

Fabre's Crusade for Justice: Why We Should Not Join¹

I Introduction

Fabre's *Cosmopolitan War* is a major contribution to the literature on the ethics of war.² Although – as will soon become apparent – I disagree with a number of its main ideas, it is a model of philosophical writing. Its arguments are worked out with uncompromising precision and clarity, the complexity of the issues at hand is never overlooked or underestimated, the connection of the topics to different areas in philosophy is highlighted, and the author is constantly self-reflective about the nature and the scope of her arguments. Fabre is a gifted tour guide. When the tour comes to an end, participants have a very helpful map of the large philosophical landscape regarding the morality of war together with more limited maps – zoom-in maps – regarding particular issues. The clarity of these maps helps the readers to decide where they stand with regard to some fundamental issues in moral philosophy in general and in and to topics connected with the morality of war in particular.

A central point in my discussion refers to a tension I sense in the book between what I shall call its morally demanding aspects and its morally permissive ones. The notions of the demanding and the permissive are of course comparative ones, namely, demanding or permissive relative to some baseline. In the morality of war, the baseline I assume is traditional just war theory [JWT]. Thus, on the one hand, Fabre is strongly committed to the value of all human beings as precious individuals whose value does not depend on their national or other affiliation. This commitment leads to serious constraints on what may be done to others in both individual and national self-defense. In particular, it leads her to ascribe no intrinsic value to borders, hence no justification for war merely in order to protect political sovereignty or territorial integrity

¹ For comments on earlier drafts, I am greatly indebted to Yitzhak Benbaji, Saul Smilansky, and the participants in the Manchester symposium on Fabre's book. Special thanks to Jon Quong both for organizing the symposium and for his detailed comments on my paper. The completion of this paper was facilitated by the time afforded me when I enjoyed a visiting fellowship at the Centre for Advanced Studies, "Justitia Amplificata," Goethe University Frankfurt, in January-February 2013.

² Cecile Fabre, *Cosmopolitan War*, Oxford: Oxford University Press, 2012. All page numbers in the text refer to this book.

(though often protecting sovereignty is necessary for the protection of *other* values, the protection of which does justify going to war). It also rules out giving preference to compatriots over strangers in case we cannot accommodate the rights of all. Even in war, the very fact that some individual is of our ilk vs. one of the enemy collective does not justify preferring her life or her interests. Finally, Fabre regards the killing of combatants on the just side (“just combatants”) as morally forbidden (unless they are involved in unjust behavior, such as intentionally targeting innocent people on the unjust side), thus denying the moral equality of soldiers. Clearly these constraints are demanding in comparison to JWT, which sees threats to borders as a paradigmatic *casus belli* and which legitimizes the killing of combatants on both sides. They are also demanding in comparison to commonsense morality that permits special treatment to our compatriots in times of peace, and all the more so in times of war. Yet, on the other hand, the book is also unambiguously permissive. It opens the gate to far more wars than JWT would ever have permitted, in particular to what Fabre has dubbed “subsistence wars,” and it rejects the most fundamental constraint imposed by traditional *jus in bello*, namely, the prohibition against the deliberate killing of civilians.

This dual character of the book owes much to Jeff McMahan’s work, whose influence on Fabre is obvious and explicitly acknowledged by her. On the one hand, McMahan’s view is also very demanding when he argues that only unjust combatants are liable to be killed and not the other way round (again, insofar as the just soldiers fight justly). On the other hand, his view is quite permissive, in the (“in principle”) permission it grants to the killing of civilians. When McMahan’s commitment to human rights as the basis for just wars is supplemented by Fabre’s cosmopolitan justice, coupled with the view that justice “pertains to what we owe each other as a matter of rights” (23), the result is even more permissive, or so I shall argue. While we are used to thinking of justice as antithetical to war, Fabre presents us with the opposite view, namely, that precisely because we care, or should care so *much* about justice, we ought to consider going to war in order to defend it. When justice is threatened, no matter where, no matter by whom, we are allowed – nay, we are morally *required* – to take up arms in order to protect it. Hence the notion of a *crusade for justice* in the title of my paper. Sometimes defending justice involves the shedding of blood, but that should not deter us from joining the

forces of good in the ongoing struggle against the forces of evil. Putting the world to rights requires sacrifices not only in terms of self-interest, but in terms of morality as well. Hopefully, the realization of a more just world will atone for the blood shed in the process.

While both the demanding and the permissive aspects of the book seem troublesome to me, the latter seem more so. In the next section, I discuss briefly the demanding aspects and point to some ambivalences. In section III, I turn to the permissive aspects of the book and explain why they are unacceptable. Finally, in section IV, I point to a different approach to the one defended in the book and try to show that this approach is less foreign to Fabre than might be expected.

II Demandingness

Before I proceed, let me be more precise about the notions of demandingness and permissiveness which I used above. When I say that some view is morally demanding, I mean that the moral duties it recognizes demand a significant sacrifice of personal interests. The 'significant' clause is essential here because all moral views demand *some* compromise of self-interest. When I say that a view is morally permissive, I mean that it licenses sorts of behavior that would be impermissible according to standard moral accounts of the relevant field. To illustrate these notions in the context of self-defense: To say that one ought not to kill an innocent attacker – e.g. a three year old pointing a gun at you – in self-defense is a *demanding* view. To say that one is allowed to kill an innocent bystander in order to save some individual whose life is under threat would be a *permissive* one.

Moral crusades are both demanding and permissive. Joining them involves paying a high personal price (or taking a risk), hence the demandingness. It also involves the removal of moral restraints from actions which are usually deemed wrong, hence the permissiveness. To put it in other words, in moral crusades, one is required to pay not only a personal price, but a moral one as well. As I hope to show, such a requirement is essential to *Cosmopolitan War*.

In what sense, then, is Fabre's view very demanding? Although she does not draw this conclusion explicitly, she seems to be committed to the view that most individuals in the

affluent countries are under an obligation to give the lion's share of their wealth to Oxfam, or to other similar organizations that work to prevent disease and death in the Third World. This follows from three premises:

Rights: "Individuals have rights to the freedoms and resources which they need in order to lead a minimally decent life." (7)

Correlative Duties: "All individuals are under the relevant correlative duties to rights-bearers." (31)

No Borders: Neither the rights held by individuals, nor their correlative duties, depend on political borders. (31)

If these premises are admitted, then, given the incredible poverty and death rates in parts of Africa and Asia, each of us is under a positive duty to do the best we can to respect the rights of these suffering people. We are not under a duty to help the needy at the cost of our *own* prospects for a minimally decent life, but we have no (moral) choice but to incur any cost lower than that which is necessary in order to provide the conditions for a minimally decent life for those in need.

Fabre is clearly unhappy with this implication of her view. To block it, she offers the example of the *French Farmers*:

Let us suppose that protectionist tariffs as currently imposed by rich countries on foodstuff from Third World countries are very harmful to the latter's producers. We may find it relatively unproblematic to claim that, as a matter of justice, French farmers who benefit from such tariffs and who also enjoy considerable welfare benefits from their state are acting unjustly if they support the policy, and thus are under a duty of justice to support its abolition. But many will find it utterly implausible to hold them under a duty unilaterally to raise the price of their products in order to give their Kenyan counterparts a fighting chance on Western markets.

I suspect that the reason why holding French farmers under such duty seems implausible has partly to do with the fact that positive duties of that kind can only be

discharged collectively through appropriate institutions. To hold individuals under such duties in their daily lives is to make short shrift of the fact that they simply cannot know how best to conduct themselves – by how much, for example, they should each individually raise the price of their foodstuff – as a result of which they will either do nothing at all or do more than they are expected to do. (28)

Hence, Fabre concludes, only in rare circumstances – like the babies in philosophical tales drowning in ponds just in front of us – are we, as “private actors,” under a positive duty to offer assistance to others. Even our negative duties are narrower than one might assume (28-30).

Yet I am not sure how effective this move is in blocking the demanding implication. First, even if in cases like *French Farmers* the relevant individuals are at a loss to know what they ought to do in order to respect the demands of justice, in many other cases what has to be done is quite clear. Most readers of this paper could probably donate at least 20% of their income to Oxfam without in any way undermining their ability to live a minimally decent life (assuming that this donation will actually contribute to saving life and alleviating misery). Second, even with respect to *French Farmers*, Fabre’s view is surprisingly relaxed in the light of the combination of *Correlative Duties* and *No Borders*. These premises should have led her 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 in the circumstances. The example definitely does not justify the sweeping and very lenient conclusion that “individuals are not under a positive duty of justice to provide assistance to others in their daily life qua private actors” (30).

Moreover, this lenient conclusion seems inconsistent with Fabre’s view, according to which “where immediate assistance is required, here and now, failing which the person will die” (30), we have a strong positive duty to act, even at the cost of losing three of our fingers (n. 7, p. 22). Losing three fingers is no negligible cost. Most people would pay a lot of money to avoid it. It seems, then, that whatever they would be willing to pay in such circumstances, that is what they are under an obligation to do in order to alleviate to some extent the illness and starvation in the Third World. The mere proximity in space or in time (“here and now”) does not seem to be morally relevant. At most the duty to save a person here and now should take precedence

over the duty to save a person who will die (without my help) in the week that follows or in a country far away, not that the latter duty does not exist. Just as political borders are irrelevant when it comes to fundamental human rights,³ so should temporal and spatial ones be

Finally, Fabre's surprisingly modest demands from individuals "qua private actors" seem inconsistent with her immodest demands from *states*. After all, states too act under epistemic and practical limitations. They too often can't know how best to help starving populations. Nevertheless, Fabre believes that they are under a duty to do so, even to wage a war if required.

Let's assume that I am right, that notwithstanding Fabre's resistance to this implication, *Rights, Correlative Duties* and *No Borders* entail a very demanding morality. Why should this be such a problem for her? After all, respectable philosophers, mainly the two Peters – Singer and Unger – have argued at length for such a position.⁴ The main reason why Fabre cannot accommodate such a demanding morality is that she herself relies on a *non*-demanding view of morality at some critical junctures in her morality of war, which is, of course, the main focus of the book. Here are two illustrations. First, although she doesn't say so explicitly, Fabre's quick dismissal of pacifism seems to rely precisely on this view, namely, that a commitment to pacifism is too much to demand from collectives: "The costs of endorsing [pacifism] are *unacceptably burdensome indeed*, since it would commit us to rejecting the claim that we may, at least sometimes, confer greater weight on our lives than on the lives of the innocent" (252, italics added). Second, demandingness is the reason Fabre relies on to reject a prohibition against the unintentional killing of thousands of innocent lives in order to defeat the enemy. To say that a collective is under a duty to surrender rather than bring about these deaths "is tantamount to claiming that individuals are under a duty 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... It may well be that V's citizens must surrender if

³ Although in most of the book borders are said to be "morally irrelevant," hence to carry no (intrinsic) moral weight, in her last page Fabre seems to soften her view when she suggests that "political borders have far less weight than is standard assumed in the just war tradition" (288). Far less weight is not *no* weight.

⁴ See Peter Singer, "Famine, Affluence, and Morality," *Philosophy and Public Affairs*, 3 (1972): 229–243, and Peter Unger, *Living High and Letting Die*, New York: Oxford University Press, 1996.

they cannot win their war other than by (unintentionally) killing ten million non-combatants. But to say that they must do so even if they would only kill a few thousands in the course of defending themselves *is far too demanding indeed*" (90-91, italics added).

To conclude this section, I tried to show that Fabre's basic understanding of rights and of justice leads to a very demanding morality. Once political (and other) borders are deemed irrelevant, each of us is under a duty to do much more than we currently do in order to defend the rights of people around the globe. Fabre's notion of "deep morality" (on which I say more below) should have brought her to embrace this conclusion while possibly softening its actual application for practical and other reasons. But she refuses to do so because some critical moves in her view of wars depend on the idea that morality must not be too demanding. Finally, I believe that, in *French Farmers*, Fabre unintentionally plants the seeds of a completely different view of morality in general and of wars in particular. We shall be in a better position to appreciate this view after looking at the permissive aspects of the book to which I now turn.

III Permissiveness

War is hell, as Walzer famously reminds us in the second chapter of *Just and Unjust Wars*. Although we sometimes forget this truism as a result of watching too many Hollywood war films, a minute's reflection is enough to help us get our brains back and appreciate its message again. Real world wars are much more stories of death, horror, loss and destruction, than they are tales of courage, inspiration, nobility and brotherhood. That's why it is so important to try to reduce the number of wars in the world and to make every possible effort to ensure that the wars which nevertheless are fought are constrained and conducted under accepted rules and conventions. The standard understanding of these constraints is quite restrictive, so much so as to make some philosophers wonder whether national defense wars are at all legitimate.⁵ Be that as it may, this background is sufficient to highlight the permissive nature of Fabre's view. Although she would certainly agree that war is hell, she believes that the permission to open the gates of this hell is much wider than commonly thought. This is so because war is not the only form of hell out there. Hell is also a good metaphor to describe the recently published fact

⁵ See Richard Norman, *Ethics Killing and War*, Cambridge University Press, 1995, ch. 4, and David Rodin, *War and Self-Defense*, Oxford University Press, 2002.

that five children around the world die every minute due to chronic malnutrition,⁶ or the fact that tens of millions of Africans are infected by HIV, many of whom die from AIDS due to poor medical conditions and lack of treatment.⁷ Facts like these lead her to accept a view that calls for *more* wars, not for less, a view that encourages the waging of war not only to defend our political communities, but also to reduce starvation and disease. Moreover, although Fabre doesn't explicitly say so, wars aimed at the prevention of mass death from starvation and disease seem even *more* justified than regular wars of national defense. While the former very clearly protect (or seek to protect) the right of human beings to a minimally decent life, the latter can be said to do so only at a stretch. Whether being under occupation amounts to living under the minimum threshold for a minimally decent life is at least debatable.⁸ Not so with regard to dying of starvation or of AIDS, nor with regard to being murdered in a genocidal campaign as in Rwanda.

In terms of jus ad bellum, then, Fabre's view is far more permissive than the accepted view of JWT or of international law. She is quite permissive at the level of jus in bello too, though I will say less about this. I mainly refer to her rejection, together with McMahan and others, of the discrimination principle, and the resulting permission (the "in-principle" permission, see more below) to intentionally kill large groups of civilians who are causally involved in creating the unjust threat posed by their collective. As far as unintentional killing is concerned, Fabre is also quite permissive. In her view, if the only way an agent can save her life is by detonating a bomb, thereby bringing about the death of the attacker but also one innocent bystander, then she

⁶ <http://www.thestar.com/news/world/article/1131577--300-children-die-every-hour-from-malnutrition-report>.

⁷ See e.g. <http://www.globalissues.org/article/90/aids-in-africa>.

⁸ Fabre is of course familiar with the philosophical challenges to regular national defense wars voiced by Norman and Rodin (*supra* note 5), but she is not very impressed by them. This is a bit surprising given her radical view about the moral irrelevance of national affiliation and of political borders. (Fabre herself acknowledges the surprising nature of her view, see at 284). What needs more clarification is what vital interests are threatened in such wars, the protection of which is necessary for a minimally decent life. At any rate, I am not convinced that the (joint) interest in territorial integrity and political sovereignty is "*constitutive* of a minimally decent life" (90, italics added). Also I suspect that her opponent to whom she ascribes the view that national self-determination and territorial integrity are "non-instrumental" goods (284) is a straw man. If they are goods, it is because of their instrumental connection to culture, which, in turn, is justified by its importance to freedom or to identity. See e.g. Avishai Margalit and Joseph Raz, "National Self-Determination," *Journal of Philosophy* 87 (1990): 439-446.

may so act (198). I assume that the same would hold true for cases in which detonating the bomb would kill only the bystander and not the attacker, and even for cases where the threat to the agent comes not from an unjust attack, but from some natural threat. Thus, if the only way to save my life from a grave asthma attack is by breathing the fumes of some gas, then even if a person nearby is allergic to these fumes and will die as a result of breathing them, I would probably be allowed to proceed and prefer my own life over hers. How permissive this view is can be appreciated when we realize that, in most criminal codes, knowingly bringing about the death of an innocent person is plain homicide, even if carried out unintentionally.⁹

Let me return to the level of *jus ad bellum*. I claimed above that, in Fabre's view, states are permitted to go to war much more often than commonly thought. However, according to *Correlative Duties*, the duty to feed the hungry and cure the sick applies not only to states but to anybody who can provide assistance. Now although there is no comparison between the conditions of living in sub-Saharan Africa and those in the developed countries, in the latter too there is a non-marginal number of people who live below the threshold for a minimally decent life. The hardships of such disadvantaged people – the homeless, the elderly, the lonely – *could* be alleviated by society, but this does not happen. Surely, in Fabre's view, a Robin Hood who stole from the rich and gave to the poor would do the right thing, and if such provision required killing, so be it. Her rejection of the statist view of wars and the permission she grants to groups within the state to wage war in order to protect fundamental rights leave her with no way to block this result. Not only would a Robin Hood be acting permissibly, he would actually be fulfilling a duty to which we are all bound. Morally speaking, we should all leave our fancy houses (fancy in the sense of being much more than what we need for a minimally decent life), camp out in Sherwood Forest and do our best to protect the rights of the poor and the sick, even if that requires dirtying our hands with the blood of those who are either directly responsible for the poverty and sickness, or who are indifferently complicit.

⁹ The point is made by Jeremy Waldron, who emphasizes that “much of what we call ‘collateral damage’ would be murder, for legally and morally the category of murder is not confined to intentional killings” (*Torture, Terror and Trade-Offs: Philosophy for the White House*, New York: Oxford University Press, 2010, n. 61 on pp. 106-107).

Joining Robin Hood might sound like a nice fantasy which is completely irrelevant to real life. But Robin Hoodism can come in all forms of dress and style. Suppose I am a banker and, in my position, I can draw small amounts of money from thousands of clients, money with which I could help dozens of people every month to rise above the threshold for a minimally decent life. Surely this is what I should do, and examples like this can be easily multiplied.

Let me formulate my argument in a more precise manner. I mentioned earlier –

Rights: All individuals have a right to what they need in order to lead a minimally decent life.

To this we can now add a premise which I shall label ‘purism’, following the work of Yitzhak Benbaji.¹⁰

Purism: Each human being is under a (prima facie) duty to act in order to respect the rights of all other human beings, irrespective of the ethnic, national, religious or other affiliation of the actor or of the right-bearer, and regardless of the actor’s or the right bearer’s role in society (qua soldier, mayor, judge, banker, etc.).

We assumed throughout the legitimacy of the use of force in certain circumstance, namely –

Force: When the right to lead a minimally decent life is under threat, then, subject to certain conditions (notably the necessity condition), it is permissible and often mandatory (for the right-bearer, those she authorizes, or any decent third party) to use force – even to launch war – in order to protect it.

The conclusion that follows is rather scary –

The Scary Conclusion: Since many millions of human beings lack the resources to lead a minimally decent life, 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.

¹⁰ Benbaji first introduced the expression in his “The Responsibility of Soldiers and the Ethics of Killing in War,” *Philosophical Quarterly* 57 (2007), 558-572.

You can now better appreciate my use of the expression “a crusade for justice” in the title of my paper. There is so much injustice in the world – so many human beings living poor, nasty, brutish, and short lives, and so much ignorance and indifference vis-à-vis these facts – that, in Fabre’s eyes, we must all go out and do something about it. We are under a duty, as individuals and as collectives, to fight against this injustice wherever and whenever it occurs, and bring about a better world.

Once you understand the reasoning that underlies this crusade for justice, you realize that the scope of the crusade is very wide indeed. Although Fabre’s main focus is distributive justice, in the sufficientarian version which she favors, I see no reason why her analysis should not apply to retributive justice too, whatever the exact relation between these two notions. Thus, to circulate a well-known example, suppose that I am a prison guard and that I happen to know with certainty that some inmate is innocent of the crime ascribed to him. Suppose further that, like Sara Tancredi in *Prison Break*, I could help him escape. Surely I would have a duty of justice to do so. I shouldn't say that it's not my job to decide who is guilty and who is not, or to determine who should be in jail and who should not, because such a move is blocked by Purism. (Actually, the conclusion might be even more alarming. Suppose I know for sure that some prisoner is guilty of a crime for which he wasn't punished, e.g. a murder within jail, and he is about to be released tomorrow. If we assume the justness of the death penalty for murder, then, according to Purism, I am under a duty of justice to execute the prisoner myself!) Injustices anywhere, to anybody, are the business of us all.

The scary conclusion, or at least part of it, did not go unnoticed by Fabre. At the end of the chapter on subsistence wars, she puts the following worry in the mouths of potential critics:

[T]he thesis defended here paves the way for more wars still – wars which will harm primarily those for whom they are fought and who are already their chief victims, namely the very deprived themselves. For war and the destruction it causes triggers, or worsens, poverty. Is more war not the very last thing which they need? Is it not, in fact, utterly self-defeating? Would it not be better for them to seek redress by some other means? (129)

To which Fabre replies by conceding that, in the real world, subsistence wars would indeed only seldom be just, but that, nonetheless, *if* certain conditions obtained, they could, in principle, be just. More generally –

Insofar as the right to wage war is a right to use lethal force in defence of fundamental rights, they [cosmopolitans] are open, on principle, to the view that such wrongdoing provides its victims with a (*prima facie*) just cause for war. (105)

I assume that Fabre would use the same “in principle” answer to deal with the other permissive aspects of her theory mentioned above. For example, although Robin Hoodism would probably be a disaster in real life, in principle it *could* be morally legitimate; although the assassination of politicians who act to reduce the aid to starving societies would probably bring about serious upheaval in society, it *could*, under conceivable conditions, be morally acceptable (or even demanded); and although targeting civilians deliberately might completely undermine the war convention and lead to catastrophic results, it *could*, again in principle, be the just thing to do.

This “in principle” strategy seems central to Fabre’s strategy and closely related to the notion of “deep morality.”¹¹ Let’s see what exactly could be meant by it. Suppose we say:

(1) Some action, *a*, is the right thing to do in circumstances C.

Now suppose we add to it the expression under discussion, namely:

(2) *In principle*, *a* is the right thing to do in circumstances C.

What might be the difference between (1) and (2)? One is tempted to say that while (1) indicates an all-things-considered judgment about *a*, (2) indicates a merely *prima facie* judgment. That is to say, if *a* is in-principle-right then there is *some* moral reason in its favor, though it might be overridden by other, more powerful, moral reasons. Yet this interpretation does not seem very promising. When we say, in the context of a moral discussion, that some action is right in principle, we mean to grant it some privileged status over other moral considerations in that context. If we were merely saying that that action was *prima facie* right, then this description would apply to all candidates for action in the circumstances. To refer to

¹¹ The notion is central in McMahan’s view too, see “The Ethics of Killing in War,” p. 730.

Ross's famous example of a dilemma between keeping a promise and providing assistance to an accident victim,¹² one could say that in principle I have a duty to keep my promise, just as one could say that in principle I have a duty to help the accident victim. In other words, on the prima facie level all duties are "in principle" – which would make the use of the expression in such contexts rather unhelpful in illuminating the normative situation or in providing guidance as to what to do.

I said that, in some sense, the use of the expression "in principle" privileges the course of action attached to it. Note, however, that what comes after an "in principle" proposition is almost always a reservation, a "but," or a "however": 'In principle, I would be happy to review the file for promotion, but I'm too busy'; 'In principle, everybody should become vegetarian, however that will never happen'; and so on. When you look at the kind of proviso that comes after the 'however', it usually has to do with what one might call practicality, especially in the context of moral discussion. It, then, seems, that what (2) means is something like –

(3) If certain factual conditions obtained, then *a* would be the right action in circumstances C.

Indeed this is what Fabre seems to have in mind when she says, for example, that subsistence wars could be just "in principle," that is to say, if only certain factual conditions obtained regarding the odds of success, the absence of other, less harmful means, and the proportionality of such wars, then the moral verdict would be overall positive. Similarly, if only certain factual conditions obtained, the deliberate targeting of large groups of civilians would be just, and so on.

The problem is that for non-absolutists, which means almost everybody, (3) holds true for almost any course of action. Moral philosophers should be the first to realize this as they are experts in making up hypothetical scenarios which can turn any action into either right or wrong, depending on the philosophical project. The problem is that (3) again fails to express what I called the privileged status of the in-principle-right course of action. The fact that if certain conditions obtained *a* would be the right thing to do does not show that *a* is in any way

¹² W. David Ross, *The Right and the Good*, Oxford: Oxford University Press, 1930, p. 18.

preferable to alternative actions *b, c, d*, etc., because regarding each of them it similarly holds true that if certain conditions obtained, any one of *them* would be the right thing to do.

Consider again subsistence wars. If (3) is what is meant by (2), then what Fabre means when she says that such wars “can, on principle, be just” (100), is that –

(4) If such wars were successful, necessary, and proportional, then waging them would be just.

However, Fabre would surely accept the following proposition too:

(5) If such wars were unsuccessful, unnecessary or disproportionate, then waging them would be *unjust*.

Which – together with (3) – would lead to the conclusion that, “in principle,” subsistence wars are *unjust*, a conclusion which Fabre would definitely not want to endorse.

In other words, if each of propositions a, b, and c is a necessary condition for the truth of d, then, in case *any* one of them is true, one could say that “in principle” d too is true if only the two other propositions were also true, and this saying applies equally to each of a, b, and c. To illustrate in self-defense: If Aggressor is fully culpable for some unjust attack, she is liable to defensive attack, that is to say, she might in-principle be defensively attacked *if certain other conditions held true* (success, necessity, and proportionality). But *qua* necessary condition for the justification of self-defense, the liability condition has no privileged status in comparison to these other conditions. One could just as well say that if Victim’s defensive action can be reasonably expected to block the threat, then, in principle, she may be justified in launching it if certain other conditions hold true (liability, necessity, proportionality). And so on with the other conditions (or any combination of them).

The problem with the in-principle rhetoric is that by privileging one necessary condition for the truth of some conclusion, a false impression is created, the impression that the conclusion is a “respectable one,” so to say, 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, hence the above impression is not only misleading, but potentially dangerous. As Fabre herself realizes, the last thing that populations under starvation need is war, and the least effective way to get affluent countries to provide assistance to the sick and the hungry is by using violence and terror against them. My fear is that by the very drawing of this new category – “subsistence wars” – and by repeatedly saying that *in principle* such wars may be justified, Fabre is opening the door to violent initiatives which, in the real world, she herself would almost always regard, as disastrous.

It might be worthwhile to add that I have a similar worry about discussions of torture that conclude by stating that torture might in principle be justified, though it must first meet such and such conditions. This way of putting the matter is again both misleading and dangerous. It creates the impression that torture is one option among others on the table that we may legitimately consider on a more or less regular basis when fighting against terror or crime. But this impression is false. Torture is such a blatant attack on the humanity of its victims and so vulnerable to abuse that it should almost always be considered as out of question, as “in principle” *unjustified*.¹³

This analysis of “in-principle” applies also to the expression introduced by McMahan and adopted by Fabre – “the deep morality of war.” Just as with “in-principle,” to say that some action, *a*, is deeply-morally justified (justified_{dm}), not merely (or shallowly) morally justified (justified_m) is to give the impression that *a* is either overall justified, which is clearly not the case, or that it is “almost” overall justified, which is also often not the case. Once again, the best reading of the operator ‘justified_{dm}’ seems to be something like ‘would be overall justified if certain conditions (typically about the real world) were satisfied’. But if that’s the case, there is no real difference between ‘justified_{dm}’ and ‘justified_m’ because this reading would fit ‘justified_m’ just as well: If *a* is morally justified_{dm}, but the other conditions for its justification are not satisfied, there is nothing especially deep about *a*’s justifiability; it is actually *forbidden*.

¹³ I defend this position in “The Absoluteness of the Prohibition Against Torture,” *Mishpat Umimshal* (Law and Government in Israel) 4 (1997), 161-198 (in Hebrew).

Consider the discrimination principle, which both McMahan and Fabre reject on the deep morality level. This rejection implies that, in times of war, it is morally permitted_{dm} to deliberately target many unjust civilians (=civilians of the unjust party). Does this mean that doing so is indeed overall morally permitted? Not at all. McMahan acknowledges that –

the violation of a convention by one side tends to release the other side from its commitment to respect the convention. If, however, this consideration is factored in and morality still requires the violation of the convention, it seems that the convention ought to be violated. Yet there is so much scope for self-deception in these matters that this is a conclusion that *one ought never to accept with complacency*.¹⁴

To say one ought never to accept this conclusion with complacency is to understate the case. As McMahan mentions a little earlier in the paper, “it is dangerous to tamper with rules that already command a high degree of allegiance. The stakes are too high to allow for much experimentation with alternatives.”¹⁵ Indeed so. But this insight about the urgency of maintaining the accepted conventions of war is no less important – no less *deep*, if you wish – than the principles determining liability. As a matter of fact, whether deep or shallow, it is *this* insight that McMahan – as well as Fabre – think should inform the current morality of war, not the latter.

If I am right in this interpretation of Fabre, I think we she should re-consider her commitment to the principles mentioned above, mainly to *Purism*. In the next and last section, I explain briefly the reasons for doing so, and try to show that the seeds for such a move might be found in the book itself.

IV Against Purism

According to *Purism*, each human being is under a duty to respect the rights of all other human beings, irrespective of the ethnic, national, religious or other affiliation of the actor or of the right-bearer, and regardless of the actor’s role in society qua soldier, mayor, judge, banker, and so on. This proved to be both too demanding and too permissive. It entailed that each of us is

¹⁴ Jeff McMahan, “The Ethics of Killing in War,” *Ethics* 114 (2004), pp. 732-733.

¹⁵ *Ibid.*, 731.

under an obligation towards any person in the world who is below the threshold for a minimally decent life, and also that in the crusade to achieve a more just world, we are allowed (“in principle”) to violate accepted moral norms. In spite of its initial attraction, we should consider giving up Purism and subscribing instead to what Benbaji called a moral division of labor.¹⁶ I shall formulate it as follows:

Moral Division: The duty to respect the rights of all human beings is constrained by factors about the roles of the actor or the right bearer in society (qua soldier, mayor, judge, banker, etc.).

According to Moral Division, we are not allowed to play God, in the sense of going around and meting out to all human beings their true deserts (in terms of distribution or of retribution) – a fortiori we are not under an *obligation* to do so. What prison guards may do vis-à-vis perceivably innocent inmates is different from what people who are not guards may do; what may be done to soldiers is different from what may be done to civilians (even if they bear the same moral responsibility for the unjust attack carried out by their country); and what an income tax official may do vis-à-vis some rich person is different from what Robin Hood may do in order to advance a more just distribution of resources in society. At a minimum, the various roles held by the actor or by the right bearer grant one a *permission* to act in ways that fail to show the appropriate respect for the relevant individuals (the innocent inmate, or the poor who could live a decent life if Robin transferred some of the rich man’s money to them). They might even impose an *obligation* on them to so act.

Why should we accept this alternative view? After all, even if a just and all-powerful God exists, He doesn’t seem to be doing such a good job of implementing justice in this tormented world. Shouldn’t human beings endeavor to at least *play* God and do whatever they can, wherever they can, to advance respect for human rights and thereby to make the world a more just place? A full answer to these questions requires more space than I have at my disposal here, but the short answer is no. Here, briefly, is why.

¹⁶ Yitzhak Benbaji, “The War Convention and the Moral Division of Labor,” *Philosophical Quarterly* 59 (2009): 593-618. See also David Estland, “On Following Orders in an Unjust War,” *Journal of Political Philosophy* 15 (2007): 213-234.

First, there is the problem of epistemic limitations. The epistemic burden imposed upon us by *Purism* is just too high. Prior to acting, we would have to establish who the most needy are, and to whom we have the best chance of making an effective positive contribution. Before we lock inmates back in their cells, we would need to make sure, that they indeed committed the crimes ascribed to them. And before shooting at enemy soldiers, we would have to ascertain that those we target are morally responsible for the unjust threat posed by their countries and that killing each of them is crucial – nay, is necessary! – to block this threat. And so on and so forth. In most cases, we simply don't have the epistemic capacity to make these determinations.

Second, since the duties incumbent on each individual, according to *Purism*, are very extensive in their scope, there would have to be some principles of selection to enable her to decide where to invest her moral energy. Some individuals would manage to make these principles impartial and fair, which is how they should be. But many others will probably fail in this respect and select the people they'd like to help and those they'd like to "punish" on the basis of ulterior motives.¹⁷ This is analogous to a familiar problem in administrative law, that of selective enforcement.

Third, most importantly, and related to the two earlier points: Although one could imagine cases in which *Purism* would lead to desirable results and to the advancement of justice, overall it seems a very bad idea. In fact, it sounds close to a nightmare; a world in which police officers and prison guards will enable prisoners to escape the punishments imposed by the courts in case the former believed the punishment unjust, a world in which at any minute the poor might decide to help themselves to their rich neighbor's property, possibly with the aid of some justice crusader like Robin Hood, a world in which it would be the responsibility of each of us *qua* individual to work tirelessly to feed the hungry and heal the sick. Since such a world is a nightmare, there is a strong reason to agree on a set of rules that divide the various moral tasks

¹⁷ On how ulterior motives can contaminate punishment, see Ronen Avraham and Daniel Statman, "More on the Comparative Nature of Desert: How a Deserved But Unequal Punishment Might be Unjust," *Utilitas* (forthcoming).

among members of society, thus making (part of) their moral duties and permissions dependent on the tasks or the roles assigned to them. This division of tasks means that those assigned to a certain role are (save for very extreme cases) exempt from the requirement to make sure that their behavior within that role best promotes the protection of rights in the world, and that those who are not assigned to this role are *prohibited* (again, save for extreme circumstances) from acting in their capacity as private individuals, as if they did have that role.

One can easily see how this view avoids the demandingness as well as the permissiveness embedded in the purist view. Although there is a lot of injustice, in many spheres, both in my own country and abroad, dealing with most instances of it has been assigned to designated bodies, domestic and international, which means that I, as a private individual, can live a relatively relaxed life, just making sure that I don't actively harm anybody, and as a role-holder making sure that I comply with the (not-manifestly immoral) rules and regulations attached to it.¹⁸ And although the distribution of wealth in my country is unjust, as some people don't have enough to lead an even minimally decent life, I am not permitted to take from the wealthy (or, to call a spade a spade, to *steal* from the wealthy) and give to the poor. Although stealing and killing might advance justice and reduce the total sum of right violations, save for extreme circumstances I have no permission – no *authority*¹⁹ – to do so as a private actor.

Much more needs to be said about *Moral Division*, which will have to wait for some other day. Let me add just one more clarification before I turn to examine its application to the morality of war. I introduced *Moral Division* as anchored primarily in consequentialist considerations. I argued that if *Purism* guided our behavior, the results would be very bad indeed. That seems like a straightforward rule-utilitarian justification. However, one could also see the justification for *Moral Division* as grounded in contractualism. Thus understood, the permissions and

¹⁸ For those who believe that roles grant not only a *permission* to carry out otherwise problematic actions but also an *obligation* to do so, it is the division of labor (not *purism*) that might lead, in exceptional circumstances, to demanding results because role holders might be required to dirty their hands – to betray their conscience – in order to maintain the accepted division of labor. This would be analogous to what is required, in Bernard Williams's view, from the utilitarian agent with regard to the maximization of utility.

¹⁹ I leave open the question of whether (lack of) authority grounds a separate argument in favor of *Moral Division*, or whether it is just a different way of stating it.

obligations that apply to each of us should be seen as determined by mutual agreement between all members of society in which each gives up some rights, such as the right to use force against anybody who is even minimally responsible for our rights being disrespected, and, in return, gain protection from such use of force by others. The question about the relation between utilitarianism and contractualism is a well-known one²⁰ about which I prefer to remain neutral here.²¹

The idea of understanding the morality of war in terms of *Moral Division* has been developed in recent years in detail by Benbaji, and there isn't much point in repeating his arguments here. Instead, I would like to show how even purists like McMahan and Fabre toy with this idea and make use of it at critical junctures. My suggestion to them is to be more open and clear about this move and to apply it systematically in a way that would overshadow the purist aspects of their views.

Let me start with a citation from the end of McMahan's 2004 *Ethics* paper. The rejection of the discrimination principle at earlier parts of the paper should have led him to conclude that the permission to kill in war is determined solely in accordance with individual responsibility, regardless of whether one is a combatant or a noncombatant. But McMahan stops short of making this bottom-line conclusion. Instead, he offers the following move:

[T]he laws of war are conventions established to mitigate the savagery of war. It is in everyone's interest that such conventions be recognized and obeyed... Given that general adherence to certain conventions is better for everyone, all have a moral reason to recognize and abide by these conventions.²²

²⁰ See T.M. Scanlon, "Contractualism and Utilitarianism", in A. Sen and B. Williams (eds.), *Utilitarianism and Beyond*, Cambridge: Cambridge University Press, 1988, pp. 103-28, and the literature that followed.

²¹ Fabre explicitly rejects contractarian justifications for maintaining the war convention, justifications based on an analogy with the duty to maintain the rules of games ("the sporting analogy"), see pp. 272-274 and note 41 there. Her arguments merit more attention than I can afford here. Let me just note that, in my view, Fabre underestimates the normative force of a consent given ex ante to a set of mutually-beneficial rules. If we agree ex ante not to use knives in fights, only fists, then I am not allowed to use a knife even if the price of such compliance would be losing the fight.

²² Jeff McMahan, "The Ethics of Killing in War," 730.

This makes perfect sense, but it is hardly consistent with *Purism*, according to which the fundamental rights of human beings, definitely their right to life, are anchored in their humanity and are independent of contingent roles and affiliations. While *Purism* forbids the (intentional) killing of combatants who bear no responsibility for the unjust threat posed by their country, the argument of the above citation permits doing so.

Turning now to Fabre, let me start with a comment that she makes in a footnote about conflicts between one's contractual duties and one's duties qua human being. Such conflicts arise, so she suggests,

whenever private actors are allowed to contribute to helping those in need: if a company is under contract with hospital H1 for the delivery of medical equipment, should it be allowed to default on its contract for the sake of supplying H2, which is facing an unexpected shortage in surgical instruments? And so on. (p. 217, n. 10)

Fabre does not decide the issue, but she seems sympathetic to the possibility that unless a real catastrophe is at stake, the company, namely the individuals working for it, would be allowed *not* to default on their contract for the sake of hospital H2, even if doing so would lead to better results in terms of healing the sick and possibly even saving lives. In contrast to *Purism*, she seems to accept the idea that our duties vis-à-vis other human beings *are* sometimes mediated by roles and affiliations and cannot be seen as stemming from the mere humanity of the involved individuals.

Moving now to wars, does the fact that some individuals fulfill the role of combatants make any moral difference to their rights or duties? If I see somebody wrongfully attacking an innocent person, I am permitted to kill the attacker if there is no other way to save the victim, and under an obligation to do so if the risk to myself is not too high. This would seem to imply then that when combatants of the just side see their comrades knowingly (though unintentionally) attacking innocent civilians, they should intervene to stop the murder, even by shooting these comrades if necessary. Fabre, however, rejects this conclusion because, inter alia, of the strong interest that combatants have "in being able to rely on one another's compliance with the strategic option chosen through the chain of command as the best means to maximize their

chances of surviving the war whilst promoting the latter's just ends" (202). I completely agree with the importance of such reliance, but I think that Fabre underestimates its implications. What I have in mind is her rather radical view, according to which "cosmopolitan justice permits, indeed mandates, combatants_A to kill fellow combatants_A... in defense of armed justified combatants_V" (81). This view is a plain implication of *Purism*; since the right to life of combatants_V is unjustly threatened, and since the duty to prevent right violations is incumbent on each individual, regardless of her role or affiliation, combatants_A have a duty to intervene in order to protect combatants_V even if that means killing fellow combatants_A. However, if this moral advice were to be adopted even by a small number of soldiers, it would most probably undermine the army's ability to function properly and to mobilize forces in *any* war. Fabre accepts that establishing an army via conscription is morally all right in order to protect the legitimate interests of civilians (as well as of others). But if soldiers could not trust their fellows not to kill them in case of disagreement about the goals of the war, if they had to be in constant fear of comrades who had read too much of McMahan and of Fabre, they would be quite useless as an army.²³ Except for cases of war crimes, such as the My Lai massacre (80-81), there seems therefore to be strong reasons – which Fabre half-recognizes – for guaranteeing the immunity of combatants to attacks from their fellow comrades. This would again run against *Purism*. It would mean that being in a certain role does make a moral difference, that wearing uniform changes in significant ways the moral relations among soldiers, as well as between them and others.

The closest Fabre gets to acknowledging something like *Moral Division* is in her treatment of *French Farmers*. As you recall, in this scenario, the French government's policy is harmful to Third World markets, for example in Kenya. In Fabre's view, although the French farmers who benefit from this policy are under a duty of justice to support its abolition, they are not under a duty unilaterally to raise the price of their products in order to give their Kenyan counterparts a fighting chance on Western markets. The reasons she adduces fit very well the world of *Moral*

²³ Fabre's hesitations regarding the above moral advice are expressed in her indeterminate claims about whether combatants_A are mandated to kill their fellows or merely permitted to do so. At one place she says that are "under a duty" to do so. At another, that they *perhaps* must do so.

Division: The farmers' knowledge is limited, and action as individuals will be far less effective than if such action would be carried out by the government; "positive duties of that kind can only be discharged collectively *through appropriate institutions*" (28, italics added). In practice, this means that the farmers would be permitted to assign this duty of administering justice to the appropriate institutions and meanwhile continue with their normal lives in spite of the fact that they themselves benefit from the above injustice. It is not for individual farmers to right the injustices brought about by their country's policy vis-à-vis the Third World, just as it is not for individual guards to let innocent prisoners out of jail, and just as it is not for individual soldiers to try to prevent unjust warfare by the killing of fellow-soldiers (unless they are committing war crimes).

V Conclusion

When Fabre talks about the normative aspects of war, the impression she gives is that she recognizes only two points of view, that of deep (or "pure") morality (the permissions and duties that ultimately apply to each individual against other individuals) and that of the law (the desirable legal regulation of war). In this vein she announces:

[M]y concern throughout is with the moral principles which should guide our resort to and conduct in war, and not with the laws of war as articulated in, e.g., the Geneva Conventions. I shall not say anything at all about the extent to which the latter can, or indeed ought to, reflect the former... In so proceeding, I am assuming (without defending that assumption here) that one can speak of moral principles for war independently of their applicability – in just the same way as one can coherently speak of the demands of distributive justice independently of the degree to which those demands can be cashed out, as such, into public policy. (12)

However, this dichotomy is too narrow. As I tried to show, the morality of war is not only about individual responsibility and about liability to attack, it is also about effectiveness and proportionality, and about consequences and agreements. To get the full moral picture we must bring into consideration the latter notions as well, notions which are as critical to this picture and as "deep" as the former. Whether or not subsistence wars are, or should be licit,

launching them would almost certainly be morally wrong, whatever one thinks about the individual liability of the targets of such wars. Similarly with Robin Hoodism. Regardless of whether Robin or his followers should be punished for their behavior, it is almost always morally out of question even if the wealthy are clearly above the threshold for a minimally decent life and even if they bear some kind of responsibility for the grim situation of the poor. And so on with the examples mentioned above.

Purism is an attractive view of morality in general and of the morality of war in particular. It appears to express the highest respect for human beings qua individuals. It refuses to determine their fate on the basis of arbitrary factors, especially their contingent roles and affiliations within society. But the attraction of the argument must be overcome. At the end of the day, following *purism* would lead to disaster. In a different world, it might have been a great theory. In the world as it is, we should opt for *Moral Division*.