

Collective Responsibility and Liability
to Harm in War

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PhD Dissertation

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Preface

The dissertation consists of the following summary report and four articles. The summary report provides an overview of the dissertation. It covers the research questions of the dissertation, the theoretical framework, and the methodological approach. Furthermore, the summary report introduces the main claims of the four articles and covers how each article contributes to answering the research questions of the dissertation. The four articles are titled as follows, and will be referred to as article A, B, C, and D, respectively:

Article A: Collective Responsibility and Liability to Harm in War

Article B: Harming Ineffective Combatants in War: Authority-Based Accountability and Liability to Harm

Article C: Facts, Evidence and Mistaken Defenders

Article D: The Evidence-Relative View and Lesser-Evil Justifications for Defensive Harm

1. Introduction and Research Questions

According to the principle of discrimination in war, combatants must not intentionally target civilians for attack.¹ This principle is a central tenet of the ethics of war, and most people would agree that it is a principle with a very strong moral appeal. It is also a very comprehensive principle in the ethics of war as it implicitly specifies both who is not a legitimate target of intentional attack and who is. Civilians may not be intentionally targeted for attack in war, but this implies that it is, on the other hand, permissible to intentionally target adversary combatants for attack. It seems to be an underlying assumption of the principle that there is a categorical difference between those who qualify as combatants and civilians, respectively, and that this difference is morally significant enough to permit intentional harm against combatants but not against civilians. To many, this seems to be a plausible assumption. Most people do believe that there is a meaningful difference between combatants and civilians in war and that this difference is morally significant for harm. However, in order to fully account for the moral foundation of the principle of discrimination, we need to be able to identify what exactly this moral difference is (May, 2005: 41). In contemporary just war theory, this has proven to be a difficult task. Particularly among revisionist scholars, the moral premise of the principle has been scrutinized to a point where several now argue that there is no categorical difference between harming combatants and civilians as such and that the principle is now currently best understood as a ‘useful convention’ in the ethics of war rather than a fundamental moral principle (Frowe, 2022: Ch. 8; see also Mavrodes, 1975).

This dissertation seeks to make progress on the ethical issues related to the principle of discrimination in war. The first question is how to morally distinguish between combatants and civilians in terms of who is a legitimate target for intentional attack in war. The second question is whether combatants share the same moral permissions for inflicting harm in war regardless of whether they fight for a just or an unjust cause. These issues came to the forefront of philosophical discussions of the ethics of war following Jeff McMahan’s revisionist project culminating in *Killing in War* (2009). According to McMahan, the moral basis for liability to harm is moral responsibility for promoting unjust threats of harm (McMahan, 2005). By becoming liable to harm, you forfeit your rights against being harmed, and it is thus justifiable

¹ Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, Article 48. See also Walzer (2015): Ch. 9.

for others to defensively harm you. When this account is applied to the ethics of war, it has some significant implications for the principle of discrimination. First, we cannot sustain the assumption that combatants, but not civilians, will be liable to harm on this account. Not all combatants are necessarily morally responsible as such, and not all civilians are necessarily *not* morally responsible. Thus, it does not follow from this account that combatants are necessarily legitimate targets for attack in war while civilians are not (McMahan, 2006: 30-37). Second, the account implies that those who promote justified threats of harm do not make themselves liable to harm in doing so. In war, this means that combatants who fight for a just cause do not make themselves liable to harm. If this is the case, then there is no equal permission for combatants on both sides of a war to attack their adversaries. Only just combatants are morally permitted to harm their unjust adversaries. Thus, the traditionalist doctrine of combatant equality is false (McMahan, 2009: 13-15).

This raises questions for several aspects of the traditional understanding of the discrimination principle. It questions both how far the permission to target adversary combatants for attack in war goes and whether a universal prohibition against targeting civilians for attack is morally justified. However, the principle of discrimination is such a central tenet of the ethics of war that it seems premature to accept that its moral basis must be false and that it is merely a ‘useful convention’ rather than a moral principle. However, in order to justify it as such, we need a morally significant distinction between combatants and civilians in war. We also need to assess to what extent this principle grants equal moral permissions to inflict harm for combatants regardless of whether they fight for a just or an unjust cause or whether these permissions only plausibly pertain to just combatants. This dissertation will contribute to both of these aims.

1.1 Research Questions

This dissertation will assess two potential strategies for justifying some of the central aspects of the principle of discrimination. The first part of the dissertation will focus on the moral distinction between combatants and civilians. Here, I will assess whether theories of collective responsibility could succeed in grounding liability to harm for (unjust) combatants as a group without implicating civilians. The research question for this part of the dissertation is as follows:

RQ1: Can theories of collective responsibility and liability to harm justify the moral distinction between unjust combatants and civilians in war?

For the most part, revisionist scholars in the ethics of war use the approach of reductive individualism (Lazar, 2017: 40; see also Rodin, 2002: 127-132). On

this approach, the ethics of war can be inferred from individualist ethics of the use of defensive force. It is according to this very approach that the issues for the principle of discrimination arise, especially regarding the moral distinction between combatants and civilians in war. It is the individual differences in moral responsibility among both combatants and civilians that make us unable to justify a group-based permission to harm combatants and a prohibition against intentionally harming civilians based on their liability to harm. Because of this, it is worthwhile to consider the upshot of employing a collectivist approach and to assess whether this approach fares better at tracking the distinction between combatants and civilians in war in terms of liability to harm. If successful, this could amount to a revisionist understanding of the ethics of war in terms of liability to harm that does not necessarily compromise the moral basis of the principle of discrimination.

I take revisionism here to refer to the approach to the ethics of war according to which the ethics of war can be inferred from the ethics of self-defense in contexts outside of war. This is also what *reductivism* sometimes is meant to refer to. Lazar defines reductivism in the following way: ‘Reductivism claims that we can reduce the morality of war to the morality of life outside of war: reductivists think that people lose the protection of their right to life on just the same grounds in war as they do outside of war’ (Lazar, 2015a: 24). On this understanding, reductivism is the rival approach to the traditionalist view that the ethics of war are *sui generis* in the sense that there are special moral principles that apply only to the context of war. However, the term reductivism is usually understood to also involve an individualist component, according to which the ethics of war can be inferred from specifically *individualist* ethics of self-defense in the context outside of war.²

The collectivist approach assessed in the dissertation is thus revisionist in the sense of understanding the ethics of war as not being inherently different from the ethics outside of war, but it rejects the individualism accepted by most revisionist scholars. This means that the dissertation accepts the revisionist view that liability to defensive harm is what determines the morality of harm in war and that it is responsibility for promoting unjust threats of harm that makes one liable to harm. Articles A and B focus on discussing whether responsibility can be understood on various collectivist approaches in this respect, but the arguments of the articles still, for the most part, accept the revisionist framework for understanding the ethics of war.

The dissertation assesses this collectivist approach in articles A and B. Article A assesses different collectivist accounts of liability to harm based on four

² Because of this, I will refer to revisionism as the general rival approach to the *sui generis* view and reductive individualism as the specifically individualist variant of this view.

different conceptions of collective responsibility. Article B assesses the theory of authority-based accountability by Saba Bazargan-Forward (2022) and the implications of this theory for liability to harm in war. Ultimately, the two articles do not find support for these collectivist accounts being able to justify a moral distinction between unjust combatants and civilians in war.

Note that the dissertation presumes that we can descriptively distinguish between combatants and civilians in war as two separate groups. The purpose of the dissertation is thus not to assess how to descriptively identify who will qualify as a combatant and who will not, but rather to assess whether we are able to identify a moral difference between those who do qualify as combatants according to the presumed criteria and those who do not. Here, I rely on the criteria for qualifying as a combatant according to the Geneva Convention to distinguish between combatants and civilians.³ Thus, according to the Geneva Convention, an individual must meet the following criteria to qualify as a combatant:

- Be part of a hierarchical group with a recognizable chain of command
- Wear a distinctive emblem that is visible from a distance⁴
- Bear arms openly
- Obey the rules of just warfare as stipulated in the Convention.⁵

The second part of the dissertation will focus on the extent to which just and unjust combatants alike are morally permitted to inflict harm in accordance with the principle of discrimination. Here, I will assess the implications of adopting an evidence-relative view of the use of force for the moral status of combatants and the permissions they enjoy in war qua their status. In defense of the traditionalist doctrine of combatant equality, it is often argued that combatants participating in unjust wars are convinced that they are actually fighting for a just cause. In so far as they are evidentially justified in this belief, they are morally on par with just combatants and do not become liable to harm, or so the argument goes (Barry and Christie, 2015: 350-354). If this is

³ See Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, Articles 43 and 44.

⁴ Note that this criterium was slightly revised in the Additional Protocols to the Geneva Convention of 1977 to also include certain combatants who fail to distinguish themselves in this way (Protocol 1, Article 44.3).

⁵ Note that a single combatant will not fail to qualify as a combatant for breaking these rules. However, groups of combatants who persistently do not obey these rules will not qualify as combatants. This criterium is made, e.g., to deny members of terrorist groups the status of combatants, even if they fulfill the other qualifying criteria (Frowe, 2022: 106).

true, then this will support a contingent version of combatant equality in which unjust combatants and just combatants might have a symmetrical moral permission to harm each other in war if it is the case that the unjust combatants are evidentially justified in fighting. This argument thus assumes that liability to harm should be understood on the evidence-relative view rather than the fact-relative view.⁶ That is, what determines whether an individual becomes liable to harm is not whether they are morally responsible for promoting a threat that is in fact unjust, but whether they are morally responsible for promoting a threat that is unjust according to their evidence. The research question for this part of the dissertation is as follows:

RQ2: To what extent can the evidence-relative view of defensive harm justify combatant equality in war?

In the literature on individualist ethics of defensive harm, the fact-relative view has been the standard view, but a growing literature on the evidence-relative view and self-defense under uncertainty is emerging (see, e.g., Burri, 2021, 2025; Ferzan, 2005; van der Vossen, 2016; Frowe, 2010; Quong, 2020; Bolinger, 2017, 2021; Lazar, 2018; Christie, 2023; Rivera-López & Venezia, 2023; Tomlin, 2019). This dissertation thus assesses the plausibility of the view and its implications in the context of war in articles C and D. Article C discusses the view in relation to two distinct theoretical frameworks for understanding the ethics of self-defense, namely the distributive justice framework and the enforcement of rights framework. Article D discusses the view in relation to lesser-evil justifications for harm. The articles find limited support for the view being able to justify combatant equality.

1.2 Structure

The summary report will proceed as follows. In section 2, I shall elaborate on the theoretical framework of the dissertation, explaining in more detail the individualist account of liability to harm and its implications in war. Section 3 will discuss the methodological approach of the dissertation. Section 4 will discuss the first research question and articles A and B. Section 5 will discuss the second research question and articles C and D. Section 6 concludes.

⁶ This terminology was introduced by Derek Parfit (2011: 150-164). In addition to the fact-relative and the evidence-relative sense, Parfit also discusses the *belief-relative* sense, which is not discussed in this dissertation.

2. Theoretical Framework

Contemporary just war theory had its start with the 1977 release of Michael Walzer's *Just and Unjust Wars*. Walzer's work represents the traditionalist understanding of the ethics of war and introduced many of the central tenets of just war theory. On Walzer's view, the morality of war can be understood as concerning two morally independent aspects called *jus ad bellum* and *jus in bello*. The *ad bellum* aspect concerns the morality of the war as a whole and includes considerations such as whether the war is being fought for a just cause and whether the war has reasonable prospects for success. The *in bello* aspect concerns the morality of the warfare more specifically, understood as principles regarding what combatants are morally permitted to do and prohibited from doing as part of the war effort. Notably, this includes the principle of discrimination, which prohibits combatants from intentionally targeting civilians for attack. However, unintentional yet foreseen harm to civilians is permitted as long as this harm is proportional to the military advantage gained by the attack and the least harmful means for pursuing one's military objective. Furthermore, intentional harm to adversary combatants is permissible (Walzer, 2015; see Ch. 9 in particular).

The moral independence of these two aspects means that on the traditionalist view, combatants can satisfy the principles of *jus in bello* regardless of the morality of their war on the *jus ad bellum* aspect. Because of this, combatants fighting in an unjust war vis-à-vis the *ad bellum* principles can nevertheless fight morally permissibly if they adhere to the *in bello* principles. The notion that combatants in both just and unjust wars can fight morally permissibly is often referred to as the Doctrine of Combatant Equality. They have an equal moral status and have the same moral permissions and prohibitions for fighting. As a result, they are symmetrically morally permitted to harm each other (Walzer, 2015: Ch. 3).

Over the last couple of decades, the traditionalist view has been heavily criticized by a revisionist movement spearheaded by Jeff McMahan. The revisionist movement has attacked several of the central tenets of the traditionalist view, including the discrimination principle, the doctrine of combatant equality, and the independence of *jus ad bellum* and *jus in bello*. In *Killing in War* (2009), McMahan argues that all these tenets are at odds with the individualist responsibility-based account of liability to harm. On this account, an individual forfeits their rights against being harmed by being morally responsible for promoting an unjust threat of harm, and it is therefore morally justified to harm them in order to avert the threat for which they are responsible

(McMahan, 2005). In the context of war, this has several critical implications. First, combatants fighting in a just war will not make themselves liable to harm as they are not morally responsible for promoting unjust threats of harm. Only combatants fighting in unjust wars will be liable to harm on this account. This means that there cannot be a symmetrical moral permission for just and unjust combatants to harm each other. When unjust combatants harm just combatants in war, they harm individuals who are not liable to harm, and this harm will therefore be unjust. Second, civilians living in states that wage unjust wars can also make themselves liable to harm if they are morally responsible for contributing to the unjust war. If this is so, these civilians may, in principle, be targeted for intentional attack in war if such an attack is effective and proportional in combating the unjust war effort. This is contrary to the principle of discrimination, according to which such intentional attacks are not permissible. Finally, if a combatant's moral status depends on the *jus ad bellum* status of the war and this in turn affects what they are morally permitted to do in war, then the independence of *jus ad bellum* and *jus in bello* is false (McMahan, 2006; 2009).

This revisionist critique of the traditionalist doctrines has had a significant impact on contemporary just war theory, not least because of the severe implications that the individualist account of liability to harm has for the otherwise widely accepted conventions in the ethics of war. Indeed, some have argued that the implications of the account are more problematic than McMahan suggests. According to McMahan, even minimal moral responsibility for contributing to an unjust threat can be sufficient to become liable to harm, and such responsibility is only defeated if the agent could not know that their actions contributed to any threat (McMahan, 2009: 34, 166). However, as argued by Seth Lazar (2010), the result of this is not only that virtually all unjust combatants become liable to harm, but also that a significant number of civilians will. There are many ways in which civilians can contribute to unjust wars. A clear example is the civilians who provide food and medical assistance to the unjust combatants, hereby enabling them to promote unjust threats. Furthermore, wars cannot be fought without economic resources and political power, which civilians contribute to through tax payments and support for their government. However small such contributions might be from each individual civilian, they play a critical role in facilitating the advancement of these wars. If minimal moral responsibility is sufficient for liability, it seems that all civilians who contribute in these ways will become liable to harm. In some wars, this might be the majority of the civilians living in the state. This means that it is not just *in principle* that some civilians could be legitimate targets for intentional attack. The scope of liable civilians might be so large that the principle of discrimination will no longer apply in such wars, allowing

just combatants to attack without needing to discriminate between combatants and civilians. This is the first horn of the *responsibility dilemma*, also called the ‘total war’ objection (Lazar, 2010: 188-189).

To many people, this is a morally unacceptable implication of the individualist account. A war in which combatants fighting for a just cause are permitted to indiscriminately harm civilians cannot be a morally permissible war. One could also argue that it generally seems disproportionate that civilians would lose their right against harm by making a small contribution to an unjust war, such as paying their taxes. It seems that a more substantial amount of moral responsibility is necessary in order to forfeit your rights against harm. Thus, a way to avoid implicating most civilians on the individualist account would be to raise the ‘threshold’ for how much moral responsibility is necessary for you to become liable to harm. While this would indeed likely avoid implicating most civilians, another issue arises here regarding combatants as we cannot reasonably expect that all combatants in unjust wars will have such substantial moral responsibility. In some cases, they will be strongly excused for their participation in unjust wars, and some of them might only contribute insignificantly to the war effort advanced by their side. Their assigned roles and functions might be far removed from combat, or they might be ineffective at fulfilling these roles. If such combatants in unjust wars are only minimally morally responsible, they will not be liable to harm, and they will therefore not be morally legitimate targets of intentional attack. This will greatly constrain the just combatants’ ability to advance their just cause as they will be required to discriminate between which of their adversaries are actually liable to be attacked. In practice, this will not be possible as the just combatants will inevitably not possess the required information to make such distinctions. In even more serious cases, there may be instances of wars where almost all of the unjust combatants have minimal moral responsibility. So few of them would be liable to attack that the just combatants would not be able to advance their war effort, even if they were not challenged by epistemic limitations. Just warfare would be practically impossible. This is the second horn of the responsibility dilemma, also called the contingent-pacifist objection (Lazar, 2010: 187-188).

The dilemma represents a fundamental issue in the ethics of war of how to morally distinguish between combatants and civilians. In order to lead a just war, it seems necessary for combatants to be able to indiscriminately attack their unjust adversaries as they cannot, in practice, advance their just cause otherwise. However, most would agree that the prohibition against intentionally attacking civilians also seems to be a necessary part of the ethics of war. In order to justify the permission to intentionally harm unjust combatants in war and the prohibition against intentionally harming civilians, we must

identify a categorical moral difference between them that explains why intentional harm against the former, but not the latter, is permissible.

2.1 Beyond the Dilemma

Following the revisionist breakthrough in the literature, much work on the ethics of war have focused on the issue of how to understand the liability to harm of combatants and civilians in war and what the implications are for the traditionalist conventions. While many have to some extent embraced the revisionist turn of the literature, it is not all who accept the controversial implications regarding civilian liability. Many of those persuaded by the revisionist movement accept the individualist reductivist approach to the ethics of war, according to which individual liability to harm explains the morality of harming in war. Among those, some nevertheless argue that civilians are generally not liable to harm. McMahan argues that even though some civilians are minimally morally responsible for contributing to unjust threats in war, it is still disproportionate and often ineffective to intentionally harm them (McMahan, 2009: 221-231). Likewise, Cecile Fabre argues that even though civilians do make causal contributions to unjust threats in war, these contributions are too insignificant for civilians to become liable to harm in virtue of them (Fabre, 2009: 56-63). Furthermore, Lazar argues that neither minimally morally responsible civilians nor minimally morally responsible unjust combatants are liable to harm. However, he points out that there are still strong considerations in favor of targeting combatants instead of civilians for intentional attack in war, one reason being that it is more morally risky to harm civilians (Lazar, 2015b: Ch. 4).

On the other hand, some accept that civilians might indeed be liable to harm in virtue of causally contributing to unjust threats in harm. This is argued by Helen Frowe, although she believes that there are other practical considerations in favor of not harming them, such as the difficulties of identifying liable civilians and isolating intentional attacks against them from other non-liable civilians (Frowe, 2014: 195-197). Bazargan-Forward goes beyond causal contributions as a basis for liability to harm and argues that certain civilians may be liable to harm even if they do not causally contribute to unjust wars. More specifically, civilians who profit from the unjust war will be liable to harm (Bazargan, 2015). Richard Arneson likewise argues that civilians may be liable not because of causal contribution to the unjust warfare, but because of culpability (Arneson, 2017: 81-83). Finally, and more radically, Victor Tadros has suggested that there may be certain considerations in favor of harming civilians in war. Because of considerations of fairness, it may be better to distribute the costs of harm in war among both civilians and combatants rather

than to concentrate these costs on the limited group of combatants, as the principle of discrimination implies (Tadros, 2020: Ch. 11).

There are also certain scholars who accept the reductivist approach, yet still defend the Doctrine of Combatant Equality to a certain extent. For example, Uwe Steinhoff argues that unjust combatants may permissibly attack just combatants in order to defend their civilians against being collaterally harmed (Steinhoff, 2008). In contrast, others (to various extents) reject the reductivist approach and defend the traditionalist doctrines on this basis (see, e.g., Benbaji, 2008, 2011; Statman & Benbaji, 2019; Estlund, 2007; Shue, 2008; Dill & Shue, 2012; Waldron, 2016; Renzo, 2013, 2019, 2025; Skerker, 2020; Zohar, 1993; Kutz, 2005).

2.2 Situating the Dissertation

This dissertation follows the revisionist part of the literature on just war theory and hereby accepts the revisionist approach to the ethics of war. In other words, the dissertation accepts the claim that the morality of harm in war can be explained by theories of liability to defensive harm. Such theories are therefore at the center of the dissertation, and the dissertation seeks to assess whether certain variations of these theories can support the principle of discrimination as a moral principle. As such, the dissertation follows scholars such as McMahan and Fabre, who argue that although civilians can in principle be liable to harm in war, it is not the case that the average civilian who contributes insignificantly to unjust wars is liable to harm. However, the dissertation also follows Lazar in recognizing that this entails accepting that minimally morally responsible unjust combatants will not be liable to harm and that, in this respect, such unjust combatants will not individually be morally different from non-liable civilians. However, the dissertation is open to the possibility that unjust combatants might be liable on other grounds than their individual moral responsibility, such as being implicated in collective responsibility for promoting unjust threats of harm in war.

The primary focus of the dissertation is on assessing the liability to harm of unjust combatants and civilians in war and the implications hereof for the principle of discrimination. The first part of the dissertation, which focuses on collective responsibility and liability to harm, seeks to assess whether unjust combatants as a group can be liable to harm without implicating civilians. If this is so, this could provide a moral ground for distinguishing between them as legitimate targets of intentional attack in war, hereby justifying the principle of discrimination as a moral principle in war.

The second part of the dissertation focuses on evidential justifications for fighting in unjust wars. Such justifications are often viewed as a particularly strong excuse for participating in unjust wars, and proponents of the evidence-

relative view of self-defense argue that you do not forfeit your rights against harm if you harm a non-labile person and you are evidentially justified in doing so. On this view, unjust combatants do not make themselves liable to harm if they are evidentially justified in believing that they are fighting for a just cause. If this view is correct, they will be morally on par with just combatants. On the one hand, this will bear the implication that in certain wars, both just and unjust combatants will be symmetrically morally permitted to harm each other. This would give moral support to a contingent version of the doctrine of combatant equality. On the other hand, this would also raise the burden further of how to identify a moral difference between harming unjust combatants and civilians as this difference cannot in these cases be due to differences in liability to harm. I discuss this further in section 6.

3. Methodological Framework

The dissertation employs the method of reflective equilibrium as introduced by John Rawls in *A Theory of Justice* (1971). This method seeks to achieve an equilibrium and coherence between one's considered judgments and moral principles (Rawls, 1999: 17-18; see also Holtug, 2011 and List and Valentini, 2016).

By considered judgments, I refer to judgments on what is just and unjust, or morally right and wrong, in specific situations and cases. This rests on the assumption that we as humans possess a moral capacity and understanding of justice that gives us the capacity to make such judgments and to rationalize why something is just or unjust (Rawls, 1999: 41). These are well-considered judgments in which one, independently of other moral judgments and with due consideration of the specific case, is able to give a verdict on what is just or morally right in the case at hand and why.

Principles, on the other hand, have a more general character and do not concern specific cases. They can be understood as overall moral prescriptions that can be applied in several different situations. They can be supported by specific considered judgments that we are particularly confident in, or they can be a part of our general knowledge of morality and understanding of justice. Because of this, such principles can also figure in the considerations that we make regarding our judgments of specific cases, and likewise, our considered judgments on specific cases can influence what principles we adopt.

This relationship between considered judgments and principles is what the method of reflective equilibrium concerns, as it seeks to achieve coherence between our judgments and the principles that we adopt. While working towards developing moral principles, we can test them by considering several cases that a particular principle could be relevantly applied to and see whether our considered judgments on these cases are coherent with the principle. If there is no such coherence, this might give reason to revise either the principle or the particular considered judgment.

3.1 Cases and Thought Experiments

In the process of achieving reflective equilibrium between principles and considered judgments, it is evidently of significant importance what types of cases you choose to work with. This is particularly relevant in the ethics of war as it has proved to be a considerable differentiator between the work of most revisionists and traditionalists in the literature. As most revisionists argue that the moral principles that govern harm in war can be inferred from the principles

that govern defensive harm outside of war, it is typical for these scholars to work with thought experiments that do not reflect situations clearly related to the context of war. Such thought experiments might be stylized and abstract. Traditionalists, on the other hand, will typically choose to work with either historical cases of war or thought experiments that are formulated specifically to reflect scenarios in war (Lazar, 2017: 39).

As this dissertation follows the revisionist approach, it follows the tendency of mostly working with hypothetical and abstract thought experiments. Certain well-known cases in the literature on self-defense and the ethics of war will figure in the discussions of the articles together with new variations of such cases. In addition, the dissertation also introduces and considers new thought experiments related to responsibility and liability to harm.

A particular advantage of working with abstract and hypothetical thought experiments is that such cases allow us to better consider the ethics of harm outside the context of war. This also makes it easier to filter out the influence of widespread convictions regarding war in particular historical contexts on our considered judgments (Lazar, 2017: 39). Furthermore, it allows us to better isolate and understand the effects of particular circumstances on our moral intuitions (see Slavny et al., 2021: 8-9). It is easier both to highlight and control for specific factors when working with abstract and stylized cases compared to historical or highly realistic cases of warfare. An example of this is the case of *Cannon*, which is introduced in article B. This is a stylized case illustrating three individuals who cooperate in a specific way to fire a cannon that will harm a victim. The case is used to discuss how a particular theory of responsibility applies in a case of shared action and how it affects the liability to harm of the three individuals involved in firing the cannon. The specific variations in the roles of each individual in firing the cannon and the relationships between the individuals here can be more clearly stipulated in a case such as this compared to a similar case of realistic warfare. However, as the specific article and the dissertation as a whole ultimately seek to assess responsibility and liability to harm in war, it is crucial to discuss whether the considered judgments in these types of stylized cases can reliably be inferred to parallel cases in war. Articles A and B particularly emphasize discussions of whether specific theories of responsibility can plausibly be applied to the context of unjust combatants and civilians in war and the implications for liability to harm.

3.2 Collectivism and Individualism in Just War Theory

The revisionist approach to the ethics of war is often understood as specifically *individualist* reductivism. Here, the morality of harm in war can be inferred from theories of individual self-defense outside of war. The individualist

approach is thus common among revisionist scholars, whereas collectivist approaches are more often associated with traditionalist just war theory. The divide between individualism and collectivism can be both descriptive and evaluative. On the descriptive aspect, the difference is on whether you believe that individuals or collectives act in war. On the evaluative aspect, the difference is in whether you believe individuals or collectives *matter* in war (Lazar, 2017: 40). A fully individualist reductivist would argue that war is a conflict between individuals. Whether a particular individual can permissibly be harmed in this conflict will depend on this individual's moral rights and actions in the conflict, that is, whether this individual has made herself liable to defensive harm. Traditionalist collectivists first and foremost view the conflict of war as a conflict between states. They typically believe that it is the rights of the state that justify fighting and not necessarily the rights of the individuals living in the state, nor the individual combatants who are fighting in the war. McMahan and Walzer are prime examples of this divide.

This dissertation partly breaks with the typical patterns, as the first research question seeks to assess whether a collectivist approach to liability to harm can plausibly advance revisionist arguments. The dissertation accepts the revisionist arguments in the sense that it accepts that the morality of harm in war is governed by principles of liability to defensive harm. It then seeks to assess whether these theories of liability to harm, when combined with collectivist approaches to responsibility, can plausibly support the principle of discrimination in the ethics of war. However, this dissertation is not the first attempt in the literature to combine the collectivist approach with revisionism. Notably, Bazargan-Forward has made a great deal of work on collectivist approaches to revisionism (see Bazargan, 2013; Bazargan-Forward, 2022). The first part of the dissertation therefore follows in the footsteps of this work, and article B discusses the work of Bazargan-Forward explicitly. However, the article identifies a critical shortcoming of this work in the context of war, and ultimately, the dissertation does not find support for the collectivist approach being able to justify a moral distinction between unjust combatants and civilians in war.

Because of this, the dissertation answers the second research question with a fully individualist reductivist approach, and articles C and D focus explicitly on the evidence-relative view in individualist theories of self-defense. First and foremost, the findings of these articles concern theories of individual self-defense outside the context of war. In so far as one accepts the individualist reductivist approach to the ethics of war, the findings are also relevant for the ethics of war and will have implications for what combatants in war are morally permitted to do. For example, article D discusses lesser-evil justifications for harm and the evidence-relative view. The findings of this article will

therefore, on the individualist reductivist approach to the ethics of war, have implications for the justification of collateral harm against civilians in war, which is usually justified on a lesser-evil basis.

3.3 Law and Morality

A final methodological reflection concerns the relationship between the morality of war and the laws of war. This dissertation is exclusively concerned with the moral principles of permissible harm in the context of war and not the institutional laws of war. The dissertation thus takes on a non-institutionalist approach in which moral principles are evaluated regardless of how they relate to existing or hypothetical institutions (Lazar, 2017: 38). Furthermore, the dissertation remains neutral on whether its findings have any bearing on the morality and validity of existing institutional laws of war.

The understanding of the relationship between the morality of war and the laws of war is another typical difference between traditionalists and revisionists in the just war literature. Whereas traditionalists often reflect on the morality of war specifically in light of the institutional laws and potential effects on compliance with these laws, revisionists usually consider the morality of war independently of such institutional effects. However, most revisionists also do not argue that their arguments give cause for actually changing any existing institutional laws. In the literature, it is sometimes said that revisionists are concerned with the ‘deep morality’ of war in the sense that they focus on assessing the moral principles that govern harm at a ‘deeper’ level than the institutional level. However, they acknowledge that there can be important considerations that weigh against implementing any changes at the institutional level based on such principles, such as considerations regarding compliance with the laws and prosecution for violations (see McMahan, 2006: 37-40).

One way to see how this dissertation is concerned with moral principles rather than institutional laws is in how it understands the principle of discrimination in war. This principle is a part of the institutional laws of war, but the dissertation focuses on the justification of the principle as a moral principle rather than its legal and institutional justification. In order to morally justify the principle, it is necessary to identify the moral difference between intentionally attacking civilians and intentionally attacking combatants in war, and the dissertation seeks to assess whether this difference can be identified in terms of liability to harm. Although the moral basis of the principle also to some extent plays a part in justifying the principle as a part of the institutional laws of war, there are many other considerations that need to figure in the assessment of the principle in its institutional and legal form (see, e.g., Waldron, 2016). Such considerations are not the focus of this dissertation.

4. Part I: Collective Responsibility and Liability to Harm

This section summarizes the first part of the dissertation and the contributions of articles A and B to answering the following research question:

RQ1: Can theories of collective responsibility and liability to harm justify the moral distinction between unjust combatants and civilians in war?

As discussed in section 3.2, the collectivist approach to the ethics of war is most dominant in the traditionalist literature (see, e.g., Zohar, 1993 and Kutz, 2005). There are two main reasons why it is worthwhile exploring this approach within the revisionist framework of the ethics of war, other than the fact that the approach is relatively underexplored in this domain. First, if it can successfully be argued on this approach that unjust combatants in war are collectively liable to harm whereas civilians are not, then this would be a way to sustain the principle of discrimination as a moral principle for just combatants to follow in war and simultaneously maintain the revisionist claim that other traditionalist doctrines, such as the Doctrine of Combatant Equality, are false as moral doctrines in war. The second reason is that even if one agrees with the revisionist claim that it is human beings, and not states, who are the morally relevant actors in war, then there is still a significant intuitive pull in the notion that fighting a war is effectively a collective effort and that this might have some crucial moral implications for those who are involved in this effort. Therefore, there might be something morally significant about a collective of individuals who cooperate together to pursue a purpose that could not have been pursued and promoted by the individuals independently of the collective. While this may be the case for many types of collective efforts, it seems especially true in the case of war because of the sheer scale of the cooperative effort and the level of coordination required to effectively promote the war effort. In such cases, we might not be able to explain the moral significance of the collective effort by only looking at the individual level. Crucially, we might not be able to identify the full moral responsibility for the war effort only by looking at the individual responsibility of each combatant. If it is true, as I suggest here, that there is a sense of responsibility for the war effort that can only be identified by considering the collectivist level of the war effort, then it is evident that we ought to consider what implications this bears for the liability to harm of the combatants involved.

However, this does not mean that such collective responsibility will necessarily ground liability to harm for unjust combatants in a way that provides a basis for morally distinguishing them from civilians, and hereby, it supports the principle of discrimination in war. Ultimately, articles A and B in the dissertation find that even the most suitable conceptions of collective responsibility cannot support the moral distinction between unjust combatants in war and civilians in terms of liability to harm. I will discuss the findings of these two articles in the following sections.

4.1 Collective Responsibility: Desiderata

Article A, titled ‘Collective Responsibility and Liability to Harm in War’, assesses four different conceptions of collective responsibility in terms of liability to harm in war. It does so in light of three desiderata that the article argues must be satisfied in order for such a collectivist account of liability to harm to plausibly support the moral distinction between unjust combatants and civilians in war.

First is the desideratum of *Distinction*. This desideratum specifies that the collective responsibility must appropriately fall upon unjust combatants as a group without implicating civilians. The article discusses what this distinction more precisely entails and what exceptions might be appropriate to consider in terms of whether certain noncombatants might be implicated and in terms of whether certain unjust combatants might be exempt from responsibility. It argues that the implication of noncombatant military members does not come at odds with the desideratum but that combatants in unjust wars who are actively trying to sabotage the unjust war effort should not be implicated.

Second is the desideratum of *Distribution*. This desideratum specifies that the collective responsibility must distribute to the individual members of the group so that each individual member of the group bears a part of the responsibility. This is in contrast to non-distributive conceptions of collective responsibility, in which the responsibility *only* falls upon the group entity (see Feinberg, 1968: 683-688). The purpose of this desideratum is to ensure that the collective responsibility also bears moral implications at the individual level for the members of the group. If there are no such moral implications for the individual group members, then it is difficult to see how the collective responsibility could affect the rights of the group members and invoke liability to harm for them.

Third is the desideratum of *In/Ad*. This desideratum specifies that the account must be able to ground collective responsibility for both violations of the principles of *jus in bello* and *jus ad bellum*. Wars can be unjust because of both types of violations, but there can be a significant difference between a war that is unjust, for instance, because of intentional attacks against non-

liable civilians and a war that is unjust because it furthers an unjust cause. The difference between such wars can be especially significant in terms of how to understand responsibility for these violations, and while a particular conception of collective responsibility might be particularly well-suited to ground responsibility for *in bello* violations, it may be insufficient for grounding responsibility for *ad bellum* violations.

These three desiderata must all necessarily be fulfilled in order for an account of collective responsibility and liability to harm to effectively justify both a permission to indiscriminately harm unjust combatants in war and a prohibition against intentionally targeting civilians for attack in war.

4.2 Collective Responsibility: Four Accounts

Against the backdrop of the mentioned desiderata, article A discusses four different accounts of collective responsibility and liability to harm: *corporate responsibility*, *shared intention responsibility*, *harm-producing responsibility*, and *omission responsibility*.

The first account of corporate responsibility is based on the work of Peter French (1984) and List and Pettit (2011). On this account, the internal structures and procedures of a corporation can make it out to be a moral agent that is able to act with intentionality. In virtue of this intentionality, the corporation as a moral agent is fit to bear responsibility for its intentional actions. The article argues that this account is at odds with all three desiderata, although this is due to issues primarily related to the Distribution desideratum. While the collective responsibility does distribute to the individual members of the corporation to some extent, it does so unequally. When the account is applied to military groups fighting unjust wars, the result will be that the responsibility primarily distributes to combatant members with leadership roles. This will particularly be the case for wars that are unjust because of violations of *jus ad bellum*.

The second account of shared intention responsibility is based on the work of Michael Bratman and his account of *shared intentional agency* (2014, 2022). On this account, a group of individuals acting together can interdependently form shared intentions for shared agency. For this to happen, each individual must have intentions to carry out a joint activity, and among other conditions, these intentions need to operate in a specific way so that they are reflexive and interlocked with the intentions of the other participants in the activity (Bratman 2014: 52; 2022: 13). The article argues that this account faces significant issues with the Distinction desideratum as these shared intentions will only form among close-knit sub-groups of combatants but not in the larger military group. However, even in the smaller sub-groups, it cannot be assumed that all combatants will form intentions as required by the

account. This could, for instance, be the case for combatants who primarily act in their own self-interest of avoiding risks of harm instead of acting to increase the chance of success for the military operation. Thus, this account is not able to ground responsibility for enough combatants to satisfy the Distinction desideratum.

The third account of harm-producing responsibility is based on the work of Marion Smiley (2010). On this account, a group can bear moral responsibility in virtue of its causal responsibility for producing and creating harm. Here, the collective must have coordinating control over the group members, and its existence must be necessary for the production of harm (Smiley, 2010: 196-198). By having coordinating control, the collective controls the production of harm by functioning as a normative authority that ensures the participation of its members and constrains their actions (Shockley, 2007: 447-450). The article argues that this account is unable to satisfy the desiderata of Distribution and *In/Ad*. The moral implications of this form of responsibility are only present at the collectivist level, and therefore, the responsibility does not distribute to the individual members, and the account cannot invoke liability to harm. Furthermore, the focus of the account on causal responsibility linked to norms and regulations within the group makes it mostly appropriate for grounding responsibility for violations of *jus in bello* but not for violations of *jus ad bellum*.

The fourth account of omission responsibility is based on the work of Larry May (1987, 1992). On this account, the source of moral responsibility is also the causal responsibility of the group for creating harm. However, for the individual members of the group, they will be implicated in this responsibility either in virtue of direct contributions to the harm *or* because of their omission to prevent the other group members from causing harm (May, 1987: 75). As members of the group, they bear a special duty to prevent fellow group members from causing harm (May, 1987: 77; 1992: 83). Because of this, passive group members can be implicated in the collective responsibility because of their passivity, but bystanders will not be so implicated. The article argues that this account is unable to fulfill the desideratum of Distinction as civilians may be implicated in the responsibility even if they are not members of the military group. Even if they do not have a special duty in virtue of group membership to prevent the harm, they might have special duties to do so on other grounds, for instance, if they are especially well situated to prevent the harm (Fyfe, 2020: 223-226). If this is so, they seem to also be implicated in the collective responsibility if they omit from preventing the harm. Furthermore, the account might also face some shortcomings in terms of grounding responsibility for violations of *jus ad bellum* as it seems unreasonable to claim that any individual combatant is failing a special duty to prevent harm from being caused

when the harm in question is the advancement of a war with an unjust cause. Thus, the account also faces issues regarding the desideratum of *In/Ad*.

As neither of the four accounts discussed are able to fulfill the three desiderata, the article argues that it does not find that a collectivist account of liability to harm can provide stronger support for the principle of discrimination in war than what the individualist account is able to do.

4.3 Authority-Based Accountability

Article B discusses a recently proposed theory of accountability for the wrongdoing of others, namely, the theory of authority-based accountability by Bazargan-Forward (2022).⁷ The purpose of the theory is to show how an individual can bear responsibility for the actions of others outside of the individual's own causal contribution to these actions. In the context of war, this theory aims to show that combatants in unjust wars who do not causally contribute to promoting unjust threats of harm, or *ineffective* unjust combatants, can still be morally responsible for the actions of other unjust combatants who do promote unjust threats of harm in the war. On the individualist account of liability to harm, such ineffective unjust combatants would not be individually morally responsible for promoting unjust threats of harm, and hence, they would not be liable to harm. However, if the theory of authority-based accountability is correct, they would still be morally responsible in virtue of the actions of their fellow unjust combatants, and this would make them liable to harm. This could effectively ground liability to harm for unjust combatants as a group.

Authority-based accountability begins with a division of agential labor. The deliberative and the executory functions of practical agency will be divided between two individuals, who will then function as the deliberator and the executor. Normally, these functions of agency are both enacted by a single agent. The deliberative function is to deliberate on and evaluate the practical reasons that you take there to be for acting in particular ways, and based on

⁷ With his account of complicitous liability, Bazargan-Forward (2013) first proposed a collectivist account of liability to harm specifically focused on overcoming the contingent pacifist objection of the responsibility dilemma. The primary aim of this account was to show how unjust combatants who did not causally contribute to unjust threats could be complicitly responsible for the unjust threats promoted by other combatants as their cooperators. The purpose was to ground collective responsibility and liability for both effective and ineffective unjust combatants. However, as argued by Lazar (2016: 372-377) and Morten Højer Jensen (2020: 116-119), the complicity account failed to ground responsibility outside of individual causal contributions to unjust threats. It could only show responsibility and liability to harm for individuals who had indeed made some form of causal contribution to unjust threats, and their responsibility could therefore already be fully explained by the individualist account. This dissertation does not discuss this account further and solely focuses on Bazargan-Forward's new proposal of authority-based accountability.

this deliberation, you decide how to act. By actually enacting the conduct of the decision you have reached, you embody the executive function of agency. However, this executory function can be ‘outsourced’ to another individual, and in this case, a division of agential labor is established (Bazargan-Forward, 2022: 23-24). This will result in the deliberator having practical authority over the executor as the deliberator will have a practical claim over the executor that she does as agreed (Bazargan-Forward, 2022: 27). The deliberator hereby confers a protected reason (Raz, 1979: 18; see also Raz, 1975 and Raz, 1977) upon the executor to act in this way. In virtue of this protected reason, the deliberator plays a role in determining the purpose of the executor’s conduct, and the deliberator will be accountable for the conduct of the executor (Bazargan-Forward, 2022: 5-6). In cases of shared action, Bazargan-Forward argues that all participants will bear authority-based accountability as a division of agential labor is established between each participant. Each participant will function as both a deliberator to the other participants and an executor for the other participants, and thus, they will all be accountable for the conduct of the other participants in virtue of sharing mutual authoritative claims (Bazargan-Forward, 2022: 88-89).

The article argues that when this theory is applied to combatants in war, the mutual authoritative claims are likely to collapse specifically for ineffective combatants in the war. Mutual obligations and expectations are what constitute the authoritative claims between them, so when one combatant does not live up to their obligation, then they cannot hold an authoritative claim over the other combatants. These claims are grounded by the protected reasons that each combatant has conferred upon the other combatants, but if one does not live up to the expectations of the others, they will discard the protected reason conferred upon them by this participant. Thus, the authoritative claims will collapse, and the ineffective combatants will no longer be accountable for the conduct of the other (effective) combatants.

As a result, the article ultimately argues that this account cannot show that ineffective combatants in unjust wars who do not individually contribute to promoting unjust threats of harm are liable to harm in virtue of being accountable for the conduct of other combatants who actually do contribute to promoting unjust threats of harm. Because of this, the account does not succeed in grounding liability to harm for a larger scope of unjust combatants in war than the individualist account. Thus, this account does not give stronger support to the permission to indiscriminately harm unjust combatants in war than what the individualist account is able to do.

4.4 Conclusion for Part I

The first research question of this dissertation asks whether theories of collective responsibility and liability to harm can justify the moral distinction between unjust combatants and civilians in war. Neither article A nor article B finds support for this. Even though the accounts discussed seemed to be the best suitable for tracking the distinction between combatants and civilians, they ultimately face the same issues as the individualist account. They are either too inclusive in terms of who they ground liability to harm for, hereby implicating civilians as well, or not inclusive enough by not being able to ground liability to harm for enough unjust combatants. Accounts that are too inclusive cannot justify the prohibition against intentionally harming civilians in war, and accounts that are not inclusive enough cannot justify the permission to indiscriminately harm unjust combatants.

What this ultimately suggests is that the discrimination principle in war cannot be justified based on differences in liability to harm between unjust combatants and civilians. The principle must be justified on other grounds that show that there is nevertheless a difference between harming unjust combatants in war and harming civilians, even when both groups are equally liable – or non-liable – to harm.⁸

⁸ See Lazar's *Sparing Civilians* (2015b), which proposes a range of arguments on this.

5. Part II: The Evidence-Relative View in Self-Defense and War

This section summarizes the second part of the dissertation and the contributions of articles C and D to answering the following research question:

RQ2: To what extent can the evidence-relative view of defensive harm justify combatant equality in war?

As discussed in the introduction, this research question is concerned with one of the major points of contention between traditionalists and revisionists in the literature on just war theory. According to the traditionalist Doctrine of Combatant Equality, combatants on both sides of the war have a symmetrical permission to harm their adversaries. However, on the revisionist understanding of the ethics of war, it is only those who are morally responsible for promoting objectively unjust threats of harm who are liable to harm in war. Because of this, there is rather a moral asymmetry between just and unjust combatants in war as combatants will not be liable if they fight with justification.

A particular point of contention in this debate regards the moral status of combatants who are fighting in an unjust war but are evidentially justified in doing so. Such unjust combatants may be fact-relatively unjustified in fighting but evidence-relatively justified in doing so. If one is fact-relatively justified in fighting, this means that the conditions for justified infliction of harm are satisfied according to the facts about the situation at hand. On the evidence-relative view, what matters for justification is whether the conditions for justified infliction of harm are satisfied according to the evidence available to the agent.⁹ Consider a case of a war in which one nation is fighting an unjust war against another nation. The combatants in the unjust war have been presented with evidence that they are fighting to dismantle a nuclear threat against their own nation. The evidence is false, and there is no nuclear threat posed by the other nation, but the combatants have no other evidence to suggest this to them. The question is then whether these combatants are still morally responsible for promoting unjust threats of harm in this war and make themselves liable to harm in doing so. Proponents of the evidence-relative view would argue that they are not so liable. If the combatants had no way of knowing that

⁹ See Parfit (2011): 150-164.

they were not justified in fighting, then they do not lose their moral rights in doing so. They are thus morally on par with just combatants.¹⁰

The second research question of the dissertation seeks to assess to what extent the evidence-relative view can provide a plausible defense of a contingent version of the Doctrine of Combatant Equality. This view accepts that there is a general moral asymmetry between just and unjust combatants in war, but under specific conditions in which unjust combatants are fully evidence-relatively justified in fighting, there will be a moral parity between them and, thus, a symmetrical permission to harm each other on both sides.

Article C discusses the fact-relative and the evidence-relative view in the context of two distinct theoretical frameworks within the literature on the ethics of self-defense, and article D discusses the evidence-relative view in the context of lesser-evil justifications. The findings of the articles support the plausibility of the evidence-relative view in the context of harm inflicted with liability-based justifications, but as argued in article D, the evidence-relative view seems less plausible within the context of harm inflicted with lesser-evil justifications. While this gives limited support to the contingent version of the Doctrine of Combatant Equality, the findings of article D suggest that unjust combatants will indeed make themselves liable to harm if they cause collateral harm in war and are only evidentially justified in doing so. If this is true, there would still, in practice, be a moral asymmetry between just and unjust combatants in war.

5.1 Distributive Justice and the Enforcement of Rights

As noted, article C examines the fact-relative and the evidence-relative view within the context of two popular theoretical frameworks for understanding the ethics of self-defense, namely, the framework of distributive justice and the enforcement of rights. It does so in light of cases of mistaken defense. In such a case, a Mistaken Defender will be evidentially justified in believing that an Apparent Threat is a threat to their life. In fact, the Apparent Threat poses no threat and is innocent. On a fact-relative view, the Mistaken Defender will violate the rights of Apparent Threat by engaging in self-defense, hereby becoming liable to harm herself. However, on the evidence-relative view, Mistaken Defender will not make herself liable to harm by harming Apparent Threat.

The main claim of the article is that there are certain theoretical commitments of the two respective frameworks that can only be accommodated by the fact-relative and the evidence-relative view, respectively. Thus, the article argues that the dispute between the fact-relative and the evidence-relative

¹⁰ See Barry and Christie (2015: 350-354) for a version of this view.

view in the literature on self-defense is rooted in a more substantial theoretical divide between these two respective frameworks. These frameworks differ foremost in their understanding of how a theory of self-defense should generally be conceptualized, but their proponents also disagree on what specific conditions such a theory should satisfy, such as whether the theory needs to determine a specific just outcome.

The framework of distributive justice can be explained as follows:

Self-defense is a matter of allocating a burden of unavoidable harm, and the most just allocation will be determined by considerations of distributive justice.

This framework for understanding the ethics of self-defense was first introduced by Montague (1981) but was popularized by McMahan (2025) with the responsibility-based account of liability to harm (see also McMahan, 2002: 401-405).¹¹ On this framework, it is necessary to determine a just outcome in the sense of determining which agent the burden of unavoidable harm must fall upon. Furthermore, this must be determined by considerations of distributive justice, and among proponents of this framework, this is more specifically understood as considerations of luck-egalitarian distributive justice. Thus, the burden of harm ought to fall on the agent who would be a victim of *option* luck (as opposed to *brute* luck) as a result of this (Otsuka, 2016: 62-68).

The article argues that the commitments of this framework are only compatible with the fact-relative view in cases of mistaken defense. As there must be a verdict on which agent the harm should fall upon in order to determine a just outcome, either Mistaken Defender or Apparent Threat must be characterized as being a victim of option luck if harmed. On the fact-relative view, Mistaken Defender will be so as she engages in a moral gamble by engaging in self-defense, hereby accepting the risk that the facts about the situation might be contrary to her evidence. On the evidence-relative view, both agents will be characterized as victims of brute luck. Thus, the evidence-relative view cannot give a verdict of just outcome in these cases.

The framework of rights enforcement can be explained as follows:

Self-defense is a matter of enforcing A's right against being harmed. By threatening to violate this right, B forfeits B's own right against harm, hereby permitting A to harm B as a way of enforcing A's right against harm.

The most prominent proponents of this framework are Jonathan Quong (2020) and Susanne Burri (2021, 2025). This framework is primarily concerned with answering the question of what an individual is permitted to do

¹¹ Other explicit examples of this view can be seen in Otsuka (2016), Gordon-Solmon (2018), and Bazargan (2014).

in order to protect their own rights against being violated. The right against being harmed is a claim right, which means that others have a duty to respect this right. When another agent fails this duty, they will forfeit their own right against being harmed (Burri, 2021: 546-547). The central commitment of this framework is thus to describe permissible self-defense in terms of the content of the claim-right against being harmed, but another important commitment of this framework is also to grant agents sufficient control over their own moral rights. Thus, an agent ought not to lose the right against harm because of factors beyond their own control (Burri, 2021: 550-552).

The article argues that the central commitment of the framework can be accommodated by both the fact-relative view (see, e.g., Thomson, 1991; 1990) and the evidence-relative view (see, e.g., Quong, 2020) as the claim right against harm can plausibly be understood on both views. However, only the evidence-relative view can grant agents control over their own moral rights as this view ensures that one does not lose the right against harm because of facts that are epistemically unavailable.

5.2 The Evidence-Relative View and Lesser-Evil Justifications for Harm

Article D considers and compares the implications of the evidence-relative view in the contexts of liability-based justifications for harm and lesser-evil justifications for harm, respectively. The article argues that whereas the implications of the evidence-relative view seem plausible in the context of liability-based justifications, they appear implausible in the context of lesser-evil justifications.

On a liability-based justification for harming, it is justified to defensively harm an individual because they have forfeited their rights against harm. An attack against them will thus not go against their rights or wrong them in any way, granted that this attack serves to avert a threat for which they have made themselves liable. In contrast, on a lesser-evil justification, harm befalls a non-liable individual, but this can be justified if the positive effects hereof are so significant that they outweigh the moral wrong of the harm caused. A classic example of a lesser-evil justification is the trolley case, where you can choose to either let a trolley continue down its track and hit five people or divert it to another track, where it will only hit one innocent person.¹² Notably, lesser-evil justified harm against non-liable individuals will still wrong the harmed individuals, as the harm goes against their rights. However, because the harm is justified, this will amount to a justified infringement of their rights rather than a violation of their rights. Usually, violating another individual's rights against

¹² See Foot (1967) for the original presentation of this case.

harm will cause you to forfeit your own rights and become liable to defensive harm. However, justified infringements of rights do not cause such rights forfeiture as only unjustified action causes this (McMahan, 2005: 388).

The article argues that an important implication of the evidence-relative view is that if one party has an evidence-relative justification for causing harm against another party in a given situation, then both parties will have a symmetrical permission to defend themselves against any defensive harm caused by the other party. This is because neither party makes themselves liable to harm and the conditions for justified defense will obtain in the evidence-relative sense for both parties as they will both be evidentially justified in believing that they are threatened by a violation of their rights against harm. In this sense, any defensive harm caused in this situation will justifiably infringe the rights of the other party.¹³

As noted, the article argues that this does not seem plausible in cases where one party has an evidence-relative lesser-evil justification for causing harm. The symmetrical permission seems to obtain only if the evidence-relative justification is plausibly the type of justification that makes an attack against a non-liable individual a justified infringement of their rights and because of which you retain your own rights against harm, rather than a violation of their rights and because of which you would usually forfeit your own rights against harm. For an action to be justified, it must be permissible, meaning that it is not wrong, all things considered, and there must be a positive moral reason to do it (McMahan, 2014: 106). The article suggests that when we consider whether an evidence-relative justification makes for the relevant type of justification in this sense, we ought not to consider simply whether a positive moral reason obtains for an action to be justified based on the evidence available to the agent. Rather, we should consider whether an independent moral reason obtains for why such an evidence-relative justification should allow you to retain your moral rights even though you are fact-relatively wronging another individual. In cases of mistaken defense where you have an evidence-relative liability-based justification for harming someone, such positive moral reasons will obtain. In contrast, these particular moral reasons do not obtain in cases where you have an evidence-relative lesser-evil justification for causing harm to non-liable individuals. Cases of mistaken defense will usually involve that the agent believes that they will either suffer an unreasonable cost or fail a moral duty if they do not cause defensive harm, and they are

¹³ The line of arguing proposed here is inspired by Frowe (2010), who argues that evidentially justified self-defense against a non-liable individual can be a justified infliction of harm, even if the harm goes against the rights of the individual and in this sense wrongs them (Frowe, 2010: 260-264).

evidentially justified in believing that they can avoid this unreasonable cost or fulfill their moral duty without causing wrongful harm. Thus, there is a positive moral reason for agents to retain their rights in these cases as they are then able to act to avoid unreasonable costs and to attempt to fulfill their moral duties without risking forfeiture of their moral rights because of epistemically unavailable facts. All of this is generally not the case in situations where an agent has an evidence-relative lesser-evil justification for causing harm, and so the relevant type of positive moral reason for allowing the agent to retain their rights does not obtain.

5.3 Conclusion for Part II

The second research question of this dissertation asks to what extent the evidence-relative view of defensive harm can justify combatant equality in war. Most theories of defensive harm accept the fact-relative view, which is why combatant inequality is usually seen as one of the key implications that follow from the individualist reductivist approach to the ethics of war. However, article C shows that this is not an implication that will necessarily follow from individualist reductivism. Rather, it is an implication that follows from conceiving the ethics of defensive harm as a matter of distributive justice, which is a theoretical framework that has generally been very popular in the ethics of self-defense in the last couple of decades. However, on a rights-enforcement framework, the evidence-relative view is equally plausible, and according to some scholars, perhaps more attractive than the fact-relative view. Accordingly, it might indeed be plausible for this view to justify a contingent version of combatant equality on the individualist reductivist approach to the ethics of war.

However, the implications of article D suggest that the evidence-relative view can only take us halfway to justifying combatant equality between fact-relatively just combatants and evidentially justified unjust combatants in war. If the article is correct in claiming that the evidence-relative view is plausible in the context of liability-based justifications for harming but not in the context of lesser-evil justifications, then this can only justify causing evidentially justified harm to adversary combatants in war. It cannot justify causing collateral damage to civilians, which is generally presumed to be justified on lesser-evil grounds. What this means is that evidentially justified unjust combatants will still forfeit their rights to harm in war whenever they threaten to cause collateral damage to civilians. Because of this, there will still be a moral asymmetry between just combatants and evidentially justified unjust combatants.

6. Conclusion

This dissertation seeks to make progress on some of the most debated issues related to the principle of discrimination in the ethics of war. This principle specifies a prohibition against intentionally attacking civilians in war, and it implicitly follows from this that combatants are permitted to intentionally attack adversary combatants. The first part of this dissertation seeks to investigate how to justify the moral distinction between civilians and combatants in war in terms of who is a morally legitimate target of intentional attack. The research question of this part asks whether the moral distinction between unjust combatants and civilians in war can be justified by theories of collective responsibility and liability to harm. The second part of the dissertation seeks to investigate to what extent the permission to intentionally attack adversary combatants can be justified for both those combatants that fight for a just cause and those that fight for an unjust cause in the war. The research question of this part asks to what extent the evidence-relative view of defensive harm can justify such combatant equality.

Articles A and B answer the first part of the dissertation. Article A proposes and assesses four variations of such a collectivist account of liability to harm based on theories of collective responsibility, and article B assesses the theory of authority-based accountability (Bazargan-Forward, 2020) with a specific focus on the implications for the liability of unjust combatants on this theory. Ultimately, the articles do not find support that such collectivist accounts are able to justify a moral distinction between unjust combatants and civilians in war in terms of liability to harm. The collectivist accounts do not fare better in this respect than individualist accounts.

This suggests that the moral justification of the principle of discrimination cannot merely rely on supposed differences in liability to harm between combatants and civilians in war. The problem with justifying the principle of discrimination is that if there is no categorical difference in the liability to harm between combatants and civilians, then there will be certain cases where combatants and civilians might be equally liable to harm, or perhaps equally nonliable. In such cases, we cannot explain why it would be morally wrong to intentionally target civilians for attack but morally permissible to intentionally target combatants, as the principle of discrimination stipulates. It seems that if even collectivist accounts of liability to harm cannot show that there is such a categorical difference, then it is necessary to find other moral arguments capable of showing why there is a moral difference between intentionally

attacking civilians and combatants in war in cases where they might be equal in terms of liability.

A couple of scholars have proposed such arguments. Notably, some of these arguments rely on the presumption that it is generally the case that most combatants in war are liable and that most civilians are not liable.¹⁴ To support such arguments, we need only to show that there is a more modest difference in liability to harm between combatants and civilians compared to the categorical difference that is required to directly justify the principle of discrimination. Although the dissertation argues that the collectivist accounts cannot show that there is such a categorical difference, it is plausible that such accounts may still be able to show that more combatants than civilians are generally liable compared to what follows from the individualist accounts. In this case, the collectivist accounts could perhaps provide stronger support for these other types of moral arguments regarding the distinction between intentionally attacking civilians and combatants. Ultimately, however, this will not take us all the way towards justifying the principle of discrimination. It might provide some moral reasons for why combatants should refrain from intentionally targeting civilians, but this in itself does not show that it is justified to intentionally harm non-liable adversary combatants. This is an issue that it seems the collectivist accounts cannot overcome.

Articles C and D answer the second part of the dissertation. Article C discusses the fact-relative and the evidence-relative view of defensive harm in the context of two distinct theoretical frameworks for understanding the morality of defensive harm, namely, the framework of distributive justice and the framework of rights enforcement. The article argues that the theoretical commitments of the distributive justice framework cannot be satisfied by the evidence-relative view. In contrast, this view might better satisfy the theoretical commitments of the rights-enforcement framework than the fact-relative view is capable of. Next, Article D discusses the evidence-relative view in the context of lesser-evil justifications for harm. It argues that evidence-relative liability-based justifications for harming can provide the type of justification that allows the agent to retain their rights against harm when harming a non-liable

¹⁴ The most elaborate of such arguments can be found in Lazar's *Sparing Civilians* (2015), in which he argues that it is much more likely for a combatant to be liable to harm than a civilian and that it is thus more morally risky to intentionally attack a civilian as this involves a higher risk of attacking a non-liable individual (Ibid.: Ch. 4). Likewise, Frowe argues that an argument against intentionally harming civilians in war is that we cannot isolate such attacks to only liable civilians and that these attacks will therefore cause disproportionate collateral damage to non-liable civilians (Frowe, 2014: 196-197). This argument also seems to presume that most civilians will not be liable to harm, whereas most combatants will, as the same argument would otherwise also apply to intentional attacks against combatants.

individual, but evidence-relative lesser-evil justifications for harming cannot. Because of this, the evidence-relative view only seems able to justify a limited and contingent version of combatant equality. Here, evidentially justified unjust combatants may be morally permitted to harm adversary just combatants in war and retain their rights in doing so as this harm would generally be justified on liability-based grounds. However, in so far as they cause collateral damage to civilians with their attacks, they violate the rights of these civilians and forfeit their rights against harm by doing so. In this sense, there is still a moral asymmetry between evidentially justified unjust combatants and just combatants.

What this means is that evidentially justified unjust combatants could only be morally on par with just combatants in war if they were fighting in a manner that would only inflict harm on adversary combatants. However, it would of course be unrealistic to expect them to do so. Naturally, they are not aware that they are only evidentially justified, so they will not be able to know that they are unjustified in causing collateral harm and will not restrict their fighting in accordance with this. However, even if they did attempt to do so, it is unrealistic to expect them to be able to in practice. Because of this, it seems likely that they would always fight in a manner that causes some collateral harm to civilians, hereby violating their rights and causing the evidentially justified combatants to become liable to harm. The result is that a moral asymmetry between them and just combatants will persist in practice.

Finally, a potential implication of the evidence-relative view was briefly mentioned at the end of section 2. If the evidence-relative view could show that evidentially justified unjust combatants generally retain their rights against harm in war, then this might create further complications for the issue of how to morally distinguish between unjust combatants and civilians in terms of who is a morally legitimate target of intentional attack in war. As just discussed, some of the moral arguments given for why it is morally worse to intentionally harm a non-liable civilian compared to a non-liable combatant presume that it is generally the case that significantly more unjust combatants than civilians are liable to harm. However, if it was true that evidentially justified combatants retain their rights in war, then these arguments do not seem to apply in these cases. This would make it more difficult to justify the prohibition against intentionally harming civilians in such cases. However, as article D argues, it does not seem likely that evidentially justified combatants would retain their rights in practice, as they would forfeit their rights by causing collateral damage to civilians, so these arguments would still seem to be valid. This still goes to show the vulnerability of the moral foundation that is supposed to justify the principle of discrimination, especially considering that the principle is supposed to be one of the strongest tenets of the ethics of war.

This further underlines the importance of working towards strengthening this foundation through moral arguments that are not solely based on differences in liability between combatants and civilians.

Summary

This dissertation seeks to make progress on some of the most debated issues regarding the principle of discrimination in the ethics of war. According to this principle, combatants in war must not intentionally target civilians for attack. However, they are morally permitted to intentionally attack adversary combatants and to cause unintentional yet foreseen collateral harm to civilians. Two debates related to this have been particularly prominent in the revisionist literature on just war theory. The first question is how to morally justify a categorical prohibition on intentionally attacking civilians and a categorical permission to intentionally attack combatants. To justify this, it is necessary to explain what the moral difference is between civilians and combatants and how this difference is relevant for the ethics of harm. The second question is whether combatants share a symmetrical permission to harm each other regardless of whether they are fighting for a just or an unjust cause, also known as the Doctrine of Combatant Equality. The dissertation consists of four articles in total and is split into two parts, each focusing on these two questions.

The first part of the dissertation investigates whether theories of collective responsibility and liability to harm can justify a moral distinction between civilians and unjust combatants in war. The moral distinction could be justified if these theories could show that unjust combatants in war bear collective responsibility for promoting unjust threats of harm and that this responsibility causes them to forfeit their rights against harm, hereby becoming liable to defensive harm. It must also be shown that civilians are not implicated in this collective responsibility. Articles A and B propose and assess different variations of such collectivist accounts of liability to harm. The articles do not find support that these accounts are able to justify a moral distinction between unjust combatants and civilians in war.

The second part of the dissertation investigates whether unjust combatants, who are evidentially justified in believing that they are fighting for a just cause, retain their rights against harm in war and to what extent this can justify a contingent version of combatant equality. Articles C and D assess this evidence-relative view of the ethics of defensive harm. The articles find that the view seems plausible within the context of liability-based justifications for causing harm, but it is implausible within the context of lesser-evil justifications for causing harm. Because of this, evidentially justified combatants might retain their rights when they harm adversary combatants, but they will forfeit their rights when they cause collateral damage to civilians. The articles thus only find limited support for a contingent version of combatant equality as moral

asymmetry will, in practice, likely persist between evidentially justified combatants and just combatants.

Dansk resumé

Denne afhandling bidrager med viden til nogle af de mest debatterede problemstillinger relateret til diskriminationsprincippet i krigsetik. Ifølge dette princip må kombattanter i krig ikke intentionelt angribe civile, men de har tilladelse til intentionelt at angribe fjendens kombattanter og at forårsage ikke-intentionel men forudsigelig skade mod civile, også kaldet kollateral skade. To diskussioner relateret hertil har været særligt fremtrædende i den revisionistiske litteratur om retfærdig krig. Det første spørgsmål er, hvordan man moralsk kan retfærdiggøre et kategorisk forbud imod intentionelt at angribe civile og en kategorisk tilladelse til intentionelt at angribe kombattanter. For at retfærdiggøre dette er det nødvendigt at forklare, hvad den moralske forskel er mellem civile og kombattanter, og hvordan denne forskel er relevant for etikken i at forårsage skade. Det andet spørgsmål er, hvorvidt kombattanter har en symmetrisk tilladelse til at skade hinanden, uanset om de kæmper for en retfærdig eller uretfærdig sag. Denne afhandling består af fire artikler og er opdelt i to dele, som hver fokuserer på disse spørgsmål.

Den første del af afhandlingen undersøger, om teorier om kollektivt ansvar og selvforsvar kan retfærdiggøre en moralsk sondring mellem civile og uretfærdige kombattanter i krig. Denne moralske sondring kan retfærdiggøres, hvis disse teorier kan påvise, at uretfærdige kombattanter bærer et kollektivt ansvar for at promovere uretfærdige trusler om skade, og at de gennem dette ansvar opgiver deres rettigheder til ikke at blive skadet i selvforsvar. Teorierne skal samtidig påvise, at civile ikke er involverede i dette ansvar. Artikel A og B foreslår og undersøger forskellige varianter af sådanne kollektivistiske teorier. Artiklerne understøtter ikke, at disse teorier kan retfærdiggøre den moralske sondring mellem uretfærdige kombattanter og civile i krig.

Den anden del af afhandlingen, bestående af artikel C og D, undersøger hvorvidt uretfærdige kombattanter, som ud fra deres bedste oplysninger er retfærdiggjort i at tro at de kæmper for en retfærdig sag, beholder deres rettigheder til ikke at blive skadet i krig. Herved undersøger afhandlingen om disse uretfærdige kombattanter vil være moralsk ligestillede med retfærdige kombattanter i krig, også kaldet kombattantlighed. Artikel C og D finder det plausibelt at de beholder deres rettigheder når de angriber fjendens kombattanter, men de vil dog stadig opgive deres rettigheder når de forårsager kollateral skade mod civile. Artiklerne finder derfor kun begrænset støtte til kombattantlighed i disse situationer, da der stadig vil være en moralsk asymmetri mellem uretfærdiggjorte kombattanter, som ud fra deres bedste oplysninger tror at de kæmper for en retfærdig sag, og retfærdige kombattanter.

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