

Article

Holocaust Perpetrators and Unjust Combatants

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Abstract: There are compelling reasons to accept Revisionism in just war theory, i.e., the view, roughly, that combatants fighting on the unjust side of a war have no moral right to kill combatants fighting on the just side. This seems to imply that participating in an unjust war as an ordinary soldier is gravely immoral. Indeed, it's hard to see why such soldiers aren't the moral peers of the low-level Holocaust perpetrators who have been found guilty of many counts of aiding and abetting murder. This article explores the implications of Revisionism for the moral culpability and blameworthiness of unjust combatants. I argue that (i) some unjust combatants who respect the rules of war are as culpable, and may be just as blameworthy, as low-level Holocaust perpetrators; however, (ii) there remain good grounds for thinking that such perpetrators are often more blameworthy than ordinary unjust combatants even if Revisionism is true.

Keywords: just war; revisionism; moral equality of combatants; responsibility; Holocaust; atrocity

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Introduction

Many people seem to believe that playing a minor role in the Holocaust is morally much worse than fighting as an ordinary soldier in an unjust war. Friendships between American and German World War II veterans are tolerated, even celebrated, when the Germans were ordinary soldiers.¹ However, in 1985 a group of U.S. Army veterans generated controversy for meeting with a group of former foes who had been members of the SS, the paramilitary organization tasked with implementing Hitler's murderous Final Solution.² That same year, U.S. President Ronald Reagan drew criticism for his visit with West German Chancellor Helmut Kohl to a cemetery in Bitburg, Germany that contained the

¹ See Blake, J. "A WWII Hero Returns to Germany to Meet His Enemy." *CNN*, November 10, 2018.

² Heinrich, M. "U.S. Vets Meet Former Nazi SS Members at Airport." *AP News*. September 23, 1985.

graves of 2,000 German soldiers who died in World War II. Reagan's critics, including Holocaust survivor and later Nobel Laureate Elie Wiesel, were especially incensed to learn that the cemetery contained the graves of 49 deceased SS members.³ Consider two hypothetical characters:

Camp Guard Karl. Karl is a young man who naively believes Nazi propaganda and joins Nazi youth organizations. He eventually joins the SS and is assigned to guard duty at a concentration camp. After he sees the carnage unfold there, the ideological scales fall from Karl's eyes. Karl wants to avoid being transferred to a more dangerous duty, however, and so he spends two months as a guard there without doing anything either heroic or, relative to his cohort, especially cruel.

Artilleryman Artie. Artie, an ardent nationalist, is an artillery specialist in the army of a country engaged in an aggressive war of territorial conquest. Artie enlisted mainly out of a sense of adventure and patriotism. He's respected among his comrades for his courage. Thanks in part to Artie's effectiveness, his unit kills thousands of combatants fighting on the just side. Nevertheless, his unit respects the basic rules of war by treating prisoners appropriately and taking steps to avoid civilian casualties.

Only Karl is liable to be indicted for his wartime behavior, and likely, were the public to learn about the activities of each, only Karl would be thought to be, if not a monster, then at least as someone who had once done something monstrous. (Take a moment to assess your own reactions to each.) Traditionalism in just war theory rationalizes the judgment that Karl is more blameworthy for what he's done. On this view, combatants are equally entitled to target each other so long as they abide by certain rules of conduct within war, regardless of whether they're fighting on the just or the unjust side. It appears Artie has done this; hence, according to Traditionalism, Karl would be complicit in mass murder, but Artie would not be.

Revisionists challenge Traditionalism, arguing that combatants on the unjust side of a war have no *moral* right to target combatants who justly resist them. If that view is correct, then it's harder to explain what, if anything, morally differentiates Artie from Karl. Revisionists can accept pragmatic reasons for treating Artie and Karl differently. Efforts to punish former combatants who have fought on the unjust side of a war might be unfeasible and could create perverse incentives. Soldiers determined to fight an unjust war, or one widely perceived to be unjust, might be tempted to win by any means necessary if they know that they'll be regarded as war criminals anyway. All the same, if Revisionism is correct, then killing combatants on the just side of a war seems to be *morally* tantamount to murdering civilians since both civilians and just combatants are illicit targets on this view. Thus, Artie might have as much to answer for as Karl and possibly even more.

I think Revisionism is probably true, and so we should be concerned about its implications for the blameworthiness of unjust combatants. That's what this article explores. I'll begin by describing the history of Holocaust trials to the present day in order to have concrete cases that can help ground our intuitions and focus the ensuing discussion. I then delve into the debate between Traditionalism and Revisionism in just war theory and defend Revisionism. I go on to argue for two main conclusions: (i) some unjust combatants who respect the rules of war are as culpable, and may be just as blameworthy, as low-level Holocaust perpetrators; however, (ii) there remain good grounds for thinking

³ Glass, A. "Reagan visits German War Cemetery, May 5, 1985." *Politico*, May 5, 2018.

that such perpetrators are often more blameworthy than ordinary unjust combatants even if Revisionism is true. There are three reasons for this: the perpetrators can be especially blameworthy due to aggravating factors, they're less likely than unjust combatants to perform offsetting praiseworthy actions, and they're less likely to have good excuses.

A Brief History of Holocaust Trials

The Holocaust orchestrated by the Nazi leadership, in collaboration with others, which occurred throughout Europe, and especially in occupied eastern Europe, during World War II, is one of the worst genocides in history. Indeed, Raphael Lemkin coined the word “genocide” after the Nazi Holocaust, treating it as a paradigmatic example of the phenomenon he had defined.⁴ Jews were especially targeted. Historian Timothy Snyder estimates the Nazis murdered 5.7 million Jewish people during the Holocaust. If the 300,000 Jewish victims of Nazi-inspired but independently directed Romanian anti-Semitic violence are included, this brings the number up to the familiar 6 million figure.⁵ In addition, the Nazis also murdered several million non-Jewish victims.⁶

Gas chambers are emblematic of the Holocaust, but victims were murdered by many other methods, including burning in crowded buildings, shooting, asphyxiation in mobile killing vehicles, denial of food and medical care, and bludgeoning.⁷ During the three-month peak of Operation Reinhard (August–October 1942), the Nazis, following an order from Hitler to expedite the genocide, murdered about 445,700 victims per month, an unprecedented and unsurpassed rate of slaughter 83 percent higher than that of the 1994 Rwandan genocide, to which the Holocaust is frequently compared, assuming high estimates for Rwanda.⁸ This figure is even more remarkable because the Nazis' victims were dispersed across a continent, and many were transported hundreds of miles to specially designed places of execution.⁹

After the war, the victorious Allies established the International Military Tribunal (IMT) at Nuremberg to prosecute Nazi leaders. Lawrence Douglas writes:

Nuremberg was not in the first instance a Holocaust trial; the twenty-one defendants on the dock were principally charged with “crimes against the peace” – that is, of having planned and launched an aggressive war in violation of international law. Yet the trial conferred judicial recognition on “crimes against humanity” as it called acts of state-sponsored atrocity; and the prosecution used this novel legal channel to bring much of the evidence of the Holocaust before the IMT.¹⁰

⁴ Power, Samantha. *A Problem from Hell: America in the Age of Genocide*. New York: Basic Books, 2002, ch. 4.

⁵ Snyder, T. *Bloodlands: Europe Between Hitler and Stalin*. New York: Basic Books, 2010, pp. 409–414.

⁶ The Illinois Holocaust Museum and Education Center recommends not specifying the number of non-Jewish victims. On a website devoted to combating Holocaust misconceptions, they write: “It is best when referencing the total number of victims of the Holocaust to say 6 million Jews and millions of others. All Holocaust organizations are making a united move to adhere to this message, and we must maintain a consistent record as a center of Holocaust education.” [link to the article](#); accessed July 31, 2024.

⁷ Stone, Dan. *The Holocaust: An Unfinished History*. New York: Harper Collins, 2023, p. 126.

⁸ Stone, Lewi. “Quantifying the Holocaust: Hyperintense Kill Rates during the Nazi Genocide.” *Science Advances* 5 (2019): online.

⁹ *ibid.*

¹⁰ Douglas, Lawrence, *The Right Wrong Man: John Demjanjuk and the Last Great Nazi War Crimes Trial*. Trenton, NJ: Princeton University Press, 2016, p. 4.

Although “crimes against the peace” provided much of the impetus for the proceedings, the tribunal meted out the harshest penalties to defendants who were found guilty of crimes against humanity, usually in combination with other crimes. All twelve defendants who received death sentences were found to have committed crimes against humanity.¹¹ Armed with this precedent, the Allies established courts in their respective occupation zones to prosecute other Nazis for further crimes. The U.S. conducted twelve more trials, collectively known as the Subsequent Nuremberg Trials (or Proceedings). These focused more on Holocaust crimes than the original Nuremberg tribunal. One of these trials was for the leaders of the *einsatzgruppen*, or mobile killing squads, and another was for Nazi doctors accused of committing medical atrocities.¹²

U.S. President Harry Truman insisted that the trials be fair and not show trials as Soviet Premier Joseph Stalin wanted.¹³ Although some defendants were acquitted and others received lenient sentences, many Germans perceived the trials as “victors’ justice.”¹⁴ Partly for this reason, Germany did little to punish Holocaust perpetrators for several decades and commuted most of the longer sentences for convicted Nazis after the occupation ended.¹⁵ Some other countries continued to prosecute Nazis, Israel’s extradition and subsequent trial of Adolf Eichmann in 1961 being the most famous example.¹⁶ All of these trials targeted Nazi leaders and people who had distinguished themselves for cruelty. It wasn’t until the 21st century that changes would be brought against low-level Holocaust perpetrators in virtue of their participation.

In 2009, the German government brought charges against John (Ivan) Demjanjuk, a Ukrainian immigrant to the U.S. and retired auto worker long suspected of being a war criminal. In 1986, Demjanjuk had been extradited to Israel from the U.S. on suspicion of being “Ivan the Terrible,” the operator of the Treblinka gas chamber, who was so cruel that *other Nazis* told him to desist from the worst of his sadistic excesses.¹⁷ At his trial in Israel, eyewitnesses identified Demjanjuk as their tormentor. Over his denials, Demjanjuk was convicted and sentenced to death in 1988. However, in 1993 evidence from the newly opened Soviet archives suggested that Ivan the Terrible was someone else. Demjanjuk’s conviction was overturned, narrowly saving him from the gallows, and his American citizenship was reinstated. Years later, however, the U.S. Department of

¹¹ Only ten of these twelve death sentences were carried out; Martin Bormann, who was sentenced *in absentia*, had died earlier, and Herman Goring cheated the hangman through suicide. United States Holocaust Museum, “Nuremberg Trials.” *Holocaust Encyclopedia*: online.

¹² United States Holocaust Museum, “Subsequent Nuremberg Proceedings Case #9, the Einsatzgruppen case.” *Holocaust Encyclopedia*; and “The Doctors Trial: The Medical Case of the Subsequent Nuremberg Proceedings.” *Holocaust Encyclopedia*: online.

¹³ Beschloss, M., *The Conquerors: Roosevelt, Truman, and the Destruction of Hitler’s Germany 1944–5*. New York: Simon & Schuster, 2002, pp. 26–27; and McMeekin, S. *Stalin’s War: A New History of World War II*. New York City: Basic Books, 2021, pp. 498, 557.

¹⁴ There was some basis for this complaint. Punishing individuals for “crimes against humanity” hadn’t been a part of international law before the Nuremberg trials. No Allied leaders were tried for their wartime conduct, though some of that was horrendous, such as the Katyn Massacre, perpetrated by Stalin, in which more than 21,000 captive Polish officers were murdered; McMeekin, *Stalin’s War*, ch. 25. Finally, as the trials were taking place, the former Allied countries were cooperating with the governments of Poland and Czechoslovakia to ethnically cleanse eastern and central Europe of its ethnic German minorities; Douglas, R.M., *Orderly and Humane: The Expulsion of the Germans after the Second World War*. New Haven, CT; Yale University Press, 2012, p. 13.

¹⁵ Douglas, *The Right Wrong Man*, pp. 66, 150–151.

¹⁶ Arendt, Hannah, *Eichmann in Jerusalem: A Report on the Banality of Evil*. New York: Viking Press, 1964.

¹⁷ Douglas, *The Right Wrong Man*, p. 190.

Justice Office of Special Investigations determined that Demjanjuk *had* been a guard at Nazi camps, and thus that he was after all “a terrible enough Ivan.”¹⁸ He was extradited to Germany and prosecuted again, with the dubious distinction of being the only person ever to be stripped of American citizenship twice.¹⁹

Although Demjanjuk had been a guard at three Nazi camps – Sobibor, Majdanek, and Flossenbürg – his second trial focused on his time at Sobibor. Not enough was known about Demjanjuk’s behavior at Majdanek or Flossenbürg to legally prove his complicity with murder; however, Sobibor was a “pure” death camp – or a “death factory” in Timothy Snyder’s terminology²⁰ – meaning that it had no function besides murder. Thus, the prosecution argued, working at such a place by definition makes one an accessory to murder. The judge found this argument persuasive and in 2011, found 91-year-old Demjanjuk guilty of being an accomplice in 28,060 murders. Demjanjuk was sentenced to five years in prison, though, in a pattern that would be repeated, he died in 2012 while his conviction was being appealed.

Demjanjuk’s trial and conviction nevertheless set a precedent for the indictment of other low-level perpetrators. In 2014, German prosecutors charged Oskar Gröning, the so-called “Accountant of Auschwitz” with being an accessory to 300,000 murders, a figure based on a conservative estimate. Gröning had first revealed his involvement with the Holocaust to counter Holocaust deniers. After the Demjanjuk conviction, this testimony became incriminating. Auschwitz-Birkenau wasn’t a pure death camp like Sobibor because it enclosed both a labor camp and a death factory, and so Gröning wasn’t presumed to be complicit with murder in virtue of his employment there. Instead, he was found guilty because of specific things he had done. Gröning had been present on the ramp where victims were unloaded from trains and had helped maintain their unawareness as they were escorted to the gas chambers. He had stolen from the luggage victims were told would be delivered to them later. These facts mattered legally not because Gröning was necessarily consequential to the outcome – the victims probably would have been killed without his involvement – but because these actions are evidence of his willing participation in a murderous plot.²¹ Gröning received a 4-year sentence and like Demjanjuk died a free man while his case was being appealed.²²

Holocaust perpetrators convicted after Gröning include Reinhold Hanning, Josef Schütz, and Irmgard Furchner, a rare female Holocaust defendant.²³ All these perpetrators received sentences in the 2–5-year range, though the numbers of murders

¹⁸ Douglas, *The Right Wrong Man*, p. 2.

¹⁹ *ibid.*

²⁰ Snyder, *Bloodlands*, ch. 8.

²¹ “It is not a matter of passing judgment on Gröning because he did something during the time of the extermination of Hungarian Jews in Auschwitz. Besides, it is not every single crime committed in Auschwitz that is attributed to him. It is a matter of fact that Gröning acted in a particular manner with direct reference to the organized killing machinery of Auschwitz before and during the Hungarian Action which had to be legally appraised”; Bernhart, Fabian, Alexander Tanner, Falaq Ahmad, Joyce Galvano, and Tanja Herde, “300,000 Counts of Aiding and Abetting Murder.” *German Law Journal* 21 (2020): 743–755 at 746–747.

²² Shoychet, Matthew, (director). *The Accountant of Auschwitz*. Canada: Good Soup Productions, TLNT Productions, 2018; “Oskar Gröning: ‘Bookkeeper of Auschwitz’ Dies at 96.” *BBC News*, March 12, 2018.

²³ For Hanning, see “Reinhold Hanning: Convicted Nazi guard Dies before Going to Prison.” *BBC News*, June 1, 2017; for more on Schütz, see Snejana Farberov, “101-Year-Old Ex-Nazi Guard Sentenced for Aiding 3,500 Murders.” *New York Post*, June 28, 2022; and for more on Furchner, see Paul Kirby and Robert Greenall, “Irmgard Furchner: Nazi Typist Guilty Of Complicity in 10,500 Murders.” *BBC News*, December 20, 2022.

that they aided and abetted ranged from a few thousand to hundreds of thousands. On a time-per-murder basis, these sentences range from 7 minutes of prison time per murder for Gröning to over 12 hours for Schütz. The similarity of the penalties these defendants received corresponds with my judgment that these defendants are about equally guilty irrespective of the numbers of their victims. That's partly because of moral luck: the traffic at the perpetrators' respective camps, a factor outside their control, determined how many murders each was implicated in. Gröning was implicated in so many because he was at Auschwitz-Birkenau during the Hungarian Action of 1944, during which 430,000 Hungarian Jews were sent there to be murdered.²⁴

All these sentences are so light that we should probably understand them as symbolic gestures in support of survivors, and probably to boost the moral credibility of the German government, rather than attempts at retributive justice in the ordinary sense. A 5-year sentence doesn't seem to be an excessive penalty for a perpetrator found to be complicit in a single homicide; retributive justice, if there is such a thing, surely demands stiffer penalties for those who are complicit in hundreds of thousands.

Traditionalism and Revisionism

The doctrine of the Moral Equality of Combatants "holds that combatants on either side of a war have equal moral status so long as they abide by certain norms governing how wars must be fought."²⁵ It emphasizes a moral division of labor between the justice of the war (*jus ad bellum*) and justice within war (*jus in bello*). Uniformed combatants are responsible only for the latter. For instance, soldiers must not target civilians or use banned weapons such as poison gas, and they must take prisoners and treat them decently. Killing enemy combatants in war is morally permissible if it doesn't violate *jus in bello*.²⁶ Traditionalists accept the doctrine of the Moral Equality of Combatants while Revisionists reject it. Michael Walzer is a prominent Traditionalist, and Jeff McMahan is a leading Revisionist.²⁷

Why reject Traditionalism? McMahan argues that only just combatants have a right to self-defensive violence; hence, just and unjust combatants can't be moral equals. Unlike competitors in combat sports, just combatants – those fighting on the just side – don't waive their right not to be intentionally harmed. Additionally, justice within war requires that attacks be proportionate, meaning that they must not cause excessive harm relative to the importance of the military objective. It would violate proportionality to destroy a city to kill a small number of enemies, for example. On Traditionalism, it's hard to see how *any* attacks from the unjust side could be "proportionate" in a morally significant sense since their military goal either isn't just, or, at best, isn't worth the costs. Traditionalists resist McMahan's analysis, arguing that war is a relationship between states that cannot be reduced to an aggregate of individual actions.²⁸ However, Revisionism has the advantage

²⁴ Bernhart et al., "300,000 Counts of Aiding and Abetting Murder." pp. 743–755 at 745.

²⁵ Barry, Christian and Lars Christie. "The Moral Equality of Combatants." (pp. 339–57) in *The Oxford Handbook of Ethics and War*, eds. Helen Frowe and Seth Lazar. Oxford: Oxford University Press, 2017, p. 339.

²⁶ Walzer, Michael. *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, 4th ed.. New York: Basic Books, 2005, p. 36.

²⁷ McMahan, *Killing in War*, pp. 51–60; and "On the Moral Equality of Combatant." *Journal of Political Philosophy* 14 (2006): 377–393 at 380–383.

²⁸ For an overview of this debate, see Frowe, Helen. *The Ethics of War and Peace*, 3rd ed. New York: Routledge, 2022, ch. 6.

of parsimony: it explains war ethics in terms of the moral principles that govern ordinary self-defense without positing additional principles for war.

Let me say one thing further about the issue of just combatants waiving rights. Presumably, this would happen when they enlist or, in the case of officers, when they receive their commissions. Enlistment oaths don't generally contain provisions that do this explicitly, so the waiver must be implicit. Typically, if an agreement contains an implicit provision, we shouldn't expect any party to that agreement to be shocked when the provision is stated explicitly. But I suspect Ukrainian troops would be incredulous upon being told that by enlisting they had given the Russian troops invading their country a *moral* right to kill them. Imagine we could offer them each small sums of money in exchange for signing a document that explicitly waived their moral right not to be killed by Russian troops in ways that don't violate *jus in bello*; how many would sign it? I think that few would, indicating that most believe they haven't waived those rights already. We should accept that interpretation in the absence of a compelling argument to the contrary.

Imagine that recruits could choose which of two enlistment oaths to take and receive distinct uniforms corresponding to their choice. One oath explicitly waives the right not to be harmed by uniformed enemies who fight within the bounds of *jus in bello*; the other says that this right isn't waived. Enlistees are made to understand that the rights-waivers gain the right to target the rights-waivers in enemy countries' militaries, regardless of who (if anyone) is fighting on the just side. By contrast, the rights-retainers would only have the right to target unjust combatants in a just war of self-defense. How many of the recruits to the militaries of all the countries in the world would, if given this choice, choose to waive their rights? I suspect not many. Most enlistees have some material motives for enlisting, but many also want to protect their countries and fight for just causes. So the claim that they, or any other just combatants have waived these rights is dubious.

Revisionism and Complicity

Revisionism makes it hard to avoid the conclusion that unjust combatants, like low-level Holocaust perpetrators, are guilty of being accessories – at least – to mass murder. Unjust combatants must be prepared to carry out lethal violence against opponents who aren't liable to be killed, knowing some non-combatants will be killed along the way, even if inadvertently. It's hard to see why deliberately killing thousands of people who aren't liable to be killed shouldn't be called "mass murder." Unjust combatants would also be implicated in a slew of lesser crimes – taking prisoners would be tantamount to kidnapping – but let's focus on murder, the most serious charge. For present purposes, we can set aside the thorny question of who the principal murderers are and treat everyone as an accomplice (at least). That's bad enough.

German courts have concluded that being a functionary at a death factory automatically makes you complicit with mass murder (the Demjanjuk standard), whereas being a functionary in a mixed camp such as Auschwitz-Birkenau only makes you complicit with mass murder if you facilitate murder in a relatively direct way, or betray an intention to participate in a scheme of mass murder (the Gröning standard). To be generous, let's judge unjust combatants by the more lenient Gröning standard. That is, let's assume that to be complicit in unjustified wartime killings, unjust combatants must take specific actions to facilitate the deaths of just combatants. Many unjust combatants, and maybe the overwhelming majority, are guilty by this standard.

McMahan observes that reluctant conscripts can avoid harming enemy troops and avoid punishment by firing over their enemies' heads.²⁹ However, the conscientious soldier who deliberately misses his targets still endangers his adversaries. This isn't just a matter of a stray bullet "accidentally" finding a target; firepower is used for a variety of tactical purposes. "Suppressive fire" in military terminology refers to fire intended to degrade the enemy's ability to fire upon or observe their antagonists. Fire doesn't have to be "direct," or aimed at specific targets, to force enemy troops to keep their heads down.³⁰ The sound of a bullet, or many bullets, whizzing overhead might make me take cover and miss signs of a larger attack, or to fire less accurately because I'm eager to get down. Troops who deliberately fire overhead contribute to these effects. Moreover, such troops may also perform mundane tasks such as preparing meals, cleaning equipment, and moving supplies to those at the front who are doing the killing. The combined effect of many such small contributions might be enough to make a reluctant conscript complicit in the overall war effort if he doesn't take further steps to minimize his contributions.

Philosophers and legal theorists wrangle over what makes one complicit in atrocities such as the Nazi Holocaust. If Revisionism is true, then whatever grounds the complicity of Demjanjuk and Gröning seemingly must make many unjust combatants complicit. One view is that willingly making a causal contribution to some atrocity is what generates complicity in it. Precisely what this means depends on background theoretical assumptions.³¹ If causation is understood modally – roughly, A causes B just in case B happens and B wouldn't have happened unless A had also happened – then unjust combatants routinely make the relevant kind of causal contribution to the deaths of just combatants. On an alternative, less liberal view, the relevant kind of causal contribution might require a physical transfer of force from the agent to the victim. This occurs in some combat fatalities, as when one soldier kills another soldier with a bullet or bayonet.

The number of deaths directly caused by a single combatant, or a small number of combatants working together, can be high even in a single incident. A single torpedo from a warship or submarine, or a bomb from a warplane, can sink a ship carrying thousands of people. The sinking of the British ship RMS *Lancastria* on June 17, 1940 due to three aerial bombs dropped by the *Luftwaffe* may have killed more than 5,000 people.³² We must keep in mind those combatants who later die and sustain injuries because they cannot benefit from the support that these slain comrades would have provided. Hence, even by a causal standard of complicity that is narrowly construed, many individual unjust combatants who assist with firing missiles, dropping bombs, and coordinating artillery barrages might thus be implicated in thousands of deaths throughout a long war.

Non-causal views of complicity are also available. Perhaps belonging to a group engaged in an evil collective action generates complicity irrespective of one's causal contribution to that action. Christopher Kutz writes that the basis of legal responsibility in some cases "is not the difference an individual contributor makes, but the common plan,

²⁹ McMahan, *Killing in War*, p. 133.

³⁰ See *Field Manual 3-34.2 Combined-Arms Breaching Operations*, ch. 1, paras 1–12. Headquarters, Department of the Army.

³¹ Kutz, Christopher, "The Philosophical Foundations of Complicity Law." (pp. 148–167) in *The Oxford Handbook of Philosophy of Criminal Law*, eds. John Deigh and David Dolinko. Oxford, UK: Oxford University Press, 2011, p. 155.

³² Fenby, Jonathan. *The Sinking of the Lancastria: Britain's Greatest Maritime Disaster and Churchill's Cover-Up*. New York: Simon & Schuster, 2005.

mediated by each individual's intention to participate in that plan.”³³ As a legal matter, German courts relied on this principle to convict Gröning and uphold that verdict upon appeal.³⁴ As a moral matter, this idea receives support from the intuition that it's wrong to participate in a lynch mob even if you know that the victim would be killed with or without your involvement. By this moral standard, individual unjust combatants may be complicit in thousands of unjustified killings in virtue of their unit membership even if their causal contribution is negligible.

Understanding complicity broadly or narrowly per se doesn't affect the moral comparison between unjust combatants and perpetrators, since a broad view of complicity will expand the complicity of people in both categories. Similarly, a narrow view will narrow the complicity of people in both categories. But to apply a broad conception of complicity to the perpetrators and a narrow one to the combatants would be inconsistent. For example, it would be inconsistent to say that organization membership grounds the complicity of SS members who haven't personally engaged in atrocities, but then to refuse to draw similar conclusions about enlistees in militaries engaged in unjust wars.

If what I've argued so far is correct, then many unjust combatants, perhaps the overwhelming majority, are complicit as accomplices to mass murder even when they kill in ways consistent with the rules of *jus in bello*. Still, it would be premature to conclude that ordinary unjust combatants are the moral peers of perpetrators such as Demjanjuk and Gröning. Three significant moral wedges bear on this comparison: aggravating factors, offsetting praiseworthy deeds, and excuses. Let's consider each.

Aggravating Factors

In law, aggravating factors are features of illegal acts that justify extra punishment; the U.S. legal code specifies that aggravating factors for murder that may justify the death penalty include “Heinous, cruel, or depraved manner of committing the offense.”³⁵ Here I'm using the term more generically to mean anything that exacerbates the wrongness of a morally wrong action or adds to the blameworthiness of the wrongdoer. If Holocaust perpetrators are guilty of something worse than aiding and abetting mass murder, then the received view is partly vindicated. This section considers several aggravating factors that might apply to the actions of perpetrators but not those of law-abiding unjust combatants, or that might apply to the former more frequently or to a greater degree. I won't cover all possible aggravating factors, only the ones I think are most important; hopefully, that will give the reader some idea of how I would address those not discussed.

Genocide

All Holocaust perpetrators participated in a genocide – an attempt to eliminate a group of people, in whole or in part – whereas no combatant who obeys the rules of *jus in bello* does this. This arguably doesn't differentiate low-level Holocaust participants from *Wehrmacht* soldiers, particularly on the eastern front, since Hitler's war was pursuant to genocidal ends; this must have been widely known, and knowingly fighting to enable genocide plausibly constitutes participation. Even so, the moral distinction between genocide and mass murder might constitute a moral wedge between low-level Holocaust perpetrators

³³ Kutz, “The Philosophical Foundations of Complicity Law,” p. 157.

³⁴ Bernhart et al., “300,000 Counts of Aiding and Abetting Murder,” pp. 745–747.

³⁵ 18 US Code § 3592.

and combatants in other unjust wars, for example, those fought for territorial expansion or control of resources.

However, it's not obvious that genocide is inherently morally worse than non-genocidal mass murder. I'm inclined to think that the wrongness of murder and other crimes against individual genocide victims constitutes the wrongness of a genocide. If genocide is an aggravating factor to mass murder, then it can't be a very large one. Suppose one dictator kills 1,000 people because they're members of some group he hates, and another kills 1,001 people of diverse groups for Machiavellian reasons. I think that the second dictator has done the worse thing. (If you disagree, try to think about how many more people the second dictator would have to kill to be as bad as the first). Or imagine that another totalitarian regime committed an atrocity like the Holocaust in terms of its method and death toll but for different reasons (e.g., to terrify others into submission). I think this hypothetical atrocity wouldn't be less reprehensible than the Holocaust; certainly, it wouldn't be *much* less reprehensible. We'd still think it worthwhile to track down and punish these perpetrators decades after their crimes, just as we now do with former Holocaust perpetrators.

Granting for the sake of argument that genocide is intrinsically and categorically worse than "ordinary" mass murder, that would mean that genocide perpetrators would be more blameworthy on average. But it still might be the case that some perpetrators of a non-genocidal atrocity are more blameworthy than some low-level genocide perpetrators. Some participants are more directly involved than others, some are involved for longer, and some, as we'll soon see, have better excuses than others. Thus, Artilleryman Artie could be more culpable than Camp Guard Karl all things considered even if genocide is intrinsically worse than mass murder, depending on how we fill out the details about each.

Killing non-threats

Unjust combatants target enemy troops who, although they're not liable to be targeted, pose threats, whereas almost all Holocaust victims are non-threatening (participants in revolts such as the Warsaw ghetto uprising constitute rare exceptions). You might think that killing a person who isn't threatening is worse than killing a threat, even if your own immoral actions necessitate violent self-defense on the part of the person who is now endangering you. Maybe that's because it's hard to abstain from using violence, just or otherwise, if we could avoid harm by violent means. The person who kills the non-threat doesn't have to struggle against this natural impulse of self-preservation to avoid wrongdoing, so his action seems worse.

To see how this bears on the respective blameworthiness of low-level Holocaust participants and low-ranking unjust combatants, consider the following. A gang has two plans for a bank robbery, each of which requires that someone be murdered. The first plan requires an armed security guard to be killed because he's a threat, and it would be too risky to try to capture him. The second plan involves killing an unarmed civilian to intimidate others into compliance. Is the first plan morally better than the second? Perhaps it *is* slightly less bad since the instrumentalization of the murder victim in the second plan adds to its evil. Now consider how we'd judge the conspirator whose job is to drive the getaway vehicle. Would we judge him any more leniently in the first case than in the second? I think that if there's a difference between their levels of blameworthiness on account of this, it isn't momentous. If that's right, then the analogy suggests that there shouldn't be a very large moral difference between low-level Holocaust perpetrators and unjust combatants on account of whether the people they kill are threatening to them.

A second point to make here is that unjust combatants sometimes kill just combatants who don't pose a threat to them. Think of a surprise attack or an attack from airpower on troops below who are basically defenseless against the onslaught. Thus, if this killing defenseless targets is an aggravating factor that makes unjust killing morally worse, then it's an aggravating factor that applies to some wartime killing.

Callousness

Murders that are especially callous, in that they cut against the grain of natural human sympathy in extreme ways, seem especially wicked. The State of California considered Robert Harris an archetypical candidate for the death penalty not only because he murdered two youths without provocation, but because in the immediate aftermath of this crime, Harris had joked about his victims' deaths and eaten their hamburgers.³⁶ Likewise, death camp functionaries who hear the screams of victims daily seem especially callous.³⁷ Maybe this makes them significantly worse than unjust combatants. Bayoneting an enemy soldier to death also requires unjust combatants to disregard ordinary empathic reactions, but that kind of killing happens in adrenaline-fueled, life-or-death struggle, and so doesn't seem as callous.

Callousness indicates, and partly constitutes, bad moral character, and it may be predictive of future wrongdoing. For these reasons at least, it was rational for the State of California to consider these details about Harris's behavior in his sentencing. However, the claim that callousness is an aggravating factor in the sense that it makes murder morally worse, or makes the murderer more blameworthy, has troubling implications. For this would imply that killing in emotionally distanced ways is less bad than killing in emotionally impactful ways. I hesitate to say this.

Before stationary gas chambers were up and running, millions of Holocaust victims were murdered by bullets. Some perpetrators complained about the "emotional strain" of killing civilians: "Extra alcohol was given to German men who shot Jewish children, but it was not enough."³⁸ At other times and places, the Nazis made sure that each murder was accomplished through a series of tasks that were fatal in their combined effect, thereby diminishing each perpetrator's sense of personal responsibility. Surely – I want to say – by making mass murder more psychologically comfortable for the perpetrators, the Nazis weren't thereby making it *less wrong* or *less blameworthy*. Just as surely, a more technologically advanced Nazi regime that carried out mass murder by even more distanced and sanitized means wouldn't have been less wicked than the actual Nazis; if anything, its evil would be more refined. Thus, I'm skeptical that we should put much weight on callousness as an aggravating factor.

³⁶ Watson, Gary, "Responsibility and the Limits of Evil: Variations on a Strawsonian Theme." (pp. 119–148) in *Perspectives on Moral Responsibility*, eds. John Martin Fischer and Mark Ravizza. Ithaca, NY: Cornell University Press, 1994, at p. 132.

³⁷ Bronst, Sebastian, "Prosecution at Trial of Nazi Camp Secretary: Gas Chamber Cries 'Clearly Audible'." *The Times of Israel*, October 19, 2021.

³⁸ Snyder, T. *Black Earth: The Holocaust as History and Warning* New York: Tim Duggan Books, 2015, p.166.

Suffering

Murders that inflict extreme suffering on victims are especially bad. Death in Nazi gas chambers could take up to 30 minutes.³⁹ Moreover, this came only after victims had been subject to abuses such as starvation in ghettos and the degrading transportation by train to places of execution. This suffering compounds the evil of unjustified killing, so it certainly constitutes an aggravating factor. Some Holocaust murders occurred quickly, however. Some perpetrators at shooting pits even took perverse moral pride in how quickly they dispatched victims.⁴⁰ At the same time, some war deaths take days or weeks to eventuate, as when wounded people succumb to infection, disease, or starvation. It seems reasonable to guess that on average, perpetrators are responsible for more suffering than unjust combatants; however, some unjust combatants might be responsible for more suffering than some perpetrators.

Offsetting Praiseworthy Actions

Agents are praiseworthy when they perform supererogatory actions and when they do what's morally required in especially demanding circumstances. I think agents can also sometimes be praiseworthy for their efforts and intentions even when they do the wrong thing. Suppose my brother is a recovering kleptomaniac; if he usually steals ten times a week, but this week he has only stolen once, I might praise him for his effort and improvement, even though he's still falling short. Another kind of case occurs when a wrongdoer does something praiseworthy in the context of participation in an overall wrong project that he couldn't reasonably be expected to know was wrong. Unjust combatants perform praiseworthy actions in each of these circumstances.

Some actions performed in an unjust war are morally justified, as when unjust combatants resist unjust attacks from the just side. The Allies' aerial bombardment of German and Japanese cities at the end of World War II, which culminated with the detonation of two nuclear bombs on Japanese cities, I believe, constitute paradigm cases of *jus in bello* violations from the just side. Any Axis pilots fighting to prevent civilians from being incinerated in these attacks would have been not only excused but acting *justly*; both Walzer and McMahan seem to be committed to that position.⁴¹ Perhaps not many German and Japanese combatants directly tried to repel attacks of that sort, but being a combatant entails a readiness to respond to such attacks should they materialize. Those who were fighting to keep the enemy line as far away from the homeland as possible were doing so in part to reduce the frequency of such attacks.

Just wars sometimes include unjust phases, or phases which include many *jus in bello* violations, and unjust wars sometimes include morally complicated phases. The invasions of Manchuria by Japan in 1931 and Poland by Germany in 1939, and subsequent invasions of other countries by these belligerents, were unjust, and violent resistance to those acts of aggression was justified. Near the end of the war, however, the best these belligerents could hope for was to hold out for a negotiated peace and the possibility of avoiding an undignified occupation. Some Japanese and German troops presumably understood this, and they might have sincerely believed that negotiated peace

³⁹ Bernhart et al., "300,000 Counts of Aiding and Abetting Murder," p. 76.

⁴⁰ Ibid.

⁴¹ McMahan, *Killing in War*, p. 129; Walzer, *Just and Unjust Wars*, pp. 255–268.

would have been better for the world. That's particularly true considering the view that the harsh terms imposed on Germany after the Great War paved the way for another war.⁴² How were they to know that this cycle wouldn't repeat itself, leading to a third world war?

World War II fortunately didn't have a sequel, but what happened to Japan and Germany at its conclusion was bad enough. To focus on Germany: the invading Red Army raped as many as 2 million victims, many of whom, and possibly a majority, were gang raped.⁴³ The victorious Allies helped the countries of eastern and central Europe expel their German-speaking minorities. Between 12 and 14 million people, mostly women and children, were forcibly transferred to Germany, many of them crammed on trains like cattle in what historian R.M. Douglas calls the "greatest forced migration in history."⁴⁴ Estimates of fatalities range between 500,000 and 1.5 million through disease, starvation, and abuse, and many of these occurred in repurposed Nazi camps, such as Auschwitz.⁴⁵

I think the German troops who fought in this last stage in the war out of concern for these consequences, and others that fortunately didn't eventuate, might be substantially, and perhaps even fully, excused for that participation since they might have reasonably believed that they were at that point fighting for a just cause. Even with hindsight, the relevant historical counterfactuals are difficult to determine. Negotiated surrenders could have spared the world the suffering of the war's final stages but might have resulted in later generations of Japanese and Germans failing to disavow the fascist regimes that launched the war; Holocaust denial would likely be more rampant had the death camps not been uncovered, photographed, and documented by the invading Allies. Still, I think unjust combatants might be praiseworthy for courageous actions, such as rescuing injured comrades, in such circumstances.

Even when unjust wars are in their most flagrantly unjust stages, unjust combatants who take pains to uphold *jus in bello* norms may be praiseworthy for doing so. Wrongdoers who take pains to mitigate their wrongdoing, and indirectly limit the consequences of future wrongdoing, seem less deserving of condemnation than wrongdoers who don't do this. Consider a gang member who participates in a bank robbery, but who, out of a sense of honor and at some risk to himself, works to ensure that no one is physically harmed during the robbery. Perhaps he talks down an especially violent and impulsive fellow gang member. I think that this action probably mitigates his blameworthiness for the robbery. If that's right, then we should say something similar about unjust combatants who respect *jus in bello*. They're doing wrong, but nonetheless deserve praise for making efforts to mitigate the consequences of their wrongdoing.

Can we say something similar about low-level Holocaust perpetrators? Consider concentration camp functionaries who subvert their roles by smuggling food to prisoners, helping them escape, or otherwise mitigating the evil around them. Such people could deserve leniency and possibly praise, depending on the extent of their efforts. At a certain

⁴² Keynes, John Maynard. *Economic Consequences of the Peace*. New York: Harcourt, Brace and Howe, 1920.

⁴³ Dack, Mikkel. "Crimes Committed by Soviet Soldiers against German Civilians 1944–1945: A Historiographical Analysis." *Journal of Military and Strategic Studies* 10 (2008): 2–33.

⁴⁴ Douglas, *Orderly and Humane*, p. 13. Snyder, who generally uses conservative casualty estimates, writes in *Bloodlands*, p. 332: "The flight and deportation of the Germans, though not a policy of deliberate mass killing, constituted the major incident of postwar ethnic cleansing. In all the civil conflict, flight, deportation, and resettlement provoked or caused by the return of the Red Army between 1943 and 1947, some 700,000 Germans died, as did at least 150,000 Poles and perhaps 250,000 Ukrainians."

⁴⁵ *ibid.*

point, they'd no longer be perpetrators, but deeply embedded resistance elements. By contrast, the unjust combatants who perform the just functions I've described wouldn't be subverting their roles as uniformed combatants – they'd be fulfilling them in certain respects. Their jobs require them to stand ready to repel unjust attacks and to take measures to uphold *jus in bello* during the war, often at great personal cost.

Thus, an ordinary soldier who aims to fulfill his official role is committed to doing some just actions, and he might be praiseworthy for some of the things he does in his capacity as a soldier. Death camp functionaries might also do praiseworthy actions that offset their guilt, *but only by subverting their functions*. That's a good reason for regarding these two groups differently. It's unclear how much an individual soldier must do for his guilt to be substantially mitigated. It seems too lax to say that simply being part of a unit that isn't violating *jus in bello* is guilt-mitigating. On the other hand, if he must perform heroic actions to have his guilt mitigated, then this won't apply to most unjust combatants. I think the bar lies somewhere in the middle: it takes significant but not heroic efforts. Hence, offsetting praiseworthy actions might mitigate the guilt of many unjust combatants but far from all of them.

Excuses

Excuses lessen or eliminate the blameworthiness of those who do things that would be wrong to do voluntarily and with knowledge of the relevant facts.⁴⁶ I see three main categories of excuses that might apply to perpetrators and unjust combatants: mental incompetence, coercion, and ignorance.

Mental competence

Excuses of mental incompetence concern the agent's ability to make and act upon sound moral judgments. Insanity, youth, and low intelligence are plausible examples of this kind of excuse. Psychopathy is a more controversial example since there's some evidence that psychopaths lack the capacity to make moral judgments.⁴⁷ Intoxication can impair an agent's ability to make moral judgments, though the agent might be responsible for becoming intoxicated in the first place. Competence-related excuses undermine an agent's responsibility often amplify other excusing factors. Children are more easily coerced and deceived than adults. Hence, child soldiers fighting in unjust wars are less blameworthy than their adult comrades because they generally have less developed capacities for moral judgment *and* because they are more vulnerable to coercion and deception.

Many of the troops fighting for Germany in World War II were underage, particularly in the final stage of the war when Germany was trying to mobilize as many people as possible to resist an Allied invasion. Holocaust perpetrators could also be quite young. Although Nazi typist Furchner was 97 years old at the time her trial began, she was tried before a juvenile court, since she was 18 and 19 years old at the time of her crimes.⁴⁸

⁴⁶ McMahan, *Killing in War*, ch. 1.

⁴⁷ Experts also debate whether psychopathy, which is diagnosed based on symptoms like many mental disorders, is a unified phenomenon. See Jurjako, Marko, Luca Malatesti, and Inti A. Brazil. "How to Advance the Debate on the Criminal Responsibility of Antisocial Offenders." *Neuroethics* 17 (2024): 1–17.

⁴⁸ Bella, Timothy and Victoria Bisset, "Nazi Secretary, 97, Convicted for Role in 10,000 Murders at Death Camp." *Washington Post*, December 20, 2022.

Even though in other countries such as the U.S. this age is old enough for her to be tried as an adult, there's a difference between legal and moral adulthood. Some legal adults will be below the mental maturity level of some legal children, and these people might still be partly excused because of their immaturity.

Coercion

The Nazis drafted men of fighting age into the military and severely punished those who dared to refuse. Austrian Franz Jägerstätter was imprisoned, beaten, and finally executed for his conscientious refusal to serve in the military under Hitler's leadership.⁴⁹ By contrast, SS members were willing perpetrators. There are no known instances of members of the SS facing severe punishment because they refused to participate in atrocities. Some were merely called names; others were passed over for promotion.⁵⁰

Note, however, that even if they weren't coerced into directly participating in the Holocaust as camp guards and other functionaries, they would still have been made to participate in the war effort and thus support the Holocaust less directly since enabling the Holocaust was one aim of the war. Moreover, if Revisionism is correct, as I've argued, then participating in an unjust war is morally like participating in a genocide even when the war isn't genocidal. Thus, the camp guards were coerced into participating in an atrocity in one way or another. The only uncoerced choice they had concerned the manner of participation. Those deciding between serving as a camp guard or on the front lines were forced to choose between a form of participation that was more directly murderous, but relatively safe, or in a way that was less directly murderous (or had fewer aggravating factors), but more dangerous.

Not all unjust combatants are drafted. Those who enlist or seek commissions voluntarily, and those who were conscripted but who would have voluntarily participated had there not been a draft, obviously lack a coercion excuse. Those who are conscripted into an unjust war, but who might have taken measures to avoid being conscripted, such as fleeing the country or going into hiding, might not be fully excused. The same can be said for those who can evade participation by accepting a less severe penalty, such as imprisonment. Even those under severe duress, such as the threat of execution, might not be fully excused if they don't take steps to minimize their contribution after they've been conscripted by, say, deliberately working at a sluggish pace.

Perhaps coercion never completely excuses unjust combatants. As McMahan notes, "duress is never literally irresistible; hence, while that excuse may render a person altogether blameless, it does not render him wholly non-responsible."⁵¹ Torture, like the threat of execution, might simply be too much to bear for all but the most stoic people. There are grounds for doubt about whether the coerced agent is entirely blameless for participating even in these extreme cases. Jägerstätter, who faced torture and execution, refused to mouth an oath of loyalty to Hitler. He seemed to believe that this is what morality required of him, though the courage he displayed seems supererogatory. I think he would have been fully excused had he complied to the degree needed to save his life, but his heroic determination to refuse even this minimal participation is especially admirable.

⁴⁹ McMahan, *The Ethics of War*, p. 136.

⁵⁰ Douglas, *The Right Wrong Man*, p. 223.

⁵¹ McMahan, *Killing in War*, pp. 175–176.

When considering what sort of coercion excuses unjust combatants, we should keep consistency in mind. Would our standard for the combatants also be acceptable for the perpetrators? As mentioned, most Holocaust perpetrators weren't coerced into being death camp functionaries, but there is one class of Holocaust perpetrators who did participate under considerable duress, and their example is instructive. These were Soviet prisoners of war who were given a chance to escape prisoner-of-war (POW) camps and be trained at the Trawniki school to become *Wachmänner*, armed, uniformed assistants to the SS. Out of a total of 5.7 million Soviet POWs in German captivity, 3.3 million didn't survive the war, mostly because of starvation, so, understandably, those in captivity would do almost anything to get out.⁵² Snyder notes that "there are no known cases of anyone refusing to leave the starvation camps when offered a chance to do so, nor are any likely to be found."⁵³

Demjanjuk began his military career on the Soviet side before being captured by the *Wehrmacht* and was then given this opportunity to train at Trawniki, apparently because of his experience operating heavy machinery. Conditions for Soviet POWs had improved by the time Demjanjuk had been captured;⁵⁴ nevertheless, Demjanjuk claims he suffered extreme hunger in captivity. At one point he said: "I would have given my soul for a loaf of bread."⁵⁵ Maybe that's essentially what he did. Even if this is an embellishment to garner sympathy, Demjanjuk might have reasonably feared that conditions might deteriorate so that starvation became an imminent threat.⁵⁶ As a child, Demjanjuk had survived the Holodomor, Stalin's engineered famine in Ukraine, and so the thought of dying by starvation probably struck him with a particular horror.

Once he had become a Trawniki *Wachmann*, Demjanjuk had options, albeit not enviable ones. He could have deserted, as Trawniki *Wachmänner* frequently did. Historians called as witnesses during his second trial testified that had Demjanjuk deserted from Sobibor without taking his weapon, he'd have been subject to minimal punishment upon recapture (though, of course, he'd be defenseless). If he'd deserted with his weapon, then he could defend himself but he'd face execution upon recapture since it would have been assumed that he intended to defect.⁵⁷ There was a third, bolder option: Demjanjuk could also have attempted to start a rebellion. Indeed, a massive uprising did occur at Sobibor in 1943 in which 300 inmates escaped, leading to the permanent closure of the camp. When he was at Majdanek, Demjanjuk was disciplined for making an unauthorized trip to a brothel, so he had the wherewithal to disobey his superiors when sufficiently motivated.⁵⁸

If Demjanjuk had been a Sobibor functionary only until he found an opportune moment to desert, then he might be significantly excused for his behavior there. Even if he were there for longer, a heroic action such as aiding a rebellion or escaping with several prisoners would give us grounds for leniency. But once he was part of the Nazi machinery

⁵² Douglas, *The Right Wrong Man*, p. 225.

⁵³ Snyder, *Black Earth*, p. 200.

⁵⁴ Ibid.

⁵⁵ "Obituary: John Demjanjuk." *BBC News*, March 17, 2012.

⁵⁶ After characterizing Demjanjuk's situation as actually amounting to "a choice between collaboration and forced labor," Douglas adds: "This is not to say with certainty that Demjanjuk knew of these improved prospects. It is possible that Ukrainian POWs still believed that collaboration offered the only meaningful alternative to death"; Douglas, *The Right Wrong Man*, pp. 225–226.

⁵⁷ Douglas, *The Right Wrong Man*, p. 227.

⁵⁸ Douglas, *The Right Wrong Man*, pp. 26–27.

at a death camp, he had an obligation to minimize his participation. If that's right, and if participation in an unjust war is tantamount to aiding and abetting many murders, then we shouldn't absolve unjust combatants who are under a similar degree of coercion. Jägerstätter believed that some actions simply shouldn't be done, even at the cost of one's life. On this uncompromising view, unjust combatants may not be excused even if they're threatened with torture and execution. On a more forgiving view, unjust combatants have less stringent obligations to minimize their participation; still, many conscripts probably fail to meet these obligations.

Ignorance

Unjust combatants often believe their cause is just, but it's hard to believe that anyone working at a death camp doesn't know he's doing something wrong (unless, that is, his ignorance is culpable). In a documentary about the Gröning trial, Harvard law professor Alan Dershowitz said that the former Accountant of Auschwitz "had to know at some level of consciousness that it can't be legal to murder infants, babies, the elderly, to murder people who are his age now. He had to know that that was not only wrong but in some ultimate sense illegal."⁵⁹ Set aside the dubious inference from immorality to illegality. McMahan seems to agree.⁶⁰

Just as those who enlisted voluntarily aren't excused by coercion, those who fight knowing that their cause is unjust aren't excused by ignorance. Some must know or strongly suspect that their cause is unjust. Those who wrongly believe their cause is just, but whose ignorance is culpable – induced by epistemic negligence and active self-deception – won't be fully excused. Their degree of blameworthiness depends upon the gravity of their epistemic sins. Presumably, many unjust combatants accept Traditionalism and assume soldiers must submit to their political leaders who alone bear the responsibility for the justice of the war. Even if Traditionalism is mistaken, good faith belief in it might be exculpatory, as Thomas Hurka argues.⁶¹

Whether moral ignorance excuses is philosophically contentious. Aristotle held that ignorance of particulars (empirical facts) excuses, but ignorance of universals (moral principles) doesn't.⁶² You may be excused for accidentally killing a friend you mistook for a hostile intruder, but not for deliberately killing an innocent person because you think killing for fun is permissible. Other philosophers have staked out different views. Elizabeth Harman argues that ignorance of "contentious" moral truths could excuse an agent, but ignorance of fundamental moral truths isn't exculpatory.⁶³ Hence, even assuming that Revisionism is true, unjust combatants who mistakenly believe Traditionalism could be excused on Harman's view. Gideon Rosen departs from Aristotle more radically, arguing that even ignorance of fundamental moral truths is exculpatory if there's nothing procedurally bad about how the mistaken moral beliefs were formed. Thus, a Hittite slave owner in antiquity might not be culpable for assuming that slavery, as it was practiced in

⁵⁹ Shoychet, *The Accountant of Auschwitz*: [1:02:45–1:03:10].

⁶⁰ Case, Spencer. January 26, 2022, *Micro-Digressions: A Philosophy Podcast*, Episode 25: "Killing in War" [30:30–33:00].

⁶¹ Hurka, Thomas. "Liability and Just Cause." *Ethics and International Affairs* 21(2), 2007: 199–218.

⁶² Aristotle. *Nicomachean Ethics* Book III.1: 1110^b1, 29–33.

⁶³ Harman, Elizabeth. "Does Moral Ignorance Exculpate?" *Ratio* 24(4) 2011: 443–468.

his society, is permissible.⁶⁴ If Rosen is right, then unjust combatants could be excused for believing that wars of conquest are just. And if that belief isn't culpable, then it seems unfair to blame them for anything they've done because of that false moral belief.

If moral ignorance partly or fully excuses unjust combatants, then the Revisionist might have to say that some perpetrators are also excused because of their empirical and moral ignorance. A true-believing Nazi would be convinced that the very existence of the Jews and other groups posed a long-term threat to humanity because of their biology and culture. Someone indoctrinated might think that it's permissible, and perhaps required, to destroy those groups to prevent that threat from being realized.

Even on a view like Rosen's, a perpetrator who acted on empirical or moral ignorance would only be fully excused if his beliefs were arrived at in acceptable ways; they must not be the product of weakness of will (e.g., indulgence in wishful or biased thinking). The ignorance of Nazi true believers probably wasn't generally the product of good faith reasoning. Nazism disdains reason. Initiates are instructed, chillingly, to think "with the blood" and place racial hatred outside the jurisdiction of rational thought.⁶⁵ Some perpetrators clearly remained ignorant of the consequences of their actions through self-deception. One vivid example of this comes from Robert Jay Lifton's research on Nazi doctors:

One doctor who had shipped large allocations of cyanide to the SS storm troopers who ran the camps seemed genuinely shocked to learn that it had been used to exterminate Jews and other people. Comments Lifton dryly: "He had worked very hard not to know."⁶⁶

We still shouldn't assume that all ignorant perpetrators must have been culpably ignorant. We all depend to some degree on epistemic authorities, and when people in these positions abuse their power, we are innocent victims of their deceit. Consider the case of Jim Keegstra, a Canadian schoolteacher who was fired in 1982 after parents discovered that he was indoctrinating their children with Nazism and Holocaust denial. The replacement teacher found Keegstra's former students difficult to de-program, as Keegstra's indoctrination had calcified into a well-nigh unfalsifiable dogma. Jonathan Glover writes:

One member of Keegstra's class had his mind changed by a trip to Dachau [the site of a former Nazi concentration camp in Germany] paid for by a Calgary businessman, but for some this was more evidence that the Jews were determined to eradicate knowledge of their conspiracy.⁶⁷

The ignorance into which Keegstra indoctrinated his students was probably non-culpable, at least at first. Ordinarily, students *should* trust their teachers and books in the school library. Thus, unsuspecting targets of propaganda can innocently become true believers. It's unsettling that Keegstra had this effect on these Canadian schoolchildren, who lived in a country where the crimes of Nazism are nearly universally acknowledged and abhorred.

⁶⁴ Rosen, Gideon. "Culpability and Ignorance." *Proceedings of the Aristotelian Society* 103(1) 2003: 61–84 at 64–65.

⁶⁵ Stone, *The Holocaust: An Unfinished History*, ch. 1.

⁶⁶ "Behavior: Doctors of the Death Camps." *Time Magazine*, June 25, 1979.

⁶⁷ Glover, Jonathan. *Humanity: A Moral History of the Twentieth Century*, 2nd ed. New Haven, CT: Yale University Press, 2012, p. 363.

We can only imagine the epistemic damage that a sophisticated propaganda campaign can inflict when it's spearheaded by someone as charismatic as Hitler and amplified by every apparatus at the state's disposal. That's especially true when the victims are children. Here's a sample of what children in the Third Reich were up against: "From their first days in school, German children were imbued with the cult of Adolf Hitler. His portrait was a standard fixture in classrooms. Textbooks frequently described the thrill of a child seeing the German leader for the first time."⁶⁸

At its limits, the ignorance excuse shades into the mental incapacity excuse: people who have absorbed many years of such indoctrination might be so badly deceived that they have lost their capacity to effectively reason independently, at least temporarily. One former Nazi concentration camp commandant said in an interview: "Today it seems so cruel, inhuman and immoral. It did not seem to me then: I knew very well what I was going to do in the SS. We all knew. It was something in the soul, not the mind."⁶⁹ Maybe he should have said: "It was in the blood, not in the mind."

Unjust combatants can more plausibly plead ignorance than Holocaust perpetrators because it takes a lot more indoctrination to convince someone that killing entire populations, including children, in murder factories is the right thing to do than it does to convince people that invading another country and subduing its armed forces is morally justified. Nevertheless, many, and perhaps most, unjust combatants who act out of moral and empirical ignorance are, to one degree or another, culpably ignorant. And, of course, those who knew from the outset that the war they're involved in is unjust have no recourse to the ignorance excuse.

Conclusion

I've argued that Revisionism entails that unjust combatants who abide by *jus in bello* rules are morally more like low-level Holocaust perpetrators than is generally appreciated. And since the case for Revisionism is compelling, we must accept that conclusion. Nonetheless, there are good reasons to think that on average unjust combatants are somewhat less culpable than low-level Holocaust perpetrators. Even so, some unjust combatants are as culpable as some perpetrators. Some are likely even more so.

Let's return to Camp Guard Karl and Artilleryman Artie. In the case I described, Artie is a volunteer soldier who is indifferent to the justice of the war, whereas Karl was deceived by propaganda into endorsing the Nazi cause. Neither has a coercion excuse, and Artie has no ignorance excuse. Depending on the circumstances of Karl's induction into Nazism and the correct philosophical view about what kind of ignorance excuses, Karl plausibly has a partial ignorance excuse, though it strains credulity to think that his ignorance is completely non-culpable. Artie performs some just functions by standing ready to resist unjust attacks from the just side. Let's say he also performs some praiseworthy actions in upholding *jus in bello* norms. If Artie's efforts to uphold *jus in bello* are heroic, this should significantly soften our condemnation of him.

I think that Artie is probably at least as blameworthy as Karl, and possibly more so in the variation in which his efforts to respect *jus in bello* are the bare minimum. After all, Artie has no ignorance excuse, and he's probably more important than Karl in advancing the

⁶⁸ United States Holocaust Museum. "Indoctrinating the Youth." *Holocaust Encyclopedia*. [link to the article](#); accessed: July 2, 2024.

⁶⁹ Glover, *Humanity*, p. 361.

cause of the unjust side. If Karl is stationed at a small camp, then Artie might be implicated in more killings than Karl. Artie would also be participating in the killing more directly than Karl by doing things like firing artillery shells, making him more like a principal murderer than an accomplice to murder. I'm not sure whether that makes a moral difference, but it might make some.

Some readers might place more weight on the aggravating factors than I do; in particular, many will think that assisting with genocide is much worse than assisting with a campaign of mass murder that isn't genocidal. However, we'd have to place extraordinary weight on this aggravating factor to think that *all* perpetrators are more blameworthy than *all* unjust combatants. We can tinker with the stipulations to make the contrast starker: Karl is a camp guard for a shorter time – only a week, or a single day – and Artie is a noncommissioned officer, commissioned officer, or even a general, for years of war. It seems implausible to me to insist that the moral difference between genocide and “ordinary” mass murder would be great enough to render Karl more culpable than Artie in all these variations.

How, then, should we treat veterans of unjust wars and former low-level Holocaust perpetrators, given that there's less moral difference between these groups than is widely believed? Should we be harsh and treat the veterans more like war criminals, or merciful and treat people who are the counterparts of Demjanjuk and Gröning as we currently treat veterans of unjust wars? I'm inclined to think that the answer lies somewhere in the middle. We should expect contrition and some sort of repentance from former unjust combatants. This would involve, at a minimum, refusing to participate in military parades or accept honors for one's “service.” For the practical reasons mentioned earlier, legally prosecuting them would probably be unwise, though perhaps they still should be subject to social sanctions until they unambiguously repudiate their past actions.

We might need to modify our reactions toward low-level perpetrators of the Holocaust and similar atrocities in the direction of mercy. Snyder writes: “There is little reason to think that we are ethically superior to the Europeans of the 1930s and 1940s, or for that matter less vulnerable to the ideas that Hitler so successfully promulgated and realized.”⁷⁰ If we're somewhat less vulnerable to these ideas, it's mostly because we've had better moral luck. The authority experiments conducted by Stanley Milgram show that many ordinary people need surprisingly little inducement to obey unethical orders from people who present themselves as authorities.⁷¹ None of these subjects thought that they would incur any penalty for refusing, and none had been indoctrinated to think they should obey these orders, yet many still complied. Presumably, we should expect even more compliance when these other inducements are present.

Demjanjuk and Gröning were unlikely to be moral exemplars in any place or time. This is especially true of Demjanjuk, who, in his several decades of post-war life, never took the first step of repentance: admitting what he had done. Demjanjuk lacked the character either to resist the currents that pushed him toward complicity or to reflect on this fact later. He is, I think, a much better illustration of the “banality of evil” than Eichmann, about whom Hannah Arendt coined the phrase. Nevertheless, it's unlikely that either Demjanjuk or Gröning would have sunk so low had they not lived in a morally corrupt environment, and this is tragic. In considering what proportion of the population of our

⁷⁰ Snyder, *Black Earth*, p. 320.

⁷¹ Milgram, S. “Behavioral Study of Obedience.” *Journal of Abnormal and Social Psychology* 67 (1963): 371–378 at p. 375.

peers would pass the moral tests they faced, we have little grounds for optimism. I think that was Snyder's point. Those who faced and failed that test deserve our condemnation. They also deserve our pity.

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