The Moral Justification of Violence: Epistemic Considerations

1. Introduction

One critically important issue in applied moral philosophy is the identification of the conditions under which violence can be morally justified. This issue needs to be clearly distinguished from that of the conditions under which the agent of violence can or should be excused for having performed the act. In the former case, we are asking about the moral permissibility of the act of violence, whereas in the latter we are assuming that the act is morally impermissible and asking about the culpability of the agent.¹ Unfortunately, the issue of identifying the conditions under which violence can be morally justified is complicated by difficulties with how we are to understand the concept of moral justification. When we ask for an account of these conditions, what exactly are we asking for? What sorts of things are to count as justifying conditions?

Consider the following alternatives: Is an act of violence justified by certain facts that hold in the world, such as the fact that an agent’s life is genuinely threatened by an act of unjust aggression? Or is it justified by the relevant epistemic situation of the agent—in other words, by what the agent knows or justifiably believes about the world (more specifically, about the context within which the violent act is performed)? Put more simply, is moral justification more properly construed as an ontic or as an epistemic matter?

The significance of these questions is best appreciated in the context

¹J.L. Austin makes this distinction in “A Plea for Excuses,” Proceedings of the Aristotelian Society 57 (1957): 1-30. See especially pp. 2-3. Since the term “justification” in ordinary discourse is often used as a synonym for “excuse,” Austin’s distinction here is important to keep in mind. As we will see below, however, Austin’s distinction between justification and excuse does not exhaust the distinctions that need to be made. In fact, as I will argue in section 4, there are really two senses of moral justification, both of which contrast with “excuse”: in one sense, to say that an act is morally justified is to say that it is morally permissible, while in another sense it is to say that there is adequate reason to believe that it is permissible. Austin seems to have only the former sense explicitly in mind, but both senses can be appropriately contrasted with excuse, insofar as an excused action is assumed to be impermissible.
of an actual dispute over the moral justification of violence. In what follows, I look carefully at one such dispute—between James Sterba and myself over the justifiability of war—and show how the dispute is rooted in alternative conceptions of moral justification. While I treat the moral justification of violence as an ontic matter, such that violence is permissible only if certain conditions in the world hold, Sterba takes the moral justification of violence to be essentially epistemic—that is, he thinks that in order for an act of violence to be morally permissible, it is necessary and sufficient that the agent have the right sorts of beliefs and the right sort of warrant for those beliefs. While Sterba's approach here is not atypical, I show that it has unacceptable implications. To avoid these implications, we must hold that there is an important sense in which moral justification is ontic. And adopting this position, as we will see, has important implications for the morality of participation in war.

Before turning to the dispute between Sterba and myself, a brief terminological comment is in order. As the introductory comments above indicate, the terms “justified” and “justification” have at least two important ranges of use. In particular, we can say both of beliefs and of actions that they are justified, and we can offer justifications for either. The relationship between these two ranges of use is part of what is at issue in this paper. And since I will be using the terms in both ranges of use, it will be helpful for the sake of clarity to always indicate which use is intended. Justification for beliefs has to do with knowledge, insofar as such justifications are thought to comprise the subjective component of knowledge characterized as “justified true belief.” Justification for actions has to do with morality, insofar as such justifications are thought to speak to the moral permissibility of a morally suspect act. Thus, despite the potential clumsiness of doing so, I will refer to the justification of beliefs as “epistemic justification,” and the justification of actions as “moral justification.” Actions, then, are “morally justified,” while beliefs are “epistemically justified.”

With this terminology in place, then, I turn to the dispute between Sterba and myself.

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2In other words, he takes an act of violence to be rendered morally permissible by virtue of the agent's possessing a justified belief—the subjective component of knowledge (understood as justified true belief).

3As we will see, this distinction does not exclude an overlap between the two ranges of use. In fact, I will argue in what follows that "moral justification" has (at least) two senses, one in which it is a species of epistemic justification, and one in which it is not—hence my distinction, in section 4, between ontic and epistemic senses of "moral justification."
2. A Sample Dispute: The Reconciliation of Just Warism and Anti-War Pacifism

In his recent book, *Justice for Here and Now*, Sterba defends his reconciliation of anti-war pacifism and just warism against a variety of objections, including my pacifist objection. Sterba’s "reconciliation thesis" was originally spelled out in "Reconciling Pacifists and Just War Theorists," wherein Sterba argues that the version of pacifism he calls "anti-war pacifism" can be reconciled with the most morally defensible version of the just war theory, in that both place the same restrictions on the practice of war (restrictions that, it turns out, prohibit most but not all wars). I argue, on the contrary, that there is a defensible version of anti-war pacifism that cannot be reconciled with just war theory—namely, a version that rests on "the moderate reading of the Principle of Non-Aggressor Immunity" (PNIM). This principle holds that it is morally permissible to do violence to another human being only if that person is an unjust aggressor—where an "unjust aggressor" is understood to be someone who is presently inflicting or preparing to inflict injuries unjustly. While this principle permits using violence in self-defense, I argue that once this principle is coupled with other traditional just war principles—in particular the principle that a war must have a reasonable chance of success—all wars are ruled out absolutely.

Sterba’s core defense against this objection turns on what might be called an epistemic understanding of what is required for the moral justification of violence. A key thesis of his defense is that, so long as we are epistemically justified in believing that an enemy soldier is an unjust aggressor, it is morally permissible for us to do violence to that soldier—whether or not the enemy soldier is as a matter of fact an unjust aggressor in the indicated sense. In Sterba’s terms, "aggressors should be understood epistemologically ... rather than metaphysically ...." According to Sterba, this epistemic understanding of PNIM widens the scope of

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7Sterba mistakenly takes me to be asserting that the version of anti-war pacifism based on PNIM is the most defensible version, and criticizes me on those grounds. In fact, my stated position is that the version of anti-war pacifism based on PNIM is a defensible version, and one that rules out all wars absolutely.

legitimate military targets enough so that a war could be waged in accord with that principle and still have a reasonable chance of success. Whether he is right about this latter point is not an issue I will explore here (although I am skeptical). Rather, my intention in what follows is to show that such an epistemic understanding of moral justification is inadequate for Sterba’s purposes—and more broadly to show that, once the concept of moral justification is properly clarified, it becomes apparent that acts of violence cannot be morally justified in the way that Sterba proposes.

3. Sterba’s Principle for the Justification of Violence

Sterba rests his response to my criticism on the following principle:

In order for defensible action to be morally justified, it is not necessary that one’s defense be directed only at persons who are actually engaged in or are actually preparing to engage in unjust aggression; rather, it suffices if one’s defense is directed at persons whom one reasonably believes are engaged in or preparing to engage in unjust aggression.\(^9\)

Presumably, by “defensible action,” Sterba is referring to an act of violence, V, targeting some supposed aggressor, B. What Sterba is proposing is that actual unjust aggression on the part of B is not in fact necessary for the moral justifiability of V. Rather, it is only reasonable belief in B’s unjust aggression that is necessary. Put another way, what is necessary is that one be epistemically justified in believing that B is engaged in unjust aggression. It is quite likely that Sterba adopts this view on the basis of his commitment to a more general principle, expressed earlier in *Justice for Here and Now*. Specifically, he asserts the following general principle, which I will hereafter refer to as the Epistemic Accessibility Principle, or EAP:

If it is going to make any sense to say that something is right for us to do, knowledge of that fact must somehow be accessible to us, so that any discrepancy between what we think is right for us to do and what is right for us to do must somehow be traceable to a failure on our part to deliberate wisely.\(^10\)

\(^9\)In fact, it seems quite obvious that once an aggressor is narrowly defined as someone who is presently inflicting or preparing to inflict injuries unjustly, the number of legitimate targets would be small even if extended to all those whom one reasonably believes is an aggressor in the indicated sense. Satisfactory evidence for reasonable belief in someone’s aggressiveness would be such things as aiming a weapon, charging an enemy, pulling the pin out of a grenade, and the like. Since soldiers standing guard or on routine patrol do not display these features (let alone workers in a munitions factory), it would not be reasonable to believe that they are aggressors in the indicated sense.


\(^11\)Ibid., pp. 15-16.
The merits of EAP, and the extent to which it supports Sterba's views on the justification of violence, will be explored in a later section. First, however, I wish to examine closely his more narrow principle concerning the conditions for the justification of an act of violence, V.

For the purposes of the discussion that follows, it will be useful to consider the necessary and sufficient conditions for the moral justifiability of V. In order to simplify my discussion, I will bracket from discussion the justification of punitive violence, since its justifying conditions are presumably rather different from those of defensive violence. Hereafter, when I speak of the necessary and sufficient conditions for justifying violence, I will have in mind defensive violence only. With that in mind, for a violent act V to be morally justifiable, it has been traditionally thought that V must meet four principal conditions. In addition to the condition that V’s target be engaged in unjust aggression (we will call this the condition of Legitimate Target), the following three conditions have been commonly proposed:

Proportionality—the violent response is proportional in severity to the aggression it is intended to prevent;

Necessity—the violent response is necessary to stop the aggression, since no nonviolent responses would be effective;

Effectiveness—the violent response is likely to be effective in stopping the aggression.\textsuperscript{12}

For the sake of argument, I will assume that Sterba ascribes, at least in some fashion, to this traditional view. In order to simplify subsequent discussion, I will refer to a violent act that in fact satisfies all four conditions above as being of act-type UA. Hence, we can formally define act-type UA as follows:

UA: Any act of violence targeting an actual unjust aggressor, that is actually proportional in severity to the aggression it is intended to stop, for which there are actually no effective nonviolent alternatives, and that is actually likely to be effective in stopping the aggression.\textsuperscript{13}

\textsuperscript{12}These conditions seem to be implicit in St. Thomas Aquinas's treatment of the justification of violence in self defense. See the \textit{Summa Theologica}, II-II, q. 64, art. 7. These conditions are also evident in contemporary expressions of the Just War Theory. See, for example, The Pastoral Letter on War and Peace of the National Conference of Catholic Bishops, \textit{The Challenge of Peace: God's Promise and Our Response} (Washington, D.C.: United States Catholic Conference, 1983), pp. 28-34.

\textsuperscript{13}I should note that for the point I wish to make here, the reader need not agree that acts of violence are justified just in case they are of act-type UA. My point—that the actual features of an act, and not merely what one reasonably believes about the act, de-
If we are going to generalize from what Sterba says about the principle of non-aggressor immunity, we can take it that for Sterba, the necessary and sufficient conditions for the justifiability of V are comprised not by what could be roughly called the "objective features" of V (that V is of act-type UA), but rather by reasonable beliefs about V (that one is epistemically justified in believing V is of act-type UA). Hence, we can say that according to Sterba the following principle holds true:

MJV1: In order for an act of violence, V, to be morally justified, it is necessary and sufficient that one is epistemically justified in believing that V is of act-type UA.

MJV1 can be contrasted with the following alternative account of the necessary and sufficient conditions for the justifiability of violence:

MJV2: In order for an act of violence, V, to be morally justified, it is necessary and sufficient that V is of act-type UA.

In his criticism of my position, Sterba in effect rejects MJV2 in favor of MJV1. His reasons for this preference are largely unexplained—all he says explicitly is that to impose a requirement of the sort put forward in MJV2 is "clearly to impose too strong a requirement on morally justified defensive action." But why think that?

What seems implicit in Sterba's position here—and explicit in his Epistemic Accessibility Principle (EAP)—is the assumption that we cannot morally require that people "get it right." We cannot require that they act only on the basis of true judgments about their situation. All we can require is that they do their best to clearly apprehend the circumstances of action. Sterba's assumption seems to be that a principle like MJV2 would impose an impossible requirement on agents: given the limits of human faculties, it is not within an agent's power to always and only do what she thinks she is doing—or, better, it is not always possible for her to know with certainty what kind of act, in every relevant detail, she is performing.

Consider the following hypothetical example. Suppose that I am walking home from work one night and take my usual shortcut through an alley. I happen to have a concealed weapon, acquired because of recent threats to my life. As I walk down the alley, a large figure appears at the far end and starts rushing towards me, arm upraised. I see a knife in the upraised hand. The figure is much larger than I am, and is moving
aggressively towards me at a full run. I consider fleeing, but given the aggressor’s speed it seems that I wouldn’t be able to get away. Fearing for my life, I take out my gun and fire. The figure falls to the ground a few feet from me.

In this case, it was certainly reasonable for me to believe that the person I shot was an unjust aggressor, that my response was proportionate to the danger posed to my own life, and that my act of violence was necessary to save my life. And, clearly, the violent response was effective. My belief that my act was of type UA is eminently reasonable. Isn’t the reasonableness of the belief sufficient to morally justify my act, even should it turn out that the belief is false? Sterba would, it seems, want to say that the act is indeed morally justified—and that it continues to be morally justified even after I learn that the knife was a rubber knife, and that the supposed aggressor was actually my friend Bob, lying in wait to pull a practical joke on me. I surely couldn’t have been morally required to know that it was Bob who was charging me, or that the perceived threat to my life was actually a prank that posed no threat of bodily harm. On the basis of all the information that was available to me in the instant before a decision about self-defense had to be made, shooting the attacker seemed to be necessary for my survival. Isn’t that enough to render my action morally justified?

Sterba’s answer is yes. My answer is yes and no, depending on what one means by “moral justification.” While I agree that it is inappropriate to require that agents always know with certainty all the relevant features of their act, I do not believe that this implies that MJV2 is an inappropriate principle. On the contrary, for reasons that will become clear in what follows, I believe that MJV2, once properly understood, is inescapable. There are two important but distinct senses in which an act of violence can be said to be morally justified. The problem with Sterba’s position is that the sense of moral justification required to render MJV1 plausible is distinct from the sense required to adequately rebut my criticism of Sterba’s reconciliation thesis. In the latter sense, MJV1 must be rejected in favor of MJV2. To show this, I must now turn to an examination of the notion of moral justification.

4. Ontic and Epistemic Senses of “Moral Justification”

The question of whether a prima facie impermissible act can be morally justified in a given context is frequently posed in contemporary applied ethics. Acts of violence, which are widely regarded to be prima facie wrong, are particularly susceptible to this sort of inquiry. Newton Garver
has said that violence, while not wrong by definition, always "has the burden of proof to justify itself," such that unless a satisfactory moral justification can be offered for violence it should be regarded as morally wrong.\textsuperscript{14} The notion of moral justification, however, admits of a certain ambiguity. On the one hand, one can use the term "moral justification" to refer to a species of epistemic justification, such that to say of an action that it is morally justified is to say of the agent that she is epistemically justified in believing the action to be morally permissible—hence, what is justified in this case is not the action as such, but the agent’s belief that the action is morally permissible.\textsuperscript{15} I will henceforth refer to this as moral justification in the epistemic sense (EMJ). On the other hand, there is a sense of the term according to which moral justification is understood to be an ontic property of the act itself: to say of an act that it is morally justified is to say of the act itself that it is in fact morally permissible (despite its prima facie impermissibility). It is this sense in which moral justification is most typically contrasted with excuse.\textsuperscript{16} Hereafter, this will be called moral justification in the ontic sense (OMJ).

This distinction between senses of moral justification can be clarified when we recall that it is prima facie wrong acts that are susceptible to moral justification, and when we consider what it means to say that an action is prima facie wrong. The term "prima facie" was introduced into common ethical discourse by W.D. Ross, who used it particularly to refer to duties. For him, the characteristic of being a prima facie duty is

the characteristic (quite distinct from that of being a proper duty) which an act has, in virtue of being a certain kind ..., of being an act which would be a proper duty if it were not at the same time of another kind which is morally significant.\textsuperscript{17}

Ross goes on to note that "whether an act is a duty proper or actual duty depends on all the morally significant kinds it is an instance of."\textsuperscript{18} To say of an act (act-token) that it is prima facie impermissible, then, is simply to say that, by virtue of being of a certain kind (act-type), it


\textsuperscript{15}Sometimes Robert Audi uses the term this way—although, as with Sterba, Audi seems prone to collapse the distinction between the two senses of moral justification. For an example of this usage, see Audi’s Moral Knowledge and Ethical Character (Oxford: Oxford University Press, 1997), pp. 27-28.

\textsuperscript{16}As noted above, this is the understanding of moral justification that J.L. Austin evidently has in mind when he contrasts excuses with justifications in "A Plea for Ex-"cuses," pp. 2-3.

\textsuperscript{17}W.D. Ross, The Right and the Good (Oxford: Oxford University Press, 1963), p. 18.

\textsuperscript{18}Ibid.
would be in fact impermissible unless it were also of some other morally relevant kind (and that, in some sense, its being of this other kind outweighs its being of the former kind for the purposes of determining the act’s moral status). Whether or not a prima facie impermissible act is in fact impermissible depends on the concrete circumstances in which the act is performed—for these circumstances define all the act-types of which the act-token is an instance. Hence, to say that a particular act of violence, V, is prima facie impermissible is to say that V is of an act-type, say $T_V$ (the act-type “violent act”), whose instances are in fact impermissible except when they are also of some other morally relevant act-type(s), call it $T_D$, in which case V is morally permissible.

Within this context, we can understand the claim that a prima facie wrong act is ontically morally justified to mean that, given all the relevant circumstances in which the act is performed, and hence all the relevant act-types of which the act-token is an instance, the act-token is as a matter of fact morally permissible even though, were one of the act-types of which it is an instance to be the sole criterion by which the morality of the act were determined, the act would be impermissible. Epistemic moral justification, then, would refer to the satisfactoriness of the argument offered in support of the belief that a prima facie wrong act is ontically justified. With respect to an act of violence, V, to say that V is ontically morally justified is to say that V is not only of act-type $T_V$, but also of act-type $T_D$. To say that V is epistemically morally justified is to say that the agent, A, is epistemically justified in believing that V is not only of act-type $T_V$, but also of act-type $T_D$.

What seems to follow from the above distinction is that an act of violence can be morally justified in the epistemic sense without being morally justified in the ontic sense—that is, one can have good grounds for believing that V is morally permissible even if it is not. In such cases, it would make sense to say that the agent’s doing V is morally excused due to non-culpable ignorance of relevant facts, and that the agent is morally blameless for having performed a morally impermissible act. What I will show is that, in order for Sterba’s reply to my objection to succeed, Sterba must reject these claims, a rejection for which there is a high cost—in fact, a cost that is too high to pay.

5. The Disagreement Revisited

Given the distinction between ontic and epistemic senses of moral justification, both MJV1 and MJV2 are subject to two possible interpretations, as spelled out below:
MJV1-O: In order for an act of violence, V, to be morally permissible, it is necessary and sufficient that the agent (A) is epistemically justified in believing that V is of act-type UA.

MJV1-E: In order for an act of violence, V, to be such that A is epistemically justified in believing that V is morally permissible, it is necessary and sufficient that A is epistemically justified in believing that V is of act-type UA.

MJV2-O: In order for an act of violence, V, to be morally permissible, it is necessary and sufficient that V is of act-type UA.

MJV2-E: In order for an act of violence, V, to be such that A is epistemically justified in believing that V is morally permissible, it is necessary and sufficient that V is of act-type UA.

Of these four, MJV2-E is obviously false—but it does not follow from that fact that MJV2-O is similarly false. Likewise, MJV1-E is fairly uncontroversial—but it does not follow that MJV1-O is similarly uncontroversial. In effect, my criticism of Sterba’s reconciliation thesis assumes the truth of MJV2-O while implicitly rejecting MJV1-O. More broadly, the view is that we ought to accept the epistemic reading of MJV1 but not the ontic reading; and that we should accept the ontic reading of MJV2 but not the epistemic reading. The most controversial aspect of this view is the rejection of MJV1-O in favor of MJV2-O; hence, the defense of this move will be a primary focus in what follows. However, before turning to this issue, I wish to revisit the disagreement between Sterba and myself to show more clearly that Sterba’s reply to my criticism, if it is to succeed, must assert not merely the fairly uncontroversial MJV1-E, but the more controversial MJV1-O—at the same time denying not just the obviously false MJV2-E, but the more plausible (and I think correct) MJV2-O.

We might formulate the disagreement in terms of two competing justifying arguments for the moral permissibility of an act of violence, V. In effect, my view is that such a justifying argument would look as follows (hereafter Argument R):

R1: In order for an act of violence, V, to be morally permissible, it is necessary and sufficient that V is of act-type UA (MJV2-O);

R2: V is of act-type UA;

∴ C: V is morally permissible

The point here is that someone who embraces MJV2-O would evaluate the moral permissibility of V by trying to ascertain whether R2 is true; if R2 is found to be true, then the advocate of MJV2-O would regard Ar-
gument R to be sound, and would hence accept the conclusion that V is morally permissible—and only then, since R2’s being true is taken to be both a necessary and sufficient condition for the permissibility of V.

But notice that if we take MJV2-O as a given, then whenever I am epistemically justified in believing R2, I am epistemically justified in believing C. And whenever I am not epistemically justified in believing R2, I am not epistemically justified in believing C. Hence, if we take MJV2-O as a given, then it follows that in order for an agent to be epistemically justified in believing that V is morally permissible, it is necessary and sufficient that the agent reasonably believe that V is of act-type UA. In short, any advocate of MJV2-O would also, necessarily, affirm MJV1-E. At the same time, however, it is important to note that being epistemically justified in believing R2 is consistent with R2 being false; hence, being epistemically justified in believing that V is morally permissible is consistent with V being morally impermissible. The advocate of MJV2-O, then, affirms that an agent can be epistemically morally justified in doing V just in case the agent reasonably believes that V is of act-type UA (MJV1-E); but this does not mean that such reasonable belief is sufficient to render V ontically morally justified. Rather, it means only that if V is not ontically morally justified, then the agent is excused for having done V.

What follows from all of this is that for Sterba’s reply to my criticism to hold, he must ascribe not merely to the relatively uncontroversial MJV1-E, but to MJV1-O. He must adopt the view that reasonably believing that V is of act-type UA does not just render V morally justified in the epistemic sense, but also renders it morally justified in the ontic sense. Put another way, he must ascribe to the view that a satisfactory justifying argument for violence would look as follows (hereafter Argument S):

S1: In order for an act of violence, V, to be morally permissible, it is necessary and sufficient that the agent (A) is epistemically justified in believing that V is of act-type UA (MJV1-O);
S2: A is epistemically justified in believing that V is of act-type UA;
∴: C: V is morally permissible

Note that, given Argument S, one is epistemically justified in believing S2 just in case one is epistemically justified in believing R2—in order to be epistemically justified in believing that one is epistemically justified in believing some proposition P, it is necessary and sufficient that one is epistemically justified in believing P. Hence, the advocate of MJV1-O is epistemically morally justified in believing that V is morally permissible
under precisely the same conditions as the advocate of MJV2-O. The
difference is that, whereas for the advocate of MJV2-O one can be epis-
temically morally justified and yet not be ontically morally justified, the
same is not the case for the advocate of MJV1-O: If I am epistemically
justified in believing R2, then S2 is true; hence, if we assume that
MJV1-O is true, the truth of C is established. My fallible but epistemi-
cally justified belief about the nature of V generates an infallible conclu-
sion about the moral permissibility of V.

In short, if we grant MJV1-O, then being epistemically justified in
believing R2 is a necessary and sufficient condition for both the epis-
temic moral justifiability of V and the ontic moral justifiability of V.
Hence, for the advocate of MJV1-O, the extensional distinction between
epistemic moral justification and ontic moral justification collapses. The
reasonable belief that V is morally permissible is a necessary and suffi-
cient condition for V being morally permissible.

6. The Problems with MJV1-O

This outcome of embracing MJV1-O—the coextensionality of ontic and
epistemic moral justification—is highly problematic. It is equivalent to
collapsing the Thomistic distinction between the material and formal
rightness of an act—that is, between the “objective rightness” of the act
itself (its moral permissibility as an act of a certain type), and the “sub-
jective rightness” of the agent’s motives and intentions (which obtains
when the agent justifiably believes that the act is of a morally permis-
sible type). In what follows, I identify four problems that result from this
collapse.

The Erosion of the Distinction Between Justification and Excuse

Traditionally, we distinguish between the moral justification of violent
acts and their excuse. To say that an action is morally justified, as dis-
cussed above, is to say either that the act is morally permissible (despite
the prima facie case against it) or that one can reasonably believe that it
is morally permissible. To say that an act is excused is not to make any
claim to the effect that the act is morally permissible. Rather, it is to say
that the agent is blameless (fully excused) or less than fully blameworthy
(partially excused) for performing an action whose moral impermissibil-

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19For a careful explication of this distinction, see Alan Donagan, The Theory of Mo-
seminal use of this distinction in the Summa Theologica, I-II, q. 20, art. 1-2.
ity is uncontested. The paradigmatic case for fully excusing (but not justifying) impermissible behavior is non-culpable ignorance of relevant circumstances. Thus, for example, when Vitoria rejects the possibility of both sides in a war being just, he qualifies this response in the following way:

Assuming a demonstrable ignorance either of fact or of law, it may be that on the side where true justice is the war is just of itself, while on the other side the war is just in the sense of being excused from sin by reason of good faith, because invincible ignorance is a complete excuse.\(^{20}\)

Robert Holmes, commenting on this passage from Vitoria, distinguishes between an “objective sense” of justice that designates “the actual moral status of the war, which is unaffected by whether people think the war is just,” and a “subjective sense” emerging out of invincible ignorance, which fully excuses the agents of war even if their actions are objectively unjust.\(^ {21}\) It is clear that this distinction is entirely analogous to my distinction between ontic moral justification and epistemic moral justification, or Aquinas’s distinction between material and formal rightness. The point here is that “invincible ignorance” is taken to excuse an action, not render it permissible in any objective sense. And if one is epistemically justified in believing that V is of act-type UA, when in fact it is not, one exhibits precisely the sort of “invincible ignorance” that Vitoria had in mind. In fact, it seems that ignorance of some fact F, where the truth of F would render one’s action impermissible, can be non-culpable only if one is epistemically warranted in believing not-F. In other words, being epistemically justified in believing that some action is permissible when it is not is a paradigmatic example of excusable behavior—that is, behavior that is impermissible (materially wrong) but for which the agent is held blameless (not formally wrong). If we collapse the distinction between ontic and epistemic moral justification, this paradigm of excusable behavior ceases to be an example of excusable behavior altogether—it becomes morally permissible (materially right) behavior.

Disparity Between the Actual and Subjective Justifying Conditions for V

Let us return briefly to the example discussed earlier, of the apparent attack in an alley that turns out to be a practical joke. In this case, I am


epistemically justified in believing that my act of violence is of type UA. Furthermore, what I intend to do when I shoot my friend Bob is to perform a violent act of type UA. And it is because I believe that the act is of type UA that I believe the act to be permissible. Put another way, when I judge that my act is morally permissible, I do so on the basis of my judgment that it is of act-type UA: I look to the character of the act to justify my behavior. But according to MJV1-O, it is not the character of the act that actually justified my behavior. Rather, it is the reasonableness of my beliefs about the character of the act—what makes my act materially right is that it is formally right. Hence, if we accept Sterba’s analysis then there is a disparity between what I take to be the justifying conditions for my act, and what actually justifies my act.

What we have, then, is the following implausible outcome: that which, from the standpoint of the agent, justifies violence—namely, the act being of type UA—actually does no such thing. Rather, the belief that this is what justifies violence generates in the agent the need to try to verify that the act is of type UA, and it is the satisfactory completion of this verification procedure that actually justifies violence (regardless of whether or not the act is actually of type UA). But the question that immediately arises is this: why does satisfactorily completing this verification procedure render the act morally permissible, if that which is being verified to be true—that the act is of type UA—does not in itself confer upon the act some positive moral status? From the standpoint of the agent who performs the verification procedure, the activity of epistemically justifying the belief that the act is of type UA is performed because it is believed that being of act-type UA is necessary (and sufficient) to render the act morally permissible. Otherwise, why seek to verify this fact rather than some other? Put more simply, the only plausible rationale for seeking to epistemically justify that the act is of type UA is the agent’s belief that being of act-type UA is a condition for its moral permissibility. If we accept MJV1-O, this rationale is undercut. We might even say that given Sterba’s perspective on what justifies violence, the agent’s perspective, while erroneous, must be preserved in order to trick the agent into doing what really justifies violence.

The Case of the Malign Deceiver

A slight alteration to the case of the misguided practical joke reveals yet another problem with MJV1-O. Imagine that Bob, rather than playing a practical joke on me, has been deceived into thinking that he is participating in the filming of a movie scene. The deceiver in this case has “cast” Bob in the role of an unjust aggressor, knowing that I will be
coming down that alley armed with a gun. His plan is to bring about Bob’s death through this trickery, using me as the weapon. Oblivious to what is actually going on, I judge that I am being unjustifiably attacked with no escape but for shooting my attacker. I am epistemically justified in believing that my act is of type UA. Hence, if we accept MJV1-O, my action of shooting Bob is morally permissible. Now, of course we want to say that my action is excused. In fact, we want to lay the blame for the action fully on the shoulders of the malign deceiver who has plotted Bob’s death in this unscrupulous way. But notice what happens if we accept MJV1-O: my action of shooting Bob is not only excusable, it is permissible. The act itself—the act of shooting Bob—was not morally wrong. Through trickery, the malign deceiver has not only succeeded in bringing about Bob’s death, he has succeeding in making the act that led to Bob’s death the morally right thing to do. His villainy has managed to turn an act that would otherwise have been immoral into one that is moral.

This is a counterintuitive consequence of MJV1-O, but there is a further difficulty as well. In particular, we cannot simply transfer the blame for this immoral act of killing Bob from my shoulders to his—because Bob’s killing was not an immoral act at all. We cannot blame the malign deceiver for an act that was not wrong. Hence, we can only condemn the malign deceiver’s deceptive activities. And even if we treat these deceptive activities as very grave indeed, that does not seem to fully describe the extent of the deceiver’s guilt. We want to say that he was responsible for what I did, and that this responsibility carries with it a high degree of moral blameworthiness. But given MJV1-O, what I did is not immoral, and hence responsibility for it cannot carry with it any blame.

Erosion of the Incentive to Avoid Errors in Judgment

Consider again the case of the misguided practical joke. Assuming that I am epistemically justified in believing that shooting Bob is an act of type UA, then I will have no need to regret killing my friend Bob when I learn the truth—since what I did was objectively permissible. While I might be sad about the loss of my friend, and angry at Bob for tricking me in this way, any regret would be misplaced and irrational. After all, regret is a fitting emotional response to wrongdoing, and according to MJV1-O there was nothing wrong with my act: not only am I subjectively blameless for the act, but the act itself is a morally permissible act and hence not the sort of act for which blame could appropriately attach. Of course, even if we reject MJV1-O we might want to say that I should not be burdened with regret. I should excuse myself and move on. But even so,
regret would be coherent because there was something wrong about what was done. We can imagine that I think “I should have looked a little more closely at his face before I fired,” or “I should have seen that the knife was non-reflective.” What is important to notice here is that the regret is not based on the belief that I lacked sufficient epistemic justification for my judgment that the act is of type UA. The evidence available to me was as good as that available to many people who act in self-defense, whom we would typically regard as having more than sufficient evidence for epistemic warrant. What I regret is failing to “go the extra mile” to ensure that my act was right before I did it.

But given MJV1-O, this sort of regret is not even coherent. If being epistemically justified in believing that V is of act-type UA is sufficient to purge the act of all taint of immorality—both objective and subjective—then any reason to “go the extra mile” in assuring that one is doing the right thing evaporates. There can be no such reason. Once I have done enough to be epistemically justified in believing that V is of act-type UA, it becomes objectively right. All further inquiry into its moral permissibility is pointless. The result is that any incentive to take extra precautions to avoid error disappears. Double-checking to make absolutely sure that one is doing the right thing, if such “double-checking” involves doing more than what is sufficient to have proper epistemic warrant, makes no sense given MJV1-O. But surely such double-checking does make sense.

These four problems, taken together, offer a compelling case for rejecting MJV1-O. Because MJV1-O implies the coextensionality of ontic and epistemic moral justification, it (1) blurs the distinction between justification and excuse, (2) generates a troubling distinction between what actually (ontically) justifies violence and what the agent takes to be the justifying conditions, (3) prevents us from holding deceivers culpable for violence that we perform on the basis of their deception, and (4) undercuts the incentive to “go the extra mile” to make sure we are doing the right thing before we act. These implications of MJV1-O are sufficiently problematic that, unless we have even more compelling reasons to accept MJV1-O, we should reject it as unacceptable.


In section 3 I suggested that Sterba might have embraced MJV1-O on the basis of the Epistemic Accessibility Principle, or EAP. This is the principle, put forward by Sterba, to the effect that an action can be “right for
us to do" only if "knowledge of that fact" is accessible to us, such that "any discrepancy between what we think is right for us to do and what is right for us to do must be traceable to a failure on our part to deliberate wisely." Hence, when I deliberate wisely there can be no discrepancy: what is moral is coextensive with what I am epistemically justified in believing is moral. MJV1-0 follows immediately. Thus, if EAP is an acceptable principle, we will be forced to embrace MJV1-0 despite the problems identified in the preceding section.

A closer look at EAP is therefore in order. EAP does have a certain initial appeal. In part, this appeal can be explained in terms of the ambiguity of the phrase "right for us to do," which might be taken to refer to the subjective character of the agent rather than an objective feature of the act. Given this subjective reading, the principle holds that those who are "invincibly ignorant" ought to be excused of all wrongdoing—which, as we have noticed, is a standard moral principle stretching as far back as Aristotle. But understood in this way the principle does not imply MJV1-0 at all.

But there is more to EAP’s appeal. In fact, I would argue that within a narrowly defined scope, invincible ignorance can render objectively permissible an act that would not be permissible if one knew the relevant facts. In particular, there are certain behaviors that must be accompanied by the appropriate epistemic state in order to qualify as being of a morally prohibited act-type, such that invincible ignorance not only renders the act excusable but alters the act-type so that it falls outside the scope of the moral prohibition altogether. Consider an act of the type "poisoning one’s own child," or PC. Suppose that a mother feeds her child some infant formula and is invincibly ignorant of the fact that some villain has mixed the formula with an odorless and lethal poison. In this case there seems to be no meaningful sense in which we can say that the mother performed an act of type PC. Rather, she performed the act of feeding her child infant formula, an act of a sort that is morally innocuous. In fact, not only is the act not prima facie impermissible, it is a praiseworthy fulfillment of her parental obligations. Hence, not only is she excused for what she has done, she did not do anything impermissible—her ignorance makes it such that her act was not an instance of the prohibited act-type at all. In cases like this, ignorance neither excuses nor justifies. What it does is render the act of a type that needs neither justification nor excuse.

But notice how different this case is from one in which a mother knowingly poisons her child because she is epistemically justified in believing that her child has contracted an illness that is both agonizing and terminal. Imagine, further, that her belief about the child’s condition,
though justified, is mistaken. Assuming for the moment that euthanasia in such a case is morally permissible, we would not say that what she did was permissible. Rather, we would want to excuse her for performing an impermissible act. Why distinguish in this way between the two cases? Acts of type PC are prima facie wrong, but (given our assumption) permissible when they are also of the type “sparing one’s child the agony of a terminal disease,” or SC. In this latter case, the mother’s ignorance does not remove the act from the class of prima facie impermissible actions—she knows that she is poisoning the child, and hence is performing an act of that kind. Furthermore, the conditions that render this kind of act morally permissible do not in fact hold. Merely thinking that she is sparing her child suffering does not make it true that she is performing an act of that kind. Hence, her act is of a morally impermissible kind. Here is the key difference between the two cases: believing (even justifiably) that you are performing an act of type SC is not sufficient to guarantee that you are; but having no reason to believe that you are performing an act of type PC *is* sufficient to guarantee that you are not. Hence, if you are performing an act of one type (PC) that must also be of another type (SC) in order to be morally permissible, rationally believing that it is of type SC is not enough to render it of that type, and hence not enough to render it morally permissible. However, if you are performing an act that you have no reason to believe is of morally impermissible type PC, that may be enough to exclude it from being of that type—and hence to render the act of a morally permissible type.

Acts of violence are like the act of the mother who euthanizes her child. They are prima facie impermissible acts. Being epistemically justified in believing that an act of violence is of type UA is not sufficient to render it an act of type UA, and hence not enough to render it morally permissible. Hence, even though an objective reading of EAP is true within a narrowly defined scope, EAP cannot be appealed to in support of MJV1-O. And failing a satisfactory argument in its favor, MJV1-O should be rejected in light of its troubling implications.

8. Significance

At this point, a critic might ask, “So what?” Even if we accept that there is a distinction between ontic and epistemic moral justification, it does not follow that this distinction has any practical significance. A critic might hold that, for practical purposes, epistemic moral justification is the only relevant sort, since we can only make decisions about how to act based on what we believe according to the best available evidence. Put another way, when we decide whether or not to perform an act of
violence, V, we can only base that decision on our justified belief that V is of type UA, not on its actual status apart from what we are epistemically justified in believing.

This objection overlooks two important facts. First, persons other than the agent may have knowledge that is unavailable to the agent. Second, the agent may know that certain situations are "epistemically treacherous"—that is, the likelihood of arriving at mistaken beliefs is high even when one carefully lives up to one’s epistemic obligations.

With regard to the first point, since persons other than the agent may have knowledge unavailable to the agent, it follows that an outside observer may know that an agent’s act, V, is morally impermissible even if the agent is epistemically justified in believing that V is of type UA and hence permissible. If Sterba’s position were accepted, this same outside observer would have to judge the action to be morally permissible. But there is a clear difference between how one should respond to observing an impermissible (though excusable) act of violence, and how one should respond to observing a permissible act of violence. Among other things, permissible actions are the sort I have a right to perform, which means that interventions to prevent me from carrying out these acts would be morally problematic in a way that they are not when my actions are impermissible. Hence, distinguishing between the two sorts of moral justification has clear practical significance for outside observers who may have special knowledge.

With regard to the second point, the fact that an agent may know that a situation is epistemically treacherous could generate an obligation to avoid the situation altogether. Suppose I know that in situations of war it is practically inevitable that I will, at least at some point during the course of the war, reach the mistaken conclusion that an act is of type UA when it is not. In other words, the circumstances surrounding war are so epistemically treacherous that no matter how diligent I am in fulfilling my epistemic obligations, and no matter how committed I am to doing violence only when I believe the act to be morally permissible, I will sometimes perform objectively impermissible acts of violence. It may be that if this is so, I have an obligation to avoid putting myself into these epistemically treacherous circumstances altogether. Hence, the distinction between the two sorts of moral justification may offer a basis for a special sort of conscientious objection—a basis that would not be available if we fail to make this distinction.

A similar line of reasoning might apply to the decision-makers who initiate the war. There may be good reason for these decision-makers to believe that if they initiate this war, they will be putting troops into epistemically treacherous circumstances that will inevitably lead to un-
nderstandable errors in moral judgment about the permissibility of vio-

lence. Put another way, their decision to go to war brings it about that at
least some of their soldiers will, despite their best efforts, make mistakes
in judgment that result in the killing of enemy soldiers who are not im-
mediately engaged in unjust aggression. Since the decision-makers may
know that the objectively immoral killing of enemy soldiers is an inevi-
table consequence of the decision to enter into war (even if the soldiers
themselves may never know when they have performed such an act), this
knowledge will have to factor into their decision. We might even draw
an analogy between this case and that of the malign deceiver discussed
above. If a deceiver tricks me into shooting my friend Bob by creating
the circumstances that lead me to justifiably believe that my act is of
type UA, then it seems that we want to hold me morally blameless for
the wrongful act (since I was invincibly ignorant) but hold the deceiver
fully responsible in my stead. Those who make the decision to go to war
are similarly creating circumstances that lead to lethal moral errors on
the part of others. While there are important differences between the two
cases, the point is that the distinction between ontic and epistemic moral
justification allows us to attach to these decision-makers some of the
responsibility for those morally wrong acts for which the soldiers, due to
relevant ignorance, may be partially or wholly excused. While it is be-
yond the scope of this paper to fully develop a case for anti-war pacifism
on these grounds, the fact that the distinction between the two senses of
moral justification makes such a case possible is sufficient to show the
practical significance of the distinction. And since the collapse of the
distinction generates all of the difficulties discussed above, it seems
likely that the moral justification of violence encounters far more serious
obstacles than is typically admitted by those who, like Sterba, fail to at-
tend carefully to the difference between the two senses of moral justifi-
cation.

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