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AUTHORITY, SELF-DETERMINATION, AND COMMUNITY
IN COSMOPOLITAN WAR

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ABSTRACT. This paper examines Cécile Fabre's cosmopolitan reductionist approach to war. It makes three main points. First, I show that Fabre must 'thin down' justice's content in order to justify the cosmopolitan claim that the same rights and duties bind people everywhere. Second, I investigate Fabre's account of the values at stake in national sovereignty and territorial integrity. Can cosmopolitanism explain why it is permissible to fight in defense of one's political community? I doubt it. I argue that Fabre's reductionist approach cannot justify national self-defense in many cases. Finally, I explore the role that authoritative institutions play in specifying the rights and duties we have under cosmopolitan justice. I believe Fabre takes an overly simple view of the relationship between rights, duties, and authoritative institutions. A more complex account may leave less space for private war on the part of individuals than she does.

There is a great deal to admire in Cécile Fabre's fine book. The book's range is incredibly wide – from cosmopolitan distributive justice, to civil war, to private security companies. The arguments are also ambitious. Among other things, the book makes a case for revising several traditional just war principles. Like other recent theorists, notably Jeff McMahan, Fabre rejects the 'Moral Equality of Combatants' thesis, holding that whether combatants are liable to be killed instead depends on the moral status of the war they are fighting. She maintains – against the traditional principle of discrimination – that some *civilians*, as well as combatants, may be liable to be killed if they make a significant contribution to an unjust war effort (pp. 76–77).¹ Against the traditional view of just cause, Fabre argues that war can

¹ All parenthetical citations are to Cécile Fabre, *Cosmopolitan War* (Oxford: Oxford University Press, 2012).

be justified not only as a defense against territorial aggression, but also as a means to gain the material resources necessary for a decent life, or to protect the civil, political, and socioeconomic rights of distant strangers. And finally – against the traditional principle of legitimate authority – Fabre argues that war need not be waged by a state: it can instead be carried out by private persons, freelance mercenaries, or even for-profit enterprises. The book deserves a wide audience for these rich and provocative arguments.

Because Fabre's book covers considerable ground, my discussion will necessarily be partial. I am not a just war theorist, and I do not focus here on questions of permissible killing, liability, and proportionality. Instead, I explore some issues involved in Fabre's cosmopolitanism. My paper makes three main points. In the first section, I briefly outline Fabre's theory of cosmopolitan justice, and show that she must 'thin down' justice's content in order to claim that the same rights and duties bind people everywhere. In the second section, I investigate Fabre's account of the values at stake in national sovereignty and territorial integrity. Can cosmopolitanism explain why it is permissible to fight in defense of one's political community? I am skeptical that it can. In the paper's final section, I explore the role that authoritative institutions play in specifying the rights and duties we have under cosmopolitan justice. I believe Fabre takes an overly simple view of the relationship between rights, duties, and authoritative institutions. A more complex account may leave less space for private war on the part of individuals than she does.

Despite my admiration for Fabre's book, the main thrust of my paper will be to question the *reductionism* inherent in her view.² Fabre holds that political communities as such do not matter to war's justification: war is instead a complex aggregation of individual acts, which can be evaluated using ordinary principles of interpersonal morality. Whether individuals are liable to be killed in no way depends on which political community they belong to, but rather on what they themselves have done – whether they have significantly contributed to an unjust cause. Wrongful aggressors violate the human rights of their victims, and these victims are justified in using lethal force against their attackers in self-defense, and third parties in

² For a good critique of reductionist accounts, see Seth Lazar, 'National Defence, Self-Defence, and the Problem of Political Aggression', in Cécile Fabre and Seth Lazar (eds.), *Why We Fight* (Oxford: Oxford University Press, forthcoming).

rescuing them. Moreover, when combatants defend their country against aggression, they do not fight on behalf of their special relationship to their institutions and compatriots, but rather in defense of their individual cosmopolitan rights to a minimally decent life.

Ultimately, I doubt that a reductionist approach can succeed in explaining our intuitive judgments about war. I believe war is about defending legitimate political communities, not just about defending individual cosmopolitan rights. Combatants act as members of an organized political body, and this fact is essential to theorizing war. Despite my disagreement with her reductionism, I think that Fabre's book has done us a great service. No morally serious just war theory can reject the cosmopolitan intuition that all persons, no matter what their communal membership, have human rights we are obliged to respect. Each soldier has an important personal duty not to fight in unjust wars that violate the human rights of distant strangers. Individual combatants cannot 'wash their hands' of this moral responsibility simply because a decision to undertake the war was made by their public officials. This point, found in the work of revisionist theorists of war like Fabre and Jeff McMahan, is undeniably correct.

The challenge, as I see it, is to integrate this important insight with an equally plausible (and appropriately limited) account of the value of legitimate state institutions and the political communities they protect. These institutions carry out morally valuable tasks that *only* states can perform, and for that reason they deserve special protection when they function well. Though state institutions can (and in war, often do) go wrong, they are also morally important: legitimate states specify and enforce justice, they allow us to accept a common definition of our rights and duties amid moral disagreement, and they bring into being valuable cooperative relations among their citizens. In order to capture our intuitive judgments about war, we have to account for this special value of legitimate state institutions. Though I cannot fully make good on this challenge here, I hope at least to show that it is worth taking up.

I. FABRE'S COSMOPOLITANISM: A BRIEF SKETCH AND CRITIQUE

Fabre offers us a distinctively cosmopolitan theory of war. Unlike Fabre, many cosmopolitans are *cosmopolitan egalitarians*: they hold that egalitarian principles (like equality of opportunity, and some

egalitarian principle of material distribution, e.g., the difference principle or equality of welfare or resources) apply both domestically and globally.³ Fabre, however, is not an egalitarian, but a sufficientarian. Like statists, Fabre allows that we may have different rights and duties *vis à vis* fellow-citizens than we do to distant strangers (p. 39), and that these duties may extend to providing them with a higher level of material benefits (p. 44). But egalitarian duties to compatriots are rooted in discretionary acts of association; they are not duties of justice. Like cosmopolitan egalitarians, then, Fabre believes that our duties of *justice* to both compatriots and foreigners are the same. Our basic rights and entitlements do not depend on membership in a particular political community, though non-basic ones might.

For Fabre, all rights and duties of justice are sufficientarian in form. Each individual, wherever she resides, has rights to the resources and freedoms she needs to live a minimally decent life. A minimally decent life goes beyond the mere satisfaction of basic needs (p. 18), to encompass a set of essential capabilities, including: life and bodily integrity; basic health and average longevity; emotional and intellectual flourishing; control over material resources as well as control over one's social and political environment (p. 19). These requisites of a minimally decent life ground a set of human rights which all individuals ought to enjoy, including civil and political rights such as the right not to be killed, raped, tortured, or mutilated; rights to associate, to vote and to run for office; and welfare rights not to have one's health impaired, to be given the necessities of life (income, shelter, clothing, basic healthcare), and not to be interfered with when attempting to secure these resources (p. 26). In the terminology of recent literature, Fabre is a *non-relational cosmopolitan*: for her, sufficientarian justice extends to all persons simply in virtue of features they share as human beings, independently of the institutions or practices in which they participate, or other social relations in which they stand.⁴ These sufficientarian human rights are general rights held against the world at large.

³ See Simon Caney, *Justice beyond Borders: A Global Political Theory* (Oxford: Oxford University Press, 2005); Kok-Chor Tan, *Justice Without Borders: Cosmopolitanism, Nationalism, and Patriotism* (Cambridge: Cambridge University Press, 2004); Thomas Pogge, *Realizing Rawls* (Ithaca, NY: Cornell University Press, 1989); Charles Beitz, *Political Theory and International Relations* (Princeton: Princeton University Press, 1999).

⁴ For this terminology, see Andrea Sangiovanni, 'Global Justice, Reciprocity, and the State', *Philosophy and Public Affairs*, 35(1), (2007), 5–8. See also Laura Valentini, *Justice in a Globalized World* (Oxford: Oxford University Press), Chap. 1.

Once the goods necessary for everyone to live a minimally decent life are provided, however, Fabre argues that the well-off have an autonomy-based right to pursue their goals as they choose. One permissible option is for the wealthy to use their autonomy-right to engage in equality-enhancing domestic projects. Thus, though as a matter of justice the rich in the U.S. owe the U.S. poor the same thing they owe the poor in Costa Rica, once they have satisfied their sufficientarian duties, the U.S. wealthy may devote their remaining resources to their own projects. These may include endeavors producing additional benefits for the American poor or enhancing equality in their own community. Some of our civic rights stem from exercises of this associative prerogative, and are special rights held against fellow citizens. If the U.S. decides to give all citizens \$5000 subsidies, I have a right to my subsidy in virtue of its political decision, but this right is not a requirement of justice, and I would not be wronged if my community rescinded its decision.

I worry whether Fabre's sufficientarianism can fully account for our intuitions about *domestic* justice. Consider a society that severely violates equality of opportunity. In this society, children from the lower social classes rarely complete higher-level education or attain professional jobs. Their background effectively prohibits them from competing, since the rich monopolize access to desirable schooling and opportunities. Yet – because this is not an impoverished society – poor children still have enough to live a minimally decent life. Fabre seems committed to holding that there is no reason of *justice* for this society to even out its class barriers. Once sufficiency has been attained, justice has been done, and then it is a matter of discretion how the society distributes further benefits and opportunities. If these citizens decide to exercise their associative prerogative in a way that enhances their equality, that is perfectly permissible. But it is not required. But – at least in domestic cases – I think most of us will disagree with Fabre. If everyone in a society has the requisites of a minimally decent life, but a small elite still controls the society's productive wealth, monopolizes its desirable jobs and educational opportunities, and exerts undue control over its political process, most of us would say there is significant injustice in this society.⁵

⁵ My worries here are similar to those articulated by Paula Casal, 'Why Sufficiency is Not Enough', *Ethics*, 117:2 (2007), esp. pp. 307, 311.

It is open to Fabre, in response to my objection, to allow that justice has two distinct components: domestic and cosmopolitan. Many people are drawn to some account of sufficiency as the right criterion of *global justice*, reserving a thicker egalitarianism for *domestic justice*.⁶ On this 'two-level' view, our sufficientarian rights impose general duties of justice on everyone across the globe, while our egalitarian rights impose special duties of justice only on political associates. Adopting such a view, however, would mean granting some priority to compatriots, denying the cosmopolitan premise that the *same* rights and duties of justice hold between persons everywhere. If she took this path, Fabre would need to revise her assertion that 'borders are morally irrelevant to justice' (p. 32). She would also need to explain why, in cases of conflict, our sufficientarian justice-duties to human beings necessarily trump our egalitarian justice-duties to compatriots. Since, on this revised view, domestic justice has an associative component, political communities might matter to war's justification, if it can be permissible to impose harms on outsiders in defense of a just egalitarian scheme. To retain her account of just war, Fabre would have to show that this is not the case.

Another, quite different, response is also available to Fabre, which would avoid my 'thinning down' objection in a different way. This response reinterprets the 'cosmopolitan' thesis that all people everywhere have the same fundamental human rights. On a 'political' view, rather than seeing human rights as general moral claims, rooted in our basic humanity and correlated with duties held by all other individuals in the world, we understand them as specifying normative criteria for our inclusion in a legitimate political society.⁷ Justice requires the construction of organized state authorities, through which we shape the laws and policies that define our more specific rights and duties. To be legitimate, these states must give at least minimal consideration to our interests, by respecting our basic human rights. Foreigners have a duty to secure these rights for us when our domestic institutions fail, but – on the political view – that is a distinctly second-best outcome. An ideally just world is one in

⁶ For a view like this one, see Michael Blake, 'Distributive Justice, State Coercion, and Autonomy', *Philosophy and Public Affairs*, 30:3 (2002), 267.

⁷ For this kind of view, see Charles Beitz, *The Idea of Human Rights* (Princeton: Princeton University Press, 2009); Joshua Cohen, 'Minimalism About Human Rights: The Most We Can Hope For?', *Journal of Political Philosophy*, 12(2), (2004), 190–213.

which each person is a member of a reasonably just domestic state, which normally bears primary responsibility for specifying and protecting his rights. Here, cosmopolitan human rights are understood as a subset of the rights required by domestic justice. Adopting the 'political' view would also allow us to hold that domestic justice requires equality of opportunity, even if global justice does not, thereby avoiding the 'thinning down' objection I have pressed here.

Though I am skeptical about Fabre's sufficientarian account in the domestic context, I find it plausible that distant strangers are owed the minimal requisites of a decent life. I do wish Fabre had said a bit more about what counts as a minimally decent life, since the acceptability of her view will turn on where exactly the threshold falls (above basic needs). Some of the appeal of her view may rest on uncertainty about just how demanding the requirements of global justice are. Since each can interpret minimal decency as he likes, this makes agreement easier to generate, but the devil is in the details.

II. COSMOPOLITANISM AND SELF-DETERMINATION

Defense of the political independence and territorial integrity of one's own state is usually taken to be the paradigmatic example of a just cause for war. But can a cosmopolitan explain why the political community is valuable enough to use lethal force in its defense? For the cosmopolitan, groups are not valuable in any collectivist sense. Indeed, Fabre holds that the rights of the political community are *fully reducible* to the rights of its individual members to lead a minimally decent life (pp. 54–55, 106, 284). She further claims that an individual's political affiliation does not have any bearing on his basic entitlements (including the right not to be killed, if he is a citizen of an aggressor state). But – on this basis – can a cosmopolitan actually explain why a state's political independence is worth fighting for?⁸ As long as individuals receive what they are owed in terms of cosmopolitan justice, why does it matter what government they are ruled by?

Fabre offers us two reasons why political communities are valuable. First, such communities have instrumental value as the best vehicle through which to ensure that individuals can live minimally

⁸ Fabre also addresses this issue in 'Cosmopolitanism and Wars of Self-Defense', in *Why We Fight* (forthcoming), and I have drawn on her discussion there as well as in her book.

decent lives. Transfer costs will be higher from distant strangers, and cosmopolitan rights may legitimately vary to take account of local climatic, geographical, and social conditions. Some rights that accrue to citizens are thus instantiations of more general cosmopolitan rights, once the fact that these rights are best implemented in local contexts is taken into account. (I have a right to participate in US elections, but that is an instantiation of my general right to shape a political community; I have a right against the US state to resources, but this is instantiation of my general right to minimally decent life) (p. 42).

Second, Fabre suggests that co-citizenship has value as an exercise of free association and as the vehicle through which a specific cultural identity can flourish (p. 39). Again, the well-off have a right, after sufficientarian justice has been accomplished, to pursue their goals and projects, which may include contributing to a territorially-bounded or culturally defined association. They can allocate among themselves benefits from these cooperative ventures and confer specific rights and duties on one another (for example, with respect to maintaining their distinct cultural identity over time). Relationships of political community may thus have an additional intrinsic value that is not reducible to their effectiveness as a means of satisfying demands of justice.

I want to interrogate both of these explanations for the value of political community. Neither, I think, offers us an adequate explanation for why it might be justified to use lethal force in defense of our state's territorial integrity and political independence. Of course, sometimes it will be justified to use force against an aggressor state on purely individualist grounds: this will be the case where the lives or very basic rights of many citizens are at stake. Here defending the independence of the state *just is* defending the lives and basic rights of its members, because if the aggressor state wins, the victim state's inhabitants will be killed, tortured, or raped *en masse*. Fabre often appeals to such considerations in justifying collective self-defense (p. 66).

My criticism of cosmopolitanism is thus not that it can *never*, under any circumstances, justify defense of the political community. But I think it can obviously do so only where aggression takes the form of a direct threat to the lives and limbs of individuals. I am

therefore more interested in cases where – though the independence of the political community is threatened – the lives and basic rights of individuals are not. Many wars have more limited objectives: regime change or the acquisition of territory and political power. A distinctive feature of these cases is that the aggressor will pose a lethal threat to individual citizens only if they choose to resist his invasion, rather than surrendering to his demands. So we must ask whether the citizens of a wrongly attacked community have the right to resist. Can the cosmopolitan explain why citizens might be justified in defending their political community even when their rights to a minimally decent life are not at stake?⁹

Since it may help to have an empirical example of the kind of conflict I have in mind, let me offer one: the U.S. annexation of Hawaii. In 1893, a small group of American plantation owners – backed by a shipload of U.S. marines – overthrew the Hawaiian monarchy and imprisoned its queen. Their *coup d'état* was precipitated by a proposed constitution that would have strengthened the monarchy and weakened the owners' political and economic power. Under duress, the queen yielded her throne in favor of a new government staffed by American-aligned interests, saying that she did so in order 'to avoid any collision of armed forces, and perhaps the loss of life'.¹⁰ Five years after the coup, Hawaiian territory was legally annexed to the United States. The overthrow of the Hawaiian government was nearly bloodless, with only one policeman wounded. There were no massive violations of human rights, and indeed, most officials from the former government were retained, their actions now subject to approval by an 'Executive Council' that represented American business elites. Things went on much as they had before, except that the threat to U.S. interests was neutralized and formal sovereignty over the area lay with the American state.

The Kingdom of Hawaii was too weak to effectively defend its sovereignty in the face of wrongful aggression. But many of us believe that had Hawaii been able to use force effectively, it would have been permitted to do so. Both international law and common-sense morality reflect this position. Of course, it is possible to deny

⁹ My objections here are similar to those raised by Seth Lazar in 'National Defence, Self-Defence, and the Problem of Political Aggression'.

¹⁰ For a brief overview of this history, including the Queen's statement, see www.hawaii-nation.org-soa.html.

that a state has a liberty to use lethal force to defend its sovereignty when there is no direct threat to the lives and limbs of its citizens.¹¹ But a distinctive feature of Fabre's cosmopolitanism is that it tries to accommodate a traditional understanding of national self-defense. Indeed, she says the intuition that a sovereign community has a right to defend itself against wrongful aggression is 'deeply rooted in common-sense morality' (p. 53), and should be retained, if possible. The critique I offer is thus an internal one: I believe Fabre's cosmopolitan justification of the traditional understanding fails. It is open to her, in response, to adopt a revisionist position that hews less closely to common-sense morality. But this would involve significant changes in her view.

With the Hawaii example in mind, let me re-examine Fabre's two reasons why the political community is worth fighting for. First, she holds that the political community is instrumentally valuable as a vehicle for fulfillment of individuals' rights to the resources necessary to lead minimally decent lives. Can the instrumental value of the Kingdom of Hawaii account for its right to defend its political independence? No. Hawaiians were no worse off, in terms of their civil and political rights such as the right not to be killed, not to be raped, tortured, or mutilated; rights to associate (other than politically); and welfare rights to the necessities of life (income, shelter, clothing) under U.S. rule than they had been under their Queen. Because the instrumental argument sees a political community's self-determination simply as a vehicle for fulfilling its members' cosmopolitan rights, it is hard to see how this generates any complaint against annexers that would do an equal or superior job at securing these rights.¹²

Let me turn, then, to Fabre's second explanation for the value of the political community. Can it do a better job? Her second explanation references individuals' 'right to associate with one another and form politically independent and sovereign communities based on shared cultural norms and understandings'.¹³ This seems more promising: if the subjects of a state are also free *agents* who choose to

¹¹ Some other cosmopolitan just-war theorists have denied this. See David Rodin, *War and Self-Defence* (Oxford: Clarendon Press, 2002), 127–138.

¹² Rodin, *War and Self-Defense*, 148–149, makes a similar critique of theories that reduce claims to self-determination to claims about the value of legitimate political order.

¹³ Fabre, 'Cosmopolitanism and Wars of Self-Defense', 107.

associate together, then colonial annexation would manifest a fundamental disrespect for their agency.

While I think Fabre's second explanation is closer to the truth, I fail to see exactly how it works. In speaking of individuals' 'personal prerogative to associate with one another' (p. 65), she assimilates the moral status of the state to that of any other free association, like a club or a church. We think that a club or a church deserves some autonomy because its members have chosen to join it. Call this *the free association view* of self-determination. On the free association view, the state's self-determination derives from the free choices of individuals to belong to it.¹⁴ In respecting the state's political independence, we are really just respecting the associative choices of each-and-every member. This allows us to reduce what initially seemed like a *group* claim to political independence to a set of jointly connected claims of individuals to associate together, and to be respected in their choices to do so.

The free association view seems quite difficult to apply to the case of a state, however. The Hawaiians never chose to join Hawaii – they were just born there. Perhaps they were mostly happy living under their Queen, but that is a different matter. And the free association view of self-determination gets much of its appeal in everyday cases – like churches or clubs – from the fact that members are *unanimous* in their decision to associate together. If a member of a church decides he doesn't want to belong anymore, he can just leave. But it is usually not possible for citizens to leave. Emigration may be difficult and citizens cannot simply repudiate the state's authority. Moreover, citizens are never unanimous in their desire to associate together. Consider Hawaii again: while the vast majority of Hawaiians did not want to be forced into association with the United States, some Hawaiians – plantation owners, workers, and management – welcomed annexation, because of the economic benefits they thought it would bring. So while the forced annexation of Hawaii meant that most Hawaiians' associative choices were not respected, continued independence for Hawaii would also have involved disrespecting some associative choices, namely, those of the minority who wished to join the U.S.

¹⁴ This view has been very capably defended by David Lefkowitz, 'On the Foundation of Rights to Self-Determination: Secession, Nonintervention, and Democratic Governance', *Journal of Social Philosophy*, 39:4 (2008), 492–511.

These reflections indicate to me that it is very difficult to reduce the state's claim to self-determination to any bundle of claims, on the part of individuals, to respect for their free association. The purported reduction will always – on closer inspection – turn out to involve respecting the associative choices of the *majority*. Moreover, as long as we refrain from expelling or removing people from the places where they live, people are unavoidably side-by-side with others who may not share their associative preferences. So it's not the case, say, that we could allow all and only disaffected Hawaiians to secede and join the United States, thereby providing everyone with their preferred political association. For these people will be territorially intermixed with those who would rather belong to Hawaii, and we can't get rid of this problem without moving people around. This problem should make us wonder whether it is right to conceive of the state as a free association at all.

Even if – unlike me – you believe that Fabre's free association view can successfully explain Hawaii's claim to political independence, her account faces a further difficulty: it is not obvious that we have the right to kill in defense of our free association. Suppose someone were to continually prevent me from participating in my book club. It's clear that I have an important claim in justice against him, but do I have the right to *kill* him so that I can attend my club meeting? It does not seem so, particularly if there is no deleterious impact of his actions on my other interests. (I still have plenty to eat, my life, limbs, civil and political liberties are protected, and I can go about my daily activities and form other kinds of associations if I wish.) Perhaps I have a right to use force against this obstructor in some lesser fashion, say by attempting to shove him out of my way. But lethal force seems clearly disproportionate here.

The annexation of Hawaii seems a lot like this case, however. The majority of Hawaiians were prevented from associating together in their preferred political unit. But that was the *only* restriction they suffered – their civil and political liberties, subsistence rights, and rights to life and limb continued to be protected. One might object here that not every exercise of free association is equally valuable: politics may be a much more important form of association than a book club. While true, I doubt this undermines the intended point. The question is whether even free *political* association can justify

killing and maiming people (some of whom are not culpable) in its defense. Many other important interests – such as my interest in retaining my own property, or in freedom of speech – are not thought, by most legal systems, to justify such uses of lethal force. So even if free political association is important, it may not rise to *this* level of importance.

Fabre might concede that the citizens of Hawaii lacked the right to use lethal force in defense of their sovereignty, since free political association is not a weighty enough interest to make the use of lethal force proportionate. But perhaps Hawaiian self-defense could be accommodated within her view in a different way, by appealing instead to an argument from *escalation* (p. 70). Suppose that the Hawaiians tried to defend their sovereignty proportionately, by using non-lethal force. At that point, their American invaders would probably respond by threatening their lives. And once a threat to their lives is in play, the Hawaiians *would* have a right to use lethal force in self-defense. Indeed, Fabre suggests that if I *predict* that, were I to use non-lethal force in defense of my rights, my aggressor would respond with lethal force, then I am permitted to use lethal force against him now, on the basis of that prediction.¹⁵

Consider the book club case once again. Suppose I predict that if I try to shove my obstructor, he will draw his gun and try to shoot me. Can I shoot him now, in defense of my right to associate? Unlike Fabre, I doubt it. Probably what I ought to do instead is shove him out of the way, and be ready with my hand on my lethal weapon should he reach for his gun.¹⁶ Is the Hawaii case significantly different? Suppose the Hawaiians predict that were they to defend their sovereignty using non-lethal force, their invaders would try to shoot them. Can they then shoot first? Again, I doubt it. Probably what they should do instead is to use non-lethal force and be ready with their artillery should the invaders open fire. So it seems unlikely that a mere prediction of a lethal response can justify a *pre-emptive* use of lethal force in defense of political sovereignty.

¹⁵ Fabre, 'Cosmopolitanism and Self-Defense', 130–131.

¹⁶ What if I am certain that the obstructor is much stronger than me, and that my only chance to defeat him is to strike pre-emptively? In a case where an attacker threatens an extremely vital interest of mine, like the right to life, I may be permitted to strike pre-emptively. But I doubt that a threat to a non-vital interest like free association, even when joined with the risk of escalation, can justify the pre-emptive use of lethal force.

Fabre might concede that the Hawaiians are not permitted to pre-emptively use lethal force here. But she might still insist that the use of lethal force would *eventually* become permissible. Suppose that if the Hawaiians use non-lethal force, their opponents will then open fire, at which point the Hawaiians could permissibly fire back in defense of their lives. Knowing these facts, are the defenders morally permitted, all things considered, to impose a non-lethal harm that they correctly believe will begin this chain of escalation, or should they instead surrender? Fabre argues that the Hawaiians may permissibly escalate the conflict. But by initiating an escalation, the Hawaiian defenders not only place their own lives at risk, they risk their compatriots' lives as well. Do they have a right to impose such a deadly risk on others, merely in defense of their political sovereignty? Again, I doubt it. On Fabre's cosmopolitan premises, it hard to see why sovereignty is of sufficient importance to justify imposing such deadly risks. After all, Fabre says that the value of self-determination is largely instrumental to individuals' prospects for a minimally decent life (p. 284), and if the defenders do surrender, their fellow-citizens' human rights will be safeguarded, since *ex hypothesi* the Americans will impose a minimally just regime.¹⁷ If they fight back, however, many people's human rights will be violated. All things considered, then, it seems that the defenders ought to surrender, even though (strictly speaking) their aggressors are liable to some non-lethal harm.

In response to these reflections, Fabre might agree that her view cannot justify collective self-defense in the Hawaii case. How damning would this be? That depends on the further question of how many wars of this type exist. But it seems to me that political aggression is a non-trivial category. Similar objections will apply in any situation where victims of unjustified aggression do not expect to suffer massive violations of their human rights if they surrender. I believe that many colonial wars – not just the US annexation of Hawaii, but also e.g., the British conquest of India, Egypt, or Malaysia – fit the bill. And the cosmopolitan argument seems to me to render the right to national defense at least questionable in many other cases. On this view, did Kuwait have a right to defend itself against Iraq in the First Persian Gulf War? Did Belgium and France

¹⁷ Fabre denies a duty to surrender in 'Cosmopolitanism and Self-Defence', 132.

have the right to defend themselves against Germany in World War One? And so on.

If my criticisms are correct, then I think they have serious implications for the cosmopolitan approach. One of Fabre's most provocative claims is that wars of collective self-defense can be explained without placing any value on political communities *per se*. She goes to great lengths to establish this. But if political self-determination (a) cannot successfully be reduced to an aggregate bundle of individual rights; and (b) is not weighty enough to justify the use of lethal force, then Fabre's view faces a serious dilemma. *Either* some, perhaps many, wars of collective self-defense are unjustified; *or* political membership plays a greater role in shaping our wartime rights and duties than her cosmopolitan theory is willing to acknowledge.

III. DUTIES OF JUSTICE AND AUTHORITATIVE INSTITUTIONS

A source of uneasiness, for me, about Fabre's cosmopolitanism is that it is unclear exactly what role authoritative institutions play in her account. The scope of duties correlative to human rights is global, but do authoritative institutions play any part in defining, interpreting, or enforcing these duties? I believe Fabre adopts an overly simple model of the relationship between rights, duties, and authoritative institutions. A more complex model of this relationship may not support her contention that there is a human right to private war (p. 113).

Why should we think there is a human right to wage war? The following thesis plays a fundamental role in Fabre's view:

From a cosmopolitan point of view...the rights of state officials are reducible to rights held by individuals, either *qua* individuals or *qua* group members. Accordingly, state officials' right to defend the rights of fellow citizens cannot be justified other than by justifying citizens' very same right. The right to wage war, thus, is a right as held by individuals to kill in defence of their rights (p. 55).

Fabre seems to be saying here that if a state official has a particular right, then according to cosmopolitanism, individual citizens must have that very same right. Thus, if state officials have the right to wage war, so must individuals. Of course, it may not always be in a citizen's interest to *exercise* his 'meta-right' to wage war: often individuals will be better off transferring this meta-right to a state

institution, to be exercised on their behalf (pp. 115, 188). But Fabre argues that in principle ‘individuals can be deemed competent to go to war in prosecution of a just cause’ (p. 286).

I find the thesis that if state officials have a particular right, then individual citizens must have the very same right, questionable. Consider some paradigmatic rights of state officials: the right to levy taxes, to issue a verdict in a judicial dispute, and to penalize parents who refuse to send their children to school. There are no analogous rights held by individuals. Rather, these are *sui generis* rights of state officials. The most charitable interpretation of Fabre’s ‘reduction’ thesis may be as follows: officials’ rights are justified because they *serve* and *protect* other rights that individuals hold against one another. So perhaps each individual has a right against other individuals to a fair share of resources, or to a fair scheme of contribution to public goods, which explains and justifies state officials’ power to levy taxes. But this does not entail that *individuals* have the very same rights that state officials have, e.g., the right to tax. Similar reflections might apply to the right to wage war. State officials have the right to declare and wage a just war, because their exercise of that right safeguards and protects the rights of individual citizens. Still, that does not entail that individuals (in their capacity as mercenaries, say, or employees of private enterprises) have the *very same* right to wage a just war. This strategy for establishing a human right to private war seems unconvincing.

Fabre also offers us a more promising argument. She appeals to the fact that if the freedoms and resources necessary for us to lead a minimally decent life are fundamentally important, then it seems they should be protected, by the use of force if necessary (pp. 115, 145). The right to use force in defense of one’s human rights, in some circumstances, can be derived from the importance of those rights themselves. While this argument seems correct, I doubt that it can ground anything so sweeping as a human right to private war (p. 286). Instead, it seems merely to justify a liberty of self-defense in cases where official protection of one’s rights is unavailable. That a right is valuable enough to be enforced does not entail that it is the individual who holds the right that should do the enforcing. In most circumstances, it entails that an institution should enforce the right, by imposing sanctions and meting out punishment. Where an institution

is unavailable or unreliable, an individual may be granted an exceptional permission to defend his own rights. Analogously, the right of self-defense as interpreted by most legal jurisdictions is a justification that is available only in exceptional circumstances: it allows one to do something that would otherwise be wrongful, namely, killing. It is not a general authorization for individuals to privately enforce their own and others' rights.

Unlike Fabre, I believe that the state as a public institution possesses collective rights (of legislation, jurisdiction, and enforcement) that no single individual could, or should, possess. These rights are not reducible to a bundle of rights of individuals. It is perfectly consistent with normative individualism, I think, to hold that there can be collective institutional rights that cannot be held or exercised by individuals, so long as those institutional rights are justified by their service to, and protection of, individual rights and interests. Individuals benefit from a state's possessing and wielding jurisdictional and enforcement rights, precisely because a state has the unique capacity to do things that no individual could – or should – do. This view of the state as the bearer of *sui generis* rights of legislation, jurisdiction, and enforcement is inconsistent with the thesis that there is a human right to private war.

To see how this view of institutional rights differs from the one Fabre holds, let me contrast three stylized approaches to understanding the relation between individual rights and the rights of institutions. First consider a very simple model of this relation. On this model, institutions are merely useful instruments for coordinating our individual actions to perform clear and determinate 'natural' duties of justice to protect human rights. Here, human rights to the requisites of a minimally decent life are seen as universal, preinstitutional claims. They impose moral duties that people owe one another in their interpersonal conduct. Everyone in the world has both negative and positive duties of justice to everyone else in the world to make sure they enjoy the requisites of a minimally decent life. If someone in the Congo needs food, then all other individuals have a positive moral duty to provide him the food (or some part of the food, or some money to buy food). Here, authoritative institutions play no role in *defining* our rights and duties of justice. They merely help us to efficiently carry them out, perhaps

by imposing penalties if we fail to do what morality tells us we ought to do for others. Insofar as authoritative institutions provide us with the most efficient way of performing our prior moral duties, we ought to comply with them. Insofar as they do not, we ought not comply.

I am not sure whether Fabre endorses this simple model or not. On the one hand, she does suggest that justice is a matter of perfect duties (pp. 23–24), and many of her examples suggest that human rights correlate with interpersonal duties on other individuals to fulfill them. Consider her remarks in Chapter 5, where she analogizes the duty to undertake a humanitarian intervention to the duty to intervene to protect a bystander from assault (pp. 182–183). Or consider her remarks in Chapter 3, where she argues that justice permits the very deprived to wage war against the affluent who violate their subsistence rights. Fabre, citing Grotius, suggests that the affluent have a duty to ‘revert their resources to the common stock’ in order to make them available to the distant needy (p. 105). She also suggests that, for her, ‘there is nothing intrinsically valuable in entrusting territorially-bounded states with the task of resorting to violence’, and ‘whether an institutional actor has the right to wage war on behalf of the victims of rights violations is entirely dependent on its ability to carry out the task at hand’ (p. 188). All these remarks suggest that state institutions play no special role in either defining or enforcing our duties of justice to others.

Now normally, perfect duties of justice are thought to be owed to specifiable individuals who have a right to their performance. Yet it is hard to conceive of our positive duties of assistance toward the distant needy as perfect duties binding the affluent to specific acts of assistance to specific poor persons, in the way the first model suggests. In the absence of an authoritative institution, it is not clear which particular affluent individuals owe what to which particular deprived persons. If the failure to give sufficient assistance to the needy is to provide them a cause for war – as Fabre suggests it does – then it seems essential that the affluent know what their duties of justice require in terms of specific assistance to specific people. Likewise, it is important that the needy people know who owes them what, and when the affluent have defaulted on their duties. But this clarity will be difficult to come by in the absence of an

authoritative scheme. So there may be space within Fabre's view for a more complex model of institutions: on this second model, authoritative institutions would play some role in *defining* what we owe one another as a matter of justice, and not just in helping us to more efficiently carry antecedently specified moral duties.

Some of what Fabre says tells in favor of this second model. Most often, she suggests that our duties of justice require us to *support* just institutions, laws, and policies, which presumably will impose more particular duties on us to do our fair share in the scheme they set up. So Fabre suggests that:

1. citizens and public officials are under a duty of justice to (respectively) support and implement just institutions, laws, and policies, and not to support or implement unjust ones, for the sake of distant strangers, and
2. under negative duties not to take part in structured and organized practices the effects of which are harmful to individuals.

She also says:

3. citizens are not under a positive duty of justice (as a duty of assistance) to act in their daily life to remedy their community's failure to operate resource transfers to the very deprived abroad – e.g., by giving money to Oxfam.
4. Nor are they under a negative duty of justice, in their daily life, not to take part in unstructured practices the effects of which are severely harmful to distant strangers (p. 36).

As an example, she considers the following case: at the moment, France – like other Western countries – wrongly imposes protective tariffs on foodstuffs from African countries, that make African farmers poorer than they ought to be in an ideally just world. Should French farmers be held to a duty unilaterally to raise the price of their products in order to benefit their Kenyan counterparts (p. 28)? Fabre says no. But surely if our moral duties of justice were already pre-institutionally determinate, then we would have a duty to take individual action as suggested by (3) and (4), and perhaps others could make war on us for failing to do so.

This example suggests to me that the relationship between duties of cosmopolitan justice and institutions must be more complex than suggested by the first model, and indeed Fabre seems to agree: she says that 'positive duties of that kind can only be discharged collectively

through institutions' (p. 28). Authoritative institutions, in other words, may be necessary to define and *impose* new duties on us, so that others may enjoy the requisites of a minimally decent life. Whether or not the distant needy can hold us liable for defaulting on these duties may depend on whether or not an adequate scheme for defining them is in place. In the absence of such institutions, it may not be possible to say that we fail to give others what they are owed – since after all, who has a duty to give what to whom is not yet specified – but only something more indirect: that we failed to follow through on our duty to support a just institution. If positive duties to contribute resources to the needy are institutionally-mediated duties, then in the absence of an institution, a particular needy person may not be able to say that any particular rich person has violated *his* rights.

This second model holds that while the *rights* that justice requires us to guarantee for persons are preinstitutionally determinate, who bears the relevant *duties*, and precisely what actions they ought to take, is not so clear. There are two problems: in order to guarantee the rights to the requisites of a minimally decent life of a certain class of beneficiaries, many people may need to act together as part of a coordinated scheme. Absent an institution that can coordinate the scheme, it may be systematically unclear what each individual ought to do, and if each person attempts to act alone, the uncoordinated responses of many people may make matters worse instead of better. Second, in a world when many people fall below the sufficientarian threshold and many people have the resources to respond to their plight, it can be unclear who has a duty to do what for *whom*. Without an institution to *assign* duties to people, it can be unclear which particular group of duty-bearers has a special responsibility to respond to the plight of which deprived individuals. On this view, while the demand side of justice is fully preinstitutionally specified – we know, as a matter of pure moral reflection, what rights cosmopolitan justice requires us to guarantee for individuals – the supply side is systematically unclear, and authoritative institutions have a crucial role to play in specifying the precise pattern of duties necessary to fulfill the rights and in allocating them to specific persons.¹⁸

¹⁸ This second view of institutions is found in Henry Shue, 'Mediating Duties', *Ethics*, 98:4 (1988), 687–704.

I believe, however, that the relationship between human rights, duties of justice, and authoritative institutions is even more complicated than this second model suggests. So let me propose a third model, which claims that authoritative institutions are not merely of instrumental value, but are themselves partly *constitutive* of what justice requires. On this view – which derives its inspiration from Kant's political philosophy – we can only do justice to others by setting up and complying with legitimate political authorities. Authoritative institutions are required because: (1) some moral rights are indeterminate in the absence of legitimate institutions to define them, (2) even where moral rights are determinate, individuals may disagree about justice in particular cases, and these disagreements must be fairly resolved; and (3) since individuals lack the proper standing to coerce other individuals to submit to their judgments, they cannot engage in fully just enforcement of their rights.

To motivate this third model, consider briefly the case of property rights. It is a requisite of a minimally decent life that each person be able to claim possessions essential for his survival. But how do we know exactly which possessions these are? There are many possible and different schemes of property rules that would ensure each person's survival. But in order to say which *particular* goods a person has a right to, it seems essential to refer to some institutional background rules and the legitimate expectations they create. Surely it is foolish to believe that the terms of these various rights can be made determinate simply through abstract moral reflection on what is necessary to live a minimally decent life. Partly the problem is one of coordination: for example, even if each person has a basic interest in the goods necessary for his survival, that does not by itself determine any answer as to how to structure many other issues, including property in the means of production, rights to transfer (subject to tax? at what level?), or rights of bequest. Due to this indeterminacy, even individuals who are in full agreement as to what their most basic human interests are will not be able to translate this agreement into a consensus on which rules of justice to recognize (including rules about property, tort law, contract, exploitative agreements, fraud, and the distribution of opportunities, education, and income). It is unlikely that individuals could resolve these problems without granting authoritative institutions a significant

role, not just in clarifying and assigning their positive duties to other people, but also in defining many of their rights. One cannot fully specify what property and contractual claims a person has without reference to the particular system of rules that is actually in force in the society where she lives, and the expectations that these rules create.

Without authoritative institutions, individuals would also face a second problem in doing justice to each other: a problem of moral disagreement. Even where their moral rights are determinate, often individuals will not share a fully common understanding of these rights in particular cases, so that each person's good-faith attempt to do justice to others may not lead him to respect the precise claims other persons take to be significant. In circumstances of disagreement, it is difficult for individuals to recognize one another as attempting to do justice in their interpersonal behavior.

Consider an example: almost everyone agrees, at a very abstract level, that individuals have a right to life. Many people believe this can ground a claim to material resources essential for one's survival. And many in turn believe this grounds a claim of justice to adequate health care. But not all who agree on the abstract importance of the right to life support these conclusions. Christian Scientists think that poor health is actually a sign of erroneous spiritual beliefs that must be corrected through faith healing. And libertarians believe that while the right to life is important, it imposes only negative duties, not positive duties, on others. In a preinstitutional situation, these Christian Scientists and libertarians would not recognize any duty to contribute to securing others' interests in medical care. Indeed, the Christian Scientist may even think that he treats a sick child justly by preventing the provision of medical care for that child. When people lack a common understanding of their rights in particular cases, then their attempts to respect the rights that, by their lights, other individuals have will not strike these others as an effort to respect their rights. These divergent moral understandings will lead to injuries and conflict.

Since individuals can be expected to disagree on what their moral rights are, how these interests should be protected by coordinated rules, and which is the best of the many possible schemes that could protect these interests, even moral individuals acting in good faith

may have a great deal of trouble coordinating their behavior so as to effectively and publicly respect each other's rights, in the absence of authoritative institutions. This is because they can still disagree over what rules ought to guide their attempts to do justice to others.¹⁹ Because individuals will disagree, in attempting to do justice to others they must not only ask themselves substantive questions about justice – e.g., what rights and duties do we all have, on my best understanding of justice? Instead, they face an equally important procedural question of justice, namely: when we disagree about our rights and duties, how are we to do justice to one another? Following Kant, I believe that amid conditions of indeterminacy and disagreement, it is wrong for a group of individuals to do justice to one another by acting unilaterally, i.e., by demanding that others conform to their beliefs about what justice requires, and privately enforcing this demand.

Even when you privately enforce what you take to be the correct scheme of rules, Kant argues that it is wrongful to do so unilaterally. In effect, you are claiming a superior political standing over others that as an equal, you do not have. Other individuals are equally authoritative interpreters of justice, which means they will perceive your well-meaning attempts to enforce justice as an arbitrary assumption of power over them, not as something that places them under an obligation. If a legitimate public authority is available, or can be established, these others are entitled to insist that you submit to it for the arbitration and enforcement of your rights. A Kantian does not have to deny that one party to these disputes may be right about his substantive view of justice, while the other one is wrong. We simply deny that his being correct is sufficient to give him a right to use force on the other person in order to implement his view. Individuals, as moral equals, have a claim not to be politically 'ruled' by other private persons.

To see why unilateral private enforcement is problematic, consider the following case. Suppose my neighbor continually burns toxic trash in his backyard. Indeed, the poisonous fumes are bad enough that I correctly believe that his actions violate my right not

¹⁹ 'Good-faith' disagreement, on the Kantian view I defend here, is disagreement about the precise terms of interaction that are consistent with every individual's equal innate right to freedom. Those who deny the equal right to freedom – violent racists, for example – can still justifiably be forced to comply with legitimate institutions even though they do not recognize a duty to do so.

to have my basic health willfully impaired by others – one of Fabre’s rights to a minimally decent life (p. 26). Two courses of action are available to me: either I can go to court to get an injunction against him, perhaps vacating my house in the meantime; or I can threaten him with some proportionate harm. Surely it would be wrong for me to privately threaten him when legal channels are available to me. Even if my neighbor is indeed violating my rights by burning the trash, I would also wrong *him* by threatening private force: I would engage in unacceptable vigilantism. Indeed, he may have a legal case against me.²⁰ No private individual has the standing to claim coercive authority over other individuals, who, as independent persons, have a right not to be subject to his personal power. Even where he is objectively mistaken, a wrongdoer remains entitled to submit only to an impersonal institution, not to an act of private coercion.²¹ There is an important procedural value in the public and impartial enforcement of rights, and acts of private war fail to acknowledge this procedural value.

On a Kantian view, because individuals who disagree about justice have no way: (a) to publicly establish what moral interests they are all committed to respecting, (b) to decide which of many conventional sets of rules to protect those interests they collectively wish to adopt, and (c) to enforce justice without wrongly claiming personal power over their moral equals, they are unable to fully establish justice through their private behavior. On this third model, justice is a *necessarily* institutional value: our natural duty of justice tells us, not to attempt to enforce justice ourselves, but to collectively establish and support just institutions. Authoritative institutions are partly constitutive of justice, because they allow individuals to resolve indeterminacies in their rights, to accept a common interpretation of those rights amid moral disagreement, and to enforce these rights without private domination or subjection. On the

²⁰ In a case of justified self-defense, we do not think the aggressor has been wronged. But this is precisely because we assume that, in a time of immediate danger, the victim had no option to rely on legal channels for the enforcement of his rights. Indeed, the legal system *authorizes* the use of private force in these cases. Fabre’s right to private war goes much farther than this: there is no restriction to a ‘time of danger’, and private force may be used in response to any threat to our human rights, even if the threat does not take the form of an attack (p. 110).

²¹ It is also important to stress that Kant’s argument does not entail that in a situation where there *are* no legitimate institutions, individuals may not defend themselves through private force. Private force may be used where no legitimate institutions can be put into place. But where such an institution exists or can be set up, an individual has a duty to accept its jurisdiction.

view I endorse, then, our individual duties to do justice to others are *mediated* by institutions of legitimate authority, and justice requires us to construct such institutions where they do not yet exist, and to support and comply with them where they do.

Note too that on this view, the collective rights of jurisdiction and enforcement wielded by a state are not reducible to any bundle of individual rights. This is because only an authoritative institution can perform certain fundamental tasks necessary for justice's establishment, especially settling a clear public definition of our respective rights and duties amid moral disagreement, and enforcing these rights in a way that avoids private subjection. While individuals' rights and interests are *served* by a legitimate state's performance of these tasks, the state wields rights that no private person could, or should, wield.

The cosmopolitan thesis that all people everywhere have the same human rights is still consistent with this third view of the moral importance of institutions. As I noted earlier, on the 'political' interpretation, human rights are not understood as imposing moral duties that individuals owe one another directly in their interpersonal conduct, but rather as threshold criteria we use to assess a state's legitimacy. In cases where the requisites of a minimally decent human life are not provided to those who live under an authoritative institution, it does not create any reason to support and comply with its system of rules. Likewise, only institutions that give at least minimal consideration to the basic interests of foreigners can create duties of compliance. This should give an individual citizen special concern for assessing whether or not a war he is called upon to fight is just: since his state's legitimate authority 'runs out' where it does not take individuals' fundamental interests into adequate account – the interests of foreigners as well as its own citizens – it is unable to place him under binding duties to violate the human rights of others.²²

What is at stake in choosing among these three models of the relation between human rights, duties of justice, and authoritative institutions? An important thesis of Fabre's book is that individuals and other non-state actors (including freelance mercenaries and even

²² I accept that the duty to comply with legitimate institutions is a *prima facie* one. This duty is based on the important procedural values involved in impartially resolving disagreement about our rights and enforcing those rights without domination. Those procedural values can be trumped in cases of severe substantive injustice, including injustice to foreigners. But I think these procedural values are quite weighty; certainly weightier than Fabre acknowledges.

for-profit corporations) have the right to wage private war. Should we accept this thesis? Not if we adopt the Kantian model of institutions. Fabre argues that ‘the right to wage a war in defense of one’s human rights should also be conceived of as a human right’ (p. 113), finding support for this view in the writings of Vitoria and Grotius. It is fitting that she invokes natural rights theory here, because for the most part, these natural rights theorists subscribe to the first, very simple model of the relation between rights, duties, and institutions with which we began. For them, even our property rights can be fully preinstitutionally specified, e.g., through acts of original appropriation. Likewise, in their view, our rights impose interpersonal duties on other individuals to respect them, duties that are not mediated by any institutions. Fabre does grant more of a role to institutions than does Vitoria or Grotius: again, she suggests that ‘to the extent that [individuals] would be better off by transferring the meta-right to protect their human rights to an organization like the state, it is in their interest to do so’ (p. 116). But if a legitimate organization like the state or an international institution exists, and can enforce our human rights, are we *obliged* to transfer our meta-right to it? I believe we are so obliged, and that leads me to question whether the right to wage private war is a human right at all.

On the Kantian model I favor, when legitimate institutions exist, individuals and states are obliged to rely on legal channels for the enforcement of their rights and to accept the authoritative decisions of these bodies, even when they disagree with them. To privately enforce one’s rights against those who disagree may be necessary where legitimate institutions are lacking, but it is never fully rightful, because it is *unilateral*. When one private individual forces another to submit to his judgments about justice, he undermines the relation of reciprocal equality in which individuals ought to stand, by subjecting this other person to his private power. This is particularly objectionable amid conditions of indeterminacy and reasonable disagreement about the content of our rights and duties: why should this person’s view carry the day? But it is also objectionable where rights are determinate. In such a case, we can imagine the defeated party saying: ‘your view of justice may be correct, but why does that give you the right to rule over me by force?’ Because only the rule of an impartial institution is compatible with the equality and non-subjection

of those subject to it, justice demands that we put such an institution into place, and it demands that – where a legitimate institution exists – its subjects defer to it to interpret and enforce their rights, rather than engaging in private war.

For the Kantian, then, there can be no human right to wage private war. Fabre disagrees: her view rests on the idea is that the use of force in defense of a right is *prima facie* just no matter who does it. As long as a vigilante, a mercenary, or a private security corporation enforces the correct view, and as long as its use of force is both proportionate and has a reasonable chance of success, it has the right to do so. The Kantian holds, on the other hand, that the use of force on behalf of justice is only fully rightful when done by an authoritative public institution. Where no such institutions are in place, or where institutions fail to be legitimate, then one may be temporarily justified in using private force as a second best option. But it is always a *second-best option*: private actors are under a duty to put a legitimate institution into place as soon as possible, and the use of force by private actors always represents a *failure* to adequately protect human rights, not their fulfillment. For this reason, I disagree with Fabre's view that public institutions are merely of instrumental value, a means for achieving a preferred outcome that might be replaced by another, equally efficient means. Instead, I think authoritative institutions are partly constitutive of justice: they allow us to regulate our relations through law, rather than through unilateral private action, and they provide us an essential means of defining and enforcing our rights in a non-dominating way. Justice can *only* be established through authoritative institutions; there is no other way to do it. To believe that is to reject the thesis that there is a human right to private war.

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