# Varieties of Contingent Pacifism in War

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**Abstract**

The destruction wrought by even just wars lends undeniable appeal to radical pacifism, according to which all wars are unjust. Yet radical pacifism is fundamentally flawed. In the past decade, a moderate and more defensible form of pacifism has emerged. According to what has been called 'contingent pacifism', it is very unlikely that it is morally permissible to wage any given war. This chapter develops the doctrine of contingent pacifism by distinguishing and developing various versions of it, and by assessing the merits and drawbacks of each. According to 'proportionality-based' contingent pacifism, almost all wars with just causes are unjust 'tout court' because the *in bello* harms such wars impose on the innocent are too great relative to the relevant evils averted by achieving the war's aims. After arguing against this view, the chapter introduces a novel, more defensible form of contingent pacifism, called 'epistemic-based' contingent pacifism, according to which the prevalence of mistaken judgements regarding the justness of wars, combined with the devastating harmfulness of unjust wars, requires imposing prohibitions against waging war, where the strength of the prohibition varies according to whether the government has a history of mistakes or deception regarding the justness of wars.

## 1. Introduction

According to the most radical prohibition against war, there are no circumstances in which it is morally permissible to wage a war. On this view, which can be called "absolute pacifism", waging war is always morally wrong,

not because of what war tends to involve – e.g., destruction on a mass scale, the killing of non-combatants, etc. – but rather because war itself is intrinsically wrong. According to a slightly less radical prohibition against war, it is permissible to wage a war provided that no non-combatants are killed. The resulting prohibition, which I will call "conditional pacifism", relegates permissible wars to the realm of conceptual possibility, since all modern wars (aside from nominal ones) ineluctably result in the killing of at least some non-combatants. Robert L. Holmes seems committed to this view, insofar as he both rejects consequentialist arguments in favor of killing innocents, and claims that if the actions necessary for waging war cannot be justified, then neither can the war itself be justified (1989, p. 181). Elizabeth Anscombe is also committed to conditional pacifism, having famously written that anyone who believes that it is ever permissible to kill an innocent displays "a corrupt mind" (1958, p. 17). Both absolute and conditional pacifism are, however, morally untenable. These types of pacifism, though noble, are "dangerously otherworldly in the face of utterly unrestrained oppression or aggression," in the words of Igor Primoratz (2002, p. 221). Recently, a more moderate type of pacifism has emerged – one which is more defensible than absolute or conditional pacifism. This alternative type of war-based pacifism, recently espoused by Larry May (2008, pp. 31-35) and criticized by Jeff McMahan (2010), is called "contingent pacifism".

Contingent pacifists, unlike conditional pacifists, acknowledge that though innocent non-combatants have a right not to be killed by others, this right is not absolute; for instance, this right can be trumped by considerations of proportionality. Nonetheless, contingent pacifists believe that for any given war with just aims, it is very unlikely that it is morally permissible to wage that war. This is not to say that the possibility of a morally permissible war is merely conceptual. Rather, according to contingent pacifists, there have been and in all likelihood will be morally permissible wars. As a result, it might seem that contingent pacifism is not a version of pacifism at all. But contingent pacifism still count as a version of contingent pacifism, insofar as it treats war, at the level of national and international policy as an activity that cannot be licitly undertaken. On this picture, we ought to treat the prospect of waging a war in roughly the same way we treat the prospect of committing an act of terrorism: as morally reprehensible as terrorism is, there might be, on very rare occasions, circumstances in which it is permissible or even obligatory to commit an act of terrorism. But this does

not mean that we should have a Department of Terrorism, or government-funded and trained terrorists standing by to commit acts of terrorism; the same goes for war, if contingent pacifism is correct.

Contingent pacifism, as an account of the morality of war, is still in a nascent stage of development. The purpose of this paper is to advance this topic by distinguishing and developing various versions of it, and by assessing the merits and drawbacks of each. In so doing, I will distinguish the type of contingent pacifism that May and McMahan consider from a significantly different and novel type of contingent pacifism which I introduce. According to the type of contingent pacifism that May espouses and McMahan criticizes, almost all wars with just causes are unjust 'tout court' because they violate the constraint of proportionality: the harms they impose on the innocent are too great relative to the relevant evils averted by achieving the war's aims. Accordingly, I call this type of contingent pacifism "proportionality-based" contingent pacifism. There are several ways one might attempt to ground this type of pacifism. I will discuss three of these methods. In doing so, I will argue that if proportionality-based contingent pacifism is indeed mistaken, it is unlikely to be for the reasons that McMahan provides.

I will end by distinguishing proportionality-based contingent pacifism from what I call "epistemic-based" contingent pacifism, according to which the prevalence of false-positive judgments regarding the justness of wars, combined with the devastating harmfulness of unjust wars, requires that we err on the side of caution by adopting strong presumptions against the permissibility of waging wars – even if the presumption disallows, on occasion, waging just wars. I will argue that the strength of this presumption is relative to particular governments, depending specifically on whether the government in question has a history of mistakenly identifying unjust wars as just. This version of contingent pacifism is, I believe, more plausible than proportionality-based contingent pacifism.

## 2. Proportionality Based Contingent Pacifism

A war with a just cause fails to satisfy the constraint of proportionality, and is thus unjust 'tout court', if the war inflicts too much harm on innocents

relative to the relevant goods consisting in the achievement of the war's just causes. In calculating whether a war satisfies the constraint of proportionality, the weight that a harm receives depends on how morally bad the harm is. Thus, for example, if killing an innocent is morally worse than allowing an innocent to die, then the harm of killing an innocent would count for more in the proportionality-calculation than the harm of allowing an innocent to die; that is, to satisfy the constraint of proportionality, a greater evil would have to be averted by killing an innocent, than would have to be averted by allowing an innocent to die. According to *proportionality-based contingent pacifism*, the constraint of proportionality is very unlikely to be met in any given war; as a result, it is very unlikely that any given war is just.

In what follows I will investigate in detail three ways that a proportionality-based contingent pacifist might argue that wars are very unlikely to satisfy the constraint of proportionality. The first method involves arguing in favor of a stronger restriction on killing innocents in warfare. According to this argument, the evil which must be averted in order to permissibly kill innocents is significantly greater than generally presumed, which makes satisfying the proportionality-constraint significantly harder. A second method involves arguing that combatants – including those who participate in the furtherance of unjust aims – fail to satisfy a necessary basis for liability to defensive violence; as a result, killing such combatants constitutes a much greater moral harm than typically presumed. This makes satisfying the proportionality-constraint significantly harder. The third method of defending proportionality-based contingent pacifism involves arguing that, in war, some of the harms that the *enemy* commits ought to count in the proportionality-calculation as harms that *we* cause, which makes satisfying the proportionality constraint, again, significantly harder.

Put very roughly, each of these arguments supports varying strengths of proportionality-based contingent pacifism by 'raising the bar' on how much evil must be averted in order for a war to be morally permissible. However, no matter how high the bar is raised, there remains the (real) possibility of a war necessary to avert an evil so severe, that the war does indeed satisfy constraints of proportionality. For this reason, arguments in favor of proportionality-based contingent pacifism support varying strengths of *contingent* pacifism at best, rather than conditional or absolute pacifism.

## 2.1. The Strength of the Agent-Centered Restriction on Killing Non-Combatants

Virtually all modern wars involve killing non-combatants. We nonetheless generally think there is *some* prohibition against killing non-combatants, because typical non-combatants generally do not pose direct threats, and because they do not bear significant responsibility for threats posed by combatants. For these reasons, typical non-combatants are not liable to be attacked in warfare – such non-combatants are, in the relevant sense, "innocents". (I am putting aside for now the much-discussed issue of whether combatants fighting in furtherance of just aims count as 'innocent'. For the sake of simplicity, in this section my use of the term "innocent" should be taken to refer to innocent *non-combatants* only). What sort of prohibition against killing innocents is appropriate?

We generally think that there is an agent-centered restriction on killing innocents – a restriction that prohibits killing innocents even to prevent further violations of the same restriction. An *absolute* restriction of this sort is clearly too strong (though, obviously, *conditional* pacifists will believe otherwise). According to an alternative 'weighted' agent-centered restriction on killing innocents, it is permissible to kill a given number of innocents if doing so is necessary to save *x* times as many innocents. A strong enough weighted agent-centered restriction on killing would prevent the proportionality constraint from being satisfied in the vast majority of warfare. On this view, wars with just causes will almost certainly violate the constraint of proportionality by resulting in more innocent deaths than can be justified by the goods the achievement of the just cause consists in – even if these goods consist in preventing further deaths. For example, consider a war with the aim of averting an obvious and tremendous wrong, e.g., the widespread massacre of a domestic ethnic minority population by a foreign government. Suppose that achieving this just aim will unavoidably result in some collateral non-combatant casualties. The weighted agent-centered restriction against killing is so strong, the proportionality-based contingent pacifist will argue, that the collateral non-combatant deaths will almost certainly violate the constraint of proportionality, even if these deaths are a necessary side-effect of preventing the massacres. This is not say, however,

that all possible wars are unjust – a *weighted* agent-centered restriction leaves open the possibility of a war which averts a moral harm so catastrophic, that killing some innocents is justified if necessary to avert that harm. For this reason, proportionality-based contingent pacifism counts as a version of contingent pacifism and not conditional pacifism.

As David Rodin points out, most just wars are *not* fought to prevent deaths. Rather, they are fought to protect the civil and political rights of citizenry who are threatened by a foreign or domestic power (Rodin, 2002, pp. 130-132). But if the weighted agent-centered restriction on killing is so strong that it prohibits killing even a few innocents to prevent the unjust murder of many others, then presumably the restriction is strong enough to prohibit killing even a few innocents to prevent the civil rights violations of many others. But *is* the weighted agent-centered restriction on killing so strong that it prohibits killing a few innocents to prevent the murder of many others?

Jeff McMahan argues that the weighted agent-centered restriction against killing is not as strong as the proportionality-based contingent pacifist thinks it is (2010). That is, the restriction does not prohibit killing a few innocents as a necessary means or side-effect of preventing the unjust killings of many others. McMahan's method is to show that, under conditions of uncertainty, the application of a very strong restriction on killing yields absurd results.

Suppose the proportionality-based contingent pacifist claims that it impermissible to kill one innocent person even if doing so is necessary to save one hundred other innocents from being unjustly killed. If this is true, McMahan argues, it follows that it is impermissible to impose a one percent risk of death on an innocent even if doing so is necessary to save another innocent's life. This restriction on killing under conditions of uncertainty, McMahan argues, would prohibit accepted standards of risk-imposition associated with common practices that impose small but significant risks of death on innocents. For instance, we impose small risks on pedestrians and on children in other cars when we drive. McMahan argues that because the proportionality-based contingent pacifist's restriction on killing is so strong that it prohibits driving and other intuitively acceptable risk-imposing activities, the restriction is too strong.

But I think McMahan's argument is inadequate. Consider the following inference.

*If*

    a.  killing one innocent to save the lives of one hundred innocents is impermissible,

*then*

    b.  it is impermissible to impose on an innocent a one-percent chance of death even if doing so will save the life of some other innocent.

McMahan takes it for granted that (a) entails (b). But there are reasons to doubt this. It is plausible that as a permissibly imposed risk increases in probability, the harm that the permissibly imposed risk must avert increases disproportionately. For example, for it to be permissible to impose a 50 percent chance of death on an innocent, one must thereby avert *more* than ten times the harm one would avert in permissibly imposing a five percent chance of death on an innocent. On this view, we ought to be risk-averse in circumstances such as those involving imposing risks on innocents, in that we ought to be disproportionally cautious as the probability of killing an innocent approaches certainty. If greater risks must avert disproportionately greater harms, then the proportionality-based contingent pacifist can consistently claim (a) while denying (b). That is, proportionality-based contingent pacifism can plausibly claim that permissibly imposing a 100 percent chance of death on an innocent must avert *more* than one hundred times the harm that permissibly imposing a one percent chance of death must avert. Likewise, imposing a one percent chance of death on an innocent need not avert one-hundredth the harm that imposing a 100 percent chance of death must avert. Put more generally, the proportionality-based contingent pacifist can consistently claim that i) killing one innocent is impermissible unless it is necessary to save the lives of at least y other innocents, and ii) it is permissible to impose on an innocent a risk of death greater than 1/y even if doing so does not save any lives.

The upshot is that McMahan cannot presume that the relationship between the degree of risk permissibly imposed and the amount of harm that it must avert, is linear. A proportionality-based contingent pacifist can indeed claim that a weighted restriction on killing is strong enough to disallow all warfare,

without claiming that the restriction disallows accepted standards of miniscule risk-imposition.

Where does this leave us? The proportionality-based contingent pacifist claims that a weighted agent-centered restriction on killing is strong enough to prohibit almost all war with just aims, since such wars cause the deaths of too many innocents. The threshold at which it becomes permissible to kill an innocent as a necessary means or side-effect of saving others is so high, on this view, that it is very unlikely that any war will meet it. Like McMahan, I am skeptical of this claim. Intuitively, this restriction on killing seems too strong. At the same time, however, McMahan's argument that this restriction is inconsistent with accepted standards of risk-imposition is too quick. Still, proportionality-based contingent pacifists need an *argument* to show that the weighted agent-centered restriction on killing is as strong as they think it is. That is, contingent pacifists need to provide positive reasons for thinking that we cannot kill one innocent as a side-effect of saving many more. Absent such an argument, we are left, at best, at an impasse. In any case, I turn now to another argument in favor of proportionality-based contingent pacifism.

## 2.2. The Innocence of Unjust Combatants and their Liability to Defensive Violence

Typical wars involve killing combatants. In the proportionality-calculation of a war, if the deaths of combatants counted as heavily as the deaths of non-combatants, then virtually no war would satisfy the constraint of proportionality. In contemporary just war theory, the deaths of combatants count for much less in calculations of proportionality than do the deaths of non-combatants. The agent-centered restriction on killing combatants when it is necessary to achieve an aim, is thought to be far more lax than the restrictions against killing non-combatants when it is necessary to achieve an aim. But if unjust combatants are not to blame for their participation in the war, and if blame is a necessary basis for liability to defensive violence, then unjust combatants, like most non-combatants, are not liable to be killed. If this is correct, then killing unjust combatants who are not liable to be killed is as bad or nearly as bad as killing non-combatants who are not liable to be killed. As a result, the deaths of unjust combatants would count as heavily or

nearly as heavily in the proportionality-calculation as the deaths of non-combatants. If combatants are typically not to blame for their participation, and blame is a necessary basis for liability to intentional attack, then the evil averted by intentionally killing non-culpable combatants must be very great – nearly as great as the evil that must be averted in order for an attack upon non-combatants to be justified. This makes satisfying the constraint of proportionality virtually impossible in wars that involve killing enemy combatants, even if those combatants are furthering unjust aims.

There is an on-going debate regarding what the basis of liability to defensive violence is in general, and in the context of warfare specifically. Some believe that combatants fighting in furtherance of a just aim (i.e., just combatants) are morally liable to be attacked by unjust combatants, provided that the attack is necessary for furthering some sufficiently significant military aim.[1] There are those, however, who argue in favor of less permissive conditions for liability to attack; on one such a view, for a combatant to be liable to attack, it is not enough that the attack is necessary to further some military aim – rather, such an attack must further a *just* aim.[2] On this view, unlike the more permissive account, combatants engaged in defensive violence against unjust aggressors intent on conquering their country, are not liable to attack by those aggressors, provided that the defensive violence is necessary to stop the aggression. However, even on this more restrictive account, *unjust* combatants are still liable to be attacked, provided that doing so will reduce or eliminate some unjust threat severe enough to justify the degree of preventive harm intentionally imposed on the unjust combatant.

An even less permissive account of the conditions for the basis of liability to attack during warfare is needed to broaden the scope of the proportionality-calculation so that it both includes the deaths of just *and* unjust combatants and weighs them as heavily or nearly as heavily as the deaths of non-combatants. According to one such account of the conditions for the basis of liability to attack during warfare, the target of intentional attack must not

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[1] Various arguments in favor of this view can be found in (Kutz, 2005), (Hurka, Liability and Just Cause, 2007), (Shue, 2008).

[2] This view is defended in (Rodin, 2002, pp. 163-173), (McMahan, 2006), and (McMahan, 2009, pp. 104-202).

only pose an unjust threat, but must do so culpably.[3] That is, a combatant is liable to be attacked only if that combatant poses an unjust threat *and* is to blame for posing that threat. If this is correct, then combatants who are innocent threats – i.e., who pose threats non-culpably – are not liable to attack. That they are not liable to attack does not mean that attacking them is always impermissible; but it does means that the weighted agent-centered restriction against attacking them is much stronger than the weighted agent-centered restriction against attacking those who are indeed liable to be attacked. There are several ways that an unjust threat might be innocent; I will briefly discuss those relevant to warfare.[4]

Imposing certain types of threats can mitigate culpability for unjust actions taken as a result of the coercive threat. It is, however, controversial whether any threat – including a threat of death – can fully eliminate culpability for compliance with a coerced demand to unjustly kill another. Militaries coercively threaten their combatants with a variety of physical and psychological punishments in order to discourage non-compliance with orders. If the only way for a combatant to avoid unjustly killing an enemy combatant is to desert, and if the threat of punishment for desertion is severe enough, then the degree of blame that the combatant bears for unjustly killing is mitigated, and perhaps, in some cases, eliminated. Whether and to what extent blame is mitigated depends, of course, on the type and severity of the punishment with which the combatants are threatened. It is revealing, in this case, to consider the standards of excuse applied in the domestic criminal law. In most jurisdictions, the threat of death – let alone lesser threats – does not provide a fully mitigating legal excuse for killing an innocent. Why should we believe that an analogous threat fully excuses combatants from unjustly killing those who are not liable to be killed? The burden of proof lies on the side of those who claim that there is something about war which relaxes the standards of excuse for unjustified killing. While it is safe to say that threats of punishment partially mitigate culpability, it is

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[3] For more on the role of culpability in warfare, see (Zohar, 1993) and (Ferzan, 2005).

[4] Others have discussed this issue in more detail; see for example (Rodin, 2002, pp. 90-98) and (Lichtenberg, 2008).

doubtful that such threats eliminate a combatant's culpability for unjustly killing others.

There are, however, other reasons for believing that a combatant's culpability for killing unjustly is significantly mitigated if not eliminated. Some individuals who kill unjustly are not fully culpable because they are non-culpably ignorant of the relevant moral or non-moral facts. Combatants who voluntarily join the military have or are disposed to have a deferential attitude toward the moral authority of their superiors. This, combined with what Walzer describes as "[t]heir routine habits of law-abidingness, their fear, their patriotism, their moral investment in the state", not to mention the pliability of youth, render them highly susceptible to deception and indoctrination by the state (2000, p. 39). The resulting ignorance regarding the moral and non-moral facts in virtue of which a war is unjust might significantly mitigate their culpability for killing the combatants on the just side in a war.

Mitigated culpability also arises from threats faced during combat. A combatant might not realize the unjustness of participating in a particular combat operation, or even a war, until she is entrenched in combat. Perhaps, given the evidence available prior to combat, she was justified in believing that enemy combatants were liable to attack; only during combat does it become evident that this is not so.

If the combatant realizes during combat that participating is unjust, then she is morally obligated to cease participation. But acting on such a decision during combat operations significantly increases (we can suppose) her likelihood of injury or death (not the mention the injury or death of the combatants who depend upon her participation). In the same way that threats of physical punishment can mitigate responsibility for continued participation in an unjust aim, the threat of injury or death resulting from ceasing participation during combat can mitigate responsibility for a failure to do so.

To justify proportionality-based contingent pacifism, it is not enough to show that some combatants are not liable to be killed some of the time; thus it is not enough to show that some unjust combatants are not to blame for the unjust threats they pose some of the time, even assuming culpability is a necessary basis for liability to intentional attack. But it is safe to say, I

think, that even if the mitigating factors I've mentioned do not individually eliminate or significantly mitigate culpability for most combatants most of the time, it is likely that they do so combination. If this is correct, then to kill such combatants is to kill threats that are largely or significantly non-culpable. If culpability is a necessary basis for liability to defensive violence, and if combatants are typically non-culpable, then combatants are not liable to be attacked, even if they pose an unjust threat. If this is correct, and if all but nominal wars involve killing combatants, then all wars – including those with just aims – will very likely violate constraints of proportionality. This is the upshot of the argument from the innocence of unjust combatants. Of course, there might be wars in which the evil prevented by intentionally killing non-liable combatants is so great, and the number of non-liable combatants killed is so small, that those killings are justified as a necessary means to preventing the great evil. For this reason, the argument from the innocence of unjust combatants entails contingent pacifism and not conditional pacifism.

Though I am sympathetic to the view that combatants are often non-culpable, I believe it is a mistake to think that culpability is a basis of liability to defensive violence.[5] Any combatant (aside from child soldiers) is in a position to recognize that participating in any war is a morally risky activity, in the sense that war always involves imposing *prima facie* wrongs – e.g., killing, destruction, etc. They know enough to know that even if the evidence suggests the war is just, there remains a significant chance that the war is unjust, in which case the acts committed in furtherance of the war's aims are egregiously wrong. By participating in a war – even one that seems just – a combatant is participating in a morally risky activity. If the risk actualizes, then she is morally liable to be attacked, in virtue of having courted this risk. The upshot is that combatants can be liable to be killed even if they are non-culpably mistaken in their belief that the war is just.

Of course, this leaves largely unanswered the question of what the basis of liability to defensive killing is – the basis might be that of posing a threat, posing an unjust threat, or responsibility for posing an unjust threat, to

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[5] See also (McMahan, 2005).

name a few contested possibilities.[6] But I am concerned here with a particular defense of proportionality-based contingent pacifism. According to this defense, wars are unjust because they kill too many morally innocent persons, and a reason for thinking that the number killed will always be too many, is that enemy combatants count as morally innocent. This particular defense of proportionality-based contingent pacifism requires a defense of the view that culpability is a necessary basis of liability to defensive violence. And as I have argued, we can plausibly maintain that culpability is not a necessary basis of liability in war.

### 2.3. Negative Responsibility for Harms Committed by an Unjust Enemy

To determine whether a war satisfies the constraint of proportionality, we must assess the various harms we cause in the pursuit of that war's aims. In making this assessment, ought we to include the harms that the enemy commits – specifically, the harms that the enemy would not have committed had we chosen not to wage the war? If some of the harms that the enemy commits ought to be included in the proportionality-calculation, then the evil that the war must avert, in order to be just, must be severe enough to outweigh not only the harms that we impose upon innocents, but some of the harms that *the enemy* imposes upon innocents as well. This makes satisfying the constraint of proportionality all the more difficult. If the harms that the enemy commits ought to be included in the proportionality-calculation, then should those harms count for less, given that they were committed not by us but by the enemy? Undoubtedly, the answer to these questions will depend in part on the type of harm involved, the purpose (if any) behind committing the harm, who the victims of the harm are, etc. (For instance, if the enemy kills non-combatants that we are using as involuntary human-shields, then presumably the harm ought to fully count in the proportionality-calculation, even though it is the enemy, strictly speaking, who kills the human shields).

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[6] See (Thomson, 1991), (Otsuka, 1994), (Rodin, 2002, pp. 79-83), (Øverland, 2005), and (Frowe, 2008).

If the harms the enemy commits ought to be included in the proportionality-calculation, then this is presumably because we bear a version of what Bernard Williams called "negative responsibility" for those harms; for our purposes here, this is defined as responsibility for what others foreseeably and voluntarily do in response to one's own actions (1973, p. 95). I cannot provide here the conditions determining when and the degree to which we bear negative responsibility. Rather, my purpose here is to show how particular stances on this issue can undergird proportionality-based contingent pacifism. In what follows, I lay out an example which shows how the possibility of satisfying the proportionality-constraint is influenced by various stances we might take on the issue of how we ought to count, in proportionality-calculations, the harms that the enemy commits.

Suppose country $U$ launches an *un*just attack, intentionally targeting non-combatants in country $D$ which cannot effectively *de*fend itself. However, our country is in a position to stop the attacks by country U. The only way to do so is for us to invade and overthrow the government. Because U has minimal defenses, the invasion of U will result in few non-combatant causalities. Suppose that, ultimately, many members of the military in U respond to the overthrow of their government by engaging in acts of terrorism, in which they targets *their own* citizens, in order to deter domestic cooperation with the foreign invaders. So though our government prevents the government of U from launching further attacks against non-combatants in D, our invasion, though necessary to stop these attacks, prompts the remnants of U's military into killing a significant number of non-combatants in their own country. Suppose the number of non-combatants in U killed by U's military is greater than the number of non-combatants in D that the government of U would have killed had we not invade U. And suppose further that U had a despotic government prior to its invasion – the vast majority of non-combatants in U did not consent to, and are not responsible for, their government's attack on D.

By invading U as a necessary means of stopping U's unjustified attacks against D's non-combatants do we violate constraints of proportionality? In assessing the various harms that we cause in the pursuit of our war's aims, if we do not count the acts of terrorism that U's military commits against its own population, then our invasion of U might indeed satisfy constraints of proportionality. But if we do indeed count the deaths that U commits in

response to our invasion, then our invasion almost certainly violates the constraint of proportionality. Whether we include in the proportionality-calculation the harms we indirectly cause the enemy to commit, has a tremendous effect on whether the proportionality constraints are satisfied.

Thomas Hurka raises the same sort of issue; he notes that whether the wrongful choices of others can reduce our responsibility for bad outcomes in war is vital in the analysis of the proportionality-constraint. He points out that "the more the proportionality conditions discount resulting evils for others' wrongful agency, the more permissive those conditions are; the less the conditions discount, the more wars and acts they forbid" (2005, p. 50). He rejects the 'permissive view' according to which we ought not to include, in the proportionality-calculation, the harms that the enemy commits. Though the permissive view strikes many as untenable, it has its adherents. For example, Holmes argues in favor of the permissive view (ironically in furtherance of a pacifistic argument) when he claims that we are not responsible for what others do, even if their actions are a consequence of decisions we have made (1989, p. 205).

Hurka also rejects 'the restrictive view' according to which, in the proportionality-calculation, we ought to include all the harms that the enemy would not have committed were it not for us – on this view, these harms should count just as heavily as the harms that we commit. Advocating the restrictive view is a way to underwrite proportionality-based contingent pacifism. If the restrictive view is correct, then even paradigm examples of just wars might violate the constraint of proportionality. For example, David Rodin, at one point, suggests that the defeat of Nazi Germany ultimately might have caused more harm than it averted (Rodin, 2002, pp. 10-11). This alone certainly does not, he points out, mean that the war is unjust. But if Rodin is correct *and* if the harms Nazi Germany committed in the course of fighting the Allies – harms that the Allies could have avoided by refusing to fight Nazi Germany – ought to be included in the proportionality-calculation partly determining whether the war fought by the Allies is just, then the war seems to violate the constraint of proportionality.

I will briefly argue against the restrictive view by presenting a competing, intermediate view, which addresses the issue of negative responsibility as it applies in the context of warfare specifically. This view, even in its

preliminary form, has decisive advantages. According to this intermediate view, we ought to include in the proportionality calculation both the harms that we commit as well as those that the enemy commits in response to what we do. But on this view, unlike the restrictive view, there is a weighted agent-centered restriction only on the deaths that that we directly cause; there is no weighted agent-centered restriction on the deaths that the enemy causes (provided that the enemy kills against our wishes). Put differently, there are deontic constraints on killing directly, but 'only' utilitarian constraints on indirectly causing others to kill unjustly, when they do so contrary to our wishes. To better understand this view, return to the previous example in which we invade U in order to stop U from attacking non-combatants in D. Recall that, in response to our invasion, U begins targeting its own citizens. Suppose we need to decide whether invading U, thereby indirectly causing U to kill its own citizens, violates the constraint of proportionality. On the intermediate view, the non-combatants that U kills in response to our attack still ought to count in the proportionality calculation that partly determines whether our invasion is just. So if U kills too many non-combatants relative to the number that we save, our invasion violates constraints of proportionality. However, according to the intermediate view, unlike the restrictive view, innocents that U kills in response to our invasion count for less in the proportionality calculation than those that we kill directly, in that there is no weighted agent-centered restriction against indirectly and unintentionally causing U to kill. On this view, it is much easier to satisfy the constraint of proportionality when the enemy is doing the killing than when we are.

The claim that the innocents killed by U count for less might seem callous. But note that in the proportionality-calculation those deaths are given at least as much weight as they would be given from a strictly utilitarian standpoint. By presuming a weighted agent-centered restriction on the killing that we commit, we do not *decrease* the weight of the deaths that U commits – rather, we *increase* the weight of the deaths that we commit. Put simply, it is morally worse to be the ones who are doing the killing. The non-combatants that we kill count for more in our proportionality-calculation than the non-combatants that U kills in response our invasion, not because the non-combatants that they kill are worth less, but rather because there is a weighted agent-centered restriction against killing, but no such restriction on foreseeably, indirectly, and unintentionally causing others to kill. (Note

that this formulation forecloses on a "moral loophole" in which we intentionally *outsource* killing to others in order to avoid the agent-centered restriction on killing. Since outsourcing the killing is done intentionally, we bear the same responsibility or nearly the same as we would if we had done the killing ourselves, on the grounds that though the killings were not committed by us, they were nonetheless *willed* be us).

The plausibility of the intermediate view does not itself defeat the argument from negative responsibility – rather, it serves as a plausible, alternative account of how we ought to factor, in the calculation of proportionality, the harms that the enemy commits because of us. And on this alternative account, bearing some negative responsibility for these harms does not lead to proportionality-based contingent pacifism.

## 3. Epistemic-Based Contingent Pacifism

I will end by considering a novel form contingent pacifism. According to what I call "epistemic-based" contingent pacifism, it is very unlikely that it is permissible to wage a candidate war, not because it is very unlikely that the war will satisfy all the conditions of a just war, but rather because we cannot reliably determine whether a candidate war is just. More specifically, we too often make false positive judgments regarding whether a war is just. The prevalence of these false positives casts significant doubt on the general reliability of a claim that a war is just. Because going to war when it is impermissible to do so tends to be very wrong, we ought to err on the side of caution by adopting a strong presumption against waging wars.

The strength of this presumption, however, depends on the reliability of a government's judgments regarding the justness of a war. For example, if a government has not in recent history made any false-positive judgments regarding whether a war is just, then the prohibition against waging a given war will be much weaker for that government that it would be for one which has a history of culpable false-positive judgments (especially if the government refuses to take measures significantly reducing the probability that such mistakes will be made again). In such a case, there may very well be just wars that we ought not to fight, because we are subjectively unjustified in believing such wars to be just. The claim here is not that all

the candidate wars that such a government proposes to wage are unjust, but rather that culpably mistaken or deceptive judgments in the past precludes justifiably believing of a candidate wars that it is just.

There remains the possibility, however, of a candidate war the justness of which is luminously obvious, despite the untrustworthiness of the government's claims that the war is just. Suppose a neighboring country embarks on a campaign of extra-territorial genocide against our country; this, if anything, seems to justify a war of self-defense. In this case, past governmental mistakes do not undermine belief in the moral fact that defending against genocide is a just cause for war. In response, it might be argued that even if past governmental mistakes cannot undermine justified belief in the claim that preventing genocide is a just cause for war, past government mistakes – or more likely, outright deception – can indeed undermine justified belief in purported non-moral facts, such as the claim that a genocide is occurring, that it can only be stopped through war, etc. If we know that the government has, for example, falsely accused others of genocide in the past, this casts significant doubt on the government's present claim that a genocide is occurring. But if there are government-independent means to confirm or deny the relevant non-moral facts, and if these means are reliable enough, then supporting the war might be justified, according to the epistemic-based contingent pacifist. In this extreme case, the justness of a candidate war is obvious to an extent that silences skepticism raised by the fact that the government has culpably made false-positive judgments in the past.

The upshot is that it is possible for there to be just wars which we are in a position to recognize as just, despite past deception and mistakes from the government. So according to epistemic-based contingent pacifism, though there is a strong presumption against the permissibility of supporting wars waged by relevantly unreliable governments, such a presumption is, in rare cases, defeasible. This is why epistemic-based contingent pacifism is a version of contingent pacifism, and not conditional pacifism.

It might be argued that abiding by the (defeasible) prohibition imposed by epistemic-based contingent pacifism would allow significant evils to occur, by prohibiting us from waging *just* wars. But epistemic-based contingent pacifism prohibits waging just wars only when we have strong reasons to

believe that the war is in fact unjust. That is, it will never be the case that epistemic-based contingent pacifism will prohibit waging a war that we have good reason to believe is just. The fact that the government has made false-positive judgments in the past is precisely what undermines having such a reason. It is true that the cost of avoiding false positives is inviting false negatives – we know that we'll end up failing to wage some just wars, even if we don't know which ones those are. Ideally we would wage wars only when they are just – but this is not an epistemically open option to us. So we are left with either waging just and unjust wars, or with waging no wars at all (except in extremely rare circumstances). And the epistemic-based contingent pacifism will argue that the former option would make things worse overall.

The epistemic contingent pacifist can go further: even if waging no wars at all (except in extremely rare circumstances) does *not* make things go better overall, we *still* ought to be contingent pacifists. The epistemic-based contingent pacifist will argue that we ought to abide by the defeasible prohibition against waging wars, even if this makes things worse from an impartial perspective. This is because, in comparing the consequences of adopting the prohibition with those of the status quo, the costs associated with allowing evil to occur ought to be given disproportionate weight relative to costs associated with actually committing a comparable evil – on the grounds that it is better to allow certain harms to occur than it is to commit those types of harms. So even if epistemic-based contingent pacifism made things impartially worse, we still ought to be contingent pacifists. Of course, if this made things *much* worse from an impartial standpoint, then the moral relevance of the doing/allowing distinction will give way under the sheer weight of the net harms that could be averted by abandoning the prohibition imposed by epistemic-based contingent pacifism. But the point of the argument here is not that epistemic-based contingent pacifism is the morally correct account of war regardless of its consequences – rather, the point is that adopting epistemic-based contingent pacifism need not make things impartially better in order for it to be the morally correct account of war.

Because governments differ in how often they make mistakes or deceive the population regarding the justness of wars, epistemic-based contingent pacifism yields different answers for different governments regarding the

strength of the prohibition against waging wars. Very strong prohibitions will apply to some governments, and moderate or mild prohibitions will apply to others. So if epistemic-based contingent pacifism is correct, then pacifism in war is relative to particular governments, in that it is dependent on the reliability of that government's purported judgments regarding the justness of wars. Epistemic-based contingent pacifism is, then, *doubly contingent* – it is contingent in the sense that it admits the possibility of just wars (as all forms of contingent pacifism do), and it is contingent in the additional sense that the strength of the constraint against waging wars is relative to the country in question.

I believe that a doubly-contingent form of epistemic-based contingent pacifism is significantly more plausible than proportionality-based contingent pacifism, partly because 1) it is flexible enough to accommodate a permissive stance towards war in some contexts and a restrictive stance in others, and 2) it does not require an implausibly strong agent-centered restriction on killing innocents or a revisionist stance on the basis of liability to lethal defense. This being said, of the forms of contingent pacifism discussed here, a doubly-contingent form of epistemic-based contingent pacifism is the weakest form of contingent pacifism, since it allows countries with a history of waging only just wars to continue waging wars. One might think, then, that a doubly-contingent form of epistemic-based contingent pacifism does not count as a version of contingent pacifism at all, on the grounds that it denies that a war can be fought only in extremely rare circumstances. But in response, a proponent of epistemic-based contingent pacifism might point out that the countries with a history of waging only just wars are ones that wage wars only in extremely rare circumstances.

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