

Oxford Handbooks Online

Legitimate Authority in War

Yitzhak Benbaji

The Oxford Handbook of Ethics of War

Edited by Seth Lazar and Helen Frowe

Subject: Philosophy, Social and Political Philosophy Online Publication Date: Oct 2015

DOI: 10.1093/oxfordhb/9780199943418.013.15

Abstract and Keywords

The requirement of legitimate authority—according to which ‘the right of initiating war in a state lies with the sovereign’—was originally introduced in the writings of Augustine, Aquinas, and Pufendorf. This chapter offers a detailed account of the Requirement as it should be understood and an articulation of the moral conviction that underlies it. The chapter then defends the Requirement by addressing the main objection to it: wars are just in virtue of their intrinsic features; it does not matter who fights them. In response to this objection, this chapter shows that Joseph Raz’s ‘normal justification thesis’ supports conferring authority to veto wars on two (usually overlapping) collectives: those on whose behalf the war is fought and those who will bear its costs. The chapter further advances a proceduralist justification of the Requirement arguing that violating it compromises the ideal of fair political participation.

Keywords: legitimate authority, normal justification, political participation, pre-emption, humanitarian intervention, non-state actors

Traditional just war theory is divided into two independent codes. *Jus ad bellum* defines the conditions that wars must meet in order to be justified. *Jus in bello* concerns the question of what conduct within wars is permissible. The *jus ad bellum* code comprises six individually necessary and jointly sufficient conditions. Just wars have a *just cause* (mostly national defence). They are fought by a *legitimate authority*: usually a state that represents its citizens and is recognized as such by the international community. Just wars are *necessary*: there is no way to attain their purpose except by using force. They are fought with the *right intention*: to achieve that just cause. Just wars might incidentally (and unintentionally) harm innocents, but the good effects of just wars outweigh the evil they cause; that is to say, just wars are *proportionate*. Finally, just wars have a *reasonable chance of success*.

The requirement of legitimate authority (hereafter ‘the Requirement’)¹ was originally introduced in the writings of Augustine, Aquinas, and Pufendorf. Their assertion that ‘the right of initiating war in a state lies with the sovereign’² implies that the right to resort to war is enjoyed by states (entities that effectively rule by law in a certain territory). As it is now understood, however, the Requirement can also be satisfied by non-state actors. It acknowledges the possibility of just independence and civil wars and, therefore, grants normative power to non-state actors to fight such wars: political movements that represent stateless or oppressed political communities are entitled to fight in the name of such communities and on their behalf for national liberation, decolonization, and basic civil rights.

This extension of the Requirement follows from the standard reading of the current post-World War II legal system. According to this reading, the international community justifiably treats national defence and defence of territorial integrity as just causes for war. The right of stateless peoples to use force in order to attain political independence in a territory to which they are entitled is the other side of same coin. Wars fought by political societies (which claim to be wrongfully denied the attributes of state sovereignty) meet the Requirement if the subgroup that actually conducts the war represents the community in whose name and on whose behalf it fights. In one obvious respect, this extension reasserts the general statist tendency of the traditional just war theory: it is precisely in virtue of their aspirations for statehood that non-state actors can claim just cause.³

The entities that can, in principle, meet the Requirement are, then, legitimate states (and their political elites) and members of the elite of a stateless political society who demand political independence in its name. The Requirement distinguishes well-functioning states from rogue or failed states. It further distinguishes movements like the Taliban (in Afghanistan) or al Qaida (in the Arab world) from movements like the Palestinian Liberation Organization or the African National Congress. The former two are based on the charisma and brute force of local leaders, whereas the latter two are authentic representatives of the stateless political societies they lead.

The Requirement seems to convey certain moral convictions. Rare cases aside, wars declared and fought by persons in their capacity as private individuals are unjust even if they satisfy the other *ad bellum* conditions. Usually, such wars are (or ought to be) fought in the name of a larger group and on its behalf and, as such, need its authorization.⁴ Another normative conviction underlying the Requirement is that certain entities—criminal gangs, mafias, terror organizations, landlords—cannot represent any larger group and therefore lack normative power to fight in its name.⁵

Even at this preliminary stage of their formulation, these moral convictions raise questions. If the use of force is justified—it has a just cause, it is necessary, it is directed against culpable aggressors by those who have righteous intentions, the incidental damage it causes to innocent civilians is proportionate—why does it matter who wields it? Why are only states or well-organized state-like political movements (and their agents) entitled to fight wars? A related worry might be put thus: if a war meets all the other conditions, it ought to be fought by those who can carry it out. If so, shouldn't the relevant group bestow its authorization on the agent who can fight it?

The second conviction seems as problematic. Gangs lack permission to do violence—whether on their own behalf or on behalf of a larger group—when their purposes are nefarious. These are not examples of groups that lack legitimate authority, but rather of people who tend to engage in wrongful harming. They can be representatives of larger groups—there's nothing to stop a landlord becoming a trade union leader or a church elder. What they cannot do is use force to achieve their ends, whether they represent a larger group or not. Or so the objector argues.

In this chapter, I present what seems to me to be the best reading of the traditional requirement of legitimate authority and articulate a cogent moral conviction that supports it. The argument is shaped in light of the difficulties just put forward. Section 1 offers a detailed account of the Requirement as I think it should be understood. Section 2 presents cases that exemplify the presumption that wars are just in virtue of their intrinsic features, such that, normatively, it does not matter who fights them. It further points out that this argument follows from a more general scepticism about the very possibility of legitimate authority. Sections 3 and 4 accordingly examine two widely accepted arguments for that possibility. Section 3 shows that Joseph Raz's 'normal justification thesis' supports conferring authority to veto war on two (usually overlapping) collectives: those on whose behalf the war is fought and those who will bear its costs. This implies that wars that meet the Requirement are more likely to satisfy the other central *ad bellum* conditions. Section 4 advances a proceduralist justification of the Requirement: violating it compromises the ideal of fair political participation. Section 5 notes that, according to the analysis of Sections 2-4, the Requirement has important scope restrictions. Section 6 concludes.

1. The Legitimate Authority Requirement: The Common Understanding

This section presents what I take as a charitable interpretation of the legitimate authority requirement. On this interpretation, the Requirement is linked to three distinct but importantly related moral conjectures. The first is that an entity must have the right sort of status in order for its wars to be just.⁶ Usually, only courts are entitled to decide legal cases, only a police officer is entitled to arrest a suspect,⁷ only certain officials can distribute drivers' licenses, and so forth. Likewise, only a legitimate state, or something that shares some of its important features, can perform the act of justified war.⁸

A second conjecture connects the Requirement to the just cause condition. Only certain kinds of statist/communal aims can justify war, hence—mind the obvious logical gap here—only states/communities may possess a justification for achieving these aims by means of war.

A third conjecture links the Requirement to the morality of the *in bello* code: when individuals fight in the name of a legitimate state or a stateless political community they are subject to different rules and regulations than if they fought in the name of other entities. Most explicitly, according to the teaching of early jurists and natural law theorists, the authority of the sovereign explains why soldiers acting under orders from the prince do not violate God's proscription against killing.⁹

Recently, I offered a secularized articulation of this idea.¹⁰ Since modern wars involve mass participation, they cannot be effectively conducted without the obedience of those who actually fight the war. But only legitimate political authorities are entitled to command the obedience of their combatants; only such authorities possess the normative power to divide the labour between decision-makers and enactors in a way that allows the enactors to blindly follow the orders of the political leadership. Individuals, in their private capacity, and, *a fortiori*, evil terror organizations and mafias, have no such power. The third conjecture does not support the Requirement, but instead appeals to the authority of political persons who satisfy it in order to explain the morality of the *in bello* code. This aspect of the Requirement is, therefore, beyond my scope here.

The following account of the Requirement will develop the first two moral conjectures; in later sections, I will argue that, properly modified and weakened, these conjectures are defensible.¹¹

1.1. Contextualizing the Legitimate Authority Requirement

My interpretation of the Requirement assumes that most wars meet what I call the '*factual condition*', at least in part:

1. There is a group whose members actually fight the war: call this collective Actor. It is composed of two overlapping subgroups: decision-makers and enactors (generally, the decision-makers form a government and the enactors are members of an army).
2. Actor represents a larger group of individuals—Political Society—in whose name the war is fought. A war fought by the American army is fought in the name of the American people. By declaring war, the president takes America into war.
3. The war is fought in order to secure a public good for a third group of individuals, Beneficiary.
4. The resources with which the war is fought belong to individuals who constitute a fourth collective, Bearer. Those individuals also bear the internal risks of the war.

Routinely, Political Society is identical to Beneficiary, and Beneficiary to Bearer. In wars of national defence, Actor wages a war in order to advance the interest of Political Society in territorial integrity, national security, economic prosperity, or political clout. In such circumstances, the government and its army fight on behalf of *and* in the name of the citizens of a state by employing means that belong to them and by exposing them to substantial risk.

The distinctions between the various groups identified within the factual condition are nevertheless important. In wars of humanitarian intervention, for example, a state fights in the name of one political community (Political Society) on behalf of another (Beneficiary); the aim of the intervention is protecting the human rights of non-citizens. According to some politicians, the intervention in Iraq in the second Gulf War was made in the name of the American people but on behalf of the Iraqis. Here, the Bearer might be a third group, which includes the Iraqis and citizens of other states required to cover some of the internal costs of the war. In principle, Americans might bear no risk (because of the huge power inequalities) and invest no material resources in such a war.

Another illustration of the disparities among Political Society, Beneficiary, and Bearer comes from the Security Council-authorized first Gulf War. Although the Allies fought in the name of the United Nations, those who bore the costs of this war constituted a radically smaller group. The Beneficiary was the citizens (or, perhaps, the ruling elite) of Kuwait, who had to bear almost no internal cost.

On the interpretation I advance and defend here, wars that partly or fully meet the factual condition (and wars that ought to meet it) are subject to the Requirement. That is, wars fought by Actor in the name of Political Society, on behalf of Beneficiary, by employing means that belong to Bearer and by exposing members of Bearer to internal risks ought to be fought by a legitimate authority. More specifically, I suggest that, according to the Requirement, Political Society, Beneficiary, and Bearer are entitled to veto these wars.¹²

I said that the Requirement applies not only to wars that meet the factual condition, but also to wars that ought to meet it. To illuminate this distinction, consider the Israel–Hezbollah conflict. Although it is an officially recognized political party in Lebanon, Hezbollah’s use of force against Israel is not undertaken in the name of the Lebanese people. But it is widely believed that, because Hezbollah’s war takes advantage of Lebanon’s sovereignty and territory, it *ought* to be fought in the name of Lebanon or not fought at all. If my interpretation of the Requirement is sound, it follows that Hezbollah’s war can be just only if the Lebanese authorize Hezbollah to fight it in their name; Hezbollah might not meet this condition even if its war against Israel fulfils all the other *ad bellum* conditions.

1.2. The Authority of Whom?

So understood, the legitimate authority requirement is constituted by three subrequirements: Political Society Authority, Beneficiary Authority, and Bearer Authority. Let us look at each of them.

Political Society Authority says that if a war is fought *in the name* of a group of individuals (or ought to be fought in its name), then this group is entitled to veto the war. The moral conviction on which this rule is based is straightforward. Typically, acting in the name of a person is permissible only if the actor has the authority to do so. Typically, the authority to act in the name of another person is gained by authorization—a process characterized as authority-conferring in virtue of being a fair procedure. Thus, there can be circumstances in which Actor fights in the name of Political Society but has no authority to do so; Political Society Authority prohibits such wars. This subrequirement, I suggest, underlies the American Constitution, which empowers Congress to veto a war the president is determined to carry out; an American president who takes the country to war without the approval of Congress violates this duty.¹³

To understand the role of Political Society Authority in current political discourse, another assumption should be explored: that it is necessary for the Actor to pass basic moral tests in order to have the normative power to act in the name of Political Society. If

a political organization is sufficiently evil, it cannot represent a political community; its members can act only in their private capacity. Thus, a sufficiently bad terror organization cannot gain authority to act in the name of a people, even if it fights for a just cause and enjoys popular support (expressed in a procedurally fair election). As we shall see, states implicitly appeal to this assumption in condemning the non-state actors they fight against. Properly interpreted, their view is that the Requirement functions as an independent constraint thanks to the further assumption that political representativeness is a moralized relation.¹⁴ (Admittedly, the view that evil is a disqualification from authority is questionable. One might plausibly believe that a group can be totally heinous, yet still representative and democratic; what matters to representativeness is whether the political organization is actually conceived by the community to be acting in its name. For example, one might believe that a murderous Jewish mafia could have had the authority to fight the Nazis in the name of the Jews.)

Another implication of Political Society Authority is noteworthy. Consider armed individuals who patrol the borders of the United States in order to prevent illegal immigration from Mexico. Suppose the patrollers ought to act in the name of the political society to which they belong.¹⁵ Suppose further that, in the American legal context, representation is not gained by informal popular support; one may use force in the name of the community only if formally authorized to do so by the state. Since they hold no public position, the patrollers act in their private capacity, even if ordinary Americans support them and are willing to authorize them to act on their behalf.¹⁶ Their violent activity is in violation of Political Society Authority, whether or not its cause is just.

The account offered here identifies questions to which we need answers if we are to apply the Requirement, but it leaves these questions open. It does not specify when Actor fights in the name of Political Society or when it ought to do so. It does not tell us what it is for a Political Society to veto a war fought in its name. Nor does it specify what moral features are demanded of an Actor who has the normative power to act in the name of Political Society.

Humanitarian interventions highlight the complexity of these questions. A common argument implies that the intervener ought to act in the name of the international community. The intervention in Kosovo, David Luban argues, was justified because 'as human beings, we should be ashamed to remain bystanders in the face of evil when evil rises to the level of barbarism'.¹⁷ Conjoined to the Requirement, this justification suggests that intervention is permissible only if the intervener has the authority to fight in the name of the international community. Luban, and others, believe that the United States had this authority because its military hegemony created expectations for leadership and because others were unlikely to act without its active support.¹⁸

Interestingly, critics also appeal to Political Society Authority in order to repudiate US interventionism. Humanitarian intervention is needed in many places—Bosnia, Kosovo, Somalia, Rwanda, Burundi, Sierra Leone, Congo, Sudan, Syria, and elsewhere—but the United States selectively intervenes only to promote its national interests. Past US campaigns provide no reason to believe in American commitment to humanity and human rights. Hence, so the argument runs, US interventions fail the Requirement: the United States has no normative power to act in the name of the international community because of its features as a self-interested or even a hypocritical state. Note that the objection to US interventionism is based on the idea of authority/representation and not on the idea of (lack of) right intention: the fact that the Kosovo intervention, say, was a humanitarian effort makes no difference.¹⁹ Some take this line of thought further, claiming that whatever the nature of interventionism, ideally it 'ought not to be left to individual states acting on their own initiative. Rather, it must become the responsibility of international institutions with their own standing, professional military force created and maintained specifically for this purpose'.²⁰

The other two requirements—Beneficiary and Bearer Authority—are that those groups on whose behalf the war is fought and who provide the necessary resources are entitled to veto the war. Beneficiary Authority is evident in the conviction that humanitarian intervention 'must either be requested, or there must be at least compelling evidence that the intended beneficiaries would welcome rather than oppose it'.²¹ To see the bite of Beneficiary Authority, consider the Russia-Finland war in 1941.²² Finland's military defeat was obvious from the beginning. The war was fought for one purpose only: in order not to surrender without a fight. The war had the symbolic value of fighting for political freedom. Beneficiary Authority says that Finland's government (Actor) was justified in getting the Finns to fight this war only if the public good that the war was to secure was sufficiently important to them—only, that is, if the community on whose behalf the war was fought valued the cause of the war.

The intervention in Kosovo exemplifies the distinction between Bearer Authority and Beneficiary Authority. If bearers are unprepared to tolerate loss of human life, Bearer Authority would allow only an intervention in which force protection is maximal. This aspect of the Requirement might be the moral consideration to which President Bill Clinton implicitly appealed in deciding against an intervention in Kosovo if boots on the ground rather than an air campaign were required.²³ If Bearer Authority is a cogent requirement, proportionate collateral damage externalized on beneficiaries and enemy civilians is acceptable even if soldiers could lessen it by assuming greater risk.²⁴

1.3. The Statist Tendency of the Requirement

The interpretation of the Requirement that I offered in the preceding section implies that states, just like any other entity, can violate it. Yet it is common understanding that outsiders are entitled to assume that the Requirement is satisfied by any war waged by a recognized state in defence of its own interests. In contrast, outsiders who witness an independence or civil war should support it only after ensuring that the Requirement has been satisfied.

The privileged standing of states vis-à-vis the Requirement is rooted in a morally problematic presumption: the government of a state recognized as an equal member in the UN represents its citizens, knows their interests, and cares for them. As most interpreters of international law and most observers of international life would confirm, the presumptive legitimacy of such states is an essential element of the common morality of the society of states. Hence, whereas the Requirement applies to all wars, the question of whether it has been satisfied really arises in nontraditional wars between states and non-state actors.²⁵

This asymmetry between states and non-state actors enables states that fight guerrillas to deny them the moral power of representing the larger group in whose name they fight, without being subject to a similar critique. Thus, Israel insists that Hamas's attacks on military targets are illegitimate, as Hamas's war against it fails Political Society Authority. Moreover, Israel insists that even if Hamas was fairly elected by the majority of the Palestinian community in Gaza, it cannot fight in its name because of its moral failures. In the eyes of the international community, Israel's own moral failures seem irrelevant to the justice of its war against Hamas.²⁶

The United States' treatment of al Qaida is similar. First, its normative power to act in the name of a larger group is challenged on the basis of its moral failures. Second, al Qaida's leaders usually present its war as anti-imperialistic: they fight in the name of the Ummah of Islam (the supernational community that follows Islam) against 'Western imperialism'. Suppose (for the sake of argument) that the cause of al Qaida's war is just: the United States supports friendly dictators in a way that justifies military resistance. Even if this were true, al Qaida ought to fight in the name of the larger group that it claims to represent. The common view within the international community is that the war fails to satisfy the Requirement because al Qaida has no authority to wage war in the name of this group. Hence, its war is unjust, whether or not its cause is just and whether or not its warriors target only combatants and military objects.²⁷

As I shall argue later, these statist tendencies of the Requirement are only partly justified: the presumption that an internationally recognized state represents its citizens

and that it is sufficiently just to have the normative power to do so might be defeated in clear cases like Stalin's USSR or Hitler's Germany.

2. The Legitimate Authority Requirement Challenged

A general realizes that his country is under imminent unjust threat from a military rival. A prevalent misconception blinds the political leadership; the politicians are unaware of the danger. Waiting for the command to initiate a pre-emptive attack would cause the wasteful death of thousands of innocent people on both sides. The general violates the chain of command and pre-emptively attacks the aggressor. He manages to conceal the provocative nature of his action; the politicians are under the impression that the other side was the first to use force. The war is fought in the name of the relevant community and on its behalf: the general occupies a public role and acts in his capacity as a high-ranked officer. The war meets the factual condition and yet, the objector asserts, the fact that it fails the Requirement does not render it unjust.²⁸

A similar counterexample is offered in Cécile Fabre's cosmopolitan critique of the Requirement. She argues that it is unreasonable to insist that America's World War II would have been unjust had Roosevelt dispensed with the approval of Congress or even with the approval of the American people. She concludes that 'it is not necessary that a state be able to secure the consent of its people in order for its war to be just'. Hence, 'it is not necessary that an individual acting alone ... be able to secure the consent of those on whose behalf she goes to war, in order for their war to be just'.²⁹

Our objector might concede that there are considerations that speak against embarking on a war that does not meet the Requirement. The general has a *prima facie* reason not to violate the chain of command: he is duty-bound to support just institutions, and he is under a further, contractual duty to respect the institutions within which his role is defined. Violating the directives on which this regime is based is a violation of these duties. The objector argues that meeting the Requirement is morally *prima facie* desirable but denies that it is necessary for a war's being justified. The same is true of the president in Fabre's example: an unauthorized war defies the law and the democratic values on which the presidential office is based. Still, the objection goes, the reasons *for* going to the just wars imagined in these examples outweigh the cogent, yet less weighty reasons against.

Such cases might invoke general scepticism regarding the very idea of legitimate authority or less radical (but no less general) doubts as to the scope of the normative power of authorities. To understand these doubts, I introduce here the notion of a content-independent and pre-emptive reason for action.³⁰ A command to ψ issued by an entity that claims legitimate authority is a *content-independent* reason to ψ if it gives its addressee a reason to obey the command (i.e., a reason to ψ) irrespective of whether or not he had a reason to ψ , absent the command. The command is a *pre-emptive* reason to ψ if it is a second-order reason not to consider (some of) the other merits and demerits of ψ -ing: the command replaces these reasons. According to Joseph Raz, the notion of content-independent and pre-emptive reasons figures in the very definition of legitimate authority.³¹

Traditional just war theory treats legitimate authority as one of the six conditions necessary for just wars. This strongly suggests that the veto conveyed by Political, Beneficiary, or Bearer Authority has a pre-emptive force. To see more clearly why, observe that even if a failure to meet the Requirement is a *prima facie* first-order reason against fighting an unauthorized war, the gravity of this reason is limited, and hence it is hard to understand why a war that does not meet the Requirement is unjust. But suppose the violation of the Requirement is not merely a first-order reason against the war, to be weighed alongside the reasons for fighting it. Suppose, that is, the veto of the relevant collective pre-empts almost any other consideration that tells in favour of the war. Then the idea that the traditional treatment of legitimate authority is another necessary *jus ad bellum* condition is understandable.

One way to construe the objection under discussion derives from a general argument against the Razian approach to legitimate authority.³² Rationality demands that agents aim to act on the undefeated reasons that apply to them. Hence they never have reasons to ignore the desirable and undesirable properties of an action they consider. A requirement to treat someone as a legitimate authority—and to treat his instruction as a pre-emptive reason—must therefore be flawed. Our story about the general illustrates this truth: the Requirement implies that considerations in favour of the general's war, whatever they are, ought to be pre-empted. But these considerations might prevail, and, unless they are taken into account, a just defensive war that will prevent a much more bloody future war won't be fought.

A less radical critique accepts the possibility of Razian authorities while levelling less anarchical objections to the Requirement. According to one objection, the general is permitted to go to war without authorization because, in this domain of action, he (and perhaps other high-ranked officers) is not subject to the authority of the political leadership. It might be further argued that, in rare circumstances, the general is entitled to act in the name of the government and in the name of the people it represents without

explicit authorization of his military actions. It is, so this thought goes, an essential element of his role that in exceptional cases he will follow his judgment about what has to be done here and now.³³

The following sections defend the Requirement from the more principled objection. I will concede that it should be further contextualized in light of the nonanarchical objections to it.

3. An Instrumentalist Defence of the Requirement

Raz's powerful argument for the possibility of pre-emptive reasons and, consequently, for the possibility of legitimate authority is based on what he calls 'the normal justification thesis'. I will appeal to this thesis to show that, conjoined to certain empirical facts, those on whose behalf the war is fought (i.e., members of the collective named 'Beneficiary') and those who bear the internal costs of the war (i.e., members of Bearer) have the authority to veto it.

Normally, argues Raz, an authority is justified if the directives the authority issues serve its addressees.³⁴ Such directives help their recipient to conform to reasons that independently apply to him. A subject needs the guidance the authority provides if and only if it is more likely that he will conform to the reasons that apply to him by obeying the authority, and it is less likely that he will do so if he directly attempts to respond to these underlying reasons. Suppose, for example, that state institutions are able to identify individuals who possess medical expertise, whereas ordinary citizens have no such ability. By deferring to the directives of the relevant institutions, subjects are likely to do better than if they tried to figure out for themselves on which individuals they should count for medical advice.³⁵

Here is another (more controversial) example.³⁶ Two siblings hire an arbitrator to resolve a dispute over the just distribution of the inheritance of their late mother. Both acknowledge that they are biased towards themselves in a way that distorts their judgment of a fair resolution of their conflicting interests. If the arbitrator is more impartial than they are, his verdict is legitimately authoritative. This is because, by following his instructions, they are more likely to agree on the right distribution of the resources than if they try to resolve the conflict by themselves.

Raz observes that, for an arbitration to be serviceable, the parties must be able to rationally precommit themselves to accept its resolution, regardless of its content.

Moreover, the arbitrator's verdict must pre-empt their own deliberation on the merits of the case; should the parties consider the first-order reasons for and against the arbitrator's resolution, they would have no reason to hire him in the first place. Their deliberation would obviate the need of the authoritative directive. Moreover, the parties *cannot* be subject to the arbitrator's verdict *and* to the reasons that justify its authority simultaneously, because his verdict is meant to reflect the first-order reasons that independently apply to them. Since the considerations that support the arbitrator's verdict legitimize his authority, treating the verdict as a further first-order reason would be to count those considerations twice. To avoid double-counting, the verdict must function at a different level: it must pre-empt the underlying reasons it is supposed to reflect.³⁷

Conjoined to three plausible factual assumptions, Raz's normal justification thesis grounds the authority conferred on Beneficiary and Bearer to veto a war. The first assumption is that political leaders and high-ranked military officers tend to pursue fame, legacy, and political power, which might be achieved by successful (although unjust) wars. The personal risk imposed on initiators of wars is relatively low. Hence, in too many circumstances, they might have a distorted incentive to fight an unjust war despite having an undefeated reason against doing so.

To understand the second assumption, recall that wars that meet the factual condition are claimed by their initiators (the government, members of Actor) to be intended to secure a public good for a larger group (Beneficiary) on whose behalf the war is fought. The second assumption is that the alleged beneficiaries are in a better position to assess the value of this public good than are the politicians that represent them. The more important the public good for which the war is fought to alleged beneficiaries, the more likely the cause of the war to be just; a veto by Beneficiary suggests that the cause of the war is unjust.

The third assumption is that those who bear the costs of the war are likely to object to unnecessary wars. The costs inflicted on them are so high that they are likely to prefer any morally feasible peaceful alternative to going to war.³⁸ Of course, Bearer Authority might be satisfied by externalizing risks and costs to third parties rather than by avoiding unnecessary wars. Accordingly, the empirical assumption is weak: Bearer Authority creates a *tendency* in the political leadership to avoid unnecessary wars.

An interesting further implication of these empirical generalizations is that conferring authority on Beneficiary and Bearer to veto the war makes it more likely that the *ad bellum* proportionality constraint will be satisfied. Very roughly, a war is proportionate if its relevant good effects outweigh its relevant bad effects. Bearers are sensitive to considerations of internal costs and risks, which constitute some of the bad effects of the

war. Beneficiaries are sensitive to considerations about the public goods the war is supposed to secure—the good effects. These are two crucial factors in the proportionality calculation.

Are these factual assumptions reasonable? One might worry that the populace is a poor judge of the rights and wrongs of war, especially because the self-sacrifice of ordinary people is so easy to secure. I should like to emphasize, in response, that the empirical presumption is not that those on whose behalf a war is fought and those who bear its costs are well-positioned to veto unjust wars. Rather, the assumption is that their aggregate judgments about their own interests indirectly track justice better than the politicians or military leaders who directly assess the justice of the war. The biases from which such decision-makers suffer are well-documented.

To summarize, the instrumentalist justification of the Requirement has four noteworthy advantages. First, it illuminates and extends the Requirement/just cause conviction formulated at the beginning of this section: if the Requirement is satisfied, and other things are equal, the war is more likely to have a just cause. Second, the authority of the Beneficiary and Bearer veto serves the initiators of the war: politicians are more likely to conform to the moral reasons that apply to them if they respect it. The war they would initiate and conduct is more likely to have a just cause, more likely to be necessary, and more likely to be proportionate if beneficiaries and bearers do not veto it. Third, under the normal justification-based analysis advanced here, the Requirement constitutes a second-order reason: a veto by Beneficiary and Bearer is not another reason to be added to the balance of reasons for or against the war. In and of itself, a veto cannot render a war that is content-dependently just content-dependently unjust; an authoritative veto does not directly affect a war's justice, but rather makes it unjustified for the addressees of the veto to fight it.

Fourth, the instrumentalist justification adequately contextualizes Beneficiary and Bearer Authority. A veto by Beneficiary and Bearer does not entail that going to any war (that meets the relevant clauses of the Factual Condition) would be unjustified. In cases in which public opinion is clearly mistaken, the veto would not provide pre-emptive instrumentalist reasons to avoid it (see Section 5).

The analysis has another (already anticipated) revisionist implication. Section 2's account of the way the Requirement is commonly understood suggests that wars fought by states in defence of their national interests are presumed to meet the Requirement. Is the bias of the common understanding of the Requirement towards states justifiable? The instrumentalist justification of Beneficiary and Bearer Authority suggests not. States might violate the Requirement, just like any non-state actor. For example, a war to protect the territorial integrity of a state is unlikely to have a just cause if the territory is

unimportant to the citizen or the costs of defending this territory seem to them to be too high.

Having said that, let me offer a rough consideration that supports the Requirement's statism. Compared to non-state actors—liberation movements included—a state is usually in a better position to determine whether the public good for which it fights is sufficiently important to its citizens and whether its citizens are ready to bear the internal costs of fighting for this good. This is due to one of the essential features of states: they are composed of institutions that rule and are ruled by a legal system. As Hart's positivistic account of the concept of law teaches, the set of rules by which a polity is governed attains the status of a legal system only if it is accepted by the relevant officials and by the institutions within which the role of these officials is defined.³⁹ If all other things are equal, these relations among the state, the institutions that constitute the state, and the officials that run and maintain these institutions makes it more likely that the state will adequately respond to the preferences of the community. The relation between national liberation movements and the community it represents is much less structured. Hence, other things being equal, wars fought by states are more likely to satisfy Beneficiary and Bearer Authority than are wars fought by non-state actors.

This consideration does not imply that wars fought by states in defence of their rights or interests automatically meet the Requirement, but rather that, compared to wars fought by non-state actors, states' wars are more likely to meet the Requirement. The presumptive legitimacy of states is defeasible; states exaggerate the moral asymmetry between them and non-state actors vis-à-vis the Requirement.

4. A Proceduralist Justification of Political Society Authority

A war that meets the factual condition is fought by one group of individuals, Actor, in the name of a larger group of individuals, Political Society. The justification of Political Society Authority, which I develop in some detail in this section, is distinct from the normal justification of the authority of Beneficiary and Bearer offered in the previous section. To see why, return to the case of humanitarian intervention, which illustrates the distinction between the group in whose name the war is fought and the group on whose behalf the war is fought. A government (Actor) is involved in a military campaign, the aim of which is to protect the rights of an oppressed group of citizens of another country (Beneficiary). Political Society—the citizens of the intervening country, the individuals in whose name the war is fought—gain no material benefit from the intervention. Hence, the

war is not fought on their behalf. Furthermore, the military campaign might entail almost *no* internal risk to citizens and combatants of the intervening country (because of the power differential between the intervening state and its enemy) and no internal costs (the investment in the war will be repaid from the resources of the defeated country). There is no overlap between Political Society and Bearer/Beneficiary and, therefore, the normal justification of the authority of Beneficiary and Bearer does not legitimize the authority of Political Society. Indeed, I will assume that the mere fact that a war is fought in the name of Political Society does not put its members in any special epistemic position with respect to the justice of the war.

However, the normal justification thesis does not tell the whole story about political authority. One role of political organizations is to reach decisions when there are serious disagreements over the common good and the right thing to do.⁴⁰ Let us take a case in which there is a conflict between two political parties—Greens and Capitalists—over how to use a certain amount of resources to the benefit of future generations. The resources can be used to significantly advance future industry at the price of causing slight harm to the environment. Alternatively, they can be used to significantly benefit the environment, at the cost of causing slight harm to future industrial life. If the disagreement remains unresolved, the resources will vanish.

The disagreement can be structured as follows. The current conditions of the parties vis-à-vis these resources can be represented by the ordered pair $\langle 0, 0 \rangle$. If one of the parties prevails, the 'benefit' to its worldview is quite large (10) while the loser's worldview is slightly harmed (-2). The possible *ex post* states of affairs are, then, $\langle 0, 0 \rangle$, $\langle -2, 10 \rangle$ and $\langle 10, -2 \rangle$. Accepting a fair conflict resolution procedure under which each party gets a 50 per cent chance of winning 'betters' the *ex ante* condition of both parties. The expected benefit of this move to both parties is $0.5 \cdot (-2) + 0.5 \cdot 10 = 4$; and $\langle 4, 4 \rangle$ is Pareto superior to $\langle 0, 0 \rangle$. There is, then, a clear sense in which the conflict should be resolved one way or another; inaction ($\langle 0, 0 \rangle$) would be wasteful.

In such a case, rational parties need the service of political authorities because, *ex ante*, they would consider it valuable to take the risk of political defeat in order to gain the chance of political victory. But should the loser respect the result of the procedure? After all, the fair procedures that both parties reasonably accept—elections, referendums, and the like—allow a political action that the loser disfavours compared to the status quo. Therefore, the authority of the procedure is not covered by the normal justification thesis. Notwithstanding, it seems that the three aspects of the procedure—(*ex ante*) mutual benefit, fairness, and its acceptance by the conflicting parties—bestow authority on it. It seems that the parties are under a *prima facie* duty to abide by the outcome of the procedure even if they know it to be unjust. Rather than the merits of the outcome, it is

the qualities of the procedure by which the political decision is reached that obligate the participants to respect it.⁴¹

I suggest that Political Society Authority is such a proceduralist requirement. The authority of the individuals in whose name the war is fought to veto the war derives, I suggest, from the fairness requirement to which political decision-making is subject. The individuals in whose name the war is fought ought to be included in the process by which the decision to go to this war is taken. Indeed, the political decision ought to be sensitive to the value judgments of those individuals—even if the war would have no impact on their quality of life and would not require any substantial sacrifice from them.

Consider, in light of this requirement, the counterexamples discussed in Section 2 from the perspective of Political Society Authority. The war initiated by the general is fought in the name of the citizens of a country, but these citizens had no say in the decision-making process that led to the war. The Requirement was violated because—in the imagined society—the chain of command is the accepted procedure that resolves the disagreement between the general and the politicians as to whether to go to war at this early stage. Similarly, suppose that the president takes Americans into a paradigmatically just war without the permission of Congress, which authentically represents the American people. They have been excluded from the decision-making process. The process is defective in that it was unresponsive to the value judgments of those in whose name the war is fought.

Like wars that fail Beneficiary and Bearer Authority, a war that fails Political Society Authority might meet all other *jus ad bellum* conditions; contrary to a violation of the just cause requirement or the necessity and proportionality conditions, a violation of Political Society Authority does not imply that the war is unjust (even if it is wrong for Actor to fight it, for reasons unrelated to the justice of the war). There is, however, a crucial difference between Political Society Authority and Beneficiary and Bearer Authority. Under the normal justification, a veto on a war conveyed by bearers and beneficiaries indicates that the war in question most probably fails other *ad bellum* conditions. The veto of these collectives reflects independent reasons against going to war. In contrast, under the proceduralist justification, a veto by Political Society merely makes it the case that—whatever the merits of the war—the decision to fight it would be morally defective. The veto of Political Society does not reflect the other first-order reasons that speak against the war. Therefore, the proceduralist argument cannot appeal to the Razian argument from double-counting in order to show that reasons that speak in favour of fighting are excluded by the veto of Political Society.

It might be concluded that politicians and high-ranking military officers are entitled to weigh the moral reasons in favour of the war against the fact that the decision to fight it

must be morally defective (given popular opposition to the war). If these procedural reasons are outweighed, it could be permissible to initiate a war that does not meet Political Society Authority.⁴²

I believe, however, that the disanalogy between the normally justified authority of Beneficiary and Bearer and the procedurally justified authority of Political Society should not be overstated: pre-emption is essential to the possibility of conflict of values resolution by a fair procedure. The parties' acceptance of the procedure would be pointless unless they give each other a sincere assurance to respect its outcome, whatever it is. Otherwise, it would be irrational for them to respect a verdict of a fair conflict-resolving procedure in case it goes against their best judgment of the right way to go: however weighty the first-order reasons provided by the fact that assurance has been given, as a first-order reason of limited weight, it can be easily overridden by the reasons that speak against honouring it. Therefore, for the procedure to resolve the disagreement between the parties, the commitment to respect its outcome must somehow pre-empt most countervailing reasons against conformity. Notwithstanding Political Society's lack of normally justified authority, the requirement to secure fair political participation in the decision-making process is pre-emptive; it involves a requirement not to attend to the first-order reasons that speak against the veto Political Society conveys.⁴³

Is Political Society Authority statist, like its sisters Beneficiary and Bearer Authority? The presumption that every war fought by a state in defence of its interests meets Political Society Authority is groundless; states might violate the Requirement, just like non-state actors. Still, other things being equal, wars fought by states in defence of their interests are more likely to meet Political Society Authority than independence or civil wars fought by non-state actors. State institutions have a history; they have been founded and maintained thanks to the cooperation of many individuals over generations; the collective agency of these individuals generates a concrete shared interpretation of the ideal of fair political participation. In contrast, the institutional history of stateless political societies is usually shorter and poorer, and hence the procedures by which political participation is secured are underdeveloped.

5. The Scope Restrictions of the Requirement

The defence of the legitimate authority requirement offered in the previous sections presents it as a highly circumscribed *jus ad bellum* condition. Its scope restrictions have two main sources. First, and most importantly, the Requirement applies only to wars that

partly or fully meet the factual condition and to wars that ought to meet it. The second source follows from the philosophical defence of it that I have offered. Beneficiary/Bearer Authority functions as a second-order test; wars that satisfy these conditions are more likely to meet the other *jus ad bellum* conditions. Political Society Authority is a secondary condition: waging a just war that violates it offends the ideal of political participation. The Requirement functions as if it were a pre-emptive second-order reason. Therefore, in at least some cases, following it could bring about bad results (in terms of conformity to the underlying reasons for or against the war it forbids).

In order to explore the first source of scope restriction, I should make a preliminary remark: the *Oxford English Dictionary* definition of war seems to imply that wars meet the factual condition as a matter of conceptual necessity: 'hostile contention by means of armed forces, carried on between nations, states, or rulers, or between parties in the same nation or state; the employment of armed forces against a foreign power, or against an opposing party in the state'.⁴⁴ An individual who explodes bombs in a series of attacks against a government that violates her basic rights commits a justified or unjustified criminal act. On this conceptual view, the importance of states to the Requirement derives from their having the capacity to wage war.

I side with Fabre, who argues that wars that do not meet some of the clauses of the factual condition are easily imaginable. There is no point in denying that the individual bomber just described goes to war against the government.⁴⁵ Moreover, as far as I can see, the semantic disagreement has no normative implication. Imagine a case whose description as a private war is much more natural. A small group of citizens fights an oppressive regime. Realizing that they cannot defeat and replace it, they do not intend to fight on behalf of or in the name of other citizens. They use force to protect the unrecognized borders of the oppression-free zone in which they (rather than any larger group) live; they maintain their limited political liberty by making it harder for the oppressive regime to get into the small territory in which they live. Actor—the group that actually fights the war—does not need authorization to fight the war from any larger group for a simple reason: it is identical to Political Society, to Beneficiary, and to Bearer. The Requirement is therefore irrelevant.

It should come as no surprise that early proponents of the Requirement applied it only to public wars. Grotius argued that when a war endangers the state itself, the sovereign authority alone has the right to fight it, but that, alongside such public wars, wars might be justly fought by individuals in their private capacity.⁴⁶ Similarly, Vitoria claimed that only a commonwealth may punish by war, but 'any person, even a private citizen, may declare and wage a defensive war'.⁴⁷

Consider a more problematic case of private war, in which an intrinsically evil mafia (or terror organization) is the Actor, and the enemy is a dehumanizing genocide-seeking state. Following the common understanding of the Requirement, let us suppose that, unlike legitimate governments and legitimate non-state actors, the mafia cannot act in the name of members of the relevant Political Society. Does it follow that the mafia's war in defence of the rights of the innocents fails Political Society Authority? Not necessarily. We might deny that a war against the genocide-seeking state ought to be fought in the name of Political Society. After all, the morality of other-defence implies that, like all other private individuals, members of the mafia are allowed to defend potential victims by using force. (Other approaches to the morality of other-defence argue that self-appointed saviours are allowed to kill a culpable aggressor in the victim's defence only if the potential victim allows them to act on his behalf.) The rule of Political Society Authority does not apply to such a war because those who fight it do not act in the name of any larger group, nor ought they to do so. The use of force by the mafia is justified, even if it cannot act in the name of those on whose behalf they fight.

Turning to the second source of the Requirement's scope restriction, the Requirement's moral standing leaves room for authoritative, yet mistaken, vetoes by the relevant collectives. Actor has a pre-emptive reason not to fight the vetoed war in virtue of Actor's undefeated reason not to attend to considerations that make the war all things considered justified. Yet, as Raz notes, a normally justified authority ought not to be obeyed if it is clearly mistaken. He insists that this proviso is consistent with the pre-emptive nature of legitimate authority: 'establishing that something is clearly wrong does not require going through the underlying reasoning'.⁴⁸ You are not rationally required to obey clearly mistaken commands issued by a legitimate authority.

A different limitation of the Requirement is related to the empirical generalizations on which it is based, according to which the Beneficiary/Bearer opposition to the war symptomizes its injustice. There might be exceptional circumstances in which beneficiaries and bearers are radically uninformed. Then their veto has no authority over Actor.

These various limitations and restrictions of the Requirement raise an understandable worry. The Requirement cannot effectively constrain politicians who are determined to violate it; they have too many ways to excuse a decision to ignore or bypass it. My analysis of the Requirement treats it as a moral constraint rather than as a legal rule. Moral constraints are *not* designed in light of facts about the predicted level of compliance or enforceability. They have no built-in tendency towards generality and robustness. It is the role of the laws of war to accommodate the Requirement as an element of a system of enforceable rules whose application and violation can be easily identified as such.

6. Conclusion

Most wars are fought by a relatively small group in the name and on behalf of a larger group by imposing risks on members of this larger group and by employing means that belong to them. This chapter argues that traditional just war theory is best interpreted as conferring authority to veto a war on some of these groups. Let me highlight four propositions on which the legitimate authority requirement is based, according to the argument I offered. First, if a war is opposed by Beneficiary or Bearer, it is less likely to meet the substantive *jus ad bellum* conditions of just cause, necessity, and proportionality. Second, approval of the war by those in whose name it is fought furthers the fulfilment of the ideal of fair political participation. Third, the reason to respect the vetoes invoked by Political Society, Beneficiary, and Bearer are pre-emptive. Finally, like non-state actors, states can easily violate the Requirement. Yet, other things being equal, states are in a better position than non-state actors to know and to adequately respond to the values and preferences of the individuals they represent. They are also in a better position to fulfil the ideal of fair political participation by imposing and respecting a fair political decision-making process.

Acknowledgements

Thanks to Hagit Benbaji, Hanoach Dagan, Avihai Dorfman, Cécile Fabre, Jeff McMahan, Michael Walzer and especially to Jonathan Parry and to the Editors of this volume, Helen Frow and Seth Lazar for helpful conversations and comments.

Notes:

⁽¹⁾ The Requirement receives little attention in contemporary literature. Michael Walzer's classic *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, 4th ed. (Basic Books, 1996) devotes to it no substantive discussion. For Walzer, the legitimate authority issue arises in civil and guerrilla wars (96, 179–183). For interesting attempts to illuminate the Requirement and define its scope, see Anthony Coates, *The Ethics of War* (Manchester: Manchester University Press, 1997), 123–145. For discussion of the Requirement in the US Constitution, see Paul Christopher, *The Ethics of War and Peace: An Introduction to Legal and Moral Issues*, 3rd ed. (Upper Saddle River, NJ: Prentice Hall, 2004), 87–88.

(²) Augustine, *Contra Faustum* XXII, 74–75; Aquinas, *Summa Theologiae* II, Q. 40: Pufendorf, *On the Duty of Man and Citizen*, para. 16–18: quoted in Cécile Fabre, ‘Cosmopolitanism, Legitimate Authority and the Just War’, *International Affairs* 84 (2008), 963–976, at 967, 968.

(³) Fabre makes this point in her ‘Cosmopolitanism, Legitimate Authority’, 968; Helen Frowe makes it in her *The Ethics of War and Peace* (Routledge, 2011), 59–60.

(⁴) This preliminary account is influenced by David Luban, ‘Intervention and Civilization: Some Unhappy Lessons of the Kosovo War’, in *Global Justice and Transnational Politics*, edited by Pablo de Greiff and Ciaran Cronin (Cambridge, MA: MIT Press, 2002), 79–115, who states that ‘It takes an army to fight an army and it will be states, not heroic little bands ... that carry out ... humanitarian interventions ... no reasonable law of peoples can tolerate vigilante interventions ... [because] it gets hard in principle to distinguish self-appointed saviours ... from mafias’ (84–85).

(⁵) This formulation follows Lionel K. McPherson, ‘Is Terrorism Distinctively Wrong?’, *Ethics* 117 (2007), 524–546, taking into account Coates’s warning that, under one reading of the Requirement, any ‘revolutionary’ political movements might be regarded as ‘terrorist’ organizations due to their failure to achieve adequate legitimacy (*The Ethics of War*, ch. 5). Indeed, the suspicion that non-state actors are not legitimate authorities explains ‘the hesitancy of just war theory to engage with the issue of non-traditional wars’ (Jonathan Parry, ‘Legitimate Authority, Irregular Belligerency and Orthodox Just War Theory’ [unpublished manuscript], on files with the author). The sharpest contrast to the reading of the Requirement offered here can be found in Nicholas Fotion, ‘Two Theories of Just War’, *Philosophia* 34 (2006), 53–64.

(⁶) There might be another explanation why only certain entities can fight a just war. If I blow up the houses of Parliament, it is not an act of war (even if I act on behalf of my animal rights group). But if the US Army drops a bomb, that’s an act of war (even if the United States is motivated by concerns about the UK’s treatment of animals, and, like my animal rights bomb, it fails all the other *ad bellum* conditions). It’s an act of war because of who does it. I reject this view later (see Note 13 and Section 5).

(⁷) Citizen’s arrest is an exception.

(⁸) A powerful argument in Malcolm Thorburn, ‘Justifications, Powers and Authority’, *Yale Law Journal* 117 (2008), 1070–1130, suggests that, in criminal law, ‘conduct is legally justified only if the appropriate person validly decides that it is justified. The mere fact that there are good reasons to engage in certain conduct is not enough to justify it. ... The

appropriate decision maker must consider those reasons and make an authoritative decision on the matter' (1083).

(⁹) As Fabre remarks: 'Cosmopolitanism, Legitimate Authority', 968.

(¹⁰) See Yitzhak Benbaji, 'The Moral Power of Soldiers to Undertake the Duty of Obedience', *Ethics* 122 (2011), 43-72.

(¹¹) I owe the distinctions offered in the preceding two paragraphs to Jonathan Parry, who suggests that 'the authority requirement serves not only to identify the parties who are capable of declaring and waging *just* wars, it identifies the kinds of parties who are capable of waging war *simpliciter*, whether just or unjust' ('Legitimate Authority'). See also Christopher Finlay 'Legitimacy and Non-State Political Violence', *Journal of Political Philosophy* 18 (2010), 287-312, at 288. Cf. Note 6.

(¹²) For simplicity, I will focus on wars that actually and fully meet the factual condition.

(¹³) There's some nuance here. The president can deploy troops for a period of time, after which he must have the approval of Congress to keep them stationed.

(¹⁴) It might be further argued that, even if the mafia pursues unjust ends, this doesn't mean it is unrepresentative. It means merely that it lacks the authority to act on behalf of those it represents for the Lockean reason that representative agents only have the authority to perform actions that their principals themselves have the right to perform. I owe these formulations to Helen Frowe (private communication).

(¹⁵) The patrollers reject this claim: they say that they are entitled to act in their own name.

(¹⁶) Cf. Avihai Dorfman and Alon Harel, 'The Case Against Privatization', *Philosophy & Public Affairs* 41 (2013), 67-102.

(¹⁷) Luban, 'Intervention and Civilization', 105.

(¹⁸) *Idem*, 88.

(¹⁹) Luban, *ibid.*, presents, but does not endorse this argument it. It seems to him sufficient that the intervention in Kosovo was a humanitarian effort. The same is true of Walzer: 'Kosovo', in his *Arguing About War* (New Haven, CT: Yale University Press, 2004).

(²⁰) Jeff McMahan, 'The Ethics of Killing in War', *Ethics* 114 (2004), 693-733, at 707.

(²¹) Jeff McMahan, 'Just Cause for War', *Ethics and International Affairs* 18 (2005), 1–21, at 13. He follows Walzer, *Just and Unjust Wars*, 101–103. Cf. Fernando Tesón, *Humanitarian Intervention*, 3rd ed (Ardsley, NY: Transnational, 2005), who excepts 'those extreme situations [in which individuals] have lost their autonomy' (160). The Requirement is denied in Andrew Altman and Christopher Heath Wellman, 'From Humanitarian Intervention to Assassination: Human Rights and Political Violence', *Ethics* 118 (2008), 228–257.

(²²) Discussed in Walzer, *Just and Unjust Wars*, 70–73.

(²³) Walzer criticises Clinton's policy. The ability 'to fight a war without using armies' allows leaders to go to war 'without convincing the country the war is necessary' (*Arguing About War*, 101).

(²⁴) Suppose, though, that the bombing campaign in Kosovo would cost each US citizen \$1 000, but would save 10 000 lives. You might think citizens are under a natural duty to support the political decision to go to war. A veto would be morally invalid. This view treats Bearer Authority as based on the role of consent in a permissible use of some people to benefit others. But the defence of Bearer Authority that I advance in the following sections is very different.

(²⁵) The factual observation regarding the role of presumptive legitimacy of states in the international community is expressed in both Michael Walzer, 'The Moral Standing of States: A Response to Four Critics', *Philosophy & Public Affairs* 9 (1980), 209–229, and David Luban, 'Just War and Human Rights', *Philosophy & Public Affairs* 9 (1980), 160–181.

(²⁶) As Jonathan Parry points out (private communication), the failure to meet Political Society Authority may have a further implication, one rooted in the connection between the morality of the *jus in bello* and the Requirement. One could argue that Hamas's agents are not combatants, even if they attack only Israeli combatants, because they lack belligerent status and therefore their actions fall outside the jurisdiction of orthodox just war theory.

(²⁷) Al Qaida can satisfy the authority requirement simply by modifying its claim to representativeness: 'we claim to represent only fundamentalists'. But bootstrapping the authority in this way is possible only at the cost of losing the just cause of the war: al Qaida militants have no right to fight for fundamentalists' liberation and moderates' oppression. Compare Frowe's objection (*The Ethics of War and Peace*, 59–60) to McPherson's thesis in 'Is Terrorism Distinctively Wrong?'.

(²⁸) I used this example in Yitzhak Benbaji, 'The War Convention and the Moral Division of Labour', *Philosophical Quarterly* 59 (2009), 593–618, at 609–610.

(²⁹) Fabre, 'Cosmopolitanism, Legitimate Authority', 973.

(³⁰) Joseph Raz, *The Morality of Freedom* (Oxford University Press, 1986), 39–45. For an illuminating discussion of Raz's views, on which I rely heavily here, see Scott Shapiro, 'Authority', in *The Oxford Handbook of Jurisprudence and Philosophy of Law*, edited by Scott Shapiro and Julius Coleman (Oxford University Press, 2004).

(³¹) See especially Raz, *The Morality of Freedom*, 56–75.

(³²) See Scott Shapiro, 'Authority', 391–393.

(³³) Thanks to Jonathan Parry for pressing this point.

(³⁴) See Shapiro, 'Authority', 402–406, based on Raz, *The Morality of Freedom*, 56–75.

(³⁵) Shapiro, 'Authority', 403.

(³⁶) Raz, *The Morality of Freedom*, 41–42; Shapiro, 'Authority', 404–405.

(³⁷) Thus, according to Raz (*The Morality of Freedom*, 58), pre-emption is related to two distinct features of legitimate authorities: that they exist to serve their subjects and that their directives reflect the underlying reasons that apply to their citizens. Cf. Shapiro, 'Authority', 404.

(³⁸) Recall Walzer's critique of Clinton's policy of not putting US soldiers at risk (see Note 26). In the terms used here, if there are no internal risks, Bearer Authority is met automatically; therefore, a powerful tool to make sure that the war is a necessity is lost.

(³⁹) H. L. A. Hart, *The Concept of Law*, 2nd ed. (Oxford: Oxford University Press, 1994), especially chapters 5–6.

(⁴⁰) I rely on Shapiro's 'Arbitration Model' of the service conception of authority, lucidly developed in his 'Authority', 431–434.

(⁴¹) Cf. Shapiro's explanation of the moral standing of the outcome of a fair decision-making process; it is, he says, 'deference to a power-sharing arrangement that is socially necessary, empowering and fair' ('Authority', 435).

(⁴²) This is Jonathan Parry's view (private communication).

(⁴³) Consider a case in which a purely self-interested person is asked to give a sincere assurance to pay \$10 in the future in return for a 50 per cent chance of gaining \$100 now and a promise that dishonouring the assurance would involve no costs. David Gauthier famously argues that the gambler can give the assurance despite having no interest in honouring it: 'Assure and Threaten', *Ethics* 104 (1994), 690–721. Scott Shapiro shows that even if Gauthier is wrong, as many think, precommitments might function *as if* they were pre-emptive reasons. By subjecting themselves to the authority of the procedure, the parties might be capable of affecting the feasibility of nonconformity: 'Authority', 418–419.

(⁴⁴) Quoted in Fabre, 'Cosmopolitanism, Legitimate Authority', 969. Cf. Brian Orend: 'War is a phenomenon which occurs *only* between political communities, defined as those which either are states or intend to become states' ('War', *Stanford Encyclopaedia of Philosophy*, <http://plato.stanford.edu/entries/war/>).

(⁴⁵) Fabre, 'Cosmopolitanism, Legitimate Authority', 970.

(⁴⁶) Hugo Grotius, *The Rights of War and Peace*, I-3, I-4, I-5, quoted in Fabre, 'Cosmopolitanism, Legitimate Authority', 970.

(⁴⁷) Vitoria, *On War*, Q. 1, 2–3, quoted in Fabre, 'Cosmopolitanism, Legitimate Authority', 970.

(⁴⁸) Raz, *The Morality of Freedom*, 62.

Yitzhak Benbaji

Yitzhak Benbaji is a Professor of Philosophy at Tel-Aviv University, Israel

