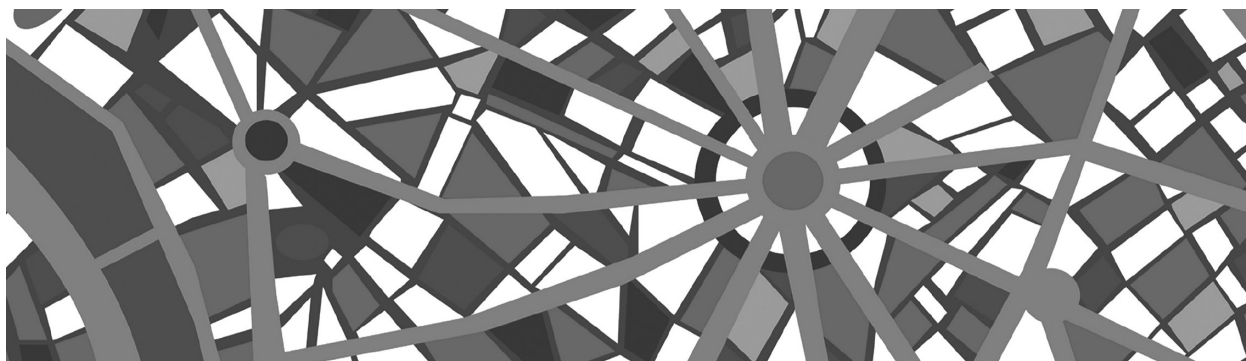


# The SAGE Handbook of Global Policing



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# War, Policing, and Killing

Cécile Fabre

## INTRODUCTION

Both war and policing involve the use of force. While force in war is more often than not lethal, in policing it usually falls short of killing. The adverb ‘usually’ masks considerable differences between countries. We do not know for sure how many people exactly are killed by police officers in the US (whether unjustly or not), as it is up to the 17,000 or so law enforcement agencies operating on US soil to report those acts. But estimates place the yearly number of police-induced fatalities at several hundreds. By contrast, the Department of Justice keeps data on police officers killed in the line of duty – 48 such deaths occurred in 2012.<sup>1</sup> In the UK, where police officers do not routinely carry arms and are subject to rigorous scrutiny whenever they discharge a weapon, nine people were killed by the police between 2008 and 2013. Three police officers were killed by suspects in 2012. By contrast, war casualties for US and British armed forces

serving in Iraq and Afghanistan were in the thousands (whether incurred or inflicted). The fact remains that war is most likely lethal, policing most likely not – or at least, not in relatively well-established Western-type liberal democracies. It is not surprising therefore that there should be a vast body of work by (broadly) Western scholars on the ethics of war most of which focuses on killing therein, whereas there is very little philosophical work by similar scholars on the ethics of policing in general, and police killing in particular. This is a regrettable state of affairs, not least because police violence, and in particular lethal violence, is a fact of daily life in most parts of the world – as attested by a growing and rich ethnographic literature which, though empirical in the main, nevertheless connects with ordinary people’s ethical stand on police killings.<sup>2</sup>

In this chapter, my brief is to scrutinize some divergences and convergences between the ethics of war on the one hand, and the ethics of policing in particular. I focus on killing,

and argue that those acts are governed by the same moral norms, whether they are committed by combatants against other combatants, or by police officers against criminals (and vice versa).<sup>3</sup> This is by no means obvious: according to both orthodox just war theory as articulated from the 17th century onwards and the international law of armed conflict, war is *sui generis* morally speaking. In the second section I reject a recent argument to the effect that war and policing are on a par as far as killing is concerned, whereby war should be construed as a police operation whose aim is to enforce the law. I argue that the police model does not help with justifying war killing. But as I also show, construing policing as law enforcement does not help with justifying police killing either: in both cases, killing is justified on the grounds that it protects some enforceable moral rights. For all its weaknesses, however, the police model teaches us an important lesson about war killing, which I draw out in the third section. Namely, in just the same way as police officers are morally permitted to kill (some) wrongdoers who are not permitted to retaliate in kind, combatants fighting for a just cause are morally permitted to kill unjust combatants who in turn are not permitted to kill them in their own defense. As I also show, reflecting on this parallel sheds light on other interesting ethical features of police killings. Finally, in the fourth section, I provide a more developed account of the rights which combatants and police officers are morally permitted to defend by lethal force.

Readers might wonder why I focus on killing. For after all, police officers and combatants often use less than deadly force (manhandling, handcuffs, tear gas, truncheons, fists). They also carry out many other activities which do not in the main involve the use of force. Police tasks involve searching for the missing, accompanying victims of domestic violence to a refuge, monitoring large public events, giving directions to wandering tourists, talking to school children about basic safety, and so on. (Betz, 1985;

Kleinig, 1996: 22–29). Moreover, both combatants and police officers are exposed to similar moral quandaries which have little to do with killing, such as whether to report corrupt colleagues at considerable risk to themselves, whether to breach the law, or whether to be complicitous with the enemy for the sake of a legitimate end. Yet, to the extent that carrying those tasks requires the use of authoritative coercion in general and lethal force in particular, it marks the police and the military off from all other professions. Moreover, killing is one of the most morally portentous acts there is and stands in particularly serious need of justification. Hence my focus in this chapter.<sup>4</sup>

Three final remarks before I start. First, by ‘*x* is permissible/wrong’, I mean ‘morally’ and not ‘legally’ permissible and wrong: my concern is with ethics, not with the law. Second, I assume that doing *x* is morally permissible only if the evidence we have at our disposal as to the facts of the matter, when deciding whether to do *x*, leads us justifiably to believe that the facts are what they seem to us, and if our beliefs are correct. Conversely, *x* is morally wrong if the evidence we have about the relevant facts does not give us sufficient reason justifiably to believe that the facts are as they are. Thus, if I have evidence which leads me justifiably to believe that you are about to kill me, I am morally permitted to kill you in self-defence in the evidence relative sense, *even if, in fact*, you are not about to kill me. But if the evidence at my disposal is weak, and does not justify my believing that you are about to kill me, my killing you is morally wrong, *even if, in fact*, you are about to kill me.<sup>5</sup> Third, throughout the chapter I shall be speaking of ‘just/unjust war’, ‘just/unjust killings’, and so on. By a just act, or end, in this context I mean an act or end which respects and promotes individuals’ fundamental human rights. In that sense, the moral norms which underpin this chapter are rights-based. I certainly do not wish to deny that there is more to morality than rights; nor do I wish to occlude the fact that there are

deep disagreements about what those rights are and how they are grounded. Exploring those issues in depth is beyond the scope of the chapter: I simply take it for granted that all individuals wherever they are in the world at least have the rights which are granted to them by (e.g.) the Universal Declaration of Human Rights.

### **KILLING FOR WHAT? A FIRST PASS: THE POLICE MODEL OF WAR**

Police officers are meant to enforce the law of the state for which they serve, and to this end are granted rights and privileges – such as the right to use force – which are denied ordinary citizens. In this respect it might seem that war and policing profoundly differ. For at first sight, combatants are not meant to enforce the law: rather, they are meant to defend their country, to defend third parties from serious threats (for example in a war of humanitarian intervention), or to protect collective security. On that view, war, unlike policing, is about killing and maiming in individual and collective self- or other-defence.

In recent years, however, a growing number of war ethicists have argued that war should be construed as a means to enforce the law – in this instance, international law as articulated in, e.g., the UN Charter, notably article 2(4), which prohibits ‘the use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations’ (Coates, 1997: 127; Kahn, 2002; Rodin, 2002; Atack, 2005; Kaldor, 2006; Walzer, 2006: 59; Dexter, 2008). So understood, war is to the international realm what policing is to the domestic realm.<sup>6</sup>

This is an attractive view. For in a world in which the dominant normative discourse is that of internationally agreed human rights, armies are no longer supposed always to protect their state’s, indeed fellow citizens’,

naked self-interests – any more than a government, at whose behest the police operates – is supposed always to act in the naked self-interest of its own members. Thus, on what we may call the policing model of war, when combatants and police officers use violence, indeed kill, they do so for the sake of enforcing the norms in force in their community – the world at large for the former, their own state for the latter. We have long known this about policing: learning it about war would help us devise an ethics of war better suited for the world in which we live. Or so the argument goes.

But as I argue elsewhere, conceiving of war as enforcing norms along the lines of a police operation will not work, for a number of reasons two of which are particularly relevant here (Fabre, 2009; 2014). First, whereas a police officer *P* can perhaps be appropriately described as enforcing morally justified laws against grievous bodily harm when using force against an attacker *A* who threatens a victim *V*, combatants who defend their country from an aggressor are not appropriately described as enforcing norms against unwarranted military aggression. For in so describing them, one fails to account for the surely plausible intuition that they – together with their compatriots – have a stake in the defence of their country which other armies and citizenries do not have, and correspondingly have moral permissions and rights in relation to this particular act of national self-defence which the latter do not have. By contrast, *P* is situated in exactly the same way, morally speaking, in relation to *A*’s assault of *V*, as any other police officer in that community.

Second, recall that war is about killing – or, at any rate, about maiming another if not with the intention of killing him, at least knowing that he may die. Justifying war thus means justifying combatants’ acts of killing. To say that a combatant rightfully kills in defence of a particular norm – for example, the norm against unwarranted aggression – is to say that defending *this* norm by lethal

force is warranted. This in turn involves giving an account of what this norm is and why it has that kind of importance. But here is the difficulty. The legal norms embodied in the UN Charter draw whatever strength they have not just from the fact that they are now part of international law but also, indeed mainly, from the fact that they are justified by and protect the most fundamental of our moral rights – in other words, fundamental human rights. War is not so much about enforcing the law *per se* as it is about defending those rights. If so, we are back to square one: combatants permissibly kill in defence of enforceable moral rights, period.

And so, in fact, does the police. For in just the same way as international legal norms are authoritative only if they instantiate and enforce moral norms, so are domestic legal norms. And in just the same way as the norms enforced by the body of international law which regulates military violence are, in the main, fundamental moral rights, so are the norms instantiated and enforced by the body of domestic law which regulate police violence. When police officers permissibly use coercion in general and kill in particular, they do so in defence of enforceable moral rights. The difficulty however is that not all such rights warrant the use of lethal force (Miller et al., 1997; Miller and Blackler, 2005: ch.1). We will come back to this point in the fourth section.<sup>7</sup>

If I am right, justifying *both* police and war killings by appeal to the notion of law enforcement does not add anything to the view that both kinds of act, if they are to be justified, ought to aim at defending rights. It is the latter view which stands in need of justification.

### KILLING WHOM? LESSONS FROM THE POLICE MODEL

Although the policing model does not offer a promising way to reflect on war, thinking

about the relationship between police officers and those whom they rightfully kill yields some interesting results when thinking about war killings. Consider the following two scenarios.

*War.* Country A wrongfully invades country B. Combatants<sub>A</sub> threaten to kill combatants<sub>B</sub> unless the latter surrender; when combatants<sub>B</sub> fire at combatants<sub>A</sub> instead, thereby threatening their life, the latter shoot back. A number of combatants from both sides die as a result.

*Police.* Don Corleone's men wrongfully break into a bank. When the police turns up, the *mafiosi* threaten to kill the police officers unless the latter let them escape. When the police officers instead open fire, thereby threatening the *Mafiosi's* life, the latter shoot back. Some police officers as well as some of the *mafiosi* die as a result.

In both cases, one set of agents pose a lethal threat to another set of agents in prosecution of an *ex hypothesi* wrongful venture (a war of aggression in *War*, an armed robbery in *Police*). According to mainstream, orthodox just war theory, however, there is a fundamental normative difference between the two cases: combatants<sub>A</sub> are morally permitted to kill combatants<sub>B</sub> once the latter fire at them, on the grounds that they are thereby defending their lives; by contrast, *mafiosi* are not permitted to kill police officers once the latter start shooting, even though they are thereby defending their lives. In *War*, the fact that some agents trigger a lethal confrontation as part of a wrongful venture is entirely irrelevant to the moral status of their acts of killing; in *Police*, the fact that they so act is decisive.

The orthodox view of war killing was first fully articulated by Hugo Grotius as a key tenet of his account of public wars; it finds its best contemporary expression in Michael Walzer's classic *Just and Unjust Wars* (Grotius, 2005 [1625]; Walzer, 2006). It is also embedded in the law. Gang members will in most (all?) jurisdictions be prosecuted for murder/attempted murder if they survive a shootout with the police. By contrast, combatants who kill in prosecution of an unjust

cause are not regarded by the laws of war as having committed a criminal offence, even though their victims are morally innocent of wrongdoing, and even though they would be prosecuted for war crimes were they deliberately to kill innocent civilians.

In recent years, however, a number of just war theorists, most notably Jeff McMahan, have revived an older account, to be found in the writings of Francisco de Vitoria, whereby combatants who kill enemy soldiers in a war which is manifestly unjust are not morally permitted to do so (Vitoria, 1991 [1539]; Rodin, 2002; Coady, 2008; McMahan, 2009; Fabre, 2012; Frowe, 2014). On that older account (the contemporary version of which is also known as the revisionist, or neo-classical account), the justness or lack thereof of the cause for which combatants kill has a decisive bearing on their permission to do so. Combatants fighting and killing for a just cause, in other words, are exactly like the police officers in *Police*, whereas combatants fighting and killing for an unjust cause (henceforth, unjust combatants) are exactly like the *mafiosi*.

At first sight, there is no reason to distinguish (morally speaking) between unjust combatants and gang members. To show otherwise, and more widely to show that killing in war is governed by moral norms which are specific to this particular kind of activity, one must identify morally relevant differences between combatants as a class, and gang members as a class. To put it differently, one must provide non-arbitrary reasons for *demarcating* war violence from criminal and police violence.

It is worth noting that the demarcation thesis is thought to apply to international conflicts, not to civil wars. For in civil wars, state actors are usually thought of, in relation to their non-state internal enemies, as the police are thought of in relation to criminals. (This is not so in cases where non-state armed groups are granted the same status as states, e.g., on the grounds that they are national liberation movements against an

unlawful occupier.) Moreover, and relatedly, the demarcation thesis presupposes that one can meaningfully identify and differentiate combatants from noncombatants, police officers from *Mafioso*. In non-statist conflicts, those distinctions are extraordinarily hard to draw. This in fact lends support to the view that, irrespective of the nature of the conflict, whether one may justifiably kill another largely depends, not on the uniform one wears, but on whether one poses a unjustifiable threat of lethal harm.<sup>8</sup>

That being said, supporters of demarcating war violence from police violence typically adduce three reasons in support of their thesis. First, they claim that combatants act under duress – the duress of conscription in some cases, and the duress of incurring severe penalties for refusing to fight in all cases. Criminals, by contrast, do not (Walzer, 2006: ch. 9). But this will not do. For not all combatants are conscripted, and not all of them are subject to such severe penalties for refusing to deploy that they can be aptly described as acting under duress. Moreover, some criminals *do* act under duress – the duress of being forced to join a gang in some cases, and of being killed, or severely maimed for refusing to do their boss's bidding in many other cases ('an offer you cannot refuse ...'). The duress argument thus does not demarcate combatants as a class from gang members as a class. And even if it did, duress is at best exculpatory, not justificatory. We readily make the point as far as criminals are concerned: we would not say of Don Corleone's henchmen that they are *justified* in murdering police officers because he would have them killed for disobeying his orders; at most, we would say that they are excused for so acting. We should say the same of combatants – who incidentally are not in fact justified in killing innocent civilians even when ordered to do so under duress and who therefore are not justified in killing morally innocent enemy combatants even when ordered to do so under duress.

The second argument in favour of demarcation adverts to the epistemic difficulties

which ordinary combatants allegedly face, and criminals allegedly do not encounter, when assessing whether the enterprise in which they are asked to take part is morally right and/or lawful. Ordinary combatants, it is often said, cannot be expected to know whether (for example) the military aggression which their leaders are instigating is unjust, or indeed unlawful. The facts are simply too hard to gather and too complex to analyse for all but the higher echelons of the leadership (Shue, 2008). Moreover, a judgement to the effect that the war lacked a just cause might be reverted a few years later, once time has worked its distancing magic. To deem morally guilty, and to judge accordingly, a soldier in the immediate aftermath of such a war merely for having killed, would be unfair. By contrast, a judgement to the effect that a gang committed a particular crime is not subject to the same epistemic vicissitudes (Kutz, 2005).

In the light of the fierce disagreements about facts which raged in 2003 as the US and the UK prepared to invade Iraq, indeed in the light of the low educational background of many enlistees and conscripts in many armies whose leaders often engage in relentless militaristic propaganda, the epistemic argument admittedly has some force. However, it is vulnerable to two objections. First, it cannot rescue all ordinary combatants, wherever they serve in the world, as a class, for as a matter of fact, many such combatants in Western-style liberal democracies do have access to the relevant facts, the ability to make a considered moral judgement on the status of the war they are asked to fight, and some training in international law.

Second, let us concede that it is much harder to know, without the benefit of hindsight, whether a particular war is just than to know whether a private (collective) violent enterprise is just. Even if the premise is correct, the conclusion (that we may deem a gang member a murderer for killing without just cause, but not a combatant) does not follow. For it is also very difficult to know, without similar benefit, whether a particular act

during war complies with the laws of war. For example, we might say that a particular act of torture carried out by a belligerent against an enemy civilian was grievously wrong – until we subsequently find out, quite late after the fact, that the civilian was in fact an active supporter of the enemy and that the information he provided saved hundreds of lives. Or we might say that the deliberate bombing of a city was in clear breach of the injunction against the intentional killing of civilians, until we find, again some considerable time later, that the situation in which it was carried out had all the hallmarks of a supreme emergency. And yet, soldiers who commit certain acts in war (such as the rape and torture of civilians) are standardly deemed guilty of wrongdoing and prosecuted, despite those epistemic difficulties. Why not, then, deem soldiers guilty of, and prosecute them for, acts of killing which are not in breach of the standard principles of *jus in bello*, but are committed in the service of an unjust cause?

The third, strongest, argument for demarcation claims that combatants who act on behalf and at the behest of a belligerent with the authority to wage war act to political ends. Gang members, by contrast, act on behalf and at the behest of an organization which lacks any authority of that kind, and do so to criminal ends. This is enough to confer on combatants rights and privileges, such as the privilege to kill the enemy irrespective of the justness or lawfulness of their war, which gang members lack. More strongly still, it is enough to hold combatants under a duty to kill enemy soldiers, again whether or not their cause is just, and to hold gang members under a duty *not* to kill police officers precisely because their cause is unjust.

The point about rights and privileges is made by Christopher Kutz, while the point about duties is made by David Estlund (Kutz, 2005; Estlund, 2007). Let me address them in turn. Kutz rightly notes that gang members who kill in the service of an unjust cause are acting impermissibly. However, his claim that soldiers are lawful combatants



irrespective of the cause which they defend is implausible. As he himself notes, his argument commits him to granting those privileges to the Taleban, in so far as they are a political actor pursuing political ends (Kutz, 2005: 180). But the distinction he thus draws between combatants and gang members is far too sharp, to the point of being extremely counter-intuitive. Suppose that the US and the UK had sought to drive the Taleban out of power, not for supporting Al-Qaeda, but, rather, for violating Afghan women's basic human rights to security, health care, and bodily integrity. If he is correct, the Taleban ought not to be regarded as criminals for killing foreign armed troops who act in rescue of those women, since their project (defending their grotesquely abusive regime) is clearly political on his account of 'the political'. By contrast, a group of men who, in any given country, stone an alleged female adulterer to death and who defend themselves against the police by lethal means can be regarded as criminals and charged accordingly. The difficulty with his view is this: both groups have exactly the same end, to wit, preventing interveners and police officers (respectively) from rescuing women from grievous, life-threatening abuse. One is deemed to be a political actor, the other not. Assuming for the sake of argument that we can aptly describe the Taleban project as 'political', I fail to see why the fact that we can so describe it confers on the Taleban a protection which they would not enjoy if the very same project which motivates our intervention (namely, the total subordination of women) were only described as 'criminal'.

There is a further difficulty with Kutz's view. Consider the following variant on *Police*:

*Police*\*. The government instructs the police to clean up gang-ridden areas of small fry criminals who (due to heavy backlogs in the judicial system) will never make it to court anyway, as well as of individuals deemed socially undesirable such as street children and homosexuals. A number of officers and those whom they target die in the ensuing street battles.<sup>9</sup>

Those police officers are involved in political violence by Kutz's lights. And yet, their ends are grievously unjust on any plausible account of morality – certainly at the bar of any human-rights based morality. On any such an account, the targets of those killings are morally permitted to retaliate in their own defence. Once they do so, the police officers are *not* morally permitted to do the same. In iterative shoot-outs, in other words, the police, who *ex hypothesi* act wrongly at time  $t1$ , are not morally permitted to carry on shooting in their own defence at  $t2$ . Their situation is the same as the situation of unjust combatants: both must surrender, even though they were acting under orders.

Kutz might be tempted to reply that there is an important difference between combatants in *War* and police officers in *Police*\*: namely that the former are not under any special duty not to harm foreign enemy combatants, whereas police officers are under a duty not just to desist from harming their fellow citizens without justification but, in addition, to protect them from such harm: this after all is why we have subjected ourselves to their authority, indeed, why we entrust our protection to them. And this is why (he might perhaps say) they are derelict in *Police*\* whereas combatants<sub>A</sub> are not derelict in *War*. But this is not plausible: on a human-rights based account of morality, whether or not you may be killed *when you have not posed a wrongful threat of harm* does not depend on whether you stand in a particular (non-intimate) relationship with your attackers.

Note that this point is compatible with the claim that a murder victim is wronged overall to a greater degree if the murderer is her partner than if it is a complete stranger – indeed, if the murderer is her bodyguard (think Indira Gandhi) than if he is a stranger (think Mahatma Gandhi). For even if that claim is true, it remains the case that Indira Gandhi did not have a more robust right not to be killed against her bodyguards than Mahatma Gandhi had against Nathuram Godse. She did however have a claim against them,

which the Mahatma did not have against Godse, that they not betray her. It is precisely because they betrayed and killed her that they wronged her to a greater extent overall than Godse wronged the Mahatma. But (I maintain) their act of killing itself was not worse than Godse's assassination of the Mahatma. The same goes, then, with combatants and police officers.

Estlund's criticisms against the claim that soldiers who fight in an unjust war are not permitted to kill the enemy is not vulnerable to those objections. On his view, under the right conditions (which neither the Taliban nor the police in *Police\** meet), a soldier is under a duty to obey ordinary orders in an unjust war, including orders to kill the enemy. For, more widely, 'when authoritative commands arise out of an epistemic procedure of a certain kind there can be a duty to obey commands to carry out even some unjust policies or punishments' (Estlund, 2007: 221). Such procedures are democratic and issue in political justifications which are acceptable to all reasonable points of view. Estlund does not dispute that the soldier, in obeying the order, would be guilty of wrongdoing. His point, however, is that fair institutions are always vulnerable to making honest mistakes, and that under the aforementioned conditions, a soldier is under a duty to do wrong. By contrast, in so far as a criminal gang lacks democratic procedures and does not seek to produce justifications which are acceptable to all, it cannot possibly count as a legitimate authority, and its members cannot be under a duty to obey the leaders' orders.

Estlund is surely correct that a political organization with broadly fair institutions simply is *not* like a criminal gang, and that a political organization whose ends are profoundly unjust, such as the Taliban, lack the authority which would bind their individual members to follow their leaders' unjust orders. As he himself acknowledges, however, the distinction thus drawn between a legitimate authority and a criminal gang does not suffice to establish that soldiers who

act at the behest of the former are under a duty to obey its unjust orders to kill enemy combatants.

His argument in support of such a duty proceeds by analogy. Briefly put, suppose that a jailer has very good reasons to believe that the prisoner in his care has been wrongfully convicted in a fair trial. Even then, Estlund argues, the jailer not only is permitted, but in fact is under a duty, to keep the prisoner in jail, as per his orders. If that is correct, he notes, one must accept that an executioner must put to death a defendant who was wrongfully convicted of a crime which normally warrants capital punishment. And if *that* is correct, then the soldier who is ordered to fight in an unjust war is under a duty to kill the enemy, under fair background conditions.

Estlund's argument depends for its success on the claim that the case of the executioner is relevantly analogous to that of the jailer, and that the case of the soldier, in turn, is relevantly analogous to that of the executioner. Let us accept, for the sake of argument, that the second of those two analogies is correct. The difficulty is with the first. There is an obvious difference between the jailer and the executioner, namely that the former 'only' keeps the wrongfully convicted defendant in jail, whereas the latter kills him. Estlund does not think that this matters: 'while death is more severe', he writes, 'the severity of extended imprisonment should not be underestimated.' And later: 'it is not at all clear how the difference between very severe and more severe would explain the different duties of the jailer and the executioner (putting aside, as a separate issue, any chance of later exoneration)' (Estlund, 2007: 220). But that which Estlund puts aside is crucial. The executioner's mistake, unlike the jailer's, can *never begin* to be adequately put right (at least not for its chief victim<sup>10</sup>). That alone enables us to exonerate the executioner from a duty to kill, even if one believes that the jailer is under a duty to imprison. On Estlund's assumption that the case of the soldier is relevantly analogous

to that of the executioner, it follows that the former is similarly under a duty not to kill in the prosecution of an unjust war (see also McMahan, 2009: 68–70).

To summarize, duress, epistemic difficulties and the distinction between political and criminal violence are often invoked to support the two-pronged thesis that combatants *qua* combatants are morally permitted to kill enemy combatants irrespective of the moral status of their cause whereas criminals are not permitted to kill police officers precisely because their cause is unjust. As we saw, those arguments are not successful: unjust combatants are relevantly similar to Don Corleone's henchmen and unjust police officers, whereas just combatants are relevantly similar to just police officers.

This is a radical view. It implies that unjust combatants are morally liable to a charge of murder, and thus that they would not be wronged if we decided to prosecute them for murder (even if there are good reasons all things considered for not prosecuting them). Furthermore, on this account of war killing, unjust combatants are not morally permitted to be loyal to their comrades in arms by, e.g., killing *just* combatants in the latter's defence, any more than a gang member is morally permitted to kill a police officer in defence of a fellow gang member – indeed, any more than a corrupt police officer is permitted to kill an innocent person in defence of another corrupt police officer. If feelings of loyalty, which by all accounts are deeply ingrained in police forces, have no place in such cases, they should have no place in the context of war.<sup>11</sup>

### **KILLING FOR WHAT? A SECOND PASS: LESSER RIGHTS AND CONDITIONAL THREATS**

To recapitulate briefly, I have argued that combatants and police officers who kill in pursuit of unjust ends are not morally permitted to do so and, further, are not morally

permitted to retaliate in their own defence – even if they are ordered to do so by their hierarchy.

Clearly, it does not follow that they are morally permitted to kill in pursuit of any just end. Directing traffic at the scene of an accident is a just end, yet police officers are simply not permitted to kill a motorist as an inducement to get other motorists to comply more quickly with their instructions. Searching premises on which, they have good reasons to believe, a criminal offence has been committed is also a just end, yet they are not permitted to kill the owner on sight just so that their search is made easier. Nor are they morally permitted (or indeed legally permitted for that matter, in many countries) to shoot at a petty thief on the run (Miller and Blackler, 2005: 62).

Contrastingly, violations of the right not to be killed, and more widely of rights not to be treated in dehumanizing ways (through rape, repeated assaults, torture, long-term deprivation of freedom) *do* warrant the use of lethal force as a means to put a stop to them – subject of course to considerations such as necessity, proportionality and reasonable chance of success. This, really, is what is standardly meant by self- and other-defence. This is not particularly controversial. It clearly implies that police officers, and indeed combatants, are morally permitted to kill in the defence of those rights, either because they themselves are under threat or to protect third parties.

Yet, there are many instances where, in practice, police officers kill a suspect even though the latter is not in fact posing a lethal threat at that particular time. Consider:

*Un-armed Robbery.* Robert is robbing a shop in the middle of the night, when police officer Paula turns up alerted by the alarm. As far as she can tell, he is unarmed.

Robert is clearly violating the shop owner's enforceable moral rights to her property. But unless she would die or end up living in dehumanizing poverty as a result, it seems that the police officer may not kill Robert to

stop him from robbing the shop, *even if* there is no other recourse available. Property rights really are not that important.<sup>12</sup>

Consider now:

*Non-violent Escape.* Mark has rightfully been convicted to a life sentence for a double murder. He escapes after a year in prison and, while on the run, is confronted by Paula. As far as she can tell, he is unarmed, but she fires anyway, as per her department's shoot-to-kill policy in such cases.

It would be tempting to construe Paula's attempt to stop or indeed kill Mark as a means to ensure that the law is upheld. But as we saw in the previous section, this is not promising, for the law derives its moral force from the enforceable moral rights which it protects. We must thus establish whether Mark is violating enforceable moral rights by escaping and, if so, whether defending *those rights* warrant the use of lethal force.

The same goes with war, where the question is usually described as the 'bloodless aggression problem'. Suppose that A's army unwarrantedly invades B (a very small country), and leads its regime to surrender, without shedding, or even threatening to shed, a single drop of blood. The invasion takes place in the middle of the night, B's embryonic army folds at the mere sight of combatants<sub>A</sub>, etc. Once in power in B, A's officials do not commit serious rights-violations against citizens<sub>B</sub>. In this pure case, combatants<sub>B</sub> are not morally permitted to kill officials<sub>A</sub> and combatants<sub>A</sub> on the grounds that the latter have violated their sovereignty rights. For although citizens<sub>B</sub> do have a genuine grievance against the occupiers, sovereignty rights are not important enough to warrant deliberately *killing* those wrongdoers. Lethal force is warranted in only two cases: if the use of non-lethal force is likely to lead invading soldiers to make good on their threat to kill those who resist, or if surrender would lead the invader to commit further, dehumanizing rights-violations against citizens<sub>B</sub> such as murder, rape, and torture – rights violations in other words which would warrant killing.<sup>13</sup>

With those points in hand, let us return to Mark, who is on the run, unarmed, from a prison sentence for a very serious crime. We need to establish whether he is violating an enforceable moral right by escaping from prison, and if so whether killing him is warranted. On the first count, the answer is 'yes'. *Ex hypothesi*, we have enforceable moral rights against being killed, assaulted, raped, robbed, and deprived of our freedom. To say that those rights are enforceable is to say that they ought to be enforced by the state's legal system – in other words, that those who violate them ought to be punished. For to claim otherwise is to imply that those rights are not that important after all – that it does not really matter that we should be killed, robbed, or raped. On whatever view of punishment one endorses – retributivist, protectivist or expressivist – this is incoherent: the interests which those rights protect, central as they are to our well-being and our status as moral and rational agents worthy of equal concern and respect, are not adequately recognized and secured unless those who harm them are punished. Thus, we, holders of those rights, have a meta-right that those rights be enforced through the punishment of violators, even when we ourselves have not been killed, robbed, raped, etc. The less severe the rights-violation, however, the more lenient the punishment, and the weaker our meta-right that punishment should be meted out at all.

Now, to say that we have a meta-right that murderers, robbers and rapists be punished implies that some other parties are under a duty not to thwart the imposition of punishment. Mark's friends, for example, are under an enforceable moral duty not to hide him from the police. Under certain conditions, Mark's spouse is under an enforceable moral duty to testify against him. What about Mark himself, though? To claim that Mark has the right to escape is to imply that the police is under a duty not to apprehend him forcibly, which in so far as it would in effect make it all but impossible to bring him back to prison to serve the remainder of his sentence, seems

absurd. Mark, thus, is under a moral duty not to flee, itself derived from his deeper duty not to actively thwart the imposition of punishment for criminal offences – which correlates with our right against him that he be punished.

Still, it does not follow from the claim that Mark violates an enforceable moral right by escaping that lethal force may justifiably be employed to prevent them from so acting. In the ethics of defence in general and war in particular, it is a necessary condition for an act of killing to be morally permissible all things considered that it should be a proportionate response to a wrongdoing and a necessary means to defend the relevant rights, and that it should stand a reasonable chance of protecting those rights. Take proportionality first. By escaping, Mark is violating our moral right that violations of the right not to be killed should be punished. Moreover, he is not violating only his victim's right: he is also violating the rights of all of those who are subject to the same jurisdiction, and who have a fundamental interest in it being seen to that violations of rights against murder, assault, rape and robbery be punished. The question then is whether the number of victims together with the seriousness of Mark's wrongdoing (fleeing from being punished for the crime of murder) can justify deliberately attempting to kill him without falling foul of the requirement of proportionality.<sup>14</sup> I do not think that it does. This is the rationale behind my earlier claim, to the effect that only dehumanizing moral-rights violations warrant the use of lethal force. Losing one's life just for non-violently escaping from prison, even for murder, strikes me as a somewhat steep price to pay. *A fortiori*, so does losing one's life for fleeing from being arrested in the first instance (before one is convicted), or for escaping from a long prison sentence at the end of that sentence, or from a short prison sentence for a less serious offence.

In any event, even if Paula meets the requirement of proportionality, she will not meet the requirement of success. The success

requirement is familiar in the ethics of war. Thus, much of the condemnation aroused by warfare in World War I stems from the view that dozens of thousands of men died and killed with no hope of securing the objective they were meant to achieve (Gallipoli comes to mind here). Again, there is no reason to think otherwise in domestic settings. If this is correct, killing Mark deliberately cannot succeed at protecting our moral right that he be fully punished, for his death will make full punishment impossible. Accordingly, Paula would act impermissibly by killing him (and thus would not be morally permitted to defend herself should he attempt to kill her in self-defence).

I can think of two objections to this claim. First, some readers might be tempted to object that capital punishment is a morally justified punishment for murder. To kill Mark to prevent him from fleeing from the scene of his crime is tantamount to imposing the death penalty; to kill him to prevent him from escaping from prison is tantamount to substituting rightful punishment (death) for what was *ex hypothesi* too lenient a punishment (prison). Either way, the police are justified in so acting.

We should resist this first objection. Even if capital *punishment* is morally justified (where punishment denotes the imposition of some burden, or withholding of rights, on the grounds that the agent has committed a given wrongdoing), the extrajudicial killing of someone who is not posing a threat (which I assume to be the case here) is not morally acceptable – precisely because it is extrajudicial. Admittedly, police violence is sometimes used as a form of extrajudicial punishment, and welcomed by local populations as a more efficient and reliable form of punitive justice than the often torturous trial process (Caldeira, 2002; Jauregui, forthcoming 2015). But although policing is part of punishment (for we need police officers to arrest suspects, bring them to court, etc.), it is not tantamount to it – or at least, to *justified* punishment. For justified punishment is

subject to conditions which a police operation alone cannot meet, to wit, the gathering of evidence, the availability of a defence lawyer, knowledge and dispassionate application of the law. Given that Paula cannot possibly meet those conditions when killing Mark as he flees, her killing him cannot possibly be justified as the imposition of punitive harm.

The second objection to my claim that Paula may not kill Mark is this. On deterrence or protective views of defensive killing (it might be said) even if Mark cannot be punished, his death might serve as a means to deter putative wrongdoers from committing similar crimes, and thereby to protect those wrongdoers' future victims. But this objection too is seriously problematic. It supposes that Mark may be used as a means only to protect individuals other than his victim from rights-violations at the hands of wrongdoers to whom he has no connection, simply on account of the fact that he himself was causally responsible for the wrongful death of another person, and even if he cannot in any way be deemed to share responsibility for those future deaths. Therein lies the problem with the objection. For even if it is sometimes permissible to use people as means only (*pace* Kant's exception-less prescription to the contrary), and even if it is permissible to use Mark as a means only in some limited sense, *killing* him even though he is not posing a threat to anyone at this point does breach Kant's maxim to an unacceptable extent.<sup>15</sup>

So far, I have considered whether police officers (and indeed combatants) may deliberately kill those wrongdoers. Suppose however that they shoot not to kill but to incapacitate, foreseeing however that Robert and Mark are as likely to die as if they had deliberately attempted to kill them. Either intentions are irrelevant to the permissibility of actions, or they matter for it. If they are irrelevant and if I am right that deliberately attempting to (e.g.) kill Mark to stop his flight is impermissible, merely foreseeably killing him is morally impermissible as well, other things equal (such as the likelihood that

Mark will die). If however intentions are relevant, the claim that attempting to kill Mark is impermissible does not entail that attempting to incapacitate him, with the same likelihood of death, is also impermissible.

At the same time, the fact that Paula does not intend to kill Mark does not entail that she may shoot under those circumstances. For the foreseen though unintended harmful consequences of a particular act may still render the latter morally impermissible (though less wrong than if those consequences had been intended). It might be, for example, that the harm is disproportionate to the wrongdoing, or that its infliction will not bring about the desired (legitimate) end. And, in this case, given that Mark is as likely to die as if Paula attempted to kill him, both points obtain. Accordingly, it is only if Mark would be considerably less likely to die that Paula's act of shooting to incapacitate would be permissible. How less likely, I do not know. But in such a scenario, the risk that Mark would in fact die and that Paula's act would therefore be disproportionate and/or inefficient might be outweighed by the chance that, as Mark would survive, he would be brought to trial. Likewise, *mutatis mutandis*, in *Un-armed Robbery*.

The points just raised have important implications for the training which police officers should receive and the weapons which they should use.<sup>16</sup> If deliberately attempting to kill an unarmed prisoner on the run is morally impermissible, police officers should not be trained to shoot to kill under those circumstances. Nor should they be trained to shoot to incapacitate in those cases where the shooting will in all likelihood cause the suspect to die and where killing him would be impermissible. Whether shooting results in the suspect's death partly depends on which kinds of weapons they use. Guns are more likely to inflict lethal wounds than truncheon, some bullets are more effective at killing their targets than others, and so on.

To recapitulate, just as the defence of lesser rights such as sovereignty rights does

not *in itself* warrant the recourse to lethal force against military invaders and occupiers, the defence of lesser rights such as property rights or the right that grievous rights violations should be punished with a custodial sentence does not, *in itself*, warrant the use of lethal force by police officers. *Pace* Miller and Blackler, thus, law enforcement – even the enforcement of custodial sentences for those guilty of very serious offences – is no adequate justification for killing (Miller and Blackler, 2005: 79–83).

So far, so good. Consider now the following scenario:

*Violent Escape.* Same as before, except that Mark is armed and threatens to kill Paula unless she lets him go.

In the ethics of defence in general, and of war in particular, this question is referred to as the problem of conditional threats. Consider:

*Possibly Bloody Invasion.* Combatants<sub>A</sub> threaten to kill combatants<sub>B</sub> unless they and their compatriots surrender.

Some philosophers argue that conditional threats provide a justification for using lethal defensive force *only* if the threat is issued to back a further, serious rights-violations. On such a view, I am not morally permitted to kill a mugger who threatens to kill me unless I hand him five pounds; but I am morally permitted to kill him if he threatens to kill me unless I agree to, e.g., allow him to torture me for fun (Norman, 1995: 128ff; Rodin, 2002: 133–38. The torture example is mine).

This seems an appealing view. Before we endorse it, however, and apply it to the case of combatants and police officers, we must pay closer attention to when and why combatants<sub>B</sub> are permitted not to surrender to combatants<sub>A</sub> and, in fact, to kill them. As I claimed above, the defence of sovereignty rights *in and of themselves* does not warrant the use of lethal force. By parity of reasoning, Paula is not morally permitted to kill Mark just on the grounds that he threatens to kill her unless she lets him go.

That said, in the case of war, combatants<sub>B</sub> *clearly* are morally permitted to use non-lethal force first and, if combatants<sub>A</sub> do make good on their threats, kill him. No less clearly, they are justified in regarding combatants<sub>A</sub>' issuing of a conditional threat, under the circumstances of war, as evidence that they will in fact make good on their threat if combatants<sub>B</sub> decide to resist.

Likewise, Paula may kill Mark only if she has strong evidence for justifiably believing that he would actually attempt to kill her were she to use non-lethal force. In this case, though, she is justified in killing him, *not in defence of our enforceable moral right that Mark should be punished, but in defence of her own life*. The requirement of success, which forbids Paula to kill Mark in *Non-violent Escape* permits her to kill him in *Violent Escape*, for the criterion for success in the latter case is not that Mark should be brought to trial (he won't be) but that Paula should survive.

There is a little bit more work to be done, however. First, those points apply, *mutatis mutandis*, only if Mark threatens Paula with dehumanizing treatment in general. Likewise with war. Second, if Paula kills Mark on the grounds that, were she to use non-lethal force first, he would make good on his threat, she kills him pre-emptively. Not everyone agrees that pre-emptive killing is morally justified: some believe that killing is justified only as a response to an ongoing or imminent threat of harm. In fact, article 51 of the UN Charter is sometimes read as ruling out pre-emptive attacks (e.g., Brownlie, 1963: 275–78), though other scholars take a rather different view (e.g., Dinstein, 2001: 165–66).

Now, if objections to preemptive killings are sound, and if killing in response to a conditional threat is appropriately construed as preemptive killing (as I concede it must) then it is morally impermissible so to act, for both combatants and police officers. However, the reason why imminence is standardly thought to provide a justification for self-defence is that it acts as a proxy for probability and

enables us to overcome epistemic limitations: the more imminent the threat, the more likely it will ensue, and the easier for us to know that it will actually ensue (Leverick, 2006: ch. 5). Probability, in fact, is what to many justifies pre-emptive wars such as the 1967 Six-Day war between Israel and her enemies (Walzer, 2006: ch. 5). Thus, if Paula is justified in believing that it is highly probable that Mark will so treat her, she is justified in killing him pre-emptively.

If probability does the deeper justificatory work in the case of imminent threat, it can do similar justificatory work in the case of conditional threats. Of course, Paula might be wrong and might end up killing Mark even though the latter would not, in fact, have tried to kill her in response to her use of non-lethal force. But on the evidence-relative account of permissibility which I endorse, this is irrelevant: so long as Paula is justified in believing, on the basis of the evidence at her disposal, that Mark will kill her, she is morally permitted to kill him.

There are further considerations in support of the view that Paula may kill Mark. In particular, it is very difficult to shoot an armed individual in such a way as to only wound him. Using non-lethal methods such as rubber bullets might not do enough to incapacitate Mark. Relatedly, prolonging the lethal confrontation might put Paula as well as innocent bystanders in even greater danger. This is why police officers use lethal weapons and are trained to shoot to kill when dealing with suspects who resist arrest by threatening lethal force.

So far, I have assumed that Paula is the only person to whom Mark poses a threat. But suppose now that she has strong enough evidence for justifiably believing that he will carry on killing if she lets him go: he has already killed more than once, has got into many uncontrollably angry fights while in prison, etc. Were Paula to kill him now, in defence of his future potential victims, she would kill him preventively, as distinct from pre-emptively – where prevention blocks threats which are further in

the future and where there is less reason to believe that they will eventuate. To help focus on this particular feature of the case, let us also suppose that she has very good evidence for thinking that, if she attempts to arrest him, she will fail – not because he will kill her (she knows that his code of honour forbids him to kill women) but because she does not have back up and will be outrun. So, she can either let him go, or kill him. If she lets him go, she contributes to *possibly* putting the life of others at risk. If she kills him, she kills someone who *possibly* would not in fact have reoffended. What is she to do?

Note that a similar question arises in war. Suppose that combatants<sub>B</sub> have very good reasons to believe that, if A wins its war of aggression against their community, it will mete out dehumanizing treatment on their compatriots. Here too, to help focus on this specific feature of the case, let us assume that the invasion itself is bloodless, but that what will ensue will be very bloody indeed. So combatants<sub>B</sub> can either surrender now, and possibly put their compatriots' most weighty interests at risk in the future, or kill combatants<sub>A</sub> now – combatants in other words not all of whom would necessarily go on to prop A's rights-violating rule over B.

Recent work on the ethics of preventive war sheds light on combatants<sub>B</sub>' and Paula's predicament. Some war ethicists argue that preventive war is always unjustified. In particular, they hold that the targets of a preventive war have not yet violated any rights the protection of which warrants such action (Rodin, 2007). A natural response is that planning to violate precisely those rights is a grievous wrongdoing such that, if in addition there is strong evidence, not just of the planning, but of the targets' determination to act on it, we are justified in waging war. On that view, what matters is the probability that the threat will ensue, whether there are ways to block it other than by using lethal force, and (if it does ensue) whether it would be a proportionate response. If there is a high degree of probability that an attack will happen at some point in



the future, if war now is the only way to block it and so long as it constitutes a proportionate response, then it is justified. In practice, of course, those conditions are unlikely to be met, and most preventive wars, of which the 2003 war against Iraq is a good example, are thus unjustified. But this leaves the principle itself untouched (Luban, 2004; 2007; McMahan, 2006; Buchanan, 2007).

If those arguments are sound (and it seems to me that they are), they apply not just to wars of self-defence but also to interventions for the sake of others. Again, by parity of reasoning, so long as Paula's act of killing meets all three aforementioned conditions, it is justified. To be sure, perhaps Mark would not in the end have committed further murders. But Paula had good, decisive evidence for believing otherwise; moreover, Mark could have surrendered after all. On my evidence-relative account of wrongdoing, she may kill him. Crucially, however, this verdict depends on the claim that she did have such evidence. And what counts as good evidence is crucial. In the example as I have construed it, Mark has killed more than once, cannot control his anger, etc. But not all convicted murderers have those features. Many convicted criminals, moreover, have not committed offences the prevention of which warrants killing them: robbers, sexual offenders, those guilty of assault. In such cases, police officers are not morally permitted to kill, even if the alternative is to let those wrongdoers go at the risk of allowing them to reoffend.<sup>17</sup>

In summary (not just of the last few paragraphs but of this section as a whole), police officers and combatants are justified in killing criminals and enemy combatants in far fewer cases than might appear at first sight, whether in self-defence or in defence of others.

## CONCLUSION

In this chapter, I have scrutinized the ethics of war killing in the light of the ethics of

police killing, and vice versa. Here are my main conclusions:

- (a) Police officers and combatants are justified in inflicting lethal force on the grounds and to the extent that they thereby protect enforceable fundamental moral rights – be it their own or third parties'.
- (b) Just as criminals are not morally permitted to defend their own lives against police officers' legitimate use of lethal force, combatants who fight in an unjust war are not permitted to retaliate against just combatants.
- (c) Police officers are not morally permitted to kill fleeing offenders (whether intentionally or not), unless they are justified in believing that the latter would commit further grievous wrongdoings defence from which would itself warrant killing them.
- (d) Police officers are morally permitted to kill resisting and armed offenders.

Conclusions (a) and (b) were reached by examining the ethics of war killing in the light of standard claims in the ethics of police killing; conversely, conclusions (c) and (d) were reached by bringing to bear some standard requirements of a just war, notably proportionality and success. Thus, the ethics of police killings sheds light on the ethics of war killing, and vice versa. More deeply, the norms which govern the former are essentially the same as the norms which govern the latter. This is not to say that all the norms which govern policing *in general* are the same as the norms which govern war *in general*: I take (and have) no stand on this particular point. With respect to the morally portentous act of killing itself, however, there is no demarcation line between war and policing.

## NOTES

- 1 See <http://www.washingtonpost.com/news/post-nation/wp/2014/09/08/how-many-police-shootings-a-year-no-one-knows/>; <http://www.channel4.com/news/police-fatal-shooting->

- trigger-happy-fact-check; [http://www.policeroll.offhonour.org.uk/national\\_roll/annual\\_roll/2012.htm](http://www.policeroll.offhonour.org.uk/national_roll/annual_roll/2012.htm). The British newspaper *The Guardian* has been keeping track of the number of police killings in 2015. Guardian reporting resources combined with verified crowd-sourced information indicate that the total stands at 1138. See <http://www.theguardian.com/us-news/ng-interactive/2015/jun/01/the-counted-police-killings-us-database>.
- 2 Notable exceptions to which I refer throughout are Miller and Blackler, 2005; Miller et al., 1997; Kleinig, 1996. See also Klockars, 1980. There is a very rich ethnographic literature on police killings. See, e.g., Belur, 2010; Hornberger, 2013; Jauregui, 2013; Caldeira, 2002.
  - 3 For interesting empirical works on the ways in which police violence and war violence resemble each other, indeed intermingle in complex societies and/or in complex operations such as counterinsurgency, see, e.g., Bachmann et al., 2014; Neocleous, 2014; Kelly et al., 2010.
  - 4 For an interesting discussion of police use of non-lethal force, see Kleinig, 1996: 99–107. Kleinig also notes that high-speed car pursuits kill more people than police shootings, and that they should be constrained by the same norms (*ibid.*: 117–122). I agree.
  - 5 The evidence-relative account of permissibility differs from the belief-relative and the fact-relative accounts (Parfit, 2011: 150–162). I shall say a little bit more about the strength of the evidence later on.
  - 6 For an interesting account of the ways in which (e.g.) the US and Israel have used both a police and a war approach to fighting terrorism, see Neff, 2008: 382–390.
  - 7 I need not take a stand in this chapter on whether police and war killings are best justified by appeal to consequentialist considerations ('we do better in the long run, as far as moral rights are concerned, if we allow the police and the army to kill on our behalf'); or by appeal to social contract theory ('we each authorize the police and the army to kill on our behalf in defence of our rights, in exchange for which we enjoy those rights in a way we could not do so in the state of nature'); or by appeal to some other considerations. For a discussion of those various justifications, see Kleinig, 1996: 107–111; for a defence of use of force in policing based on social contract theory, see Reiman, 1985.
  - 8 I am grateful to Alejandro Chehtman and the editors of the *Handbook* for urging me to highlight this issue.
  - 9 In some countries, scenarios such as *Police\** are a too frequent occurrence. Brazil and Jamaica have been the targets of Amnesty International's concerns into police death squads. See <http://www.amnesty.org.uk/press-releases/brazil-30-murdered-rio-death-squad> and <https://www.amnesty.org/en/countries/americas/jamaica/report-jamaica/>. Similar units have operated in (*inter alia*) India and Argentina. For interesting case studies, see, e.g., Sluka, 1999.
  - 10 Two points. First, I do not think that a posthumous apology to a wrongfully convicted and executed inmate constitutes even the beginning of putting to rights. Second, there are some forms of imprisonment which arguably makes life not worth living – so that, in those cases, the jailer ought to be considered in the same terms as the executioner. Again, I am grateful to Chehtman for helping me clarifying my claim here.
  - 11 For a thoughtful discussion of police officers' duty and right to resist orders to kill, see Miller and Blackler, 2005: 45–50. They would agree with my points with respect to police officers. But they would disagree with my remarks on combatants, for they think that the latter are constrained to a much greater degree than I do by the chain of command. On police loyalty and its limits, see Miller et al., 1997: 88–90, 131–132; Kleinig, 1996: 70–77.
  - 12 See the US Supreme Court's landmark decision along those lines, in *Tennessee v. Garner*, 471US 1, 105 S Ct 1694, 85 L Ed 2nd 1 (decided 27/3/1985).
  - 13 Or so I argue in Fabre, 2014. For a seminal discussion of the bloodless aggression problem, see Rodin, 2002: 131–32. For further discussions, see, *inter alia*, Lazar, 2014; Rodin, 2014. Crucially, the claim that we may not kill bloodless invaders outright is compatible with the claim that we may resist them with non-lethal force at first, and that if they in turn escalate the violence to lethal point, we may retaliate in kind. Thus, my argument against killing in those cases is not an argument in favour of outright subjection to an invader.
  - 14 For the view that the number of victims can tip the balance in favour of killing a wrongdoer who commits a lesser right-violation, see McMahan, 2014.
  - 15 The view which I am criticizing here is adapted from Tadros' protective justification for punishment, which itself draws on the ethics of defensive killing (Tadros, 2011). I do not think that Tadros would commit himself to endorsing Paula's killing of Mark in this case.
  - 16 They also have implications for the law – notably shoot-to-kill laws, which on my account are illegitimate. See Hornberger, 2013 for a discussion of such laws in the South African context.

17 In their very interesting book, Miller and Blackler argue that the police do not kill in self- or other-defence in such cases, for (to repeat) they can let the offender go. Strictly speaking, they claim, the life of the police officer is not under threat at the time at which they kill him (Miller and Blackler, 2005: 75). More deeply, Miller and Blackler think that cases such as *Violent Escape* (real-life examples of which they discuss) illustrate the distinction between killing in self- and other-defence, and killing to enforce the law. My point is that the distinction collapses once we appropriately construe those acts of killing as pre-emptive or preventive.

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