



Shooting to Kill: The Ethics of Police and Military Use of Lethal Force

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Police Officers, Regular Soldiers, and Normative Institutional Analysis

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Abstract and Keywords

In this chapter a normative, comparative institutional analysis of police officers and regular soldiers is provided. The roles of police officer and regular soldier are defined by recourse to normatively specified, empirically anchored, organizational roles. Two key theoretical notions employed are those of multilayered structures of joint action and collective goods. The moral rights and duties constitutive of institutional roles are derived in part from the collective goods that are the *raison d'être* of police and military organizations. These institutional moral rights and duties are *special* rights and duties. The institutional roles of police officers and regular soldiers are importantly different from one another. For example, military forces, unlike police forces, do not have as a primary and overriding role to enforce the law, and soldiers use lethal force with less legal and moral constraints than police officers.

Keywords: normative teleological theory, police role, military role, special rights, enforcing the law, collective goods, joint action

IN THIS CHAPTER I undertake a normative, comparative institutional analysis of police officers and regular soldiers in the setting of the contemporary liberal democratic nation-state. This will serve as a precursor to the detailed discussion in later chapters of police and military use of lethal force.¹ I do so in the overall context of my favored normative teleological account of institutions and institutional roles, according to which the latter presuppose logically prior *natural* moral rights, obligations, and goods (the natural right to self-defense and natural obligation to defend the lives of others, in particular), but I nevertheless

adjust or further specify these natural rights and obligations in light of the institutional purposes or, more precisely, collective ends served by these institutions.

The occupational roles of police officers and regular soldiers are related by virtue of an important feature that they share in common—a feature that is evidently one, but not the only, defining feature of each. The feature in question is their use of coercive, indeed lethal, force. That this is a defining feature of the police, in particular, might be controversial in some quarters, but it is, to say the least, an influential view,² and one that **(p.79)** I have defended elsewhere.³ At any rate, it is an assumption of this chapter and elsewhere in this book. Granted that this defining feature—the use of coercive or lethal force—serves to demonstrate that the two roles are related, how are they to be differentiated?

Differentiating police officers from regular soldiers might seem straightforward enough. The role of the police officer is to maintain order and enforce the domestic criminal law of the land—paradigmatically by arresting offenders, but on occasion, and only if necessary, by using lethal force. By contrast, the role of the regular soldier (or sailor or airman), whether they be members of a standing professional army, members of a voluntary citizen-militia, or conscripted citizens, is to defend the state (or like political entity) against armed aggression by other states (or like political entities⁴)—paradigmatically by the use of lethal force. I will refer to naval and air force personnel, as well as army personnel, as regular soldiers, in part for ease of exposition, and in part to signal that they are members of the armed forces of the nation-state—specifically, the contemporary liberal-democratic state. The contrast here is with *irregular* soldiers, such as mercenaries, armed insurgents, terrorist-combatants, and the like.

In recent times this way of differentiating police from soldiers has come under some pressure. Are not many regular army soldiers engaged in peacekeeping missions, and as such focused on maintaining order and upholding the law? Are not these soldiers essentially functioning as police? Consider also armed police squads engaged in shoot-outs with heavily armed bank robbers or terrorist groups in, for example, India and South Africa. Are not these police essentially functioning as combatants?

Evidently, there has been a blurring of the distinction between police officers and regular soldiers. Arguably, this is in part a consequence of the rise of international terrorism (e.g., al-Qaeda and ISIS), and, as a consequence, the need for closer cooperation between domestic police agencies and military organizations, for example, in the intelligence-gathering/sharing area.⁵ The so-called war on terror has also, one way or another, **(p.80)** led to a great expansion of security agencies and an attendant outsourcing of security functions to the private sector, notably to private military forces (PMFs) in Iraq, Afghanistan, and elsewhere.⁶ At any rate, whatever the precise nature, extent,

and causes of the blurring of the distinction, in this chapter I seek, first, to clarify these related occupational roles, and, second, to unearth the implications in general terms for the morally permissible use of lethal force by the police, on the one hand, versus the military, on the other.

My general approach here is to frame these problems in normative and institutional terms. That is, I take it that differentiating between police officers and regular soldiers is, or ought to be, principally a matter of demarcating their respective institutional roles.⁷ This, in turn, requires a specification of the nature and function (or end or telos) of the institutions of which these roles are, or ought to be, constitutive elements. Such specification is, I suggest, essentially a normative undertaking, as opposed to, for example, an exercise in purely descriptive organizational sociology. That said, it is a normative exercise that needs to be anchored in appropriate institutional description.

In proceeding in this manner, I eschew the essentially noninstitutional, individual-based approach favored by many contemporary philosophers.⁸ In doing so, I am not engaging in sociology, much less endorsing some **(p.81)** metaphysical view to the effect that institutions are *suprahuman* agents, the actions of which cannot be reduced to those of individual human agents. Far from it; sociologists tend to reject normative analysis, and I certainly reject the metaphysical extravagance of the likes of Peter French, Margaret Gilbert, and some Hegelians of old.⁹ Rather, I am insisting on defining the notions of police officer and regular soldier by recourse to normatively specified, descriptively anchored, organizational roles—a procedure that might be referred to as institutional ascent. Institutional ascent contrasts with the noninstitutional, individual-based approach of attempting to identify features of salient individuals who have, or might have, occupied the occupational roles in question, and using these features to generate a set of necessary and sufficient conditions for someone to be a police officer or regular soldier.

On the other hand, given my rejection of supra-individual institutional agents, the procedure of institutional ascent needs to offer a theoretical account of the relationship between institutional roles and the individual human beings who occupy those roles and, in particular, their pre-institutional (logically prior) *natural* rights and obligations. Here I invoke the quasi-theoretical notion I have analyzed elsewhere of acting qua member of an institution.¹⁰ I explain this notion in the context of my outline of the key theoretical concept for my purposes in this chapter—namely, that of an institutional role.

I stress that my procedure of institutional ascent is consistent with individualism broadly understood. Within individualism, we need to distinguish between atomistic accounts and relational accounts. Historically, atomism has been associated with methodological individualism and posits rationally self-interested actors who cooperate only insofar as each believes it to be in his or

her own individual interest, or at least a means to his or her own individual end.¹¹ McMahan offers an atomistic individualistic account of war in that he seeks to generalize from the individual case of self-defense to ever more complex cases involving numerous individuals attacking and defending one another over extended periods **(p.82)** of time.¹² However, war involves joint action, particularly joint action in organizational settings. Yet there is no easy theoretical route from individual action to organizational action. Indeed, most contemporary social ontology theorists hold that organizational action is conceptually irreducible to individual action.¹³ At any rate, at this point McMahan and other reductive individualists require an adequate individualistic theoretical account of joint action and of joint action in organizational settings, in particular—something that they have not provided. My own account provides the required theoretical account of joint action in organizational settings (see below).

3.1 Institutional Roles

The occupational roles of police officer and regular soldier are institutional roles; that is, they are constitutive in part of social institutions, namely, police organizations and military forces, respectively. So how are we to understand social institutions? In this discussion, social institutions are to be understood, in the first instance, as organizations and systems of organizations. As such, they have three key dimensions: function, structure, and culture. The function is the goals or ends or purposes—collective ends, in my parlance—that the institution serves—military institutions have as a purpose to fight and win wars, for example. The structure is the (usually formal) structure of task-defined roles constitutive of the institution, such as the rank structure favored by most police and military organizations. The culture is the ethos, or “spirit,” that pervades an organization; it consists in the informal attitudes that influence the way in which tasks are performed, and, on occasion, whether they are performed at all. Notoriously, for example, police culture is solidaristic and puts a premium on loyalty to fellow officers, even to the point of shielding corrupt officers.

Elsewhere¹⁴ I have argued for what I term a teleological *normative* theory of contemporary social institutions and their constitutive occupational **(p.83)** roles.¹⁵ Put simply, on this account social institutions are organizations and systems of organizations that not only realize collective ends, but also provide collective goods by means of joint activity (i.e., the collective ends are collective goods). This is what might be referred to as the general theory of social institutions. However, the collective goods in question vary from one institution to another. They include the fulfilment of a variety of aggregated moral rights, such as needs-based rights for security (police organizations), material well-being (businesses operating in markets), education (universities), governance (governments) and so on. Hence the requirement for what might be referred to

as special theories of particular social institutions, such as the normative theory of a police force as opposed to a military force.

The central concept in the teleological account of social institutions is that of *joint action*.¹⁶ As we saw in Chapter 1, joint actions are actions involving a number of agents performing interdependent actions in order to realize some common goal or collective end (e.g., members of a mortar squad loading and firing a mortar having as a common goal to destroy an enemy gun emplacement). I defined a collective end as an individual end more than one agent has, and which is such that, if it is realized, it is realized by all, or most, of the actions of the agents involved; the individual action of any given agent is only part of the means by which the end is realized, and each individual action is interdependent with the others in the service of the collective end.

Organizational action typically consists in, what I have elsewhere termed, a *multilayered structure of joint actions*.¹⁷ As I have argued in various places,¹⁸ one important illustration of the notion of a layered structure of joint actions is an armed force fighting a battle. Suppose at an organizational level a number of joint actions (“actions”) are severally necessary and jointly sufficient to achieve some collective end. Thus the “action” of the mortar squad destroying enemy gun emplacements, the “action” of the flight of military planes providing air cover, and the “action” of the infantry platoon taking and holding the ground might be severally **(p.84)** necessary and jointly sufficient to achieve the collective end of defeating the enemy; as such, these “actions,” taken together, constitute a joint action. Call each of these actions “level-two actions,” and the joint action that they constitute a “level-two joint action.” From the perspective of the collective end of defeating the enemy, each of these level-two actions is an individual action that is a component of a (level-two) joint action: the joint action directed to the collective end of defeating the enemy.

However, each of these level-two actions is already in itself a joint action with component individual actions; and these component individual actions are severally necessary (let us assume this for purposes of simplification, albeit it is unlikely that every single action would in fact be necessary) and jointly sufficient for the performance of some collective end. Thus the individual members of the mortar squad jointly operate the mortar in order to realize the collective end of destroying enemy gun emplacements. Each pilot, jointly with the other pilots, strafes enemy soldiers in order to realize the collective end of providing air cover for their advancing foot soldiers. Further, the set of foot soldiers jointly advance in order to take and hold the ground vacated by the members of the retreating enemy force.

At level one, there are individual actions directed to three distinct collective ends: the collective ends of (respectively) destroying gun emplacements, providing air cover, and taking and holding ground. So at level one there are

three joint actions: the members of the mortar squad destroying gun emplacements, the members of the flight of planes providing air cover, and the members of the infantry taking and holding ground. However, taken together, these three joint actions constitute a single level-two joint action. The collective end of this level-two joint action is to defeat the enemy; and from the perspective of this level-two joint action, and its collective end, these constitutive actions are (level two) individual actions.

I note that the relationship between an officer and his or her subordinates may involve a second-order joint action that consists in coordination of a first-order joint action. The officer commanding the mortar squad, for example, may issue commands to the members of the mortar squad in the course of their activities, such as commanding them to fire more rapidly, or to adjust the direction in which they are firing. The officer's commands are joint with the members of the mortar squad insofar as members of the squad adjust their actions in compliance with these orders.¹⁹ It follows that the individual actions constitutive of a joint action **(p.85)** are not necessarily autonomously performed, any more than an intentionally performed single action is necessarily autonomously performed.

The notion of acting qua occupant of an institutional role (e.g. that of foot soldier) is simply that of performing the tasks definitive of the institutional role (including the joint tasks), conforming to the norms and regulations that constrain the tasks to be undertaken, and pursuing the purposes or ends of the role (including the collective ends).

Collective goods of the kind I have in mind have three properties: (1) they are produced, maintained or renewed by means of the *joint activity* of members of organizations or systems of organizations (i.e., by institutional role occupants); (2) they are *available to the whole community* (at least in principle); and (3) they *ought* to be produced (or maintained or renewed) and made available to the whole community, since they are desirable goods and ones to which the members of the community have an (institutional) *joint moral right*.²⁰ Notice that the institutional role occupants in question have a collective, or joint, moral responsibility to produce, maintain, or renew these collective goods, and this responsibility is to the members of the particular community in question. So it is a partialist collective responsibility. Moreover, the rights and duties constitutive of the occupational roles in questions are special rights and duties in two respects. First, they are partialist rights and duties, and, second, they are rights and duties that other members of the community may not have.

Notwithstanding that natural rights, such as the right to life and the right not to be tortured, and their correlative obligations are logically prior to social institutions, many moral rights, duties, values, principles, and so on are *not* logically prior to social institutions. Such institutional moral rights and duties include ones that are (a) derived at least in part from collective goods, and (b)

constitutive of specific institutional roles, such as the rights and duties of a fire officer, police officer, or regular soldier.

Importantly, institutional arrangements assign *moral* rights and duties to natural persons (so to speak) that those persons did not previously have, and in some cases that no person previously had.²¹ They are institutional rights and duties that are also moral rights and duties. Indeed, they are *special* moral rights and duties. In the case of the institutional role of police (p.86) officer, for example, the moral basis appears to be something like the collective good of aggregate human security in the jurisdiction in question. Perhaps each member of a community has an individual human right to, say, some minimum level of security, if he or she needs it. However, it is only when a certain threshold of aggregate need exists that the establishment of an institution takes place (and ought to take place). For example, a police organization with its constitutive institutional role occupants (police officers) is not established because a single person's right to security is not being realized. When such a threshold of aggregate need exists, what is required is collective or joint action on the part of many persons (indeed, a multilayered structure of joint actions). Accordingly, a cooperative enterprise or institution is established that has as a collective end the provision of security to the needy many by means of the joint activity of the police officer members of the institution.

The (collective) moral obligation to assist may, then, in certain cases, imply the obligation to establish and support institutions to discharge the original obligation to assist. Once such institutions with their specialized role occupants are in place, it may be that those of us outside the institution generally have no further duty to assist within the area of the institutions' operations. Indeed, it may be that, generally, we should not even *try* to assist, given our relative lack of expertise and the likelihood that we will get in the way of the role occupants. Moreover, these specialized role occupants have duties that they did not have before, and that in fact no one had before the establishment of the institutional role with its specific duties. For example, police officers may have an institutional and, indeed now, *moral* duty to put themselves in harm's way in a manner and to an extent (e.g. by arresting armed and dangerous offenders across the entire community (jurisdiction)) that is not morally required of ordinary citizens, and that was never morally required of anyone prior to the establishment of police organizations. Notice that the special (institutional and moral) rights and duties of police officers are jurisdictionally relative; an Australian police officer, for example, does not have these institutional rights and duties in China.

Once institutions and their constitutive roles have been established on some adequate moral basis, such as the duty to aid, then those who undertake these roles necessarily put themselves under obligations of various kinds—obligations that attach to, and are in part constitutive of, those roles. To understand the

specific content of institutional role morality, then, we need to examine the purposes—to meet aggregate security **(p.87)** needs, in the case of police officers—that the various institutions and their constitutive roles have been formed to serve, and the way in which roles must be constructed in order to achieve those purposes. Of course, one only comes to have an institutional role through voluntary action, but the morality that comes with that role is not itself ultimately grounded in the individual's choice, but rather in the larger purposes (collective ends that are collective goods) of the role.

A further point to be made here is that any given institution is typically one component in an overall structure of institutions, and the single institution in question serves its institutional purpose (produces the relevant collective good) in the context of the other institutions serving theirs. For example, the police are a component in the overall criminal justice system. Moreover, some institutions, notably governments, are meta-institutions; that is, they coordinate and regulate other institutions. The point to be stressed here is that single institutions have important structural and functional relationships to other institutions within the nation-state, and frequently, in a rapidly globalizing world, to institutions in other nation-states; indeed, many institutions are transnational in character. Hence my emphasis in the sections following this one on normatively appropriate institutional relationships between different security agencies, (e.g., the military and the police), on the one hand, and between security agencies and fundamental institutions (e.g., the judiciary and the democratically elected government of the day), on the other hand. This might involve the need for a degree of institutional independence of police agencies from government).²²

In light of the above general normative teleological-cooperation theory of contemporary social institutions and their constitutive occupational roles, a number of points can now be made in relation to security agencies, in particular. First, the general theory requires that the special normative theory of any given security agency be anchored in empirical reality. If the Australian Defence Force, for example, never trained for, or engaged in, any wars of national self-defense, then this would put pressure on the special normative theory that the Australian Defence Force ought to exist to protect the Australian citizenry from external aggression.

(p.88) Moreover, new security needs may well give rise to the establishment of new or substantially redesigned institutional roles and, therefore, new structures or configurations of special moral and institutional rights and duties. National cyberwarfare forces are a case in point. Arguably, cyberwarfare, understood as involving offensive cyberattacks on the communication and information technology infrastructure of an “enemy” state, for example, is a form of conflict short of war in the conventional sense, but not really police work, since it is (presumably) a matter of national defense rather than an attempt at (domestic or international) law enforcement. Normatively speaking,

the establishment and ongoing maintenance of such institutional roles (cyberwarfare roles) would only be justified if the needs in question persisted and cyberwarfare roles were fit for purpose. If so, then an appropriate special normative theory of cyberwarfare forces should be developed; a normative theory anchored in empirical reality. Indeed, it seems that such normative theorizing is currently underway.²³

Second, at the level of the individual role occupant, as opposed to the institution per se, there is conceptual, and typically also some actual, space between, on the one hand, the collective end and activities that are definitive of an occupational security role by the lights of the relevant normative theory, and, on the other hand, the ends and activities actually pursued by a given role occupant. Accordingly, any actual role occupant can be closer to or further away from the institutional ideal. For example, a good police officer would correctly exercise his or her expertise in the service of, say, deterring gangs of youths from engaging in assault, and thereby protect the personal security of vulnerable citizens; a bad police officer might ignore the problem or take ineffective measures, and thus fail to realize these ends. Naturally, at some point a bad or incompetent, putative police officer will cease in reality to be a police officer (e.g., if the officer is incapable of understanding any of the laws she or he is supposed to be enforcing).

Third, the relevant special theory will prescribe the appropriate normative relationship of a given security agency to the state or other political entity and do so by recourse to the collective good(s) that the agency in question exists to provide. For example, the above-mentioned independence of police agencies vis-à-vis other institutions derives from their defining collective good of upholding law and order.

(p.89) Here it is important to note that market-based, commercially driven organizations, such as private military forces (PMFs) do not, and ought not, have the same institutional relationship to, for example, the executive branch of government as do public sector agencies, such as most military forces. For market-based organizations and public sector agencies by their very nature have disparate institutional commitments. Markets are a specific institutional arrangement in which organizations engage in commercial competition with one another under conditions of more or less free and fair competition, and each pursues profit maximization as an organizational goal. The collective good is realized indirectly—not by each organization consciously aiming at it, but by virtue of the so-called invisible hand. The government via its regulators intervenes only to ensure a given market is functioning as it should: there is free and fair competition and the invisible hand is working. PMFs are market actors operating under this institutional arrangement. The market is not the institutional arrangement in which public sector agencies, such as most police and military forces, operate.²⁴ The latter are tax-funded organizations that

directly and consciously aim at their relevant defining collective good (e.g., law and order, national security). Moreover, the appropriate normative institutional relationship between each of these different kinds of security agency and government is, in both cases, a complex matter. I seek to unravel these two institutional relationships in the relevant sections below. Suffice it to say here that neither of these institutional relationships is that which obtains between governments and market actors such as PMFs.

By the lights of the normative theory of institutional roles outlined above, there is a need to distinguish the institutional point to the effect that someone is acting qua this or that occupational role occupant, (e.g., a police officer or soldier intentionally doing his duty) from the noninstitutional, individual-based points about the actual motives of individual regular soldiers and police officers (e.g., that some regular soldiers are primarily motivated by money, whereas most regular soldiers are not, or that all have mixed motives). These latter points are to be understood **(p.90)** as statements to the effect that someone (or many or most persons) is acting qua individual person, in his or her personal—as opposed to institutional—capacity.

Finally, I should point out that by the lights of my normative teleological-cooperation model, the existence of the phenomenon of individuals acting qua occupants of an occupational or other institutional role does not imply that there are agents other than individual human beings in play here; it does not imply, in particular, that there are supraindividual, institutional agents. The above invocation and description of multi-layered structures of joint action ought to allay this concern.

3.1.1 Institutional Responsibility

An important aspect of institutional roles is the ascription of institutional responsibility and, specifically, the relationship between institutional responsibility and moral responsibility. This relationship is a difficult one to unravel, not the least because the notion of moral responsibility is itself theoretically complex and a matter of controversy. Moreover, I cannot in this short section elaborate on these complexities and controversies. However, there are some general points that can be raised. In raising them I assume that (roughly speaking) an agent, A, is morally responsible for an action (or omission), x, or the foreseeable and avoidable outcome of x, if x is morally significant (and A is aware, or should be aware, of this moral significance), A intentionally performed x, A's intention to x caused x, and A's intention to x is under A's control.

Obviously some institutional actions - actions performed by the human occupants of institutional roles in their capacity as institutional actors - are not morally significant and some morally significant actions are not institutional. On the other hand, as we have seen in respect of police officers and military

personnel, many institutional actions are morally significant and not the least of these is the use of lethal force.

Let us henceforth consider only institutional actions that are morally significant and known to be so by the relevant institutional actor – or, at least, the institutional actor should know the actions in question are morally significant. A question now arises as to whether or not with respect to these actions at least, moral responsibility tracks institutional responsibility. If so, then an institutional actor who performs a (morally significant) institutional action, or fails to perform one, is necessarily morally responsible for the performance of that action or omission, and for its foreseeable **(p.91)** and avoidable outcomes. However, this appears not to be case. Consider, for example, a senior government official, such as a cabinet minister, a number of whose subordinates engage in serious and ongoing war crimes, such as torture. Such acts are morally significant and the subordinates are morally responsible for perpetrating them. What of the senior government official? Under some institutional arrangements, the senior official might be held institutionally responsible for failing to ensure that such crimes as this did not take place and, consequently, might be forced to resign. Nevertheless, the senior official might not be morally responsible for failing to prevent these crimes.²⁵ Let us assume that the senior official could have prevented these crimes, if he knew about them and he could have known about them if he had spent a good deal of his time focused on war crimes prevention. However, he did not; he had other legitimate and more pressing priorities. Perhaps the senior official took all the steps that might reasonably be expected of him to prevent these crimes but his job is an onerous one, the war criminals were exceptionally clever, and so on. In short, whereas he is institutionally responsible for failing to prevent these crimes he is, arguably, not morally responsible. So apparently institutional responsibility does not necessarily track moral responsibility. Nor is it obvious that such an institutional arrangement, supposing it exists, is necessarily deficient qua institutional arrangement. I note that Schauer, for example, has argued in detail²⁶ that institutional arrangements, including laws, are necessarily blunt instruments and, as such, cannot be sensitive to all the requirements of morality.

A second claim concerning the relationship between moral responsibility and institutional responsibility is that institutional arrangements can sometimes make a difference with respect to whether moral responsibility is full or partial. Thus, as a consequence of institutional arrangements put in place to deal with some collective action problem, each agent might, it is claimed, have full moral responsibility (jointly with others) for some adverse outcome O – notwithstanding the fact that each only made a very small causal contribution to the outcome. Suppose **(p.92)** the impoverished members of sailing ships' crews in the 18th century are informed of a law to the effect that anyone stealing one or more of the (somewhat expensive) screws inserted into their ship's woodwork to hold its wooden planks together will be flogged and, further, if the ship sinks

as a consequence of multiple screws being removed in this manner then anyone who has removed at least one of these screws will be held to be *fully* legally responsible for any deaths resulting from the ship sinking and to be legally liable to the death penalty. Let us assume that this admittedly harsh criminal law is morally justified in the circumstances, perhaps in part because of the difficulty of identifying which sailors removed screws. At any rate, this apparently harsh law is the only means to prevent these wooden ships frequently sinking and, therefore, the only means to prevent great loss of life. In that case it might be thought to be morally justified for each screw-thief who contributed to causing a ship to sink be held *fully legally responsible* for the loss of life, notwithstanding that his causal contribution to the sinking might be minute. This being so, it might be further argued that each such screw-thief is also *fully morally responsible* for any loss of life. If so, then the establishment of institutional arrangements can evidently transform prior *partial* moral responsibility for an adverse outcome (e.g. prior to the existence of a relevant law) into *full* moral responsibility (post the enactment of the law). Moreover, it can do so notwithstanding that the underlying causal responsibility is unchanged and is only *partial causal* responsibility for the adverse outcome.

A final claim concerning the relationship between moral responsibility and institutional responsibility is one we have already discussed, namely, that institutional arrangements assign moral responsibilities to agents that those agents did not previously have and, indeed, in some cases that no agent previously had. We have already mentioned a number of these in relation to police officers and military personnel and we return to this issue below and in Chapters 4 and 6, in particular.

3.2 The Institutional Role of Police Officer

In this section I discuss the institutional role of the police officer, with a view to differentiating it from that of the soldier. I also address the question of what the implications would be for the role of the police officer of any attempt to introduce market-based, commercially driven police services. **(p.93)**

Elsewhere,²⁷ I have defined the police role in terms of (1) the collective end of protecting the legally enshrined, justifiably enforceable, moral rights of citizens from violation by fellow citizens,²⁸ including citizens who are also institutional actors, such as government officials²⁹ (i.e., the collective good of internal security³⁰); (2) the exercise of this role by means of the use of coercive force, or the threat thereof; and (3) a jointly held moral obligation on the part of all citizens to protect the moral rights of fellow citizens from their fellow citizens (i.e., to provide the collective good of internal security). This latter, jointly held, moral obligation could be discharged by an all-citizen police service, but in contemporary societies it is discharged by establishing the institution of the police and its constitutive occupational role of police officer. (I return to this issue in Chapter 4).

An important aspect of all this is the institutional division of labor involved. It is by means of a kind of institutional division of labor that the members of various institutions in a given community or nation-state discharge different sets of jointly held obligations that are in fact held by all (e.g., soldiers in a standing professional army, police in a police service). However, it remains true that all able-bodied citizens have a jointly held obligation to provide for security. It is just that if a subset of the community (e.g., the members of a police service) provide collective security for all, then their fellow citizens are not needed to perform policing duties, and so are not obliged to perform them. Nevertheless, members of the citizenry who are not police officers have residual joint obligations in relation to collective internal security, such as paying for police salaries, assisting the police by reporting crime, appearing as witnesses, and so on. Indeed, to do their job properly, police rely on the assistance of the citizenry at large.

(p.94) So even when the institution of the police is set up, the jointly held obligation of the citizens to provide for their collective security does not disappear; rather, there is no need for it to be directly discharged by, for example, engaging in police work. However, if the police were found to be incapable of providing collective security, then citizens might need to once again discharge their jointly held obligation by engaging in activities akin to those undertaken by members of specialized police organizations (e.g., by establishing neighborhood patrol groups in townships in South Africa during the breakdown of law and order in the apartheid years). However, it is important to stress that this jointly held obligation of citizens to provide for their collective security (directly or, more likely, indirectly) is relatively inchoate and unspecified and, therefore, stands in considerable contrast with the well-developed and clearly specified rights and duties constitutive of the role occupants of police and military institutions (of which more in Chapters 4 and 6).

This jointly held moral obligation on the part of all citizens to provide collective internal security is a weighty, albeit relatively inchoate and unspecified, moral obligation that must be discharged, even if citizens incur significant costs in so doing. In well-ordered, contemporary, liberal democracies, such costs would typically consist in large part in the payment of taxes to fund police organizations. The moral obligation to see to it that security is provided is a weighty one, because security is a human good of great importance; indeed, it is a necessary condition for the enjoyment by humans of most, if not all, other collective goods.

We have been speaking somewhat loosely in terms of collective internal security. However, it is now time to return to our initial specification of the institutional ends of police organizations provided at the beginning of this section—namely, the collective end of protecting the legally enshrined, justifiably enforceable, moral rights of citizens from violation by fellow citizens. I want to discuss the

relation of the police to the law on this account; specifically, that the moral rights in question are legally enshrined, notably in criminal codes (e.g., laws against murder, assault, fraud, and theft). My focus is on the implications that the institutional end of upholding the law has for the role of police officer.

There are three points to be made here. First, as argued above, the primary and (typically) overriding commitment of the police must be to ensure that the law³¹ is upheld, as opposed to ensuring that they comply **(p.95)** with the directives of government. In this respect police have a quasi-judicial role,³² and are therefore somewhat different from civil servants and the military, who are essentially the instruments of the elected government. Please note that this point should not be confused with the requirement that all citizens and institutional role occupants, including police, comply with the law. Second, and notwithstanding their primary and overriding commitment to law enforcement, the police must be responsive to the elected government of the day. In this regard they are somewhat different from the judiciary, for example. Moreover, this requirement stands in some tension with their quasi-judicial role. Third, in order to ensure that they are able to enforce the law in a given jurisdiction (which might be a city or other subpolitical entity rather than the state itself) they must enjoy a monopoly of coercive force in that jurisdiction.

Let me now discuss each of these three points in somewhat more detail, beginning with the first one. Evidently, police need to have a considerable degree of operational autonomy, if they are properly to discharge their functions of upholding the law, investigating crime, and the like. This is partly a matter of efficiency and effectiveness; the police are, or should be, not simply competent practitioners, but (so to speak) the experts. In this regard the police are no different from the military.

However, given their primary institutional end of ensuring that the law is upheld, the police need to have a substantial degree of institutional independence of government in particular; something which the military do not need and ought not to have to the same degree. Politicians, for example, need to be subject not only to an independently adjudicated law (the role of the judiciary), but also to an independently enforced law (the role of the police). If a powerful politician, or powerful group of politicians, act unlawfully, the police must investigate, arrest, and charge them. In order to ensure that the police effectively carry out these investigative tasks in relation to government, the police need to have a substantial degree of institutionally based independence from government. Naturally, what **(p.96)** must go hand in glove with independence is accountability; police must be held accountable for the exercise of their independence.

This institutional independence needs to be seen in the context of the so-called separation of powers. Specifically, the executive, the legislature, and the judiciary ought to be kept separate; otherwise, too much power is concentrated in the hands of a unitary state agency. It is highly dangerous for those who make laws also to be the ones who apply those laws. Politicians, for example, need to be subject to laws adjudicated by judges who are institutionally independent of politicians, on pain of undue influence on judicial processes and outcomes. Likewise, the enforcement of these laws needs to be undertaken by an agency with some independence from those it might have to enforce it against, including government officials.

There are grave dangers attendant upon police coming simply to be the instrument of government, rather than to have as their priority to serve the law and, on my account, to protect moral rights enshrined in the law. In this connection, consider the police states of communist Eastern Europe, Nazi Germany, Iraq under Saddam Hussein, and the like. These former police states serve to illustrate the importance of a substantial degree of police independence from government in favor of serving legally enshrined moral rights. Indeed, police operational autonomy has on occasion been abridged by democratically elected governments in order, for example, to create and preserve a manageable level of public disorder from which the incumbent political party and its supporters may politically or materially benefit.

We have been discussing institutional independence in the context of the interface of police and the government of the day. Enough has been said by way of demonstrating that the notion of the police as simply the instrument of government is unsustainable. On the other hand, determining the precise nature and extent of police independence is extremely difficult, given a contrasting institutional constraint on police forces—namely, their need to be responsive to the democratically elected government of the day (of which, more below). Moreover, there are dangers attendant upon high levels of police independence. After all, the police are the coercive arm of the state, and historically the abuse of their powers has been an ever-present threat. Specifically, the police institution as the coercive arm of the state does need to be subjected to (at least) the constraint and influence of the community via democratically elected bodies, notably the government of the day.

(p.97) If independence is a key requirement for police and police organizations, then it is presumably also a requirement for investigators in other sectors. In recent times there has been a rebirth of private policing, most prominently in the protective services area (e.g., armed guards for banks, armed escorts for personnel), but also in the investigations area. For example, in the important area of fraud investigation, many corporations are employing their own investigators. The increase in the numbers of private sector security personnel raises the important ethical issue of their independence. For example,

conflicts of interest can and do arise for private sector personnel when the interests of the employing private company or corporation are held to be of greater importance than those of bringing the lawbreaker to justice.

Our second point, standing in some tension with the need for police independence, was the requirement that police be responsive to the democratically elected government of the day. The argument made above for this requirement is in essence that police services are established in accordance with the principle of a division of labor to discharge the joint moral obligations of all citizens to contribute to their own collective internal security; “collective internal security” being understood as a state of general compliance with the law (which in turn enshrines the moral rights of the citizenry). On this view, the police are ultimately the servants of the citizenry, and they therefore must be responsive to the government as the representative body of the citizenry.

So the question arises as to whether a market-based, commercially driven organization could reasonably be expected to have the required level of responsiveness to government, as opposed to, for example, its own shareholders. Given its commercial imperatives, this seems extremely doubtful. Consider in this connection the “responsiveness” of private sector banks to governments in the lead up to the global financial crisis of 2007–2008. This “responsiveness” consisted in large part in attempting, and often achieving, regulatory capture. The tail ended up wagging the dog.

Our third point pertained to the need for police in a given jurisdiction to have a monopoly of coercive force in that jurisdiction. Police services not only must have the capacity to use coercive force to uphold the law on behalf of the community, they must also have a monopoly on the use of coercive force within the bounds of their own jurisdiction, on pain of not being able to guarantee the upholding of the law in the jurisdiction in question. In short, neither the government, the state’s police force, **(p.98)** nor, more importantly, the citizenry can countenance the possibility of competing private sector, or otherwise entirely government-independent, security agencies possessed of sufficient coercive capacity to challenge the state’s police force in this regard.

At this point an even more radical proposal might be put forward; namely, one in which the state’s police force is disestablished in favor of a market in which private security agencies compete. This would effectively denude the state of its authority. Without the capacity to enforce the laws it promulgates, the state would be at the mercy of the private security agencies in question, and would in time simply go out of existence. The proposition that the state could *enforce* its will domestically, notwithstanding the presence of private domestic organizations possessed of greater enforcement capacity is incoherent. If X (private security company) is possessed of a greater enforcement capacity than Y (state police force) then—other things being equal—X can enforce its will at

the expense of Y doing so. Thus, in the envisaged scenario, the state and, in a liberal democracy, the citizenry could no longer reliably enforce its will.³³ The related, but nevertheless distinct, issue of the state's externally focused enforcement capacity (i.e., military force), is considered in the next section. In short, the notion that commercially driven organizations operating in a free market could effectively substitute for police services in a liberal democratic state—as opposed to providing subsidiary and complementary security services—is evidently profoundly misguided.

I have outlined the institutional role of police officers and argued that it is required of police services by virtue of this institutional role that they have institutional independence, be responsive to government, and possess a monopoly of coercive force in their respective jurisdictions. I have further argued that market-based commercially driven private security firms cannot meet these requirements, and therefore cannot intelligibly replace public sector police services (which is not to say that they might not have a legitimate subsidiary role). I also suggested in passing that military forces do not, by virtue of their institutional role, require the degree **(p.99)** of institutional independence of government that police forces do. Let us now turn directly to external collective security, and therefore to the role of the regular soldier.

3.3 The Institutional Role of Regular Soldier

Regular soldiers who are members of a professional standing army, a citizen militia, or citizens operating under a system of universal conscription have jointly held obligations to protect the moral rights of fellow citizens, as do their fellow citizens who are not soldiers.³⁴ As is the case with the police, it is by means of an institutional division of labor that this comes to be. So all citizens, including the professional soldiers in the standing army—have a jointly held moral obligation to protect the moral rights of fellow citizens. However, well-ordered, contemporary liberal democracies typically rely on soldiers who are members of a professional standing army to discharge the jointly held obligation of all citizens to provide collective external security; or at least they rely on professional soldiers. Accordingly, ordinary citizens do not need to discharge their jointly held obligation by taking up arms; instead, they are able to discharge it by paying taxes that fund a professional standing army (and navy and air force). However, the jointly held moral obligation of all citizens to provide collective external security does not disappear; it remains, although, under the terms of an institutional division of labor, others discharge the obligation on their behalf. Indeed, should a professional standing army be no longer able to adequately provide collective security against external threats as was the case in the Second World War then ordinary citizens may well need to take up arms under, for example, a system of universal conscription.

As is the case with police, the jointly held obligations of soldiers are relativized to their fellow citizenry. Thus soldiers have a jointly held moral obligation to protect the moral rights of their *fellow citizens only* (i.e., the citizens or residents of their communities or nation-states), but not necessarily the citizens of other communities or countries. This is not to say that citizens of one community or nation do not have moral obligations to assist the citizens of other communities or nations; far from it. For example, there was a clear moral obligation on the part of the United Nations to **(p.100)** intervene to prevent the genocide in Rwanda in 1994.³⁵ Rather, the moral obligations to assist the members of other communities or nations have less moral weight. I return to this issue in Chapter 8 on armed humanitarian intervention. Thus citizens might not be obliged to bear significant costs to assist members of other communities to the point, for example, of risking their lives.

The institutional role of the regular soldier can be roughly defined in terms of: (1) the realization of the collective end of protecting the moral rights of fellow citizens from violation by members of the armed forces of external communities/nations (i.e., the collective good of external security); (2) by means of the use of deadly force, or the threat thereof; and (3) on the basis of a jointly held obligation on the part of all citizens to protect fellow citizens from external threats (i.e., to provide the collective good of external security).³⁶ This latter, jointly held, moral obligation could be discharged by a citizen-militia to which all citizens belong. However, as noted above, in contemporary liberal democracies it is typically discharged by establishing standing professional armed forces (possibly supplemented in wartime by an armed force of citizen conscripts).

Notice that in contrast with the threat to collective internal security—a threat paradigmatically involving the rights violations of individual or groups of citizens by fellow citizens or groups thereof—external security paradigmatically (e.g., in wars of conquest) involves a threat to the integrity of the state or community. Accordingly, it is not simply a matter of individual lives or other goods to which individuals have moral rights (e.g., individual freedom), even in aggregate, being at stake—although these things are also at stake. Rather, to say that the integrity of the liberal democratic state or community is at stake is to say such things as that the existing citizenry will no longer be the joint decision makers (via their elected government) with regard to their territorial exclusion rights, their laws, their policies, their way of life, and so on.³⁷ Naturally, there are many wars fought on lesser issues than the integrity of the state.

The claim that a liberal democracy's military forces have as their primary and (typically) overriding institutional purpose the collective good of the nation's external security needs to be distinguished from two other **(p.101)** related claims. First is the claim that no other nation's military forces have this as their *primary* institutional purpose. This claim is in fact true. However, it would not follow from this that a liberal democracy's military forces might not also have as

a *secondary* institutional purpose the collective good of a fellow liberal democracy's external security, as in the case, for example, of the members states of NATO.

Second is the proposition that the nation-state claims a monopoly on the use of force in the pursuit of its external security. This proposition is ambiguous. It could mean that each nation-state claims a monopoly on the use of force vis-à-vis *other nation-states* in pursuit of its external security. This proposition is false since some nation-states have less military power than others and some might on occasion need to rely on their more powerful allies for their external security. Alternatively, the proposition could mean that each nation-state claims a monopoly on the use of force vis-à-vis *other internal domestic entities*, such as domestic private companies, in pursuit of its external security. This proposition is true. There is a need for the state to have a monopoly on the use of force internally and externally relative to other actors within the state.³⁸

This jointly held obligation to protect collective external security does not include infringing the rights of foreign citizens or members of other communities by, for example, engaging in wars of conquest on behalf of one's own national leadership. There is no such institutional moral obligation. Accordingly, the members of nationalist armed forces, such as the German armed forces under Hitler, do not have jointly held obligations to prosecute wars of conquest. The so-called *ius ad bellum* is an attempt to spell out the relevant moral principles governing the waging of war, including by liberal democratic states.³⁹ However, in accepting various **(p.102)** moral constraints on waging war derived from the institutional role of regular soldiers in a liberal democratic state, one does not have to endorse that doctrine in all its particulars.

Moreover, there is a moral obligation on the part of military forces and individual soldiers to comply with moral principles constraining the use of lethal force in wartime—the so-called *jus in bello* principles,—such as not to intentionally kill innocent civilians (principle of discrimination), only to use an extent of deadly force that is militarily necessary (principle of military necessity), and, when deadly force is militarily necessary, to avoid a disproportionate extent of (unintended) civilian deaths (principle of proportionality).

Having provided ourselves with an explicit, albeit rough, definition of the role of regular soldier, let us now compare it with that of the police officer elaborated in the last section. As already stated, the two roles are similar in two fundamental respects, namely that (1) they both involve the use of coercive force as a means, and (2) they are both performed in the service of the collective end, indeed collective good, of protecting the moral rights of fellow citizens. What of the differences?

The first and perhaps most obvious difference is that the police defend citizens against one another (i.e., their orientation is internal to the state), whereas soldiers defend the citizenry against threats external to the state (e.g., armed aggression by other nation-states). Moreover, the external threats in question are threats to the state, or at least to its vital interests, and as such are *ultimately* political threats posed by political entities, though typically the threat is a military one in the first instance.

This picture is complicated by the existence of international terrorist groups such as al-Qaeda and ISIS. However, it is not fundamentally altered, or so I have argued in other places.⁴⁰ For insofar as terrorist groups have a substantial lethal capability and constitute a serious external threat requiring a military response, they are simply a different kind of external political entity. On the other hand, insofar as terrorist groups⁴¹ constitute, as they often do, an internal threat, they are a matter for the police to deal with; this is terrorism as domestic crime.

Naturally, an insurrection, whether orchestrated by terrorist groups or nonterrorist ones, can get to the point where a police response is no **(p.103)** longer adequate. The liberal democratic state in question may need to move to a temporary and geographically limited state of emergency, as India has had to do frequently in the recent past. Beyond this there is the possibility of all-out civil war in which government-led military forces are pitted against large sections of the state's own people; indeed, in these circumstances, the nation's military forces are often themselves divided. However, I suggest that in fighting on one side in a civil war, the regular army (and navy and air force)—as distinct from other kinds of military force—is operating outside its institutional role.⁴² For in an all-out civil war, the moral and institutional legitimacy of the erstwhile state has itself been undermined, and the members of the armed forces are therefore simply taking sides in a politically based armed conflict being waged to decide who is to constitute the state, and perhaps what form it will take.

The second important difference between the institutional role of regular soldier and that of police officer also pertains to the nature of their institutional ends. Unlike the police, the military do not have as their primary institutional purpose to enforce the law, even the international law (by analogy with the police as enforcers of domestic law). Rather, military forces are essentially instruments of the citizenry via their elected governments acting in the service of the national interest in external security (as outlined above in terms of protection of the moral rights of the citizenry from external threats).

Naturally, the military ought to comply with international law in their operations, as police officers ought to comply with the domestic law in their law enforcement activities, and, for that matter, citizens ought to comply with the domestic law in their day-to-day activities. However, it does not follow from the fact that an agent ought to comply with a law or rule that the agent has an

institutional role as an enforcer of that law or rule; players have to abide by the rules of the game, but this does not make them umpires.

This point is not undermined by the fact that in recent times, as already mentioned, military forces have undertaken policing roles, such as United Nation peacekeeping operations. For in undertaking such operations, the military forces of nation-states are undertaking a secondary role; this is not their primary institutional role. It might be argued that it would be a very good thing if the military forces of nation-states **(p.104)** abandoned their primary role in national defense or, at least, reduced it to the status of a secondary role, and did so in favor of international peacekeeping operations, international law enforcement, and the like. Maybe so, but this would be possible only if the international order ceased to be, at bottom, one of nation-states, and for example, there came to be some form of world government that deployed erstwhile military forces as police forces. This is, to say the least, highly unlikely in the foreseeable future. In the meantime we are stuck with a world in which the de facto highest authority is the nation-state, since no other putative higher authority, such as the United Nations, has the capacity to enforce its laws and policies in the event that one or other of the major powers, (e.g. the US or China) chooses to ignore them.

Since military forces (in the world order as it is currently constituted), unlike police forces, do not have as a primary institutional role to enforce the law, there is not the same requirement for them to have a substantial degree of independence of government; they do not have the quasi-judicial character of police organizations and their officers.

A third and final set of differences between the role of regular soldier and that of police officer pertains to their use of lethal force. In essence, soldiers use greater levels of lethal force, and they do so more frequently and with less legal and moral constraints. For example, soldiers are legally and morally allowed to ambush and kill enemy soldiers, whereas police officers are not allowed to ambush and kill offenders. Moreover, the individual soldier's use of lethal force is in large part determined by orders from above. More specifically, if a military combatant is given a lawful order from a superior officer to use lethal force against particular enemy combatants in a theater of war then he is institutionally and morally obligated to do so; likewise if he is ordered not to use lethal force against these combatants then he is institutionally and morally obliged not to do so. For having decided to occupy the institutional role of military combatant and having embarked on war, the individual military combatant has waived his or her discretionary right to use lethal force, and done so in favor of his or her superiors. In this respect military combatants differ from police officers. I return to this issue in Chapters 4, 5, and 6.

As mentioned above, regular soldiers' use of lethal force is constrained by the principles of military necessity, proportionality, and discrimination. As we will see in Chapter 4, it is morally (and, typically, legally) permissible for a police officer to use lethal force under the following far more restrictive conditions: (1) the threat is imminent; (2) it is necessary (**p.105**) for the officer to use lethal force to protect the life of the police officer (or third party), or, at least, to prevent the commission of some other serious crime; (3) the use of lethal force by the officer is proportionate to the threat posed by the offender, (e.g., there is a threat to life or the likelihood of grievous bodily harm).

What is the justification for this difference in respect of allowable lethal force between regular soldiers and police officers? Certainly in well-ordered, law-abiding, liberal democratic states, police interactions with offenders do not necessitate the use of lethal force other than on rare occasions; it is typically possible to arrest offenders without recourse to lethal force, and in these circumstances police are required by law, as well as by the dictates of morality, to eschew lethal force. By contrast, a soldier's encounters with enemy soldiers in a theater of war frequently necessitates a lethal response, if the soldier is to preserve his own life and that of his fellow combatants.

However, this does not fully explain the difference. For it omits the fact that individual soldiers are not only engaged in personal self-defense or defense of the lives of their fellow soldiers. Soldiers are also engaged in lethal attacks on enemy soldiers; they are trying to kill enemy soldiers and not simply avoid being killed themselves.

Police-citizen lethal encounters are typically one-off, self-contained interactions in the overall context of a legal framework that is enforced by a police organization enjoying a monopoly of coercive/lethal force. If the police are trying to arrest an offender using lethal force to resist arrest, the presumed illegality of the offender's actions will in due course be independently adjudicated, and the police organization's monopoly of coercive/lethal force is not at stake.

By contrast, the use of lethal force by a soldier against an enemy combatant on a particular occasion takes place in the context of an ongoing conflict between the armed forces of political entities and outside the framework of laws actually enforced by a police service, or other security agency, with a monopoly of coercive/lethal force. I say this notwithstanding the existence of international law. For the latter has no effective enforcement mechanism; this is, in large part because there is no enforcement agency with a monopoly of coercive/lethal force.

More specifically, the lethal action of a regular soldier on a specific occasion is (1) performed jointly with the actions of other soldiers at various levels (e.g., members of the mortar squad and of the battalion); (2) performed as one

element of a causally and means/end connected, dynamic, **(p.106)** and unpredictable unfolding series of lethal actions directed at short-term, mid-term, and long-term collective ends (e.g., winning this skirmish, this battle, the war); and (3) done in the context of a *standing* joint lethal threat from enemy combatants. In relation to point 2, it is important to note that soldiers are often engaged in lethal attacks on enemy soldiers in order to degrade the enemy force and, thereby, win the war; they are trying to kill enemy soldiers in order to reduce their number, and not simply to avoid being killed themselves. Even if, as I have argued, the *ultimate* moral justification for the use of military force is to protect the moral rights of the citizenry, the *proximate* purpose of the use of lethal force by soldiers is to win wars. Crucially for our concerns here, this proximate purpose is in large part definitive of the institutional role of the military, whereas it is not definitive of the police role. Rather the analogous role of the latter, to reiterate, is in essence to use coercive force to effect arrests.

In light of the above, there is a presumption in favor of killing enemy soldiers during armed conflict in a theater of war, and it is not necessary that the threat from an enemy soldier be imminent; nor is it a necessary condition for permissibly killing an enemy soldier that one is doing so to protect one's own life (personal self-defense) or that of one's fellow soldiers (defense of the lives of copresent others).

3.4 Conclusion

In this chapter I have provided a normative, comparative institutional analysis of police officers and regular soldiers in the setting of the contemporary liberal democratic nation-state. In doing so, I have relied on my normative teleological account of social institutions. I have defined the roles of police officer and regular soldier by recourse to normatively specified, empirically anchored, organizational roles—a procedure I refer to as institutional ascent. Two key theoretical notions employed are those of multilayered structures of joint action and collective goods. The moral rights and duties constitutive of institutional roles are derived in part from the collective goods that are the *raison d'être* of particular institutions, including police and military institutions. Moreover, these institutional moral rights and duties differ somewhat from institutionally prior natural moral rights and obligations. Indeed, they are special rights and duties: they are rights and duties that other natural persons may not have, and they are partialist in that they are rights and duties with respect to **(p.107)** the members of a given community, but not necessarily members of other communities.

The institutional roles of police officers and regular soldiers are similar in two fundamental respects, namely that: (1) they both involve the use of coercive, indeed lethal, force as a means; and (2) they are both performed in the service of the collective end, indeed collective good, of protecting the moral rights of fellow citizens, albeit in one case (police) from internal threats, and in the other

(military) from external threats. However, these two roles are also importantly different in a number of respects. For example, military forces, unlike police forces, do not have as a primary role to enforce the law, and soldiers use lethal force with less legal and moral constraints than police officers. Moreover, military combatants, but not police officers, waive their right to use (or not to use) lethal force when given a lawful order by their superiors to do so (or not to do so).

Notes:

(1.) An earlier version of much of the material in this chapter appeared in Miller, "Police, Citizen-Soldiers and Mercenaries."

(2.) See for example, Egon Bittner, *The Functions of Police in Modern Society* (Washington, D.C.: US Government Printing Office, 1970). For social contract justification of police use of lethal force, see Kleinig, *The Ethics of Policing*, Chapter 6; and Reiman, "The Social Contract and the Police Use of Deadly Force."

(3.) Miller and Blackler, *Ethical Issues in Policing*, Chapter 1. For a different view, see Kleinig, *Ethics of Policing*, Chapter 2.

(4.) I would include some, but not all, terrorist and/or revolutionary organizations among these political entities.

(5.) Arguably, it is important to have an institutional demarcation between intelligence-gathering agencies, such as the CIA, and military forces, and also, within the intelligence-gathering community, between those with a domestic focus (e.g., MI5 in the UK) and those with an external focus (e.g. MI6 in the UK). The CIA's use of UAVs (unmanned aerial vehicles), or "drones," is a concern in this regard.

(6.) Perhaps the initial impetus for privatization was the ending of the Cold War, which brought with it not only the discharging of millions of soldiers, but also the end of serious resistance to free-market ideology. See P. W. Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* (Ithaca, N.Y.: Cornell University Press, 2003), and Andrew Alexandra, "Mars Meets Mammon," in Andrew Alexandra, Deane-Peter Baker, and Marina Caparini, eds., *Private Military and Security Companies: Ethics: Policies and Civil-Military Relations* (London: Routledge, 2008), 89–101. More recently, the rise of the Chinese state and economy—dominated as these are by hybrid public/private sector state-owned enterprises (SOEs)—has arguably tempered the enthusiasm for markets, at least in their pure form, and perhaps caused a rethink of the privatization/outsourcing, etc. of security functions in particular. At the very least there is growing concern in respect of Chinese firms taking over the operation of critical

infrastructure and, more generally, of the security risks China Inc. poses (e.g., in the area of cybersecurity).

(7.) Miller, *Moral Foundations of Social Institutions*.

(8.) See, for example, McMahan, "Collectivist Defenses of the Moral Equality of Combatants." I broadly agree with McMahan's criticisms of collectivist views, such as that espoused in Kutz, "The Difference Uniforms Make." However, my institutional view offers a relational individualist analysis and, as such, sidesteps both narrowly individualist as well as collectivist accounts.

(9.) Peter A. French, "The Corporation as a Moral Person," *American Philosophical Quarterly* 16, no. 3 (1979): 207–215; Margaret Gilbert, *On Social Facts* (Princeton, N.J.: Princeton University Press, 1992).

(10.) Miller, *Moral Foundations of Social Institutions*, 52–54.

(11.) David-Hillel Ruben, *The Metaphysics of the Social World* (London: Routledge and Kegan Paul, 1985), Chapter 4; Charles Taylor, *Philosophical Papers*, Vol. 2, *Philosophy and the Human Sciences* (Cambridge: Cambridge University Press, 1985), 15–57.

(12.) Jeff McMahan, "War as Self-Defense," *Ethics and International Affairs* 18, no. 1 (2004): 75. I am not suggesting that he is committed to the rationally self-interested version of atomism.

(13.) John Searle, *Making the Social World: The Structure of Human Civilization* (Oxford: Oxford University Press, 2010); Raimo Tuomela, *Social Ontology: Collective Intentionality and Group Agents* (Oxford: Oxford University Press, 2013); Gilbert, *On Social Facts*.

(14.) Miller, *Moral Foundations of Social Institutions*, Chapter 1.

(15.) In relation to professional roles in particular.

(16.) The notion of joint action can in turn be used to construct more complex notions, such as that of joint activity and joint task, in the manner in which action can be used to construct notions of activity, task, and the like.

(17.) See, for example, Miller, *Moral Foundations of Social Institutions*, Chapter 1.

(18.) Miller, "Joint Action"; Miller, *Social Action*; Miller, *Moral Foundations of Social Institutions*.

(19.) Miller, "Joint Action," 287.

(20.) Miller, *Social Action*, Chapter 7.

(21.) Miller, *Moral Foundations of Social Institutions*. For a contrary view see Bernard Gert, *Common Morality* (Oxford University Press, 2007).

(22.) The importance of a degree of police independence is obvious when one considers that police officers need to investigate the criminal activities of, for example, politicians. On this issue see Seumas Miller and Ian Gordon *Investigative Ethics: Ethics for Police Detectives and Criminal Investigators* (Oxford: Blackwell Publishing, 2014) Chapter 4.

(23.) Fritz Allhoff, Adam Henschke, and B. J. Strawser, eds., *Binary Bullets: The Ethics of Cyber-Warfare* (Oxford: Oxford University Press, 2016).

(24.) Free market ideology has to some extent permeated the public sector in recent years, and this has led to attempts to introduce market-derived “reforms” of various kinds into the public sector. Insofar as these have not simply consisted in wholesale privatization, they have resulted in public sector agencies with some of the trappings of the market and, I would argue, a degree of institutional confusion, notably in relation to their institutional purposes (collective ends).

(25.) But, of course, his culpability may be rightly suspected and, indeed, proven in a court of law. In relation to torture (or so-called ‘enhanced interrogation’) by US military and CIA officials in Abu Ghraib prison in Iraq see the *Torture Memos* prepared by the US Department of Justice.

(26.) Frederick Schauer *Profiles, Probabilities and Stereotypes*, (Harvard University Press, 2003).

(27.) See Miller and Blacker, *Ethical Issues in Policing*, Chapter 1.

(28.) This is not quite right since the violations in question might be perpetrated by residents who are not citizens, for example.

(29.) When institutional actors violate the rights of citizens they might be doing so in their private capacity or their institutional capacity. If the latter, they are typically also violating the law, at least in liberal democratic states. However, this is not necessarily the case, e.g. a given law might itself be a violation of moral rights as past laws banning homosexual acts between consenting adults were.

(30.) I have argued elsewhere that *order*, in *law and order*, is not reducible to respect for legally enshrined moral rights, since there can be order and yet rights violations. However, I also argue that if there is respect for the law and the law enshrines moral rights, then there will be a high degree of order. See Miller and Gordon, *Investigative Ethics*, Chapter 1. I do not need to pursue these complications here.

(31.) Of course, the law is here to be understood as enshrining the justifiably enforceable moral rights of the citizens.

(32.) The terminology used in by the UK's commission into the police in arguing for police independence, *The Royal Commission on the Police: Cmnd. 1728: Final Report*, 1962, paras. 87 and 88. For a similar argument on the importance of police independence, see also Justice Lusher, *Report of the Commission to Inquire into New South Wales Police Administration* (Sydney: NSW Government Printer, 1981), 680.

(33.) The possibility of a weak state requiring temporary assistance to, for example, quell an illegitimate internal armed insurrection does not affect this fundamental point about the need for the state to have a monopoly (or near monopoly) on the use of force. Such a weak state fails a key test of legitimacy if its inability to deal with internal armed insurrections is permanent rather than merely temporary. In short, I suggest that the state's monopoly of the use of force domestically is a necessary condition of its legitimacy. See Miller, *Moral Foundations of Social Institutions*, Chapters 9 and 12.

(34.) For a related view, see Fabre, *Cosmopolitan War*. For a somewhat different view, see Rodin, *War and Self-Defense*.

(35.) See Miller, "Collective Responsibility, Armed Intervention and the Rwandan Genocide."

(36.) Miller, "Police, Citizen-Soldiers and Mercenaries."

(37.) Sometimes referred to as self-determination.

(38.) There is a further issue in relation to the possibility of transnational private military companies. However, such companies are jurisdictionally based (e.g., incorporated in some nation-state such as the United States or the United Kingdom. As such, they are under the authority of some nation-state or other; or, if not, they ought to be, on pain of not being subject to *enforceable* law. Accordingly, at least in principle, they cannot, or at least ought not, threaten the monopoly on the use of force of their parent nation-state. This is not to say that some PMC's might not be possessed of greater coercive force than some nation-states. This has clearly been the case (e.g., in Sierra Leone). See Dimitrios Machairas, "The Ethical Implications of the Use of Private Military Force," *Journal of Military Ethics* 31, no. 1 (2014), 58f, for discussion of these and related issues.

(39.) These principles and, of course, just war theory more generally, are the subject of a voluminous philosophical, not to speak of legal literature and the literature of other fields. However, Walzer's *Just and Unjust Wars*, is a useful starting point.

(40.) Miller, *Terrorism and Counter-Terrorism*.

(41.) And, for that matter, nonterrorist insurrectionary groups.

(42.) In saying this, I am not denying that in some circumstances it might not be morally permissible, even morally obligatory, for it to do so.

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