

## 8. On the possibility of justified subsistence wars

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### 1 INTRODUCTION

Rouen, October 1562: King Charles IX of France has a long conversation with three Brazilian natives from the Tupinambá people. After having been told about European manners and ceremonies, and the layout of the beautiful city, someone asks them what they think about all these ‘amazing’ things. This is how Michel de Montaigne recalls one of their points in his ‘Des Cannibales’:

Since they [the Brazilian natives] have an idiom in their language which calls all men ‘halves’ of one another [...] they had noticed that there were among us men fully bloated with all sorts of comforts while their halves were begging at their doors, emaciated with poverty and hunger: they found it odd that those destitute halves should put up with such injustice and did not take the others by the throat or set fire to their houses.<sup>1</sup>

‘We’, Europeans, are the real barbarians for allowing such rampant inequality, Montaigne points out. These three Brazilian natives simply could not understand why the poor would allow themselves to be treated that way. Why would they not resort to using force?

Centuries later, economic inequality persists, both within states and on a global scale. Although the proportion of the world’s population living in extreme poverty has decreased in recent years – for example, from 28 per cent in 2000 to 16 per cent in 2010 – around 8.6 per cent of the world’s population were still living in extreme poverty in 2018.<sup>2</sup> When asked to think about global poverty and deprivation, we cannot but agree with the Brazilian natives, and

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<sup>1</sup> Michel de Montaigne, *The Complete Essays* (1580 Penguin Books 2003) 240–1.

<sup>2</sup> ‘World Economic Situation and Prospects: October 2019 Briefing, No. 131’ (*Un.org*, 1 October 2019). See <<https://www.un.org/development/desa/dpad/publication/world-economic-situation-and-prospects-october-2019-briefing-no-131/>> accessed 20 June 2020.

consider this a great injustice. We should, therefore, ask ourselves the same question: Why would the global poor not resort to force? Do the global poor, suffering from a severe and life-threatening lack of means of subsistence, have just grounds for waging war against the global rich? Contemporary political theory, unfortunately, does not give us much guidance here. There seem to be only two domains in which this question is addressed – either being discussed as an interesting side issue or simply alluded to: just war theory and theories of civil disobedience/resistance.<sup>3</sup> No broad discussion or comprehensive theory of subsistence wars exists.

Given the dire circumstances of the world's poor, the growing shortage of natural resources and exponential population growth, such a lack of scholarly attention is problematic. Therefore, despite the uneasiness raised by the thought of our poor 'other halves' waging a just war against us,<sup>4</sup> this chapter will argue that the issue of subsistence wars deserves a broader discussion. This will be accomplished by focusing on the domain of just war theory, and more specifically by analysing the issue of subsistence wars through the lens of the conventionalism–revisionism dichotomy.

Conventional just war theory, by which we refer to Michael Walzer's conception of this historical doctrine, is thought to be very restrictive with regard to the treatment of issues concerning subsistence. It primarily aims to regulate war and limit its destructive effects.<sup>5</sup> The typical just war is a war of self-defence against military aggression, although nowadays it is often assumed that humanitarian intervention can also be a just war. It seems to be a far stretch, though, from the justification of self-defence and humanitarian intervention to the justification of subsistence wars. And yet, according to theorists such as David Luban, Kasper Lippert-Rasmussen, Gerhard Øverland and Cécile Fabre, the violation of subsistence rights *can* be a just cause for war – either when the rich fail to help the poor 'begging at their doors' or when they

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<sup>3</sup> In the first domain Cécile Fabre, *Cosmopolitan War* (OUP 2012) deserves explicit mention; in the second see Alejandra Mancilla, *The Right Necessity* (Rowman & Littlefield 2016).

<sup>4</sup> Let us, merely for the sake of simplicity, assume that 'we', Western citizens, are generally relatively rich and that subsistence wars will take the form of international wars. In reality things are, of course, far more complex given that both poverty and inequality have an international and a strong national dimension. See e.g. Philip Alston, 'Report of the Special Rapporteur on Extreme Poverty and Human Rights on his visit to the United Kingdom of Great Britain and Northern Ireland' A/HRC/41/39/Add.1. Subsistence wars, in that sense, could just as easily take the shape of civil wars.

<sup>5</sup> Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (4th edition, 1st edition 1977 Basic Books 2006).

actively cause poverty, be it directly or indirectly.<sup>6</sup> They argue that war can be a justified response to violated duties of global justice.<sup>7</sup> Such a defence of subsistence wars seems to require a specific reading of just war theory – a new school called ‘revisionism’.

In this chapter we argue that the defence of subsistence wars is *not* the exclusive preserve of revisionists. As a consequence, the issue of subsistence wars should be taken far more seriously than is currently the case. The chapter proceeds as follows. Section 2 gives a general overview of the way revisionists have tried to revise the conventionalists’ view of *jus ad bellum* – the rules and principles that govern the resort to war. With that overview in mind, the debate on subsistence wars is mapped in section 3. These two sections are needed for our account of the respective positions on the issue of subsistence wars. At first sight, the different positions of conventionalists and revisionists can be explained by different views on morality and global justice (*the argument of global distributive justice*) and the unique nature of subsistence wars (*the argument of the nature of subsistence wars*).

In section 4 we take a closer look at Walzer’s and Fabre’s accounts of global justice.<sup>8</sup> Our main focus in this section is to determine whether subsistence rights are part of Walzer’s and Fabre’s account of global distributive justice, not whether subsistence rights have a rightful place in the domain of justice. In section 5 we inspect the nature of subsistence wars and compare them to the typical just war of self-defence. It appears that neither of these arguments in fact explains the different positions of conventionalists and revisionists on subsistence wars. While revisionism seems to provide the most fertile theoretical terrain in which to ground an argument for subsistence wars, the justifiability

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<sup>6</sup> David Luban, ‘Just War and Human Rights’ (1980) 9(2) *Philosophy & Public Affairs* 160; Fabre, *Cosmopolitan War* (n 3); Kasper Lippert-Rasmussen, ‘Global Injustice and Redistributive Wars’ (2013) 1 *LEAP* 65; Kasper Lippert-Rasmussen, ‘Pogge, Poverty and War’ (2017) 16(4) *Politics, Philosophy & Economics* 446; Gerhard Øverland, ‘602 and One Dead: On Contribution to Global Poverty and Liability to Defensive Force’ (2011) 21(2) *European Journal of Philosophy* 279; Christian Barry and Gerhard Øverland, *Responding to Global Poverty: Harm, Responsibility, and Agency* (Cambridge University Press 2016).

<sup>7</sup> As to be expected, this controversial claim is criticized from different angles. See for example Thomas Pogge, ‘Poverty and Violence’ (2013) 1(1) *Law, Ethics and Philosophy* 87; Juha Räikkä, ‘Redistributive Wars and Just War Principles’ (2014) 12 *RATIO*.ru 4–26; Daniel Statman, ‘Fabre’s Crusade for Justice: Why We Should Not Join’ (2014) 33 *Law and Philosophy* 337; Victor Tadros, ‘Resource Wars’ (2016) 33(3) *Law and Philosophy* 361.

<sup>8</sup> The reason why we primarily focus on Fabre’s account and not directly on the work of other revisionists is a rather pragmatic one: Fabre includes a substantive discussion of subsistence wars in her account of cosmopolitan war.

of subsistence wars is open to conventionalists too. Section 6 ties the analysis together and ends with concluding remarks.<sup>9</sup>

## 2 *JUS AD BELLUM* REVISED

To fully understand the discussion on subsistence wars within the domain of just war theory, we need to take a step back and briefly look at the differences between conventionalism and revisionism. Conventional just war theory is based on Walzer's modern classic *Just and Unjust Wars*.<sup>10</sup> This theory departs from a strong presumption against war. Nevertheless, sometimes war *can* be justified. Regarding the question of *jus ad bellum* (under what circumstances can war be justified?), just war theory requires that there is a just cause, that there is a right intention, that war is declared by a legitimate authority; and that the war is proportional, is a last resort and has a reasonable hope of success.<sup>11</sup> The typical just war is self-defence of a political community against military aggression. In very rare cases, a humanitarian intervention to halt actions that 'shock the moral conscience of mankind' can be justified as well.<sup>12</sup>

The conventionalist reading of just war theory is based on distinct theoretical premises. For this chapter, an important premise to discuss is the idea of collectivism.<sup>13</sup> Conventional just war theory is a statist theory that starts from the assumption that the world is made up of sovereign states and that these states are granted independent moral standing (which is why a defence against a 'bloodless invasion' can be justified). Although individual human rights matter, collective rights are important too. The sovereignty of states is valuable since it facilitates and protects the right of political communities to self-determination. Only in rare cases of extreme human rights violations, when states fail to protect the collective right to self-determination and the basic rights of their citizens, can the state's claim to sovereignty be overridden.

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<sup>9</sup> Unfortunately, space precludes us from addressing other interesting aspects related to this topic, such as historical examples of (successful) subsistence wars, the likelihood that this type of conflict will proliferate in the future, the asymmetric character of subsistence warfare or other types of subsistence violence (e.g. civil war, revolution, terrorism).

<sup>10</sup> Walzer, *Just and Unjust Wars* (n 5).

<sup>11</sup> For these criteria, see Seth Lazar, 'War', in Edward N. Zalta (ed.) *The Stanford Encyclopedia of Philosophy* (Spring 2020 Edition), <<https://plato.stanford.edu/archives/spr2020/entries/war/>> accessed 20 June 2020.

<sup>12</sup> Walzer, *Just and Unjust Wars* (n 5) 102.

<sup>13</sup> Other premises are e.g. conventional exceptionalism versus revisionist reductionism, and conventional pragmatism versus revisionist idealism. See further e.g. Seth Lazar, 'Method in the Morality of War' in Seth Lazar and Helen Frowe (eds) *Oxford Handbook of Ethics of War* (OUP 2018).

There has been a relatively large consensus on these *jus ad bellum* norms since the publication of *Just and Unjust Wars* in 1977. In recent times, however, the conventionalist theory has come under serious scrutiny from a 'revisionist' school of thought in just war theory. Certain influential theorists, such as Jeff McMahan, David Rodin and Fabre, argue that the theory is philosophically incoherent.<sup>14</sup> These theorists are called revisionists, because they criticize conventional just war theory and set out to revise its moral norms, and sometimes also the legal norms. Various revisionists argue for various revisions to the conventional account, for example, of the norms on collective self-defence, humanitarian intervention, the moral equality of combatants and the immunity of non-combatants. Aside from aiming to revise the conventional norms in one way or another, revisionists also broadly share certain distinct theoretical premises (which are remarkably different from those of the conventional theory). We will focus on only one of these premises: revisionist theory is individualist rather than statist; it takes individual people as the primary locus of concern. The morality of war cannot be explained in terms of sovereignty and collective rights, but solely in terms of individual human rights. It is individuals that determine just war theory. Revisionists can (but do not need to) be cosmopolitan, denying the independent moral standing of states, claiming that all individuals are equal and part of a single human community. In this human community, collective entities as states have no value beyond their contribution to the wellbeing of individual members.<sup>15</sup>

The revisionist focus on individual rights leads to fundamental revisions of the *jus ad bellum*; revisions which are more demanding in some respects, and more permissive in others. On the one hand, most revisionists argue that the self-defence of a political community (solely with the goal of protecting political independence) is not necessarily a just cause for war. Self-defence must meet a higher threshold than conventionalists such as Walzer would accept.<sup>16</sup> The values of sovereignty and political independence can only be used as legitimate reasons for self-defence if a violation has implications for the individual rights of citizens. On the other hand, revisionists are often more permissive with regard to humanitarian interventions – wars with the aim to halt human rights violations abroad. The threshold for a sufficiently grave violation of human rights is lower than it is in conventional just war theory. Not only can violations of security rights (by way of internal military aggression) be a just

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<sup>14</sup> Jeff McMahan, *Killing in War* (OUP 2009); David Rodin, *War and Self-Defence* (OUP 2003); Fabre, *Cosmopolitan War* (n 3).

<sup>15</sup> See further on this distinction e.g. Helen Frowe, 'Collectivism and Individualism in the Ethics of War', in Kimberley Brownlee, David Coady and Kasper Lippert-Rasmussen (eds) *Blackwell Companion to Applied Philosophy* (Wiley-Blackwell 2016).

<sup>16</sup> Walzer, *Just and Unjust Wars* (n 5) 59–62.

cause for war, but so can violations of other basic rights. In this way, endorsing and integrating such substantive obligations can lead to a more permissive just war theory.<sup>17</sup>

The discussion above seems to explain why only revisionists have defended the claim that a lack of subsistence – for example, violations of the right to adequate food, clothing and housing<sup>18</sup> – can be a just cause for war. They have lowered the threshold for the rights violations that can constitute a just cause for war, making the step from humanitarian intervention to subsistence wars easier. Also, the individualism (and sometimes cosmopolitanism) that forms the foundation of revisionist arguments can entail a substantive account of global justice, including an account of global justice duties. The connection between such account and just war theory enables the argument for subsistence wars: it is precisely the failure to comply with these duties that constitutes a just cause for war.<sup>19</sup> We will assess those two arguments in sections 4 and 5: *the argument of global distributive justice* and *the argument of the nature of subsistence wars*. But let us first take a closer look at the discussion on subsistence wars.

### 3 THE DISCUSSION ON SUBSISTENCE WARS

While the debate on subsistence wars is fairly recent, the first defence of such a claim is dated as far back as 1980 and can be found in Luban's article 'Just War and Human Rights'. Although his account is primarily written as a critique of the conventional view of just war and the legal definition of aggression, Luban also addresses two 'hard cases'.<sup>20</sup> The first is the case of an economic war – a war for subsistence – and the second is the case of humanitarian intervention. The way Luban describes the first hard case is illuminating for our further discussion:

Consider this example: A and B are neighbouring countries of approximately the same military capability, separated by a mountain range. A is bordered by the ocean and receives plentiful rainfall; however, the mountains prevent rain clouds from crossing over to B, which is consequently semi-arid. One year the lack of rain causes a famine in B which threatens millions of lives. A, on the other hand, has a large

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<sup>17</sup> That does not imply, however, that every revisionist is bound to recognize the legitimacy of subsistence wars; revisionism is a broad school of thought.

<sup>18</sup> Compare art. 25 of the Universal Declaration of Human Rights. Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III).

<sup>19</sup> Cécile Fabre, 'Right, Justice and War: A Reply' (2014) 33 *Law and Philosophy* 391, 414.

<sup>20</sup> Despite his critique of the conventional view of just war, we would not qualify David Luban as a revisionist, in the way that this label is used today.

food surplus; but for a variety of cultural, historical, and economic reasons it makes none of this food available to B. Can B go to war with A to procure food?<sup>21</sup>

The main reason why such a hard case arises is because Luban presents us with a new definition of just war, deviating from Article 51 of the Charter of the United Nations (1945). Whereas the UN definition strongly focuses on self-defence against military aggression, Luban introduces the idea of socially basic human rights as a second criterion. Such rights ‘are everyone’s minimum reasonable demands upon the rest of humanity’.<sup>22</sup> This entails not only the right to not to be killed or tortured and rights to food, clothing and shelter, but also the right to clean air. A war, according to Luban, is subsequently just if it is ‘(i) a war in defence of socially basic human rights (subject to proportionality); or (ii) a war of self-defence against an unjust war’.<sup>23</sup>

In recent years, Luban’s argument has been taken up by several revisionist just war theorists, who have strengthened the argument for subsistence wars. Whereas Luban merely focused on *assistance-based duties* to help the global poor, contemporary authors also look at different forms of *contribution-based duties*. The global rich are considered to be responsible not because they violate a positive (assistance-based) duty to help the global poor (assuming that they are capable of doing so), but because they violate the negative duty not to harm them. They *contribute to* harming the global poor either *actively*, on the basis of national policies or by imposing an unjust global political and economic order, or *passively*, by not reforming the rules of the global political and economic order of which they are part.<sup>24</sup> Thomas Pogge’s well-known analysis of global poverty is used by some revisionists to show that *if* indeed the rich act in a way that impoverishes the poor, the poor might be justified in waging a redistributive war against them so as to defend their subsistence rights.<sup>25</sup> The underlying conditional is therefore a rather general one: ‘If con-

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<sup>21</sup> Luban (n 6) 177.

<sup>22</sup> And here Luban goes back to Henry Shue’s notion of subsistence rights. Henry Shue, *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy* (2nd edition, 1st edition 1980, PUP 2006). Shue, interestingly, is a strong critic of McMahan’s revisionist position. See Henry Shue, ‘Do We Need a Morality of War?’ in David Rodin and Henry Shue (eds) *Just and Unjust Warriors: The Moral and Legal Status of Soldiers* (OUP 2008) 87–111; Henry Shue, ‘Laws of War’, in Samantha Besson and John Tasioulas (eds) *The Philosophy of International Law* (OUP 2010) 511–30; Henry Shue, ‘Laws of War, Morality, and International Politics: Compliance, Stringency, and Limits’ (2013) 26 LJIL 271–92.

<sup>23</sup> Luban (n 6) 175.

<sup>24</sup> Øverland (n 6) 279, 280.

<sup>25</sup> Lippert-Rasmussen, ‘Global Injustice and Redistributive Wars’ (n 6) 65–84, Lippert-Rasmussen, ‘Pogge, Poverty and War’ (n 6) 446–69. See for an earlier version

tribution to global poverty generates stringent duties to address it, then this contribution implies permission on the part of the victims to defend themselves with force, or for third parties to use force on their behalf.<sup>26</sup>

Whether the focus lies on *assistance-based* or on *contribution-based duties*, it is clear that violations of the subsistence rights of the global poor do not qualify as forms of either external or internal *military* aggression against them. It therefore constitutes a significant extension of just war theory. According to Lippert-Rasmussen, however, it does not matter whether the cause of death is machete or malnutrition. The difference between military and non-military aggression is not sufficiently morally significant to show that defence against the first but not the second is justified.<sup>27</sup>

Fabre probably offers the most substantiated defence of subsistence wars. Subsistence wars, according to her, can be a response to both a violation of the duty to assistance and a violation of the 'duty not to subject distant strangers to severe deprivation'.<sup>28</sup> Although the first is not a case of 'doing harm', it can be seen as a failure to ensure that a harm 'is no longer an ongoing harm'.<sup>29</sup> Understood as such, Fabre's account of subsistence wars rests on two important pillars: the right 'to the resources and freedoms which [individuals] need in order to lead a minimally decent life' and 'the right not to be subject to severe deprivation'.<sup>30</sup>

Whether we follow Luban, Lippert-Rasmussen or Fabre, one thing is clear: according to their revised just war theory, a far greater range of rights violations can be seen as just cause for war.<sup>31</sup> Non-compliance with regard to duties of global justice can be a legitimate reason to use force to reclaim or restore violated rights. All of these three actors start with an individualistic reading of just war theory. However, moral individualism and the general idea of equal respect for all are not sufficient by themselves to explain why revisionists

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of this argument: Uwe Steinhoff, 'Why "We" Are Not Harming the Global Poor: A Critique of Pogge's Leap from State to Individual Responsibility' (2012) 4 *Public Reason* 119. Pogge's main claim is that 'the citizens and governments of the affluent societies, in collusion with the ruling elites of many poor countries, are harming the global poor by imposing an unjust institutional order upon them'. Thomas Pogge, 'Real World Justice' (2005) 9(1) *Journal of Ethics* 29, 33. See also Thomas Pogge, *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms* (Polity Press 2002); Thomas Pogge, *Politics as Usual: What Lies behind the Pro-Poor Rhetoric* (Polity Press 2010).

<sup>26</sup> Øverland (n 6) 279, 280.

<sup>27</sup> Lippert-Rasmussen, 'Global Injustice and Redistributive Wars' (n 6) 68.

<sup>28</sup> Fabre, *Cosmopolitan War* (n 3) 110.

<sup>29</sup> *Ibid* 111.

<sup>30</sup> *Ibid* 7 and 105.

<sup>31</sup> *Ibid* 6.



would accept ‘contribution to global poverty’ as a just cause for war.<sup>32</sup> What needs to be added is an account of global distributive justice.

#### 4 SUBSISTENCE WARS AND GLOBAL DISTRIBUTIVE JUSTICE

The adopted account of global distributive justice could be a reason why conventionalists and revisionists draw different conclusions regarding the permissibility of subsistence wars. If revisionists were to defend a comprehensive theory of global justice including strong global justice duties, and conventionalists were to defend mere duties of humanitarianism to alleviate global poverty where possible, this would explain why some revisionists are – at least in theory – prepared to accept the permissibility of subsistence wars, whereas conventionalists are not open to their acceptability.<sup>33</sup> To what extent, however – and here we return to *the argument of global distributive justice* mentioned in our introduction – is this a correct inference? In this section we want to argue that this inference – at least if we look at Walzer’s and Fabre’s work – is wrong.<sup>34</sup>

Before turning to the question whether the duty to alleviate global poverty is a duty of humanitarianism or justice, let us start with the difference between humanitarian duties and duties of justice, to build our case.<sup>35</sup> Several theses have been developed regarding this distinction. Allen Buchanan distinguishes four:

- (1) Duties of justice [...] are exclusively negative duties (duties to refrain from certain actions); duties of charity are generally positive duties (duties to render aid).
- (2) Duties of justice may be enforced; duties of charity may not.
- (3) Duties of justice are perfect duties; duties of charity are imperfect [...]
- (4) Justice is a matter of rights; charity is not.<sup>36</sup>

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<sup>32</sup> Øverland (n 6) 280.

<sup>33</sup> Compare Seth Lazar and Laura Valentini, ‘Proxy Battles in Just War Theory: Jus in Bello, the Site of Justice, and Feasibility Constraints’, in David Sobel, Peter Vallentyne and Steven Wall (eds) *Oxford Studies in Political Philosophy* (OUP 2017) 42.

<sup>34</sup> A caveat: our analysis is limited by the fact that we mainly focus on one proponent of the conventional view of just war (Walzer) and one proponent of the revisionist view (Fabre). A full analysis would have to include a closer analysis of the work of other theorists as well.

<sup>35</sup> Instead of humanitarianism one could also talk about duties of charity, beneficence or humanity. Although these concepts need to be distinguished, we will not do so in this chapter. We merely want to distinguish between those duties that are stringent and enforceable and those duties that are not.

<sup>36</sup> Allen Buchanan, ‘Justice and Charity’ (1987) 97 *Ethics* 558, 558.

Within the debate on subsistence wars especially, the second and fourth theses play an important role. Fabre, Luban, Lippert-Rasmussen and Øverland accept (2) and (4) but reject (1). Whether these authors would also defend (3) is more difficult to determine.<sup>37</sup> That is primarily due to the epistemic uncertainties that apply when determining responsibility for global poverty.<sup>38</sup> For now, however, it suffices to show that Walzer and Fabre in fact accept theses (2) and (4).

Regarding the *strength of justice*, the degree to which it is morally important to respect the requirements of justice,<sup>39</sup> Fabre claims that justice is first of all connected to the question of rights. Duties of justice explain who owns what to whom. If someone has a right, this implies that ‘an interest of hers is important enough to impose on third parties duties not to interfere with her pursuit of that or some related interest. As well as duties to promote that interest’.<sup>40</sup> These rights, moreover, entail enforceable claims. ‘Duties of justice’ in that sense correlate to rights and rights correlate to enforcement. ‘Duties of charity’, conversely, are morally required but do not correlate to rights and are therefore not enforceable.

Regarding the *content of justice*, what justice actually prescribes, Fabre defends a sufficientist or minimalist account of justice. The idea of a minimally decent life provides the criterion for knowing whether someone has a right or not. Interestingly enough, Fabre uses the language of egalitarians to describe her sufficientist account or minimalist theory of justice:<sup>41</sup> individuals should have ‘equal opportunities for a minimally decent life’.<sup>42</sup> Regarding the *scope*

<sup>37</sup> Perfect duties, according to Buchanan, ‘are determinate both with regard to the content of what is required and with regard to the identity of the individual who is the object of the duty’ (ibid 558). Perfect duties, in that sense, are binding and leave no room for exceptions. Imperfect duties, on the other hand, leave room for personal discretion. They mainly imply that something needs to be done to advance a certain end.

<sup>38</sup> Whether these epistemic uncertainties lead to the conclusion that the duty of aid is in fact a humanitarian duty is an interesting question. We will not, however, address this question here.

<sup>39</sup> Fabre, *Cosmopolitan War* (n 3) 17.

<sup>40</sup> Ibid 23.

<sup>41</sup> Minimalist accounts – such as those of John Rawls, David Miller or Ronald Dworkin – claim that global justice mainly deals with ending severe poverty. The aim of global justice is to set a global minimum that specifies the conditions for ‘a decent or minimally decent life’. Egalitarians, on the other hand, deny that global justice can be restricted to creating the conditions for a minimally decent life for all. Global justice should also tackle the difficult question of global inequality. See further e.g. Chris Armstrong, *Global Distributive Justice: An Introduction* (CUP 2012).

<sup>42</sup> Fabre, *Cosmopolitan War* (n 3) 19. In response to an objection by Anna Stiltz, Fabre adapted her position regarding her minimalist account of justice: “I agree [...] with her that holding the wealthy under a duty to ensure that the needy merely have a minimally decent life is not demanding enough: rather, they are under a duty to ensure

of justice, finally, Fabre defends a rights-based cosmopolitan theory of global justice. All individuals are simultaneously rights-bearers and duty-bearers. Political borders have no immediate moral relevance. Fabre's primary reason for broadening the scope of justice is the familiar one: 'If possession of a particular characteristic  $x$  provides a justification for treating one individual who has  $x$  in certain ways, then one must treat all bearers of  $x$  in those same ways.'<sup>43</sup> Political boundaries, in that sense, have no ethical significance.<sup>44</sup>

What about Walzer's position? His views on global distributive justice are rather ambiguous. In *Spheres of Justice*, Walzer famously argued that '[a]ll distributions are just or unjust relative to the social meaning of the goods at stake'.<sup>45</sup> The goods with which theories of distributive justice are concerned do not fall like manna from the sky, as abstract goods that can be distributed according to abstract principles of justice. They are goods that are produced and conceived in a certain way; goods with a specific social meaning. Importantly, this includes universally necessary goods like food, shelter and medical care. Distributive justice, in other words, only makes sense in a bounded world within which people share a common language, history and culture. If we only take *Spheres of Justice* as our point of reference for comparing Walzer's and Fabre's takes on subsistence wars, our conclusion could be quickly drawn. Given that every 'substantive account of distributive justice' is always 'a local account', there is no stringent duty of justice for the global rich to aid the global poor.<sup>46</sup> Neither, along those lines, is there a valid reason for the global poor to use lethal force against affluent countries. Interestingly enough, however, Walzer has also made different claims regarding universalism and justice in more recent work.

His most explicit treatment of global distributive justice can be found in 'Achieving Global and Local Justice'.<sup>47</sup> In this article, he denies that humanitarian aid should be discussed 'under the heading of benevolence'; the duty to alleviate global poverty is a duty of justice. The 'vast inequalities of wealth and power in the world today, and the accompanying poverty, malnutrition, and

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that all have opportunities for a flourishing life.' Fabre, 'Right, Justice and War' (n 19) 391, 402.

<sup>43</sup> Fabre, *Cosmopolitan War* (n 3) 33.

<sup>44</sup> To ground the permissibility of subsistence wars Fabre appeals also to the 'right of necessity' (*casus necessitates*): in cases of dire or absolute necessity, those in need may take from others (not on the same level of want) what they need to survive. Necessity, in short, 'breaks through the ties of all laws'.

<sup>45</sup> Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (Basic Books 1983) 9.

<sup>46</sup> *Ibid* 314.

<sup>47</sup> Michael Walzer, 'Achieving Global and Local Justice' (2011) 58(3) *Dissent* 42–8.

illness' are unjust and 'cry out for a globally applicable critique'.<sup>48</sup> For such a critique we do not need a comprehensive theory of global justice, but a 'minimalist account of justice-right-now'. Such an account rejects absolute egalitarianism and aims at economic sufficiency and political decency. Another aspect is the 'political responsibility for cross-border injuries'.<sup>49</sup> Like Pogge, Walzer stresses the negative effects of the current global order and emphasizes the reparative duties that follow. These two aspects of global distributive justice (humanitarianism and political responsibility) constitute duties of justice and not humanitarian duties. Global distributive justice, in that regard, includes both negative duties and positive duties. This brief reconstruction of Walzer's position suffices to make the claim that he defends a rights-based and state-oriented approach to global justice – a minimalist theory.

This shows that Fabre and Walzer do not differ substantially in their understanding of global justice. Both argue for a minimalist account of global justice, a positive duty of aid, a negative duty not to harm and a duty to repair. The fact that Fabre defends a cosmopolitan position and Walzer a statist one focused on the decency of political communities, or that Fabre's account of a minimally decent life might set a higher bar than Walzer's account, is relevant for the general discussion on global distributive justice, but not for our discussion. If extreme poverty of large groups of people is at stake, both authors would agree that these people are unable to lead a minimally decent life and that more affluent others have a duty of justice to provide assistance.<sup>50</sup>

## 5 SELF-DEFENCE AND SUBSISTENCE WARS

Walzer's and Fabre's accounts of global justice do not convincingly explain the reserve of conventional just war theorists concerning subsistence wars, nor why revisionists like Fabre are willing to accept the permissibility of subsistence wars. But what about the first argument we mentioned in our introduction: *the argument of the nature of subsistence wars*? Compared to generally accepted forms of a just war, subsistence wars appear to be radically different qua nature and character. Given that subsistence wars seem to be based on a violation of individual human rights – subsistence rights instead of security rights – they appear to be more similar to humanitarian interventions than they are to the classical defence against external military aggression. As

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<sup>48</sup> Ibid 42.

<sup>49</sup> Ibid 42, 47.

<sup>50</sup> Pogge's work, to return to a point we made earlier, fervently defends the claim that global poverty can be seen as an institutional human rights violation, but does not believe that the permissibility of subsistence wars can convincingly be argued for. Pogge, 'Poverty and Violence' (n 7) 87, 109.

revisionists are usually more permissive than conventionalists when it comes to justifying humanitarian interventions, this would make it easier for them to justify the somewhat similar but more far-reaching subsistence wars. But does the specific nature of these wars explain the different positions of conventionalists and revisionists? We would like to answer this question by comparing one specific version of a subsistence war to Walzer's classical type of a just war: national self-defence.

Let us first take an example to test whether that characterization is correct: A and B are neighbouring countries of approximately the same military capability, where the respective populations lead a (minimally) decent life. Both rely on a river that runs through the continent for drinking water, for the irrigation of land and agriculture and for fish. Suppose now that A decides to divert the river to maximize the river's advantages, increasing its population's standard of living. As a result, the river no longer runs through B, which means that a shortage of clean drinking water and food fairly quickly arises.<sup>51</sup> Consequently, the lives of millions of people living in B (nearly the whole population) are threatened. Neighbouring A turns a blind eye and ignores B's desperate requests and forceful commands to reverse the diversion. Can B go to war with A?<sup>52</sup>

In spite of the (threatening) humanitarian catastrophe in B, this example resembles a typical self-defence. In both cases the continued existence of B – or, formulated differently: the extinction of B – is at stake. Unlike Luban's example (see section 3), moreover, A is responsible based on a violation of contribution-based (negative) duties. After all, country A directly violates the population's subsistence rights to the extent that they are on the verge of starvation. Given that contributing to a certain problem is generally considered to weigh more heavily than merely being able to assist, this example cannot be so easily swept aside by conventionalists as is the case for Luban's example. For Walzer, political and physical extinction, for example, constitutes a legitimate reason to override the rules of war (*jus in bello*), for example by targeting the civilian population of the aggressing country.<sup>53</sup>

The question whether the people from B could be justified in defending their subsistence rights by military force against A is therefore not far-fetched or absurd. Not only are the most basic individual human rights violated, but one could even claim that A violates the population's collective right to

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<sup>51</sup> For an example not too far from reality, consider the water conflicts between Egypt, Ethiopia and Sudan about the hydroelectric dam project.

<sup>52</sup> This example is a variation on one of Luban's 'hard cases', discussed in section 2.

<sup>53</sup> Walzer, *Just and Unjust Wars* (n 5) 251.

self-determination as it dominates the autonomy of B.<sup>54</sup> Should B take up arms, it would be waging a war to secure individual subsistence rights and, arguably, the population's collective survival. Moreover, responsibility for these rights violations can straightforwardly be attributed to A. Hence, this particular sort of subsistence war is more similar to national self-defence than one might expect, and its justification would certainly not be such a far stretch for conventionalists.

However, a fundamental remaining difference is that a national self-defence is a defence against *military* aggression,<sup>55</sup> whereas the subsistence war sketched in our example constitutes a defence against non-military aggression. While according to Luban aggression is not a necessary condition for a just war,<sup>56</sup> most just war theorists (and particularly conventionalists) do have an 'aggression-centred perspective'<sup>57</sup> which entails that there can only be a just self-defensive war in response to external military aggression. Therefore, to justify such wars we would have to stretch the notion of 'aggression'. And this is precisely what the proponents of the permissibility of subsistence wars try to accomplish. According to Lippert-Rasmussen, 'the distinction between military and non-military aggression may not be entirely clear-cut and once we make it clear-cut, this distinction may not align perfectly with a morally relevant distinction'.<sup>58</sup> This claim, however, is too general to be convincing.

A more precise argument – also made by Valentini and Fabre<sup>59</sup> – starts from the claim that the 'aggression-centred' view is based on an analogy to the use of lethal force in self-defence by an innocent person. It is argued that self-preservation depends not only on physical security or bodily integrity, but also on having access to sufficient material resources.<sup>60</sup> Given the nature of our example – the collective survival of B – this seems sufficient to argue for the permissibility of using lethal force: even though there is no military aggression of A against B, there is direct economic aggression which has lethal consequences for the people living in B.

Hence, the unique character of subsistence wars does not conclusively explain the competing positions on subsistence wars either. A subsistence war

<sup>54</sup> Fabre, *Cosmopolitan War* (n 3) 106.

<sup>55</sup> That is, a response to an armed attack or imminent threat thereof. See e.g. Brian Orend, *The Morality of War* (Broadview Press 2013) 34–5 and Yoram Dinstein, *War, Aggression and Self-Defence* (CUP 2005) 182–5.

<sup>56</sup> Luban (n 6) 160, 175.

<sup>57</sup> Laura Valentini, 'Just War and Global Justice', in David Held and Pietro Maffettone (eds) *Global Political Theory* (Polity 2016) 145.

<sup>58</sup> Lippert-Rasmussen, 'Global Injustice and Redistributive Wars' (n 6) 65, 75.

<sup>59</sup> Fabre, *Cosmopolitan War* (n 3) 105; Valentini (n 57).

<sup>60</sup> Valentini (n 57) 146; and compare Fabre, *Cosmopolitan War* (n 3) 105 ff.

based on violated negative duties shows remarkable similarities to classical defensive wars. Assuming that the notion of ‘aggression’ could be stretched to incorporate lethal non-military aggression, conventionalists would not be able to categorically exclude subsistence wars. Also relevant in this regard is whether there is a legitimate authority, whether there is a reasonable chance of success<sup>61</sup> and whether the subsistence war is proportional to the harm it intends to address. These conditions, however, also apply to a typical self-defensive war.

## 6 TAKING STOCK

In sections 4 and 5 we examined two arguments that seem to explain why conventionalists such as Walzer neglect the issue of subsistence wars, whereas some revisionists defend subsistence wars: different perspectives on the duties of justice (*the argument of global distributive justice*) and the unique character of subsistence wars (*the argument of the nature of subsistence wars*). We saw that both arguments – although relevant for reflecting on the issue of subsistence wars – do not in fact explain their respective neglect and receptiveness.

Even though the individualist underpinning of revisionism seems to provide fertile ground for the justification of such wars, these arguments do not prevent statist such as Walzer from being open to that possibility too. Subsistence wars do not need to be uniquely different from classic self-defensive wars. Also, violated subsistence rights are not necessarily only a matter of violated individual human rights. Such violations can have severe and widespread consequences, jeopardizing the existence of entire communities. Furthermore, conventionalists and revisionists appear not to have such different views on global distributive justice. Walzer, too, endorses duties of global distributive justice, including strong negative duties not to harm. What remains is the question of how such duties can be enforced. More specifically: What can be enforced as a matter of right by means of lethal force? It seems that, in situations where the rights violations are so serious that they ‘shock the conscience of mankind’ or threaten collective self-determination, conventionalists *should* consider subsistence as a just cause for war.

Does this mean that our ‘destitute halves’ are permitted to wage war against us? Not necessarily. We have not argued in this chapter for or against the permissibility of subsistence wars. What we did want to show is that, given the seriousness of global poverty as an issue of global justice, conventionalists too should engage in this debate. Based on our analysis, nothing seems to prevent conventionalists from recognizing the possibility of justified subsistence wars.

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<sup>61</sup> Cf. Walzer, *Just and Unjust Wars* (n 5) 54.

And even if subsistence is not a viable just cause for war, based on arguments not discussed here,<sup>62</sup> a consequentialist exception to the rights-based character of just war theory might provide an alternative justification (that is, a 'lesser evil' justification).

As is well known, Walzer introduced a doctrine of supreme emergency as a way to manoeuvre between rights absolutism (innocent human beings have a right not to be intentionally attacked) and consequentialism ('innocence' can be weighed against other values to achieve the greatest good for the greatest number).<sup>63</sup> Walzer uses this doctrine to allow a strong infringement of *jus in bello* norms in extreme circumstances; he specifically refers to the British decision in the early 1940s to bomb German cities in order to reduce the morale of German citizens.<sup>64</sup> Which circumstances are extreme enough to justify such an infringement? Walzer states that only 'against the imminent threat of political and physical extinction', or when the 'physical and moral survival' of political communities is at stake, can extreme measures be considered.<sup>65</sup>

Extreme emergencies do not only arise as a consequence of military aggression, however. They might also develop due to a lack of food, clean drinking water or life-saving medicines. In those circumstances of life and death, we should ask the question: When can lethal force be used to secure access to essential resources? In this way, the doctrine of supreme emergency can be linked to the broader philosophical discussion on the permissibility of violence to claim violated rights.<sup>66</sup> Along these lines, an argument for the justification of subsistence wars in situations of extreme and life-threatening poverty could be developed by conventionalists. At the very least, conventionalists too should take the issue of subsistence wars seriously.

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<sup>62</sup> Such arguments could e.g. be related to practical feasibility and prudential considerations, the enforceability of rights (notably by lethal force), responsibility for global distributive justice or the counter-productiveness of permitting subsistence wars.

<sup>63</sup> Michael Walzer, *Arguing about War* (YUP 2004) 35.

<sup>64</sup> *Ibid* 45.

<sup>65</sup> *Ibid* 54, 47.

<sup>66</sup> This is obviously linked to the laws of necessity when the fundamental rights of individuals are concerned. Well-known authors in the long tradition of philosophical reflection on the right of necessity are Cicero, Thomas Hobbes, Grotius, Samuel von Pufendorf, Francis Hutcheson, William Paley, John Locke, Immanuel Kant and more recently Joel Feinberg. For a very sophisticated recent account see Mancilla (n 3). Mancilla defends the permissibility of transgressions of the law in situations of necessity, under certain circumstances. She does not, however – but for one short paragraph – go into the issue of the use of violence.