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ORIGINAL ARTICLE

The wrong of mercenarism: a promissory account

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Recent history has seen a rapid growth in the involvement of private parties in war conflicts. In 2020, there were almost twice as many private contractors as US soldiers in Afghanistan.[1] In the ongoing war in Ukraine, private actors are allegedly deployed by both parties in the conflict.[2] Originally hired by states to provide support services from catering to logistics, private military firms (PMFs) have progressively taken on functions, including combat tasks, that were deemed, at least in the last century, inherently governmental.[3] The phenomenon amounts to an unprecedented form of corporatized mercenarism.[4]

The condemnation of mercenarism has an illustrious history. While Machiavelli famously deprecated mercenaries' lack of loyalty and tendency to corrupt the state,[5] Rousseau worried that hiring mercenaries, rather than having citizens fight wars, would lead the latter to value comfort more than republican freedom. Recent critics argue, among other things, that fighting for profit is inherently wrong;[6] that the privatization of war leads to an unjust distribution of access to security;[7] that it allows both states and private parties to escape democratic accountability;[8] and that it provides incentives to escalate conflicts and to increase the use of violence in the battlefield.[9] Some contemporary philosophers have, on the other side, shown a friendlier face towards mercenarism. Most prominently, Cécile Fabre argues that, at least under ideal circumstances, private parties have a right to sell their soldiering

[1]Bilmes 2021.

[2]Lawless 2022.

[3]See Singer 2011.

[4]In this article I will exclusively focus on private parties to which military functions are delegated by governments through contracts. I will not discuss the status of rebels or paramilitary groups.

[5]Machiavelli 1958; but see Lynch and Walsh 2000.

[6]E.g. Coady 1992, p. 63; but see Baker 2010; Pattison 2010.

[7]Pattison 2014.

[8]E.g. Pattison 2014; but see Baker 2010.

[9]E.g. Singer 2011; but see Fitzsimmons 2015.

services to states, for the purpose of just defensive killing, and states are at liberty to buy those services from them.[10]

Departing from Fabre's (qualified) defense of mercenarism, my goal is to provide an account of the wrong of privatized war, which neither rests on the controversial claim that fighting for profit is inherently wrong, nor assumes that privatization leads to unjust distributive outcomes, a lack of accountability, or the disproportionate use of force (although it may). I argue that, even in the absence of such problems, the privatization of (at least some) military tasks would amount to a condition of *double domination*, whereby both those exposed to the mercenary's use of force and, perhaps more surprisingly, the mercenary themself is dominated: that is to say, subject to the arbitrary will of another. This can occur even within the context of a just war.

To make my case, I will first argue that the state's outsourcing of certain military tasks to private parties, including most combat tasks, consists of a system of contracts between states and such parties that contain either invalid (not binding) or seriously problematic promises. Either the mercenary's promissory offer to perform those tasks entails the *alienation* of certain rights that cannot be so alienated, in which case the promise is invalid, or, if limited to the mere *waiving* of those rights, then the state is generally under a duty not to accept the mercenary's offer. Therefore, either the mercenary acquires no promissory duty to perform the content of the promise, or, if they do acquire it—because the state wrongly accepts the offer—they should be released immediately. Further, insofar as the mercenary comes to acquire a permission to use force *on behalf of* the state only as a necessary means to discharge their promissory duty to fight on its behalf, if the promise misfires, the mercenary does not acquire any such permission either.

Two implications follow. On the one hand, any attempt, on the part of the state, to compel the mercenary to perform constitutes an instance of domination over them—an arbitrary imposition of duties on them. On the other hand, since the mercenary lacks permission to exercise force on behalf of the state, and since one can arguably legitimately enforce rights *on behalf of* a state only if one does so in virtue of a grant of permission therefrom,[11] those exposed to this exercise are also dominated—subject to an arbitrary will. One important and difficult part of the argument will be to explain why the relationship between states and regular soldiers does not present the same normative problems that afflict the contractual relationship between the state and mercenaries.

A concern with double domination provides strong reasons to limit the privatization of war, *even if* private actors are committed to only fight just wars and to avoid any disproportionate use of force. This does not mean, however, that the privatization of *all* military tasks, in *all* circumstances, is equally problematic. My argument provides reasons to condemn the privatization of combat tasks on the ground, and possibly also of non-combat but essential support tasks in dangerous missions for which replacements cannot be easily found, but not the outsourcing of non-essential

[10]Fabre 2012, p. 218.

[11]See Parry 2017.

tasks or of combat tasks with no or very little risk of death to those providing them, such as drone operating. Further, my account condemns the privatization of military tasks by normally functioning states—that is to say, political entities that have both the institutional and economic capacity to maintain a public military—but not necessarily by very weak or failing states. I take these qualifications to be a strength rather than a weakness of the argument, since they reflect the complex nature of the question at stake, and of reality.

Although the argument relies on empirical assumptions about contemporary mercenarism, some of which could *arguably* be changed without compromising the conceptual integrity of the practice itself, nevertheless, the objection is robust insofar as, as we shall see, making the changes needed would undermine the reasons why mercenarism exists in the first place.

Granting that the concept of mercenary is contested,[12] I will follow Fabre in defining a mercenary as

> an individual who offers his military expertise to a belligerent [state] against payment, outside the state's military recruitment and training procedures, either directly to a party in a conflict, or through an employment contract with a private military corporation.[13]

Also, and importantly, mercenaries do not occupy an official position within a state's armed forces.

Although an ethical assessment of the privatization of war is the main focus of this article, it is not its only ambition. The article also provides an opportunity to reflect on what, if anything, makes the occupancy of a public office normatively special, and suggests a plausible, if not conclusive, answer to the broader question of which jobs, if any, should be performed exclusively by public actors. One upshot of my argument is that we have reasons to publicize—to reserve to public agents—the performance of jobs the function of which (1) is both morally permissible and socially desirable, in the sense that a political society has strong reasons to not eliminate the job in question, and (2) can only be fulfilled if employees are bound and can be compelled, by threat of punishment, to stay when an imminent risk of death materializes. Beyond combat tasks, firefighting and, more controversially, also policing and the provision of emergency care during deadly pandemics are plausible candidates.

I | MERCENARISM AS A PROMISSORY PHENOMENON

If mercenarism consists in a contractual exchange for services between a government and a private actor, then, mercenarism is a promissory phenomenon. For what

[12]Singer 2011.

[13]Fabre 2012.

is a contract if not an enforceable promise?[14] This way of defining contracts, still dominant among philosophers, also reflects the way most legal systems understand contracts. For example, US contract law defines a contract as "a promise … for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty."[15]

Mercenary contracts are legally binding and mutually conditional promises. By outsourcing military tasks (T) to a mercenary (M), government (G) promises to give certain benefits to M *if* M performs T on G's behalf. Simultaneously, M promises to perform T *if* G provides, or commits to providing, those benefits to M.

A moral assessment of the privatization of war should thus grapple with the question of whether mercenary contracts contain valid promises and, if so, whether such promises are promises that a state can permissibly hold their parties to. For even if the law of contract should not perfectly track the *morality* of promises—for example, a marriage contract in which Joseph marries Bob mostly for pecuniary reasons may be immoral (unethical), but nevertheless binding—still, the validity, and thus the enforceability, of contracts is conditional on the *validity* of underlying promises. Further, a state should not use legal norms to force people to comply with promises they made to the state, if the state itself should not have accepted those promises, however valid, in the first place. If it turns out, then, that mercenary contracts contain invalid promises, or promises a state ought not to accept, we would have strong reasons to question the contracts' enforceability.

But what does it mean for a promise to be *valid*? A promise is valid if it successfully imposes on the promisor a new duty, owed to the promisee, such that the promisor would wrong the promisee by failing to perform. I endorse "the authority view"[16] in thinking that what generates promissory obligations is not the fact that the promise creates an expectation in the mind of the promisee, for predictions can do this too, but rather the fact that the promisor transfers to the promisee *decisional authority* over the promisor, including "the right … to be the one to decide whether to act, how to act and on what grounds."[17] Before promising to buy you a book, I had the right to decide whether to buy it or not. After my promise, you have the right to decide that for me.

If what generates promissory duties is a transfer of decisional authority, then, to be valid, a promise must meet an *alienability condition*: the authority that the promisor purports to transfer to the promisee cannot be inalienable. The promise to become someone else's slave is a paradigmatic example of a promise that fails to meet this condition. Why?

[14]Fried 1981; Shiffrin 2007.

[15]*Restatement (Second) of Contracts, §1* 1979.

[16]Owens 2012.

[17]Shiffrin 2011, p. 156.

For one thing, the kind of decisional authority slavery promises attempt to transfer is arguably itself inalienable. *If* individuals' right to autonomously decide how to live—a right the slave gives up—is grounded on the value of moral agency, where to be a moral agent is to be a person endowed with free purposiveness—that is, the ability to develop long-term projects and to revise purposes over time, as well as to live according to them—it is plausible to see the very grounding of the right to autonomous living as internally constraining its own alienability, to the extent that irrevocably transferring decisional control over one's life to another, while remaining a person, would contradict moral agency.[18]

But even if one disagrees that there are inherently inalienable rights, one can still agree that a certain kind of decisional authority cannot be transferred *through promising*. According to the authority view, it is our interest in having the right to decide what we do that justifies the attribution to us of a power to enter into promises. This is because

> someone motivated to insist on the right to decide for themselves what they are going to do will also be motivated to seek the right to require another to behave in a certain way, where their own decisions depend on the actions of that other person.[19]

Promises that bind someone to irrevocably transfer the right to decide for themselves what they are going to do are invalid because they violate the rationale that justifies having the power to enter into promises in the first place. This invalidates promises to become someone else's slave, and possibly also promises that *irrevocably* transfer the right to decide on fundamental questions, such as whether one should live or die.

With these clarifications in mind, I now turn to ask: can a mercenary validly offer their combat services to the state?

II | THE MERCENARY'S INVALID PROMISSORY OFFER

Some answer positively to the question above. Fabre, for example, argues that, in the same way in which a weapon manufacturer can permissibly sell guns to those who need them to justly defend themselves, even though the assistance that they provide involves a contribution to an act of killing, private parties also have the liberty and claim, on grounds of freedom of occupational choice, to offer killing services, as long as the cause they serve is just.[20] Just defensive killing also provides, for Fabre, a jus-

[18]This does not mean that I lack the right to kill myself, since suicide is itself an exercise of moral agency, after which I am no longer a person who needs rights to exercise free purposiveness. What I cannot do is to irrevocably transfer the exercise of my free purposiveness to someone else in a way that undermines my moral agency, while I remain a person. Libertarians would object that since we own our bodies and capacities, we can do whatever we want with them, including enslaving ourselves. But certain ways of alienating control over our bodies or our person will undermine the basic interests which a system of property rights is predicated upon, including reasons we may have to value self-ownership, such as freedom from unwanted interference. See Carnegy-Arbuthnott 2019.

[19]Owens 2012.

[20]Fabre 2012.

tification for conferring on states the liberty and power to hire mercenaries for killing services.

Fabre's argument is intuitively appealing, but a careful analysis of her analogy reveals a problem. Whereas the manufacturer's offer simply transfers to the state a right over the use of an object (a weapon), those who fight for a state generally transfer to it also decisional authority over their life. Take the case of soldiers. By offering their combat services to the state for a just cause, soldiers transfer to it the authority to decide whether and when they should sacrifice their life for that cause. The state acquires the right to *demand* that, if circumstances necessitate, the soldier stay, even if the risk to their life amounts to almost certainty of death. If the soldier leaves just because things are too risky, they would be seriously wronging the state. The soldier–state contract thus implies the transfer of what Joel Feinberg calls *the discretionary right to life*—the authority to decide, at any given point in time, and without external interference, whether or not to end or sacrifice one's own life.[21]

This right transfer is generally considered morally justified, assuming that the state is committed to only fight just wars and to not demand futile sacrifices from soldiers, because without it, the effectiveness of the military would be compromised.[22] The transfer is also legally sanctioned. In the US, for instance, the Uniform Code of Military Justice (UCMJ) makes soldiers who disobey an order on the grounds that it demands self-sacrifice liable to punishment, including execution.[23]

If this is the content of the promise between the state and its soldiers, we have prima facie reasons to think that the content of the promise between the state and mercenaries should be the same. After all, if demanding sacrifice is necessary for military effectiveness in the case of soldiers, why would it not be equally necessary in the case of mercenaries? The mercenary promise would then (attempt to) transfer something that Fabre's manufacturer's promise does not transfer: the promisor's discretionary right to life.

But can the promise, so understood, meet the alienability condition? Whereas the manufacturer can alienate through a private contract their property right over the weapon, it is far less clear that the mercenary, as a private individual, can alienate their discretionary right to life through a simple private contract. As we saw, valid contracts must rely on valid promises, but some promises—for example, slavery promises—are invalid if and because they attempt to transfer rights that cannot be so transferred, and this is so even if compliance with such promises could promote a just cause. Many would agree that slavery contracts would be

[21]Feinberg 1978. It could be objected that transferring the authority to decide whether someone should live or die, as in the case of euthanasia, is different from transferring the authority to decide whether someone should be subject to a risk of death, however serious and imminent. But even in the case of euthanasia, note, there is always the possibility that the procedures chosen to kill will fail. Therefore, euthanasia, too, can be redescribed as a transfer of the authority to decide whether someone should be subject to a very high and imminent risk of death.

[22]See, e.g., Pattison 2014.

[23]Dobos 2015.

invalid, even if and when a system of voluntary slavery could promote, say, overall welfare.[24]

Now, the same reasons why slavery promises fail to meet the alienability condition also explain why promises that attempt to alienate one's discretionary right to life fail to meet that same condition—the discretionary authority to decide whether one should live or die being perhaps the most fundamental aspect of moral agency, and definitely something we have an authority interest in controlling, since our ability to embark on meaningful projects and plan long term would be seriously diminished if we transferred to others the right to control that more fundamental decision. Therefore, either the discretionary right to life is inherently inalienable, for its alienability would contradict the grounding value of moral agency, or it cannot, in any case, be alienated through promising, for such alienation would contradict the reason for having the normative power to promise—the authority interest. Note that this does not mean that contracts for, say, voluntary euthanasia are necessarily invalid, for in the case of voluntary euthanasia, I do not transfer to someone else the discretionary authority to decide whether I should live or die, regardless of changes in my future will. To the extent that I can change my mind until the last minute, I am myself *exercising* that authority.[25] By contrast, to (attempt to) transfer to another the right to decide whether I should live or die, regardless of potential changes in my future will, is to (attempt to) *abandon* that authority.

It follows that, *if* the mercenary's offer is interpreted, on a par with the soldier's promise, as an attempt to alienate the mercenary's discretionary right to life, then, such an offer (unlike Fabre's manufacturer's offer) ought to be regarded as invalid—even if the state accepts it, no promissory duty to stay in the case of an imminent risk would arise. If the mercenary refuses to die, they would not be wronging the state.

It could be objected, however, that people sign employment contracts to undertake very risky occupations all the time, and such contracts generally succeed in imposing binding obligations on the employees. Indeed, although mercenaries incur serious risks to their lives,[26] professions such as logging or construction working are overall more risky. So why is the mercenary contract, but not, say, the logger contract, invalid? The reason is that the logger's offer does not attempt to alienate their right to life. What the logger agrees to—performing tasks to which some randomly distributed risk of death is attached—is not the same as transferring to another the authority to decide whether they should stay once a risk of death materializes. The logger does not wrong the employer if they leave as soon as they reasonably fear a tree

[24]See, e.g., Satz 2010.

[25]Feinberg 1978.

[26]According to Baker (2010), Reuters reported that by July 2007 contractor deaths in Iraq and Afghanistan had surpassed the 1,000 mark, with a further 13,000 wounded; and that ArmorGroup estimated that their contractors had been attacked over 500 times during a one-year period.

is falling on their head, and this would be so even if they had contractually agreed to do whatever the employer decides. Not only, as Ned Dobos points out, would we "not think it morally justifiable for any civilian employer to demand and enforce obedience *unto death*", but also employees, including those in very risky occupations, have a moral and a legal right to disobey an order if they believe that an "imminent danger" exists, where this is legally defined in terms of a reasonable expectation "of death or serious physical harm."[27]

In the same way in which a logger's promise to do whatever the employer demands, including staying in case of imminent danger to the logger's life, would be invalid, so too should be the mercenary's promise to do whatever the commander demands in case of imminent risk of death. Later I will explain why soldiers constitute a sui generis exception to this conclusion.

It could be objected, however, that in the case of mercenarism, and only in this case, obedience to sacrifice is necessary to fulfill the aim of the profession—an aim that is arguably both morally acceptable and sufficiently valuable.[28] Perhaps this fact suffices to justify morally binding the mercenary to do as the commander says.[29] The objection, however, encounters a deontological challenge: the expected benefits of alienation would seem insufficient to make alienable what is inalienable. Just as a system of slavery contracts would be invalid, even when necessary to achieve social stability or economic growth, a system of mercenary contracts that entails the alienation of the discretionary right to life would be similarly invalid, even when necessary to achieve better security.

III | THE STATE'S IMPERMISSIBLE PROMISSORY ACCEPTANCE

It would seem, then, that mercenary promises can be both valid and permissible only to the extent that mercenaries are treated as *waiving*, rather than alienating, their right to life. Just as, say, sex workers can (arguably) sell sexual services in the market, as long as they retain the right to walk out as soon as they change their mind, mercenaries can sell their combat services, assuming that they retain the right to leave when things get too dangerous. They may have a duty to return the money if they provide no service, but no duty to incur any sanctions for failing to perform.[30]

[27]Dobos 2015, p. 106.

[28]Ibid.

[29]It could also be argued that mercenaries should be punished for failing to perform, for their non-cooperation poses a lethal threat to others. After all, if you hire me to hold a rope when you are mountaineering, I cannot change my mind and let go without being subject to serious legal punishment (I thank Dan Butt for this example). I would argue, however, that if there is an imminent and serious threat to the rope holder's life, e.g. a massive rock about to fall on her head, she retains the right to save her own life and should not be severely punished for leaving.

[30]Some may argue that sex workers who fail to perform can be permissibly asked to compensate their clients, insofar as their agreeing to perform sex generates an expectation in the mind of such clients. But even if we assume, arguendo, that such expectation is reasonable and that its disappointment justifies compensation, this is not the same as saying that unwilling sex workers have a moral duty to stay, and ought to be sanctioned for leaving.

The current legal system is ambiguous between the two ways—alienating versus waiving—of understanding the mercenary contract that we have analyzed so far. As Singer explains,

> [L]eaving a PMF post is not *desertion*—punishable by prosecution and even death, but merely *the breaking of a contract with limited enforceability* … As compared to a conscript army, when they return home, contract employees *likely* face no sanctions for defection as do conscripted soldiers.[31]

While the fact that walkouts are not punished as desertion indicates that mercenaries cannot be compelled to remain against their will, the fact that they break a contract when they leave indicates that they are understood as having a duty to stay, albeit one with "limited enforceability."

Regardless of how existing law understands the content of the mercenary contract, morally speaking, the mercenary's offer for services can be valid only if it is limited to waiving.[32] But this generates a new problem. If mercenary offers are valid only conditionally on private actors retaining the right to walk out in case of imminent danger, then, this fact would seem to compromise the moral permissibility of a state *accepting* such offers, since acceptance would endanger the success of military operations,[33] thereby contravening the state's moral duty to effectively protect its citizens.

This is not an abstract problem, and not a rare occurrence. As David Barnes explains,

> private security contracts run the risk of walkouts, strikes and dropped contracts, but the consequences of these potential pitfalls are even greater during wartime and contingency operations… [C]ontractual breaches … have occurred regularly enough to warrant investigation.[34]

It could be argued, however, that even if mercenaries are less reliable than soldiers, they may bring other benefits that could outweigh the heightened risk of walkouts, such that accepting mercenary offers would be, all things considered, the best way for states to fulfil their duty to effectively protect their citizens and their own stability. Of course,

[31]Singer 2011, pp. 159–60.

[32]Note that this is true only if we assume that the mercenary can voluntarily make the choice whether to stay or leave. Yet it could be reasonably argued that the incentives operating on mercenaries at times of war, especially when life-threatening risks materialize, are such that their decision to remain rather than desert is often not a free one, as it is made under high pressure. I thank an anonymous referee for this point. For the purpose of this article, however, I want to set this concern aside, in order to argue that the waiving account presents serious problems, *even if* we assume the mercenary's choice to be voluntary.

[33]See Pattison 2014.

[34]Barnes 2016, p. 86; see also Singer 2011.

when it comes to combat tasks on the ground, reduced reliability would seem to be a particularly weighty consideration, since if combatants walk out in the middle of a military operation, the success of the entire operation would be jeopardized, especially if those who walk out have, say, higher skills or better training. But in order to assess the weight of reduced reliability, relative to other considerations, we should be more specific as to what reasons states may have to prefer mercenaries to soldiers as means to discharge their duty to effectively provide security, compatibly with other duties they may have.[35]

One often cited reason is that, because of market competition, private companies can provide superior services at lower costs than the state. However, even if we assume, arguendo, that this functional consideration could compensate for reduced reliability, it may simply not apply in the case of most combat tasks, for providing security in conflict zones exhibits, and robustly so, all the features of market failure: scarce competition, a narrow consumer base, and consumers' inability to pass on economic losses.[36]

A second reason states may have to prefer private companies is "to acquire the services that they want when they want them, rather than having to maintain an ongoing regular military."[37] This is an important consideration, for security is not the only responsibility a state has, and a political society may reasonably opt to redirect military spending to other causes. However, this consideration holds only if we assume that privatizing military tasks will amount to long-term savings that could then be redirected elsewhere, something that is, again, highly questionable, once the costs involved in monitoring and administrating private contracts are factored in.[38]

Third, hiring private armies allows states to avoid politically unpopular choices such as committing additional soldiers to dangerous missions.[39] But either a state should do what the people want and not send the troops, or, if it should pursue the aim of security, despite the people's will, then, other things being equal, it is impermissible to prefer private combatants just to avoid political costs, if there is a higher risk that such combatants will leave when things become too dangerous.

Finally, normally functioning states that have the capacity, if not the willingness, to recruit soldiers cannot generally appeal to the scarcity of soldiers as a justification (as different from an excuse) for hiring mercenaries, as a means to discharge their duty to effectively provide security, for in such states the scarcity of soldiers is often a consequence of previous decisions to hire mercenaries instead.[40]

In sum, insofar as private combatants' reduced reliability cannot be easily outweighed by competing considerations, states with the capacity to maintain or recruit

[35]This list is not exhaustive. It focuses exclusively on reasons that amount to permissible considerations (I do not therefore discuss issues such as plausible deniability—the strategic use of privatization by state actors as a means to avoid responsibility), and that international security scholars have shown to motivate the hiring of mercenaries in most circumstances.

[36]Hedhal 2009.

[37]Pattison 2014, p. 16.

[38]See e.g. ibid.

[39]Ibid.

[40]Hedhal 2009.

alternatives—which excludes very weak states—will *generally* have strong reasons, grounded on their moral duty to effectively protect their citizens and defend themselves, not to accept the mercenary's promise.[41]

But perhaps the assumption that mercenaries are, or can be expected to be, less reliable than soldiers just because they are not subject to threats of punishment is false. After all, economic incentives, such as refusal to renew a firm's contract in case of walkouts, or motives such as comradeship, could and often do suffice to secure the willingness of private combatants to sacrifice their lives.[42] In response, we should first notice that incentives can be circumvented. For example, private firms can dissolve and form a different company in order to avoid a ban on bidding for further government contracts.[43] As for motives, even if we assume that mercenaries can be motivated, precisely like soldiers, by comradeship and a sense of honor, beyond pecuniary considerations, the threat of punishment may still be necessary to keep cases of desertion under reasonable limits. Otherwise it could not be explained why soldiers, who are similarly motivated, are subject to such threat of punishment.

But there is more. A state has a duty to secure not just reliability, as far as the provision of security is concerned, but *robust* reliability—reliability under a set of possible changes in human motivations. The reason is that a state should ensure that its citizens' security does not significantly depend on the good will of its providers[44]—in the same way as a state committed to the economic security of its citizens should not leave its provision to philanthropy. If mercenaries, however well intentioned, were allowed to discretionally judge the level of risk, and make decisions about whether to leave or stay on that basis, this would raise important concerns of domination. It is thus impermissible for states to exclusively rely on the comradeship of the mercenary, or on their discretional responsiveness to economic incentives, to ensure the successful performance of justified military operations.

To this we can add that, if mercenaries could not be compelled to remain, states would likely have incentives to deceive them about the risks of certain wars in order to prevent desertion.[45] This in turn could generate a lack of trust between mercenaries and state officials, as well as other soldiers, thereby further undermining the effectiveness of the military. Finally, the overall likelihood of desertion would impose higher costs on those remaining in the field of war.[46]

[41]I say "generally" because there are still cases where even functioning states might suddenly need specialist combat forces, such as, say, former SAS forces, that can be extremely difficult to find. In such limited cases, hiring a few specialist combat mercenaries might be all-things-considered permissible, but this does not eliminate the fact that it is generally problematic, and seriously so, to rely on mercenaries.

[42]Baker 2010.

[43]Barnes 2016.

[44]Pettit 2014.

[45]Benbaji 2011.

[46]Ibid.

All these reasons, then, suggest that functioning states are under a duty, grounded on their prior moral duty to provide security in an effective, non-dominating and fair way, not to accept mercenary offers. We thus reach the following preliminary conclusion: *either* the mercenary's promissory offer of military services violates the alienability condition, in which case the promise is invalid, *or*, if limited to waiving, it is generally impermissible for states to accept the offer. It follows that, if the state does what it ought to do, the mercenary would acquire no promissory duty to perform. If, by contrast, the state (wrongly) accepts the mercenary's promise, it would still be wrong for the state to demand that the mercenary comply with the offer's terms. It should release the mercenary instead. In turn, the state should not consider itself wronged if the mercenary fails to comply, for this failure is only possible as a result of the state's previous wrongful failure to release the mercenary.

Note that this argument does not apply to the provision of services, including some combat tasks such as drone operating, that entails no, or a very low risk of death for those providing them, or to services, however essential, for which replacements could be easily and effectively found, because in such cases leaving would not undermine security. It only applies to the provision of services that are both essential and can only be effectively supplied if those who provide them are willing to stay when a risk of death materializes—for example, combat on the ground by front-line infantry or, depending on circumstances, the operation of bombing campaigns. It may also apply to the provision of non-combat support services, as long as such services are essential for the success of a military mission, their provision in conflict zones entails a non-negligible risk of death, and replacements in cases of walkouts cannot be easily secured.

But a part of the puzzle is still missing. If mercenaries cannot alienate their discretionary right to life, why can soldiers? Call this *the asymmetry question*. True, soldiers retain the option of choosing imprisonment as an alternative to making the ultimate sacrifice.[47] However, the pair of options between which soldiers can freely choose is imprisonment versus (an imminent and likely risk of) death, as opposed to a free life versus (an imminent and likely risk of) death. Joining the army involves, in this sense, a qualified form of alienation.

IV | THE ASYMMETRY QUESTION

The literature on war suggests two answers to the asymmetry question, both of which are wanting.[48] The first answer points to the distinctively financial character of the mercenary's contract. Along these lines, Baker argues that "sacrifice has no

[47]Hurka 2007.

[48]A third answer is provided by Dobos (2015), who argues against asymmetry on the ground that alienation may be justified both for mercenaries and soldiers, if necessary to achieve the socially necessary end of security. I have already explained why this view is subject to an important deontological challenge.

place in the cost–benefit analysis that is at the heart of commercial soldiering," and Pattison contends that "the difference lies in the nature of the agreement."[49] For private contractors, "it is financial and, as such, its fulfillment is not always binding, especially in the face of likely death"; by contrast, the contract between the state and the soldier "is not simply financial … It involves an extensive responsibility of care, expert training, and a special positioning in society."[50]

It is, however, unclear what the financial aspect of the contract refers to and why it is relevant. If it refers to the *motives* for the sake of which mercenaries agree to fight, this cannot explain the asymmetry between soldiers and mercenaries, because, as Baker himself argues, both parties can have mixed motives.[51] Further, the motives an agent has for signing an agreement arguably do not bear on whether they can or cannot alienate their right to life through that agreement. Whether I am motivated to agree to become someone's slave for money, fun, or to pursue a just cause, the other party still wrongs me if they enslave me. If, instead, the financial aspect refers to the *rationality* of the agreement—whether the expected benefits are worth the expected costs—this cannot explain the asymmetry either, because mercenaries, precisely like soldiers, could in principle expect the benefit of fulfilling a vocation or of obtaining a certain kind of social recognition for their heroic acts, in a way that could make their agreement to stay in case of imminent risk of death rational.[52] But, again, the fact that it may be rational for an agent to enter a certain agreement (for example, a contract for voluntary slavery with great benefits attached to it) does not mean that the agent has the moral power to alienate what is in fact inalienable. Nor the fact that soldiers have special responsibilities of care, undergo expert training, and occupy a special position in society explains why they, and only they, can alienate their discretionary right to life. Not only could these features in principle extend to mercenaries, but also a private agent's inalienable rights generally constrain the kind of responsibilities she can reasonably be allocated.

The second answer is contractarian and argues that soldiery is a role the constitutive rules of which (1) could be agreed by all relevant participants (for example, states) as fair and mutually beneficial, and (2) demand that soldiers acquire sui generis permissions and liabilities that would be ruled out by ordinary morality. Benbaji makes this argument to explain how soldiers, by consenting to their role, lose their moral claim against being unjustly attacked by enemy soldiers, but his argument could be extended to explain why soldiers also lose their claim against being compelled by commanders to face an imminent risk of death against their will.[53]

However compelling in its own case, Benbaji's argument cannot suffice to answer the asymmetry question, for two reasons. First, one could argue that a practice of

[49]Baker 2010; Pattison 2010, p. 441.

[50]Pattison 2010, p. 442.

[51]Baker 2010.

[52]See Dobos 2015.

[53]Benbaji 2011.

mercenarism, the constitutive rules of which required private parties to alienate their right to life, would also be mutually beneficial and fair to all relevant parties, for the same reasons why that is the case for soldiers: most states are not able to efficiently fight just wars except with armies compelled to remain when a risk of death materializes. Mercenaries could then acquire a duty to stay by simply consenting to become mercenaries. Therefore, fairness, mutual benefit and consent cannot by themselves explain the asymmetry between soldiers and mercenaries with regards to alienation. Second, as Benbaji himself acknowledges, the contractualist argument is subject to an important deontological objection. In Benbaji's own words "a person's claim against being unjustly killed is not alienable just by her consent to morally optimal rules."[54] That is correct and applies as well to a person's claim against being compelled to die against their will. Neither a soldier nor a mercenary can alienate their inalienable rights through simple consent, no matter how optimal the rules they consent to.

In sum, the reason why soldiers but not mercenaries can be treated as if they have alienated their right to life cannot be reduced either to the non-financial nature of their agreement or to the fact that they consent to optimal constitutive rules. Rather, the asymmetry must ultimately have to do with a difference in their (public/private) status or identity.

IV.I | Why soldiers are special

We can start to make sense of the above difference by considering a distinction, developed by legal theorists Alon Harel and Aviay Dorfman, between actions *of* the state and actions *for* (in service of) the state.[55] Dorfman and Harel use this distinction to argue that, because private actors can, at most, act as service providers *for* the state, but not as agents *of* the state, such actors fail to provide certain inherently public goods (for example, punishment) that can only, conceptually speaking, be provided by the state, and to legitimately exercise certain powers that can only be legitimately exercised by the state itself. Dorfman and Harel do not, however, address the asymmetry question. They do not explain why state agents could be regarded as alienating rights that private actors are not able to alienate. In the case of privatized war, their account cannot therefore explain why the mercenary themself, beyond those subject to their use of force, are dominated. I will argue, however, that the distinction between actions for the state and actions of the state can be fruitfully deployed to answer the asymmetry question and to deliver a broader account of the wrong of privatized war.

The distinction between actions of and for the state reflects different ways in which a principal, call it State, can use an agent, call it Agent, to execute a command.[56] First, State can seize Agent's hand, forcing Agent to execute the command step by step. In this case, State is acting through the body of Agent, as if Agent's arm

[54]Ibid.

[55]Dorfman and Harel 2013.

[56]See ibid.

were its own. Agent's action counts as State's own action, because Agent qualifies as an extension of State. This is an instance of what we may call "extended agency."

Second, State can tell Agent to execute the command, while setting up mechanisms of both guidance and control to ensure that what Agent does is guided step by step by State. In this case, too, we can speak of extended agency, because and to the extent that what Agent does can be regarded as something that State, the principal, has intentionally brought about—Agent can be aptly regarded as carrying out State's own will, different from Agent's independent will.

Finally, State can ask Agent to execute the command as an independent party: that is to say, leaving Agent the discretion to act outside State's continuous guidance and without a mechanism to ensure ongoing control over the process of execution by Agent. In this case, Agent's duty is better understood as one of performance rather than deference. Agent is expected to perform certain functions that State wants it to perform, but not to defer to State and carry out its intentions throughout the execution process. Because of this, and insofar as State lacks robust mechanisms for the ongoing guidance and control of Agent's acting, Agent's particular acts and specific determinations cannot be regarded as something that State has intentionally brought about, and this is so even if what Agent does, happens to coincide with what State wanted.[57] We can then say that even if Agent acts *in the service of* State, in this case, it does not act *as if State itself was acting*. It is not an extended agent of State.

To further illustrate this point, consider a case in which a robber is unjustifiably attacking you and you ask me to kill him on your behalf. My killing the robber counts as my own action, not yours, and this is so even if I kill the robber with the intent to do what you asked me to do; even if I try hard to put myself in your shoes when deciding whether and how to perform the killing;[58] and even if you give me incentives (for example, a promise of some benefit) to try to align my preferences as to how to kill with yours—alignment that ultimately depends on my discretional response to those incentives, since I am not bound to defer to you. Insofar as we act as two independent persons—you are neither directly guiding nor have ongoing control over my action—my action cannot count as your own action, that is to say, as if *you* did it. I am not an extension of you. Consequently, although you may bear outcome responsibility for my action, because you requested and incentivized it, I remain the independent *author* of the action. The action is mine and only mine.

How can we judge, in the context of a political order, if an agent meets the conditions of extended agency, such that when the agent acts it is the state itself that is acting, as opposed to someone just acting in its service? The answer—as Dorfman and Harel point out—has to do with the unified structure of political authority. A unified and authoritative system of official roles organized to robustly secure compliance with the duty of office—first and foremost a duty of deference, not merely of performance—simultaneously performs functions of coordination and integration

[57] Ibid.

[58] Harel 2011.

through mechanisms of both guidance and control, so that when an office holder acts within its mandate it is the state as a whole that acts through them.[59] The structure of office holding, and the mechanisms of command and control within it, make it possible to see the acts of each office holder as carrying out the previously specified intention of another office holder. The actions resulting from each performing their roles within this unified and integrated practice can then be regarded as state actions, attributable to the state as a unified collective agent, because they can be regarded as the conclusion of an appropriately deferential and integrated collective process of decision-making by holders of official roles. The agents who perform such actions can in turn be aptly regarded as extended agents of the state—they are, quite literally, integral parts of the state body.

What does all this have to do with the asymmetry question concerning the alienability of rights by soldiers and mercenaries?

Soldiers—and, as we shall see, only soldiers—can be regarded as extended agents of the state, because one essential feature of the status of soldier, as defined by the constitutive rules of soldiery, is that they respond to the *chain of command* within the official structure of the military. This does not mean that because they are formally integrated into this structure, the military cannot have autonomy or that soldiers cannot exercise significant discretion on the battlefield.[60] The point is simply that the process of practical deliberation that the soldier follows can be aptly regarded as the conclusion of the state process of deliberation, because soldiers' exercise of practical judgment is embedded within, and results from, an integrated system of offices, and a structure of official duties, that make it possible for us to regard the soldier's deliberation as carrying out the intentions of his superiors, and those of his superiors to higher offices, and so on and so forth, in such a way that the soldier's action can be attributed to the state as a unified agent.[61] The official structure of the military represents—indeed, ought to represent—a form of extended agency, so that the military's decisions and acts, to whatever extent autonomous, can be directly attributed to the state itself, as its own.

If the occupancy of an official position within the authority structure of the military is a constitutive feature of the status of soldier, as it certainly is, it follows that the capacity to act as an extended agent of the state also is a constitutive feature of such status. As extended agents of the state, rather than merely independent service providers for it, soldiers, quite literally, "bear the person" of the state, to say it with Hobbes. *This* change of identity in turn has a crucial normative implication: to the extent, and only to the extent, that soldiers bear the person of the state, and do not act in their capacity as private persons, they cannot claim that free purposiveness and that authority interest in deciding for themselves how to live, upon which the inalienability of the right to life rests. Soldiers, qua state agents, can thus be treated as if their discretionary right to life is temporarily suspended, although, of course, this right is reactivated as soon as they

[59]Dorfman and Harel 2013. See also Ripstein 2009; Cordelli 2020.

[60]See e.g. Baker 2010.

[61]See Harel 2010.

return to act in their capacity as private persons. Crucially, it is by acquiring the status of extended agents of the state, and by acting as if the state was acting, not by signing a contract, that such normative transformation—the suspension of the right to life—happens, and this is so even if the status is acquired through contract.

Importantly, the suspension of the discretionary right to life is justified only to the extent that it can be regarded as a requirement of the role of soldier—a role the demands of which must in turn be justified by appeal to those general principles of political morality that justify the institution of soldiery as a whole. On the one hand, soldiers cannot refuse to continue fighting in just wars that they think too risky, without being subject to threats of severe punishment, to the extent that this would impair the very point and purpose of soldiery—supporting a mutually beneficial regime of self-defense. Again, if soldiers could not be compelled to stay, states would likely have incentives to deceive their soldiers about the risks of certain wars in order to prevent desertion.[62] This, in turn, might generate a lack of trust between soldiers and higher-ranked officers. Further, the likelihood of desertion would increase with higher costs for those remaining in the field of war.[63] The very reasons that justify the institution of soldiery are thus, arguably, also reasons to see the suspension of a discretionary right to life as an important requirement of the role of soldier. On this point, my argument agrees with Benbaji's: it is only to the extent that the constitutive rules of soldiery are independently justified that, by occupying the role of soldier, soldiers can acquire permissions and liabilities they would not be able to acquire through simple promising or contracting. However, it is *not* the fact that soldiers consent to optimal rules that explains alienation, but rather the fact that, by occupying a role the constitutive rules of which require embeddedness in a system of offices, soldiers undergo a transformation of their normative identity: they become the state.

On the other hand, however, what soldiers can be expected to do is also limited by the principles that justify their role. A role occupant must retain the right to refuse to do things that contravene the justification for the existence of their role, or are unnecessary to its proper performance. Therefore, if the institution of soldiery can only be justified as a means for the effective fighting of *just* wars, soldiers retain the right to refuse to make the ultimate sacrifice for causes that are evidently unjust, not because within their official role they retain the right to act according to their private judgment, but rather because the order in question falls outside the domain of their role.[64] Similarly, the role of soldiery arguably requires that soldiers make the ulti-

[62]Benbaji 2011.

[63]Ibid.

[64]Determining when an order violates the requirements of the role of soldier depends on one's account of the moral principles that justify that role—on whether, for example, symmetry of treatment between combatants can be regarded as an element of the norms of soldiery; see e.g. Hurka 2007; McMahan 2009; Benbaji 2011. I remain agnostic about the precise content of such norms. But I take it that soldiers retain the right to refuse to sacrifice their life for causes whose pursuit falls outside the requirements of their role, and that for this right to be meaningful, they must retain a capacity to judge when a command violates such requirements. Therefore, I don't think that a soldier's deference is incompatible with their exercise of independent judgment (for an objection to Dorfman and Harel along these lines, see Feldman 2016).

mate sacrifice as circumstances necessitate, but does not require that soldiers be exposed to unnecessary risks.[65]

It could be objected that not all soldiers, when joining the army, consent to such drastic changes in their normative identity, but this objection neglects the fact that what someone consents to when entering an institutionally established role is determined by the constitutive rules of the role she consents to enter.[66] If I consent to play soccer, I thereby consent to all the rules of the game. Therefore, if acquiring a normative identity that comports the suspension of one's discretionary right to life is a constitutive component of the role of soldier, by consenting to become a soldier, one ipso facto also consents to bear that identity.[67] Regardless, the status of soldier need not be acquired voluntarily. Suppose that justice requires that a state fights a certain war, and that fairness requires that soldiers be selected by lottery among all citizens who are capable of fighting. If duly selected citizens have a duty of justice or political obligation to serve as soldiers, they also have a duty or political obligation to submit to the constitutive demands of the institution of soldiery.

What about mercenaries, then? From a conceptual perspective, mercenaries can only remain meaningfully distinct from soldiers if they remain outside the official structure of the national military. After all, as law scholar Taussing-Rubbo puts it, "is not the essence of the entire enterprise of privatization and subcontracting that the parties [states and private parties] remain distinct—that the contractors are not even employees [of the state] but are 'independent contractors'?"[68] Although states can certainly deploy incentives, in line with principal–agent theory, to try to achieve a strategic alignment between the preferences of contractors and their own preferences,[69] this is not the same as occupying an official position within the authority structure of the state. Mercenaries do not occupy a role a constitutive duty of which is to respond to the chain of command.[70] The fact that private contractors operate outside this official

[65]Dubik 1982.

[66]Benbaji 2011.

[67]It could be objected that, if one lacks the moral power to alienate certain rights, one cannot validly consent to occupy a role that requires the alienation of those rights. But this seems untrue. Consider the following examples. As an individual, I lack the moral permission to kick your leg without your consent. I can, however, validly consent to become a football player. Qua football player, I acquire a sui generis moral permission to tackle my adversary, even if he asks me not to. As an individual I also lack the moral permission to lie. But I can consent to become a lawyer and, once I am a lawyer, I arguably acquire a (limited) sui generis moral permission, perhaps even a duty, to lie for the purpose of effective advocacy. Similarly, as an individual I lack the moral power to alienate certain rights. I can, however, consent to become a soldier, that is to say, an extended agent of the state. Qua soldier, I acquire the sui generis moral power to alienate otherwise inalienable rights or, more precisely, those rights are suspended during the performance of certain tasks required by my role.

[68]Taussing-Rubbo 2009, p. 140.

[69]See Baker 2010.

[70]This, in my account, is the crucial difference between a mercenary and a voluntary (non-conscripted) soldier. Both can assume their roles through contract. But the soldier, and only the soldier, comes to occupy a role within the official structure of the military and under the chain of command. This comes with a transformation of the soldier's normative identity, and subsequent suspension of his rights, that the mercenary does not undergo.

structure normatively entails that they can, at most, be regarded as acting as service providers *for* the state—this is, after all, what the word "contractor" indicates—not as an integral part of its body. Mercenaries, therefore, qua mercenaries, cannot bear the person of the state. Insofar as they, conceptually, bear their own private person, they retain their free-purposiveness and authority interest, and cannot therefore suspend their discretionary right to life through a simple promissory agreement.

It could be objected that mercenaries would not, conceptually speaking, cease to be mercenaries if embedded within the official authority structure of the state military. I do not find this objection compelling; but, even if correct, the fact remains that bringing mercenaries into this structure, and imposing on them even only some of the same requirements of soldiers, would likely defeat the very reasons, including (among others) cost reduction, effectiveness, and flexibility, that arguably make the privatization of war prima facie justified in the first place. After all, if mercenaries were severely punished for deserting, they would arguably need to be paid even higher salaries than they currently are to compensate for the imposition of such burdens. This would in turn create hostile competition between mercenaries and soldiers—now all under the same chain of command—and, as Hedhal argues, "further impact the ability to retain crucial, skilled personnel within the military itself."[71] It seems, therefore, that even if we had good reasons to transform mercenaries into extended agents *of* the state, this transformation would be either conceptually or empirically self-defeating.

We have reached the following conclusion: to the extent that being a mercenary is relevantly different from being a soldier, especially in terms of the official structure within which they are respectively placed, mercenaries act as private agents. As such, the contracts they routinely sign with normally functioning states for (many) combat tasks, and possibly also for some essential non-combat tasks, either contain invalid promissory offers (if they involve alienation) or, if valid (because limited to waiving), then a government should generally not accept these offers.

V | DOUBLE DOMINATION

The above conclusion comes with a first, interesting implication. If the mercenary offer is invalid, or if it is valid but the state does what it ought to do (decline the offer), no promissory duty of performance on the part of the mercenary arises. Therefore, whenever a state attempts to enforce that duty on the mercenary—including, for example, by threatening them with economic sanctions if they do not perform—the state wrongs the mercenary. This wrong amounts to a form of domination, insofar as the state arbitrarily interferes with the mercenary's freedom by trying to enforce duties upon them that they do not in fact have (or that they may have, but just as a result of the state's wrongful failures to refuse the promise and to release the promisor), and by claiming the authority to do so on the basis of a contractual relationship that the state itself should have refused.

[71] Hedhal 2009.

But there is a further implication. Sometimes promises that misfire fail not only to impose new duties on the promisor, but also to transfer new permissions to them. To illustrate: if you accept my promise that I will look after your garden while you are away, I not only acquire a promissory duty to look after your garden, but also permissions that I would not otherwise have to do things that are either instrumentally necessary to, or constitutive of, the successful fulfillment of the promissory duty—for example, I now have permission to access your garden and water the grass. If, for whatever reason, the promise misfires, I now have no duty to take care of your garden and no derivative permission to access or water it (unless, of course, you separately granted that to me).

Similar considerations apply to the promise between the state and the mercenary. By accepting the mercenary's promissory offer to perform combat tasks on its behalf, and assuming the offer is valid, the state imposes on the mercenary a promissory duty to fight on its behalf. Insofar as, and only insofar as, the use of force is constitutive of, and instrumentally necessary to, the successful discharge of that duty, the state also transfers to the mercenary the moral permission to use force on its behalf. However, if the promise misfires, either because the offer is invalid or the state's acceptance impermissible, the promise cannot transfer to the mercenary a derivative permission to use force on behalf of the state.[72] Yet, if the mercenary uses force without permission to do so, they arbitrarily impose force on others, thereby dominating them. The privatization of (many) combat tasks thus entails a threat of *double domination*: the domination of both the mercenary and of those subject to their use of force.

It could be objected that states, or state-authorized agents, are not the only parties with permission to use force in war, and that any private party has the right to independently initiate and fight in just wars.[73] Therefore, even if mercenaries fail to acquire, through their contract with the state, permission to fight in a war, their use of force need not to amount to domination. My response follows contemporary Kantians who have, in my view compellingly, argued that private parties can neither adjudicate nor enforce rights against others merely unilaterally: that is to say, independently of an omnilateral, political authorization.[74] This is so, even if the content of their determinations is correct, insofar as being correct

[72]If the state wrongly accepts the mercenary offer to fight on its behalf, the mercenary would be de facto authorized to use force on behalf of the state, but, insofar as it is impermissible for the state to accept the offer to fight, acceptance cannot transfer to the mercenary a moral permission to act as they promise. To illustrate: suppose you promise that you will help me rob a bank. Insofar as it is impermissible for me to accept your offer, even if I wrongly accept it, you do not acquire permission to do what you promise. One could object that this is because robbing a bank is itself wrong and a promise cannot transfer permissions that the parties to the promise do not have. To this I would respond that a functioning state also lacks permission to fight a war with unreliable armies, because this contravenes the state's duty to provide effective security, and mercenaries lack permission to contribute to states fighting wars in such a way. Therefore, wrongful acceptance of the promise by the state cannot transfer the relevant moral permission to the mercenary.

[73]Fabre 2012.

[74]E.g. Stilz 2014.

is insufficient to confer on private parties the authority to impose their own unilateral determinations on others. It is true that we have a liberty of self-defense, but this liberty is exceptional. It is not a general authorization to independently enforce one's rights or the rights of others, it is rather a limited, sui generis authorization to do so only when public authorities acting omnilaterally are unavailable.[75]

But even if one thinks that private parties are permitted to independently fight wars, the fact remains that one can legitimately enforce rights *on behalf of* an agent only if one does so in virtue of their authorization.[76] Insofar as, in the context of privatized war, the mercenary's job entails enforcing rights on behalf of a state, not independently, the state must grant, through contract, a moral permission to the mercenary to use force on its behalf in order for *that* use to be non-arbitrary. Insofar as mercenaries lack such permission, their use of force remains arbitrary. Hence the problem of domination.

The argument developed so far provides us with strong reasons not only to limit the privatization of war, but also to take under state control some professions beyond the military. I recommend that a profession be within the exclusive purview of the state when (1) the profession is morally permissible and socially desirable and (2) can only fulfill its purpose if its members are bound to stay when an imminent risk of death materializes. As we saw, in the case of most risky jobs (logging, constructions, mining, and so on), the purpose of the activity can be fulfilled even if employees retain the right to walk out when a risk of death materializes. In these cases, the activity can be private, and we can simply say that the employee does not wrong the employer when they leave. No moral residue is left.

By contrast, as we also saw, the case of mercenarism creates a distinctive conflict: the success of the activity itself requires the *alienation* of the right to decide whether to stay or leave in case of an imminent and very serious risk to one's life, *but* such right cannot be alienated by private persons through simple promising. If the activity remains private, then, it fails to fulfill its purpose. In such case, the activity ought to be exclusively performed by state agents, because those who bear the corporate person of the state, and only they, occupy a status to which the circumscribed suspension of the right to life can be attached (to the extent necessary to achieve the role's necessary purpose). It is only by making the job public that we can eliminate the moral conflict: no one either violates an alienability condition *or* fails to achieve a morally acceptable and socially desirable purpose.

Soldiery, however, may not be the only profession to meet these conditions. Firefighting is arguably another profession of this kind, and there may be others, including providing emergency care during deadly pandemics, and policing. If such professions serve permissible and socially desirable purposes, and if the achievement of such purposes demands that their members be required to stay when a serious

[75]Ibid.

[76]Parry 2017.

risk of death materializes, we may have equally strong reasons to not privatize them. Whether such reasons are conclusive is left for another time.

VI | CONCLUSION

The privatization of war, especially when certain military tasks—many combat tasks and potentially also some essential support tasks—are at stake, consists in a system of failed promises between private parties and states that gives rise to a condition of double domination. Since failed promises cannot generate binding duties, attempts to enforce such duties on the mercenary constitute an act of domination against the latter. Since failed promises cannot generate derivative permissions either, the mercenary's use of force on behalf of the state also amounts to the domination of those subject to it. This argument also provides strong reasons to reserve to state agents the performance of other socially necessary functions, such as firefighting.

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