (more likely) wrongfully appropriating resources to which they have a rightful claim causes harm to them, and makes it permissible, at least *prima facie*, to kill the authors of those acts; by contrast, wrongfully killing those who fail to rescue the poor is impermissible because that failure does not cause severe poverty.¹⁹

Although Tadros agrees that some resource wars are permissible under certain conditions, he and I seemingly differ on the value which can best justify those wars. He notes that in defending subsistence wars by appealing to the view that all individuals have rights to the freedoms and resources necessary for a minimally flourishing life, I fail to take on board the thought that a life may be very short and yet flourishing while it is lived.²⁰ Given that it is grievously wrong to kill a 20 year old, whether or not her life is flourishing, the idea of a flourishing life does not do the work which I ask it to do. This is an interesting point, which gives me yet another opportunity to be clearer as to what I mean by flourishing life. In discussing Stiliz's contribution, I said that someone has a flourishing life to the extent that she has the capacities to frame, revise and pursue a conception of the good with which she can identify, which in turn requires that she have access to the relevant resources and an adequately wide range of opportunities to choose from. There are many opportunities which one cannot enjoy until well into adulthood; moreover, there are many conceptions of the good which we begin

¹⁹ A terminological point: Tadros often speaks interchangeably of being permitted to kill wrongdoers and wrongdoers being liable to being killed, though he draws a distinction between liability and permissibility in ft. 15. I will follow his usage unless otherwise specified.

²⁰ Same comment as in ft. 16 (though I do not think that Tadros' objection is stronger against the flourishing-life conception of justice than it is against the minimally-decent-life conception).

in young adulthood and which will come to fruition over the course of several years, indeed decades. Having one's life cut short at a young age is thus vitiative of autonomy, and therefore of one's prospects for a flourishing life. That said, I take Tadros' point and would add the stipulation that justice requires providing individuals with such prospects over the course of a lifetime of appropriate length – where 'appropriate' is defined not by reference to (e.g.) the median age at death in one's society but, rather, as the median age at death in affluent society. Much more work needs to be done on this. But it is worth bringing up the issue, albeit sketchily. For as Tadros notes in a different context, whereas in standard cases of defensive killing the victim will die imminently unless the attacker is blocked, in the cases which occupy us, the affluent's derelictions of duties towards the very poor will harm the latter (or allow harm to happen to them) quite some time afterwards. What matters, from the point of view of justice, is not just severe malnutrition or severe untreated diseases, but also the dramatic reduction in life expectancy which they cause. Accordingly, what matters from the point of view of an ethics of war is also whether wrongful reduction in life expectancy can justify killing those who are somehow causally responsible for it. I believe that it can, for reasons briefly sketched above.

Incidentally, the issue does not arise just with resource wars, but also with defensive wars more traditionally understood as repelling a kinetic military attack. Suppose that our community is under a serious threat of imminent aggression from another. Suppose further that we know that our aggressor will use nuclear weapons, in a first strike, against us. If there is one case where pre-emptive war is justified, this one is. And it seems to me that the reason why that is so is not just because nuclear weapons are utterly destructive at the moment of impact: it is also because of the long-term consequences of radiation on individuals' health and, thereby, on their life expectancy.²¹

Let us set that issue aside and move on to Tadros' core critique of my defense of resource wars. Of the many cases he considers, the following three are the most important.

²¹ That very last point raises the matter of the degree to which the interests of the as-yet unborn ought to be taken into account when assessing whether war is proportionate. I am not aware of any work done on this.

Enforced Rescue V is drowning in a pond through no fault of his own. D could rescue V at little cost to himself, but he can't be bothered to do so. The only way for V to save himself is by shooting D dead. D will then fall into the pond and V can climb over him to safety.

Medicine I I suffer from a severe illness. I have to take a pill each year to stave off death. I have 15 pills remaining in my possession that I am entitled to. You take those pills. The only way for me to secure them providing me with 15 more years of life is to kill you, depriving you of 15 years of life.

Medicine 3 You and I reach the age of 30. We each need a pill per year, for the next 30 years, to survive. After that we each need two pills per year. There are 60 pills. We are entitled to an equal share of the pills. You take 45 pills leaving me with 15. The only way for me to secure more pills is to kill you now and take them.

According to Tadros, I am permitted to kill you in both *Medicine I* (in which you wrongfully take what is already in my possession) and *Medicine 3* (in which you wrongfully appropriate that to which I have a rightful claim). However, V is not permitted to kill D in *Enforced Rescue* (on which point Tadros agrees with Rodin). In defence of not permitting V to kill D, Tadros argues that whether we are under a duty to rescue another person from harm depends on the costs that we would incur in so doing. We can be under such a duty only if those costs are 'significantly less than the costs that a person will bear if she is not rescued' (p. ??). Those costs should be 'significantly less' because 'a person has the right to determine for herself what to value and to pursue amongst the valuable things on offer. She needs not expend her life in service of the best' (p. ??). Tadros call this the Ethical Autonomy Thesis.

I find the thesis rather puzzling. For a start, the key issue in *Cosmopolitan War* is not what the best is, from a consequentialist point of view, but what justice requires. What justice requires might not be the best. It might be, for example, that a world in which everyone has only one functioning eye is better than a world in which half are blind and half are fully-sighted, yet it does not follow (as we saw in Sect. II) that justice equates with the former such that we may harvest eyes from the fully-sighted to give to the blind. And whilst we may well have reasons not to always do what justice requires, those really should be weighty reasons indeed. It is not so easy to show that we are permitted, and have the right, not to act justly – less easy I think than to say that we need not always do the

best. So let us rephrase the thesis as ‘a person has the right to choose whether to be just, not to expand her life in the service of justice’. The thesis admits of two different interpretations:

- (a) A person is morally permitted, and has the right, to decide what to value, and not to act justly.
- (b) A person is not morally permitted, but nevertheless has the right, to decide what to value, and not to act justly.

However, a person may not decide whether justice is more or less important than other moral values, in the same way as a person may decide whether to value the arts or sporting excellence. However difficult it is to rank moral values, assuming even that it is possible to rank them, how to do so surely is not up for individual discretion. Tadros is not a subjectivist, meta-ethically speaking, so he should instead go for (b): even if a person errs in pursuing a value other than justice, we are under a duty not interfere with her decision, and, moreover, she has the right not to expand her life pursuing justice – even if it is morally wrong of her to do so.

This, I think, is the most plausible interpretation of the Ethical Autonomy Thesis. Nevertheless, it is not a convincing basis for a criticism of my defence of resource wars. For remember that my account of duties of distributive justice – dereliction of which sometimes justifies war – holds that agents are not under a duty to give their resources to the very poor if they would jeopardise their own prospects for a flourishing life by doing so. Not only, then, do I not deny that agents need not expand their life for the sake of justice: it is an in-built feature of my account of justice (and not a value which competes with justice) that they are not under a duty to do so.

To be sure, given that agents are not under a duty to sacrifice their life for the sake of the very poor, it might seem odd to claim, as I do, that their failure to do what justice requires may sometimes be met with a lethal response. But it is precisely because they do not do what they ought and are able to do that they are (sometimes) liable to being killed. Tadros denies that the fact that agents could have fulfilled their duty but did not do so makes a difference between their life and their death. Rather, he maintains that one may harm a wrongdoer as a means to a morally desirable end only if that agent is under a duty to incur that very same harm to that very same end.

This is because (on this view) the claim that we are under a duty to rescue others from harm subject to a no-excessive costs proviso and the claim that we generally may not harm others as means to valuable ends *both* flow from the Ethical Autonomy Thesis and so correlate with each other.²² I remain unconvinced. For there are cases where it is permissible at time *t1* to inflict on an agent a harm which she is not under a duty to incur at *t2*. Suppose that D is driving through town, carefully and without taking any risks. For reasons entirely beyond his control, unless he swerves either to the right or to the left, D will kill V. If he swerves to the right, he will inevitably scrape his car off a wall and cause some damage to it though he himself will remain unscathed. If he swerves to the left, he will die. D clearly is under a duty to swerve to the right, but is not under a duty to swerve to the left.²³ And yet, he cannot be bothered to swerve to the right: he really does not want the bother of having his car repaired, he loves his car exactly as it is, etc. So he goes on. Suppose now that V can prevent D from running over her by killing him. In so far as D is causally responsible for posing a wrongful threat of lethal harm to her, V may kill him (see *CW*, Sect. 2.2). If this is right, then we have a case where it is permissible to impose on a wrongdoer a harm which he himself is not under a duty to incur as a means to bring about a morally desirable end. The question, then, is why this holds true in this case, but not (according to Tadros) in *Enforced Rescue*.

I suspect that Tadros would reply along the following lines, which run throughout his paper: in so far as (as per the doctrine of acts and omissions, or DDA) wrongfully letting die another person is not as bad as wrongfully killing them, and as wrongfully killing them warrants lethal defensive force, wrongfully letting die must be met with less force. This is intuitively powerful, both in the ethics of defensive force and in the criminal law: for example, breaking someone's arm is not as bad as killing them, and so should be met with less force, and be punished less harshly.

²² V. Tadros, *The Ends of Harm: The Moral Foundations of Criminal Law* (Oxford: Oxford University Press, 2001), pp. 129ff.

²³ In fact, I do not think that D is under a duty to swerve to the left even if swerving to the right is not an option. In this case, I believe that D may go on and run over V if the alternative is for D to die. But my concern here is with a case where, just as in *Enforced Rescue*, an agent is under a duty to incur a minor cost at *t1* for the sake of another person's life.

I see the force of this point. However – and this is crucial – even if DDA is generally true, there are cases where wrongfully letting die is as bad as wrongfully killing. Suppose for example that the wrongdoer deliberately omits to help as a way to achieve a wrongful end, as in James Rachels' well-known example of the person who fails to rescue his 6 year-old cousin from drowning as a way to inherit his fortune, and whose wrongdoing is as bad (Rachels rightly argues) as if he had pushed the child into the bath.²⁴ Moreover, even if wrongfully letting die is not as bad as wrongfully killing when other things are roughly equal, it can be as bad, indeed worse, when numbers of victims are very unequal. Thus I do not think that wrongfully killing one person is worse than wrongfully allowing millions to die (as we do every year). In fact, it seems to me that the latter is worse than the former. But if we may employ lethal force to thwart that one act of killing (subject to necessity and proportionality) then we may employ lethal force to get the affluent to do their life-saving duties by the very many poor (again, subject to necessity and proportionality).

Suppose that wrongfully letting die is never as bad as wrongfully killing. According to Tadros, a crucial difference between *Enforced Duty* on the one hand, and *Medicine* and *Medicine 3* on the other hand, is that whereas D does not *cause* Victim to fall in the water and drown, by taking or appropriating the pills I need, you avoidably *cause* me to die earlier than I would otherwise. This is why I may kill you to retrieve the pill, whereas V may not kill D. The disagreement between us turns on how best to understand the role of causation in the imposition of duties and the conferral of the permission to enforce the latter. Tadros seems to think that *initiating* a harm at *t1* (or, as I shall say, strictly causing a harm) is necessary for permissible killing at *t2*. The difficulty with his argument is that he deems D under a duty to help V at *t2* even though he did not initiate her demise at *t1*. At this juncture, I can only reiterate the argument which I deploy in *CW*, Sect. 3.2.3 and which Tadros does not confront head-on, namely that even if an agent is not strictly causally responsible for the initiation of a threat at *t1*, in so far as he is in a position to stop that threat at *t2*, he contributes in a significant sense to making it the case that the threat is ongoing. To deny that D is

²⁴ J. Rachels, 'Active and Passive Euthanasia', *The New England Journal of Medicine* 292 (1975): 78–80.

contributing to V's demise is to put D on a par *vis-à-vis* V as, e.g., someone who is there and cannot swim, or someone who lives on the other side of the world. Clearly however D is not on a par with the latter: this is precisely what is captured by the claim – which Tadros accepts – that D acts wrongly by not helping whereas those people do not, even though neither he nor they initiated the harm. If, then, strictly causing a harm to befall another person at *t1* is not a necessary condition for being under a moral duty to rescue that person from it at *t2*, we need to know why it is a necessary condition for coercing the duty-bearer to act given that the duty-bearer wrongfully contributes to make the harm an ongoing one. I fail to see what Tadros' argument to that effect actually is.

Let us assume that I am wrong. Tadros agrees with me that it is (under certain conditions) permissible to wage war against the affluent if they wrongfully take or appropriate resources which are in the very poor's rightful possession or to which the very poor have a rightful claim. As he notes, however, the affluent's failure to comply with their duties of justice to the very poor is best characterised as wrongfully receiving and taking resources from those who wrongfully take or appropriate those resources, as in the following case:

Medicine 4 As *Medicine 3*, except after taking the 15 extra pills you pass them on to X. X knows that these pills ought to have been mine and could easily give them back to me, providing me with the 15 extra years of life that I am entitled to. He refrains from doing so in order that he can extend his life beyond the 60 years he would otherwise live.

Presumably, given that X fails to rescue me, I may not kill him – as per *Enforced Duty*. Not so, according to Tadros. For we must distinguish between the case where X's receiving the pills makes no difference to my predicament in that you would have kept them for yourself (*Medicine 4a*), and the case where it does make a difference in that had X not received the pills I would have been able to secure them from you (*Medicine 4b*). In *Medicine 4a*, I may not kill X; in *Medicine 4b*, I may. In the light of Tadros' views on the relevance of causation to permissible killing, his verdict in *Medicine 4b* is not surprising: X is causally responsible for my predicament in the latter case but not in the former. In the light of my response to Tadros on

this point, it is not surprising that I should reject the difference he draws between those two variants of the case: he gives the very poor permission to go to war against the affluent in *Medicine 4b* and not in *Medicine 4a*, whereas I do so in both.

Even if I am wrong, there are reasons to dispute Tadros' claim that global injustice is best captured by *Medicine 4b*. He thinks that 'the people who initially took their resources will retain sufficient resources for the poor to secure if they are able to do so' (p. ??). Thus, for the merely rich wrongfully to receive resources from those people – the very rich – does not make a difference to the situation of the very poor, which (together with the causal responsibility thesis) entails that waging war against the merely rich is impermissible. But *pace* Tadros, the very poor are unlikely to be able to get those resources from the very rich, simply because the very rich, in virtue of being very rich, are very likely to have even better means than the merely rich to defend themselves. Moreover, even if the very poor stand some chance of success against the very rich, it is plausible that they will incur far higher costs in the course of waging their war than if they targeted the merely rich. It thus pays to ask whether, in this case, they are permitted to do the latter. Of course, Tadros might answer in the negative and draw from my objections the conclusion that far fewer resource wars still than *he* had initially supposed are permissible all things considered (since far fewer, if any at all, are modelled on *Medicine 4b*), whereas on my view, resource wars which are modelled by both *Medicine 4b* and *Medicine 4a* are permissible (subject to the aforementioned conditions). The lesson to be learnt from Tadros' fascinating discussion, however, is that whether some people wrongfully appropriated or wrongfully received resources to which the very poor have a rightful claim makes some difference to the latter's permission to go to war: other things equal, I agree that they must fight the very rich; but if other things are not equal, and in particular if they stand a much better chance of success or will incur much lesser costs by fighting the merely rich, then they may do the latter. In fact, and more strongly put, given that in the course of fighting a resource war they will inevitably kill or maim innocent individuals (whether on their side or on the side of the affluent), they must wage the war which has the greater chance of succeeding and/or will be the less costly on the innocent. It is not just that they may fight the merely rich rather than the very rich, but that if they choose to go to war at all, then they must do so.

It might seem that Tadros' position on resource wars is radically at variance with mine. By way of concluding, however, we agree that the recovery of wrongfully taken or appropriated property can be a just cause for war. We also agree (and I owe this point to his paper) that the affluent may be killed if their participation in market activities results in violations of the right not to suffer severe poverty: this is so even if those violations are overdetermined (as a result of the exceedingly small contribution to severe poverty made by millions of wrongdoers) so long as killing them would avert the same number as, or a higher number than, the number of deaths caused by the market as a whole. A full account of resource wars (which I did not and could not have aimed to provide in *Cosmopolitan War*) should attend to the issues raised by market complicity.

V. WHERE NEXT?

Each of those four papers raises interesting issues which are worth exploring further with respect to rights, justice, and war. Thus, whilst I have doubts about reciprocity as a basis for rights, it is hard not to feel the pull of the intuition that one's failure to reciprocate what other agents do for us, or refrain to do to us, can at least sometimes trigger the forfeiture of both one's rights against harm and one's rights to assistance. At a deeper level still, and as I noted in my response to Rodin, more work needs to be done on the extent to which, if at all, the nature of a right as purely moral or partly conventional has a bearing on the conditions under which the right is possessed or forfeited. I also think, in connection with both Stilz's and Statman's contribution, that advocates of duties of distributive justice and war ethicists (whether or not they regard themselves as cosmopolitans) ought to probe further still than they have tended to do so far the normative role which states, or state-like institutions, ought to play in developing and interpreting what is required of each and every one of us. Finally, as Tadros urges, we need to scrutinise carefully the grounds upon which on the one hand failure to assist, and on the other hand collective and overdetermined failure not to harm, can warrant the resort to lethal force.