On February 24 2022, Russian armed forces invaded Ukraine. This is the first war in the 21st century in which one state threatens the very existence of another. Russia likely seeks to annex Ukraine outright or install a puppet regime, like the one governing Belarus. To this end, Russian forces have bombed Ukrainian cities, targeting schools, apartment buildings, and hospitals. The UN commissioner for Human rights estimates that over 1600 Ukrainian civilians have already been killed.\(^1\) Thousands more Ukrainians have been wounded or have died in defence of their country.

International law prohibits the Russian aggression. The Russian Federation and Ukraine have both ratified the United Nations Charter, including Article 2 (4), which says that “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State....” Yet international law, namely the laws of war, also maintains that soldiers on both sides are equally free to kill one another. The fact that Russian armed forces are waging an illegal war of aggression while Ukrainian armed forces are pursuing lawful self-defence is irrelevant to their status under the laws of war, now that the war has started. The stark moral asymmetry between Russian and Ukrainian forces seems to vindicate those moral philosophers who have – for twenty years now – argued that the laws of war do not track the ordinary moral limits on the use of force.

\(^1\) https://www.ohchr.org/en/news/2022/04/ukraine-civilian-casualty-update-7-april-2022 (accessed April 25, 2022).
In their book War by Agreement Yitzhak Benbaji and Daniel Statman take on this revisionist critique of the War Convention, as the debate is standardly called, and defend the view that the laws of war reflect the underlying morality of war. Benbaji and Statman would, of course, agree that Russia is committing an illegal and morally unjust aggression against Ukraine. Yet, according to their account, the violation of the so-called jus ad bellum does not affect how, from a moral point of view, the war ought to be fought. The rules for fighting the war, the so-called jus in bello, and the prohibition on all but defensive wars together form a legal system that is best understood as “a contract between decent states whose aim is to maintain the peace of the status quo ante” (p. 2). The contract, or war agreement, alters the pre-contractual rights of states and their citizens and gives international law its “moral standing” (p. 6).

War by Agreement is the only serious book-length account and defence of contractarian just war theory. It has appeared at a critical inflection point in the development of just war theory. Scholars have grappled with the question whether and how the moral status of a war relates to the moral permissibility of conduct in war since the medieval beginnings of just war theory. In the last twenty years, the just war tradition has witnessed an extraordinary revival in Anglophone academic philosophy with theorists developing individualist accounts of the morality of war modelled on the morality of killing in general. In this revisionist view, the moral rights and duties of soldiers, both vis-à-vis enemy soldiers and civilians, are dependent on the moral status of the war. It follows that Russian soldiers are not morally entitled to kill Ukrainian soldiers to seize Ukraine’s territory or to bend Ukraine’s leadership to Russia’s will – any more than a gang of robbers is morally permitted to kill the police officers who seek to prevent it from pursuing its unjust ends. However, subject to considerations of proportionality and necessity, Ukrainian soldiers are morally entitled to kill their Russian counterparts, precisely in so far as they do so in justified defence of their country.

Revisionist just war theory now dominates the field. However, as Yitzhak Benbaji and Daniel Statman remind us, it was not always thus. Indeed, revisionism is so called because it argues against a long tradition in just war theory, best exemplified by Michael Walzer’s

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2 Yitzkah Benbaji and Daniel Statman, War by Agreement – A Contractarian Ethics of War (Oxford: Oxford University Press, 2019).
Just and Unjust Wars, which unhinges soldiers’ moral rights and duties from the moral status of their war, and which reflects the laws of war. Revisionists have extensively criticized Walzer’s account: pace Walzer, they have argued that the laws of war, as they stand, both permit morally unjustified conduct and prohibit permissible acts of violence. Yet, with the notable exception of Victor Tadros, they have not proposed morally better (by their standard) legal rules for how soldiers ought to fight. In fact, as Benbaji and Statman note, revisionists generally caution against changing the laws of war to better reflect revisionist moral principles which, many have acknowledged, are impossible to implement in the conditions of war. In their book, Benbaji and Statman provide an illuminating counterpoint to revisionism, which keeps the laws of war firmly in view. Unlike recent works in just war theory which provide alternatives to revisionism, such as Seth Lazar’s Sparing Civilians and Adil Haque’s Law and Morality at War, War by Agreement offers a contractarian account and defence of the moral foundations of the laws of war.

This journal has been influential in shaping the field, and we are delighted that its editors, Kimberly Ferzan and John Oberdiek, have agreed to publish the symposium. Let us summarise the book’s argument in brief. We – all of us – are under a moral duty to minimise the horrors of war, and to strive towards peace; it is also in our interest to do so. Whichever laws we adopt for the regulation of warfare should be designed with that overriding aim in mind. Our current laws – also known as the War Convention – are morally preferable to a legal system that is grounded in revisionist principles. The Convention is best construed as a legally enforced moral contract between decent states, each of which renounces its right to use military force even if the resort to force is the only way to pursue its morally justified ends – hence the prohibition on military aggression as set out in article 2(4) of the UN Charter. Under the terms of the contract, however, a state which is subject to an unlawful aggression is allowed to defend itself. The point is not just that the state exer-

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3 Victor Tadros, To Do to Die, To Reason Why: Individual Ethics in War (Oxford: Oxford University Press, 2020).

4 Seth Lazar, Sparing Civilians (Oxford: Oxford University Press, 2016); Adil Haque, Law and Morality at War (Oxford: Oxford University Press, 2017).
cising self-defence is legally allowed to do so: the point, rather, is that the contract grants a moral permission to do so.

Once the war has started, soldiers on both sides of the conflict are legally on a par. The legal equality of soldiers is morally grounded in states’ contractual undertakings. If the laws of war were to require of each individual soldier that they inquire about the moral status of the war which they are asked to fight, this would make it much harder for their state effectively to deter or thwart a military aggression – to the detriment of peace. Instead, parties to the contract agree to let their respective soldiers fight regardless of the moral and legal status of the war. Moreover, given that they are under a moral obligation to minimise the horrors of war and that it is in their own interest to do so, soldiers commit not to target enemy civilians – which in any case is usually not necessary to achieve war aims.

Benbaji and Statman are not under the illusion that the War Convention guarantees individuals’ pre-contractual moral rights. Nevertheless, they believe that, although it is honoured as much in the breach as in the observance (if not more), the War Convention better protects peace and minimises the horrors of war than any other alternative – at any rate, than any alternative revisionist just war theorists might want to propose. The prohibition on aggressive war and the laws of war, together, form a “sufficiently good legal system” (p. 7). “When a legal system is good enough, [and] the consent of the parties to be governed by it is given freely”, it is “morally effective” (p. 6), they argue.

The five commentators, contributing to the symposium, Susanne Burri, Linda Eggert, Christopher J. Finlay, Gerald Lang, and Arthur Ripstein see much to admire in War by Agreement, as well as much to object to – as do we. They are not card-carrying members of the revisionist “school” – far from it, which is one reason why we invited them to take part in the symposium. Nevertheless, they argue that Benbaji’s and Statman’s contractarian defence of the laws of war faces a number of challenges, some of which are specific to the case of war while others arise for any contractarian account of morally justified legal rules in general. We highlight here those challenges which strike us as the most important.

First, in a world characterised by roughly equal and decent states, it is in states’ interest to avoid going to war and, instead, resolve their
disputes through bargaining. It is not clear, then, why they have an incentive to enter the contract in the first instance. Ripstein, in his contribution, questions whether the war agreement fulfils Benbaji’s and Statman’s own test of “mutual advantage” for a valid contract.

Second, it is contestable what force the contract has once it is breached. Most wars start with a violation of *jus ad bellum*. There are two ways in which such a breach could affect the contract. First, we may wonder why, once a state has embarked on an unjust war of aggression, its forces nevertheless have the contractual right to kill soldiers from the other side. Second, we may wonder why the other party to the contract remains under a moral obligation to abide by its terms. In the case at hand, Russia *ex hypothesi* has breached the contractual prohibitions on military aggression and on targeting civilians. Why is Ukraine nevertheless under a contractual obligation to Russia not to (e.g.) target the latter’s civilian populations? We emphasise contractual: the suggestion is not that all Russians are now fair game to Ukraine’s armed forces; rather, the suggestion is that the imperative to abide by one’s contractual undertakings cannot explain why Russian civilians remain immune from attack. Finlay and Burri, in their contributions to the symposium, both explore different implications of a violation of *jus ad bellum* for the moral force of the contract that sustains the War Convention.

Third, Benbaji’s and Statman’s moral defence of the War Convention relies on empirical premises which are debatable. They assume that the world is made up of a majority of decent and roughly equally powerful states, and a minority of indecent and/or weak states. Yet, we might think that armed conflicts involving indecent states, some of which are vastly more powerful than their foes, are the norm. Is a War Convention framed as an agreement between decent states for a world characterised by symmetry fit for purpose? This raises a deeper worry, namely that this contractual account, wedded as it is to defend our existing laws, is inherently conservative, obscuring the urgency of much needed reforms.

Finally, Lang and Eggert argue that there are alternative moral justifications for the laws of war that benefit from further exploration. Lang suggests that the laws of war better protect (pre-contractual) moral rights than rules for the conduct of war that more directly reflect revisionist moral principles. This rights consequen-
tialist justification of the laws of war accounts for their moral standing. Eggert, for her part, suggests that the distinction – in theories of justice – between fundamental principles of justice and rules of regulation offers a useful framework for understanding how the morality of war relates to the laws of war.

In their thoughtful and detailed response to their commentators, Benbaji and Statman at times stand their grounds; at other times they clarify and qualify their arguments. It is not for us to say whether they succeed – who, in other words, has “won”. We however firmly believe that the book together with those five replies is one of the most important joint contributions to just war theory of the last two decades.

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