

Warfare and Authority-Based Accountability

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1. INTRODUCTION

Warfare is a deeply collaborative endeavour characterised by intricate dynamics and inherent complexities. This makes it a particularly pertinent subject for Saba Bazargan-Forward's innovative account of accountability in his new book, *Authority, Cooperation, and Accountability*. In the fifth chapter, Bazargan-Forward extends his conceptual framework, initially developed in the first part of the book, to the realm of war ethics. My contribution to the symposium on the book aims to critically analyse this attempt.

2. WAR ETHICS: AN OVERVIEW

“Combatants” are the members of organised armed forces and individuals directly participating in hostilities or holding a continuous combat function. “Non-combatants” are simply not combatants or civilians. “Jus ad bellum,” which translates to “right to war,” encompasses the moral principles that justify the decision to initiate war or engage in armed conflict. Essentially, it outlines the criteria that distinguish a just war from an unjust one. A just war aligns with the principles of jus ad bellum, while an unjust war is characterised by a

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failure to meet these principles. “Jus in bello” pertains to the moral principles governing conduct within war, with a particular focus on determining the liability of combatants and noncombatants. To say that someone is liable to a kind of harm is to say that one is not wronged by being harmed in that way, particularly when the inflicted harm is necessary and proportionate. In the context of war ethics, we are especially interested in questions about liability to lethal harm. A critical question arises concerning the interplay between jus in bello and jus ad bellum: Does the moral grounding of a war, whether just or unjust, impact the ethical standards applied to the actions within that war, especially in the determinations of liability?

No, say the traditionalists. Michael Walzer (1977/2006), the most prominent promoter of the traditionalist position, endorses the principle of MEC (the moral equality of combatants), asserting that soldiers can ethically engage in combat regardless of the cause they are fighting for. According to this view, combatants automatically forfeit their claim to life and liberty by engaging in combat and posing a threat to others. However, the traditionalist position faces robust opposition from the revisionist camp. Jeff McMahan (2009) contends that posing a morally justified threat does not make one liable to be killed. Instead, liability is rooted in an individual’s responsibility for contributing to an unjustified threat. Thus, according to revisionists, the ethical standing of combatants is intricately tied to the nature of their involvement in a conflict. Just combatants are permitted to kill unjust combatants, but not vice versa.

However, the revisionist view faces a challenge of its own. Many unjust combatants make only marginal contributions to threats posed by their side. Sometimes, they may even hinder the threat due to their incompetence. Is this sufficient to make them liable? If it is not, then just combatants would find themselves tasked with distinguishing between unjust combatants who bear adequate responsibility and those who do not, making the idea of a just war inapplicable in practice (Lazar, 2010). McMahan thinks that marginal contributions are sufficient for liability, given that the liability threshold is relatively low. But this causes another problem. Noncombatants also make contributions to their army’s war efforts. Consequently, if the threshold is low, then this would make the prohibition on targeting noncombatants challenging to justify.

This creates a responsibility dilemma, as articulated by Seth Lazar (2010): if we establish a high threshold of responsibility for liability to safeguard noncombatants from being targeted, we inadvertently exempt a significant number of combatants from liability; conversely, if we opt for a low threshold of

responsibility, holding all unjust combatants liable, then many noncombatants might also become liable, compromising their status as impermissible targets.

Bazargan-Forward's authority-based accountability account is a potential solution to this dilemma. It claims to provide a justification for the permission to eliminate inefficient unjust combatants while maintaining a prohibition against targeting noncombatants.

3. AUTHORITY-BASED ACCOUNTABILITY AND WARFARE

At the core of Bazargan-Forward's account is the concept of a "division of agential labour," comprising a deliberator and an executor. The deliberator, wielding practical authority, can "constitutively" determine the purpose of the executor's actions by bestowing a "protected reason," which provides the executor a first-order reason to comply with the deliberator's instructions and a second-order reason to disregard specific first-order reasons against compliance (Bazargan-Forward 2022, 4-6)¹. Essentially, once the deliberator establishes the task and the executor agrees to perform her part, the executor is relieved of the need for further deliberation. Within this dynamic, the deliberator is accountable for the wrongful action performed by the executor (45-7).²

Bazargan-Forward expands upon this framework by applying it to collaborative endeavours that involve larger groups of individuals. In these instances, Bazargan-Forward argues that every participant serves as a deliberator and executor in $n-1$ pairwise agreements, with n denoting the total number of cooperants. Through the mutual conferral of protected reasons, the cooperants constitutively determine the purposes of each other's actions. Each cooperant, then, qua deliberator, is accountable for a wrong-making feature of what the executor does (7-8).

Bazargan-Forward then applies this framework to the context of an armed conflict by considering the army's hierarchical command structure. He argues that the armed forces operate according to protected reasons outlined by civilian leadership (150), which confers upon it authority-based accountability for the actions undertaken by combatants on their behalf. Within the army itself, the squad leader assumes the role of the deliberator, providing directives to the soldiers who function as executors (146-8). Crucially, during the execution of a mission, each soldier assumes a dual role, serving as both a

¹ Reference to Bazargan-Forward (2022) will be shortened to page number only throughout this special issue.

² The executor may also be held accountable, but the primary focus in the book lies with the deliberator.

deliberator and an executor:

Each soldier engaged in a cooperatively committed harm will end up at least partly accountable for the fact that what the other soldiers do is wrongful, in virtue of the protected reason that each soldier confers upon every other soldier that she does her part [...]. This means any given soldier bears authority-based accountability for what *other* soldiers do in conformity with the protected reasons she confers upon *them*; likewise, every other soldier bears authority-based accountability for what *she* does in conformity with the protected reasons they confer upon *her*. (144)

Bazargan-Forward argues that his account overcomes the issue of assigning liability to unjust combatants who only make marginal contributions. As he argues:

These combatants, then, bear at least some authority-based accountability for what their comrades do, which suggests they can be morally liable to be targeted after all, even if such combatants do not contribute substantially to that war's unjust aims. (148)

However, if the basis for liability is a division of agential labour, would this not extend to the citizens, thereby undermining civilian immunity from attack? Bazargan-Forward acknowledges this possibility. He argues:

In a well-functioning democracy, citizens of a country indirectly authorize the armed forces, via civilian leaders, to undertake military operations. In such an arrangement, it might seem that citizens enjoy a kind of authority over the combatants in that combatants function at the behest of the citizens on whose behalf they fight at home. On this view, the armed forces act on protected reasons proffered by the civilian leadership, who in turn act on protected reason proffered by the citizenry which elects the leadership. (150)

Nevertheless, he goes on to argue that this does not pose a problem:

By electing her, the citizenry divests itself of authority over its armed services, by conferring it upon a third party—the commander-in-chief. It is for this reason that the commander-in-chief is under no legal obligation to do as the citizenry says or wants when it comes to

military decision-making. The people of a country do not stand atop the hierarchical chain of command in which the armed forces consist. Rather, the people determine who stands atop that chain of command. This difference is crucial; determining who is the commander-in-chief does not give us authority over the commander-in-chief. The result is that we do not bear authority-based accountability for what the armed forces do, after all. (150–1)

Consequently, Bazargan-Forward's account offers a potential solution to the responsibility dilemma, providing a justification for the permission to eliminate inefficient unjust combatants while maintaining a prohibition against targeting noncombatants. In what follows, I will raise my issues with it in the form of two objections.

4. FIRST OBJECTION: ACCOUNTABILITY

Bazargan-Forward's exposition on the implications of accountability appears to lack clarity. In the second chapter of the book, accountability is linked with blame responsibility. "To hold an agent accountable is to blame her in a more robust way" (36), whereas, in the sixth chapter, accountability is linked with liability: "combatants, as participants in shared action, are morally liable to be attacked on the grounds that they bear authority-based accountability for what their cohorts do" (140). Although this is not explicitly stated, it seems that in the realm of war ethics, Bazargan-Forward draws a clear correlation between accountability and liability while setting aside blameworthiness. To be sure, considering the connection between accountability and blame responsibility established previously in the book, it might be reasonable to think that accountability in the realm of war ethics implies a combination of blameworthiness and liability. However, the discourse on war ethics and self-defence typically sidesteps the notion of blame responsibility, recognising that one can be held liable without necessarily being blameworthy. Given this, I will assume that accountability in this section implies liability without blameworthiness.

Moving on, in this chapter, Bazargan-Forward articulates the concept of accountability with a nuanced perspective, suggesting that it may manifest in varying degrees. Notably, he also seems to posit that accountability is shaped dynamically by the actions undertaken during the course of the war, challenging the conventional notion of it being determined exclusively *ex ante* (shaped by considerations of *jus ad bellum*). The following sentence demonstrates this clearly: "A typical soldier bears *little* accountability for

what the vast majority of the other combatants fighting in the war do—and yet is accountable for what her platoon does on a mission in which she is participating” (145, emphasis mine). Consider also the previously cited passage: “Combatants, then, bear at least *some* authority-based accountability for what their comrades do, which suggests that they can be morally liable to be targeted after all” (148, emphasis mine; see also 153–4, 160 for similar examples).

However, shouldn't the notion of liability for combatants maintain a binary nature? After all, the outcome of being lethally harmed is unequivocal—an individual is either killed or not. In other words, a combatant's right not to be defensively killed is either forfeited or not. This cannot be a matter of degree. Given this, how can some soldiers be more or less accountable than others?

Perhaps Bazargan-Forward is attempting to show that a combatant's liability can vary in the severity of harm, as outlined in his (2014), where he introduces a “complex account of liability.” According to this account, an unjust combatant might be held “liable for no more than n percent of the unjust harm for which she is responsible, where n is equal to the percent moral responsibility she bears for that unjust harm” (Bazargan 2014, 121). However, the practicality and effectiveness of implementing a system that calculates and assigns varying degrees of liability in the midst of a complex and dynamic conflict environment are questionable. Introducing such nuanced considerations may pose a challenge to the overarching objective of justifying the permissible targeting of all unjust combatants.

Moreover, Bazargan-Forward has elsewhere suggested that the role one has within the army makes a morally relevant difference in the attributions of liability.³ However, the allocation of roles seems arbitrary, influenced more by luck than any inherent moral qualities or choices made by the individuals involved. Consider the following scenario. Army X, who is pursuing an unjust war, has gathered at their camp in order to devise a strategy for their upcoming missions that could play a decisive role in ending the war. These missions only require a handful of soldiers to take primary roles (call them the “hit squad”). In contrast, other soldiers would take more secondary roles like guarding the camp area, preparing the weapons, and so on (call them the “support team”). Given Bazargan-Forward's account, the hit squad would bear more accountability than the support team. Nonetheless, the assignment of primary roles (hit-squad) and secondary roles (support team) appears contingent and subject

³ This suggestion was made during the workshop on *Authority, Cooperation, and Accountability*, organised by Payton and Wrings, on which the present symposium is based.

to luck. The individuals in the support team, who bear less accountability according to Bazargan-Forward's account, might only hold that position due to chance. The roles could easily have been reversed, with members of the support team taking primary roles and vice versa.

A further issue with this is that Bazargan's determination of accountability seems to be directly linked to the missions within the war. This stance would suggest that a private manning a traffic-control checkpoint, a naval technician working aboard an aircraft carrier, an armourer, or an army culinary specialist would not be held accountable (or would at least be held much less accountable) for all the missions in the war, and potentially for the war itself. However, a potential concern arises with this perspective. The military's overall effectiveness relies on these support personnel's contributions, as combatants cannot engage in missions without essential supplies, weaponry, and sustenance. We would, therefore, be exempting soldiers who contribute substantially to the war effort from accountability (or significantly reducing their accountability compared to combatants who take part in missions). This raises questions about fairness and the ethical implications of such a move. There appears to be no valid rationale for selectively restricting the accountability of certain unjust combatants over other unjust combatants, considering they are all engaged in the same unjust war and are likely to share similar extenuating circumstances.

Bazargan-Forward also seems to think that one's status makes a morally relevant difference. He gave the example of the 2003 Invasion of Iraq, claiming that the regular conscripts are less liable than the Republican Guard, and if there is a choice, defensive harm should be directed towards the Guard.⁴ Jessica Sutherland (2024) has recently made a similar argument regarding child soldiers. While this move appears more plausible to me than the others, I am still unsure about its practical aspects. Furthermore, it is not a principle that can be easily generalised; rather, it requires a detailed analysis of the relevant facts.

Addressing the objections raised in this section would require Bazargan-Forward to clarify the implications of accountability. There is also a need to discuss how liability can vary in degree while supporting the authorisation to target all unjust combatants. Furthermore, we need an explanation of whether this conception of liability is fair, given the contingent nature of role assignments and the substantial contributions made by combatants who do not directly participate in missions.

⁴ Bazargan-Forward made this suggestion also during the workshop on *Authority, Cooperation, and Accountability*.

5. SECOND OBJECTION: NONCOMBATANT IMMUNITY

Bazargan-Forward establishes the basis for liability in a division of agential labour, but he believes this does not expose noncombatants to liability for attack. Contrary to his assertions, I believe that it does. I will demonstrate how in three steps. I start with representatives, then move to subgroups of citizens, and finally to the citizenry as a body. I will also argue that the last possibility is not as bad as it initially seems.

Bazargan-Forward acknowledges that the armed forces operate according to protected reasons outlined by civilian leadership (150). However, he does not explicitly recognise that this implies that the civilian leadership is liable for justified and proportionate attacks in pursuit of just objectives. In practical terms, civilian leadership may encompass the entire government in democracies or a small cabinet in non-democracies. Hence, the liability of the civilian leadership also raises the possibility that affiliated entities, including the Presidential Palace, Parliament, and other government branches, could be considered legitimate targets for attack. This extends the potential consequences of the agential division of labour not only to individuals but also to physical structures and institutions associated with the leadership. Consequently, non-combatant immunity is no longer preserved in Bazargan-Forward's account.

Bazargan-Forward might bite the bullet here, arguing that it might be tolerable since the inculcation of civilian leadership does not open up the floodgates to total war. However, it is not clear to me that this is limited to leadership. Below, I present two interrelated example cases that explain how citizens can become inculcated:

Case 1: Elections, Parties, Policies. X, a democratic state, is engaged in an unjust military occupation of state Y. X is approaching a general election, where two major political parties vie for supremacy in a closely contested race. Crucially, both parties express their commitment to perpetuating the ongoing occupation, albeit with divergent policies. Party 1 asserts a relatively lenient stance, advocating for a softer approach to the military occupation. This position suggests a willingness to consider peaceful alternatives, potentially engaging in negotiations that could end the occupation. In contrast, Party 2 adopts a more assertive stance, advocating for a stringent and uncompromising approach. Party 2 categorically declares that under no circumstance would they be willing to negotiate with Y's representatives. On election day, the majority of citizens voted for Party 2, knowing well their policy on the occupation.

In my view, the existence of distinct policies on the war and the citizens' ability to influence the state's course of action through their electoral choices are sufficient to include them within the division of agential labour and hold them accountable. The citizens, by participating in the democratic process and deciding which policy the state should pursue, actively shape the direction of the military occupation. However, it would not be possible to distinguish between citizens who are in the majority and those who are not. This may be a good reason in itself not to target citizens, even if there may be a moral justification for doing so.

Let us now move to the second case.

Case 2: Lobby Group. Country Z persistently provides financial support to Country X, even in the midst of its involvement in an unjust military occupation. The rationale behind Country Z's assistance remains unclear, as the benefits derived from supporting Country X are not readily apparent. Upon investigation, it becomes evident that a powerful lobby group of different organisations and companies significantly funds political parties and politicians in return for their unwavering backing of Country X. Hence, it becomes apparent that the lobby group wields a significant influence over the financial support for the unjust occupation.

Once again, this is sufficient to place the lobby group within the division of labour and hold it accountable for the unjust occupation. This would render all individuals, companies, and organisations involved in lobbying activities liable for defensive harm. This case is also not subject to the problem raised for the first one, or at least not to the same extent.

However, does this issue solely apply to subgroups such as the electoral majority or lobby groups? I believe that an argument can be made that the citizenry of democratic states, conceived as a collective agent, can also be liable, given its role in the division of agential labour.⁵

Is it possible, though, for the citizens to be conceived as a collective agent? Many say "No," pointing out the citizenry's inability to reason collectively, maintain rational coherence in their judgments, and assert autonomy apart from individual members. Nevertheless, the citizenry does engage in a deliberation process encompassing various forms of reasoning activities, including everyday discourse, protests, demonstrations, social

⁵ I argue that the citizenry is a collective agent in detail elsewhere (Sebep, n.d.). I will only be able to provide a sketch of the argument here.

media interactions, partisan engagements, opinion-poll participation, and more, which contribute to the revision of its judgments, as evidenced by shifts in public opinion on policy matters, fluctuations in election outcomes, and variations in political parties' vote shares. The deliberation process also ensures that different elections are interconnected, preventing them from being perceived as isolated events, thereby fostering coherence in the citizenry's decisions across various electoral cycles. Structural constraints, such as limitations on the citizenry's decision-making opportunities, further mitigate irrationality between different judgments. Finally, the decisions of the citizenry cannot be simply equated with those of its members for three key reasons. First, a significant portion of voters do not vote solely in accordance with their personal preferences; strategic or communal considerations often come into play. Second, in states that use the first-past-the-post voting method, like the US, UK, and Canada, there can be an apparent discontinuity between the decision of the electoral majority and that of the citizenry. Thirdly, despite continuous changes in its membership, neither the citizenry's identity nor judgments undergo drastic, unforeseeable alterations.

Given this, we have good reasons to recognise the citizenry as a collective agent and hold it accountable for its role in the division of agential labour. Nonetheless, this does not mean that the members of the citizenry are liable to defensive harm. Holding the collective agent liable does not necessarily imply that each of its members is liable as well. What, then, would the citizenry's liability consist of? How can a non-physical collective agent be harmed? This is a significant topic that I cannot fully explore here. Nonetheless, I believe that the citizenry's agential capacities can be hindered through the conquest of their state or by forcing it into a state of emergency that postpones elections. This would impede the citizenry's ability to achieve self-determination, substantially threatening their freedom and independence.⁶ Consequently, Bazargan-Forward could also ensure that his account justifies noncombatant immunity by recognising the citizenry as a collective agent.

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⁶ Thanks to Bill Wringe for an insightful discussion on this issue.

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