

Ukraine, Wagner, and Russia's Convict-Soldiers

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One of the most pronounced features of the war in Ukraine has been the heavy reliance of the Russian forces on convict-soldiers, especially by the private military and security company (PMSC) the Wagner Group. Wagner reportedly played a key role for Russia in securing and defending regions of Ukraine, most notably Bakhmut, and the company's involvement in Ukraine has attracted huge global attention. Its now deceased leader, Yevgeny Prigozhin, was an extremely vocal critic of the Russian military hierarchy for allegedly failing to provide Wagner with the necessary ammunition, culminating in the most remarkable event of the war thus far, when, in June 2023, Wagner forces staged a mutiny. This led to the seizure of the military command center in Rostov-on-Don and the advancement toward Moscow by Wagner forces, followed by the agreement to exile Prigozhin to Belarus, and, ultimately, the death of Prigozhin in a plane crash in Tver Oblast two months later.¹

Since summer 2022, Wagner forces in Ukraine have been largely comprised of recruits from prisons. Although penal units have been used historically by both Russia and militaries in general, such as during World War I, the use of prisoners for war fighting in Ukraine appears to be significantly different than the main alternative approaches to the arrangement of military forces in other recent

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conflicts, including wars in which other PMSCs have been hired extensively. What are the main problems with using convict-soldiers and how should we understand ethically the use of prisoners to fight as compared to other military arrangements, such as conscription or an all-volunteer force?

In this essay, I argue that the central issue with using prisoners to fight wars is the perceived expendability of convict-soldiers. I first claim that, although many prisoners have been under major duress, the use of convict-soldiers may be somewhat preferable to conscripts in this regard. Second, I argue that, in contrast to those who highlight the external problems with using convict-soldiers (that is, the problems that the prisoners cause), the main problem with using them is that they are likely to be subject to human rights abuses *themselves*, seemingly more so than other types of soldiers. Third, I argue that the liability of convict-soldiers for fighting in an unjust war does not render it permissible to treat them as expendable.

The argument that I present is comparative in two senses. The first sense is focused on the specifics of the case: the argument compares Wagner's use of prisoners to that by other Russian military forces. The second sense is more general: the argument compares convict-soldiers in general to private contractors, conscripts, and volunteer regular soldiers. Both forms of comparison are dependent on empirical features—of the particular case or the likely features of the arrangement of the military in question. In this regard, the differences identified below are not *necessary* ones—that is, they are not applicable to every instance of the use of prisoners for war fighting. There might, in other words, be exceptions. However, as we will see, there are still differences based on what we can reasonably expect of the alternative forms of the military based on the available evidence.²

WAGNER AND CONVICT-SOLDIERS IN UKRAINE

Although some elements of the organization were already in place, Wagner was essentially formed in 2014, arising from Russia's desire to have armed forces in Ukraine that it could plausibly deny were its forces.³ The firm was subsequently used in Syria to assist Russian forces, playing an important role in the second battle in Palmyra in 2016, helping the Syrian government recapture the city from the Islamic State.⁴ Wagner has also been used in Mali, the Central African Republic, Libya, Sudan (where there currently appear to be connections with the Rapid Support Forces fighting against Sudan's regular army), and Mozambique (where

it carried out counterinsurgency combat operations as part of a political deal with the government); it was also reported by U.S. intelligence to be working with Chadian rebels to destabilize the government and potentially assassinate the president of Chad.⁵ In these roles, Wagner's operations have often been similar to those of special operations forces—akin, effectively, to traditional mercenary organizations that hire ex-special forces, on a relatively small scale, to undertake clandestine roles for those willing to pay.⁶

The 2022 war in Ukraine saw Wagner expand its operations and approach. Prigozhin posted a series of videos online, including, most pertinently for this essay, of him recruiting prisoners.⁷ Any lingering attempt to maintain plausible deniability, which was already tenuous by 2018 after the Deir al-Zour incident (in which U.S. forces clashed with Wagner forces in Syria),⁸ was replaced with the need for a large number of soldiers, given Russian faltering war efforts, heavy casualties, and recruitment problems. The war in Ukraine is the first time that a mercenary army/PMSC has used prisoners to fight on a very large scale, with an estimated fifty thousand prisoners having been deployed by Wagner in Ukraine.⁹

However, Wagner is not the only actor that has used prisoners in the war in Ukraine. The Russian military itself has recruited from prisons, copying Wagner, as part of the “broader, intense effort by the Russian military to bolster its numbers, while attempting to avoid implementing new mandatory mobilisation, which would be very unpopular with the Russian public.”¹⁰ In October 2023, the *Washington Post* estimated that, based on a sharp drop in the number of Russian inmates, in total (that is, including Wagner convict-soldiers) Russia has sent over one hundred thousand prison inmates to fight in Ukraine. Many have been used in “Storm-Z” squads, which are effectively punishment battalions comprising prisoners and regular soldiers who have violated disciplinary rules, and, since September 2023, “Storm-V” units.¹¹ It is estimated that another Russian PMSC, Redut, has recruited at least one thousand convicts.¹² Moreover, Ukraine has also seemed open to using prisoners to fight on its side. In February 2022, President Zelensky stated that “Ukrainians with real combat experience will be released from custody and will be able to compensate for their guilt in the hottest spots of the war.”¹³

These strategies in Ukraine and Russia are far from an aberration, even among highly accomplished Western militaries: for instance, it was reported in 1999 that the United Kingdom considered recruiting directly from prisons, with prisoners

entering the army immediately after the end of their sentence.¹⁴ The use of penal units has also been common historically. For instance, in World War I, the United Kingdom mobilized prisoners, allowing criminals to avoid prison and granting early release to adult prisoners if they enlisted. This offered a chance for criminals to rehabilitate themselves in the eyes of society and criminals were seen as desirable to the military due to their perceived violent nature.¹⁵ All that said, the use of prisoners in the war in Ukraine is by far the most high-profile instance of this phenomenon in recent times.

How does using convict-soldiers compare ethically to other arrangements of the military, such as using regular conscripts (of free civilians) or an all-volunteer force? Of course, since the Russian war is clearly an unjust war, any form of military arrangement to advance the Russian cause should be deemed problematic. Notwithstanding this point, some forms of military arrangement are even worse than others. The 2003 Iraq War, for instance, was widely viewed as both ethically and legally problematic. But it seems plausible that it was seen as being even worse because of its reliance on PMSCs, which led to several major problems, including the undermining of the democratic control held by the American military force, the torture and killing of civilians by private contractors in Abu Ghraib and Nisour Square, and the exorbitant financial costs.¹⁶ Likewise, we can think of an unjust war where child soldiers are deployed as being even worse than one in which regular soldiers are deployed. And, more broadly, we might also think that an all-things-considered just war is less justifiable because it uses a problematic arrangement of the military, such as the notorious PMSC Executive Outcomes used by the government of Sierra Leone to (justifiably) fight against the murderous Revolutionary United Front in 1995.¹⁷

DURESS

It seems clearly morally wrong when prisoners are forced to fight without their consent in an unjust war. However, at least some Russian prisoners seemingly consented to fight in Ukraine. They were promised that they would have their sentences commuted to six months if they enlisted, with a pay of one hundred thousand rubles per month.¹⁸ Many prisoners were attracted by this offer. According to a testimony given to *PBS NewsHour* by a Wagner convict-soldier, “Yevgeny Prigozhin flew into our prison and talk[ed] to the prisoners. There were 560 people; 220 agreed to sign a contract with the Wagner Group and participate in the

special military operation.”¹⁹ And, according to a Russian Storm-Z convict-soldier, “I had a choice: rot in prison another eight years, or try to survive six months in Ukraine . . . I chose the latter.”²⁰

Should we view such apparent consent as morally valid? On the one hand, it could not be plausibly claimed that the convict-soldiers gave free consent, which is widely held to require the availability of a reasonable alternative.²¹ The convict-soldiers were under significant duress, it seems, given that they would have otherwise remained in prison. Yet this does not seem to be the end of the matter. We tend to hold that, under certain conditions, prisoners can validly consent to certain arrangements when it concerns their sentence and prison life.²² These include making a plea bargain to reduce their sentence and agreeing to take on certain jobs in prison, such as being a library orderly or kitchen worker. If we think, then, that the validity of consent does not depend simply on being free from duress but, rather, more specifically, on whether the duress—or how much of the duress—is justified in the first place, then it could be permissible, in general, to use prisoners to fight. The reasoning, then, is this: *When prisoners are culpable for their duress, the duress that they face does not invalidate their consent.* They are not being coerced into fighting.

The underlying point here is that if there is an inevitable burden that needs to be distributed due to some injustice, and it cannot be distributed to those who are culpable for the injustice (such as to the Russian leaders), consent is a plausible way to distribute the burden. Suppose that Chris is robbing a bank and uses his gun to coerce Dan into going along with him. Chris makes Dan take two hostages, Abbie and Bella, wronging all three. Dan, trying to do his best in a terrible situation, persuades Chris to release one of the hostages while keeping the other for several days, with her suffering psychological and physical harm. Chris tells Dan that he is permitted to choose which of the two to let go. Bella does not volunteer to remain hostage, desperately wanting to get back home to look after her children. Abbie, on the other hand, volunteers to stay out of a sense of having less to lose and wanting to do her bit to help others; in this case, Bella. It seems that Dan should respect the wishes of Abbie and Bella about who should remain hostage—about where to distribute the unavoidable cost of being held hostage. That is, Dan should choose Abbie to remain as hostage, even though, of course, she is not *liable* in any way to these costs. We can assume here that political and military leaders will fight their unjust war regardless of who fights it, and this leads to the question of how the burden of war fighting should be distributed.

There is no feasible option not to distribute it, as the alternative might be even worse, leading those who do not consent to the burden—that is, conscripts—to bear it. It is preferable that those who consent to the burden bear it rather than those who do not agree to it.

How does this apply to Russia's convict-soldiers? Given the various reports of the crimes they have committed before their enlistment, it is plausible that at least some of those in prison were rightly imprisoned and hence culpable for being under duress, and so the duress does not abrogate their consent. Likewise, given the various accounts of their signing up to fight in the war, it seems that some signed up freely (taking into account the background conditions), especially at the start of the prison recruitment program.²³ But this appears to be the case only for some of the prisoners and it is increasingly less clear that they are signing up freely. The Russian criminal justice system suffers from huge inadequacies²⁴ and many are unjustly imprisoned, including many political prisoners.²⁵ Some of the convict-soldiers have been subject to an excessive degree of duress that is clearly disproportionate to their culpability (that is, going beyond justifiable imprisonment for crimes).²⁶ For instance, some convict-soldiers who are HIV positive were deprived effective treatment unless they agreed to fight, effectively conscripting them.²⁷ Thus, we might view this as *some*—and perhaps *most*—prisoners being, in fact, conscripted to fight. But, even then, a system in which some are conscripted may still be better than one in which all are conscripted, at least in terms of duress.²⁸ On the face of it, this provides a pro tanto reason for favoring prisoner recruitment over conscription.

It is worth emphasizing, though, that autonomy is not the only relevant consideration for the legitimacy of the military. Defenders of conscription highlight the importance of fairness, arguing that a system of conscription based on random selection or universal conscription is a fairer way to determine who within the state should bear the costs of being a soldier.²⁹ The claim is that conscription appears to disregard privilege when choosing who must bear arms, whereas a system that relies upon volunteers, recruiting from the market—either in the form of the volunteer regular army or with the use of PMSCs—will typically be made up of those more disadvantaged, as those who are wealthier have numerous other career options.³⁰ Similarly, in Russia the prison population is primarily made up of those from lower socioeconomic backgrounds and so using convict-soldiers might mean that the already disadvantaged end up bearing the burdens. Yet, although it is right that there are other considerations regarding the ethics of

convict-soldiers—some of which I will come to shortly—fairness seems less relevant, at least in practice. Although a consideration of fairness suggests that there is a reason to favor conscription in principle, in practice systems of conscription tend to replicate and even exacerbate societal privileges, as those who are privileged are typically able to, in effect, dodge the draft.³¹ This is the case, it seems, in Russia, where it is largely those from the poorest, remotest areas of Russia who have been left to do the fighting, while those in richer areas, such as in Moscow, have been less mobilized and those in the middle classes have long paid bribes to avoid the draft.³²

How do convict-soldiers compare to the all-volunteer force, where individual soldiers sign up to fight for the military (in Russia's case, on a contract basis)? This might appear to be much more preferable than using prisoners. But this should not be overstated: both volunteer soldiers and prisoners tend to have difficult socioeconomic backgrounds that often limit their life choices, which should make us question how many reasonable alternatives they have compared to being a soldier or choosing a life of crime.

EXTERNAL CHALLENGES AND EXPENDABILITY

It might seem that we should be seriously concerned about the use of convict-soldiers because of what I will call the “external challenges” they pose. These are challenges that are caused by using prisoners.

The most obvious worry is that convict-soldiers will commit abuses against civilians from the opposing side, violating some of the central rules of *jus in bello*. After all, the objection runs, in an unjust war one of the benefits of using convict-soldiers is that they are violent and willing to act brutally in ways thought to be necessary to fight effectively. Several prisoners notorious for their heinous crimes have been recruited, including cannibals.³³ In Ukraine, Wagner's prisoner recruits have, indeed, committed human rights abuses against Ukrainian civilians and soldiers.³⁴ However, it is unclear whether they act any worse than other soldiers in this regard. Russian regular soldiers have also committed widespread human rights abuses. Although it might be the case that prisoners are more susceptible to committing abuses, this appears speculative without sufficient evidence to support the claim. We do know that a military's propensity to commit abuse is multifactorial—dependent on training, discipline, military education, and socialization, rather than solely the background of the recruits.³⁵

A second external challenge concerns the after-service period. Tens of thousands of former prisoners recruited by Wagner have returned to Russia, free to reenter society after their prison commutations. According to Prigozhin, “As of June 18, 2023, 32,000 persons previously convicted and who took part in the special military operation among the ranks of the Wagner PMC [private military company] went home at the end of their contracts.”³⁶ The argument may go that these commutations contravene the requirements of just punishment. It may, for instance, not be what they deserve, if one accepts some form of retributivism, such as the cases where the sentences of very violent criminals have been commuted after serving only a short period of their sentence. This might also appear to undermine expressivist justifications of punishment, as it weakens the criminal justice system’s condemnation of the crimes committed by the now convict-soldiers. Moreover, the convict-soldiers may go on to commit further crimes. Indeed, there have been reports of murders committed by pardoned Wagner prisoners.³⁷

However, these arguments appear to be problematic. The convict-soldiers have undertaken major hardship—fighting in Ukraine is no easy way out. Their original crimes have not been condoned; rather, the heinousness of the crimes is what appears to motivate the choice to use convict-soldiers, as the prisoners are seen as less worthy of protection because they have committed serious crimes. There is still an expression, then, that they have acted wrongly. (As we will see shortly, this leads to a major problem with using convict-soldiers.) The risk of reoffending is seemingly a more valid concern. But, again, it needs to be seen comparatively: there is also a risk that using regular citizens for fighting will significantly increase rates of violent crime, given what we know about ex-soldiers and their propensity toward violent crime once they return from the battlefield.³⁸ Prigozhin claimed that less than 1 percent of all Wagner recruits have committed crimes after completing their contracts, and that there are higher reoffending rates by those who have not served as Wagner soldiers.³⁹ It is unclear whether this figure is accurate.⁴⁰

What we do know is that recidivism among Russian prisoners is very high; around 63 percent of inmates in Russian prisons are reoffenders.⁴¹ It might be, then, that serving as a convict-soldier decreases the likelihood that a prisoner will reoffend. That said, the recidivism rates among ex-Wagner soldiers may be distorted because of a lack of recording crimes and of a new law that criminalizes those who attempt to discredit those who have served in Ukraine.⁴² To be clear, I do not want to dismiss outright these external challenges. My point is that we do

not have sufficient evidence that convict-soldiers are much worse in these regards than other forms of soldiers.

This brings us to an area where we should have more confidence. Rather than focusing on the external challenges posed by using prisoners for war fighting—on the abuses committed *by* convict-soldiers—I want to focus on the abuses *of* convict-soldiers. Again, this objection applies also to other arrangements of the military, where contract soldiers report being unprepared and mistreated, yet it seems *particularly* troubling for convict-soldiers. The issue is this: prisoners are seen as extremely expendable and, in effect, as cannon fodder. According to Ukrainian and Western officials, Wagner has sent poorly prepared fighters to certain death in eastern Ukraine.⁴³ The testimony of one convict-soldier given to the *New York Times* is powerful: “We are being sent to a slaughter . . . We are not human to them, because we are criminals . . . Every day, we live like on top of a powder barrel . . . They tell us, ‘You are nobodies, and your name is nothing.’”⁴⁴ According to another testimony from a former inmate who is now deceased, “I’m running around with an automatic gun like an idiot. I haven’t made a single shot, I haven’t seen a single enemy . . . We are just a bait to expose their artillery positions.”⁴⁵ A Storm-Z convict-soldier testifies to being sent into a “‘total meat grinder,’ without proper armaments or without even being told of the real situation on the front line.”⁴⁶ Indeed, the death toll of convict-soldiers has been very high. According to a Wagner Telegram channel, twenty-two thousand Wagner recruits have been killed (as of July 2023), with forty thousand injured (out of a total of seventy-eight thousand fighters, forty-nine thousand of whom were recruits from prisons).⁴⁷

Prisoners are particularly likely to be seen as expendable by political and military leaders. Unlike for regular soldiers in the volunteer force or those conscripted, there is less likely among the general population to be an aversion to the casualties of prisoners. There is less likely to be sympathy for convict-soldiers in society, given that they have committed crimes. Indeed, more generally across the world, the plight of prisoners is widely overlooked, from the dehumanizing conditions of incarceration, to the insufficient attention paid to shocking rates of prisoner suicides, to the willingness to subject prisoners to risky medical trials.

In addition, convict-soldiers have little power when the terms of the agreement that they make are violated. They may be forced to fight for longer or not be paid for their service, in violation of their contracts, with little uproar from society. Indeed, this has been the case with Russia’s convict-soldiers. According to

testimonies given to the *New York Times*, officers forced surviving convict-soldiers to remain at the front for another year after the end of their contracts and, during their service, they were deprived of food and water for days after asking the commander to be relieved.⁴⁸

To be clear, being seen as expendable—and having their rights violated—is not unique to convict-soldiers. There is indication that the casualty rate among Russian conscripts has also been high (and that conscripts have also been poorly treated).⁴⁹ In other wars, such as in Iraq and Afghanistan, third country nationals (TCNs) from states such as Uganda and the Philippines were also subject to unnecessary risks and unable to leave at the end of their contracts.⁵⁰ But, despite this, the level of abuse and the number of deaths suggest that the concern about prisoners being seen as expendable is even greater with convict-soldiers.

LIABILITY AND EXPENDABILITY

All this might be thought to be rendered redundant, however, by the fact that the convict-soldiers have been fighting an unjust war in Ukraine. Given their apparent consent (at least, for some), this might appear to render them liable to lethal force. This is clear on both the traditionalist and revisionist understandings of liability in just war theory. For the traditionalist, the convict-soldiers would be liable simply by being combatants, by taking up arms. For the revisionist, the convict-soldiers (who do consent) would be liable because they are freely and willingly (and potentially culpably) contributing to an unjust war.

Indeed, we might think that convict-soldiers should be targeted ahead of other Russian soldiers. Say that Ukrainians have the choice of using force against Russian conscripts or convict-soldiers. Who should they target? Arguably, given that (some) convict-soldiers have agreed to participate in the war, convict-soldiers are more culpable for taking part in the unjust war (assuming they have consented).⁵¹ If we hold that those who are more culpable should, ideally, bear the burdens when they need to be distributed, it would appear to follow that those convict-soldiers should be targeted first.

It might also appear to follow that their expendability should not be seen as problematic to the extent that they are liable. Does the fact that (some) convict-soldiers appear to have agreed to the risk mean that we should not be too concerned about them being expendable? After all, they agreed to fight in an unjust war and, in his notorious videos, Prigozhin is upfront about the risks.

But it is important to separate two considerations here in relation to the risk of harms borne by those fighting in an unjust war. The first consideration concerns the justifiability of the targeting decisions—including the distribution of risks of harms—by those on the other side, such as by those pursuing the just war (in this case, Ukraine). This should reflect the culpability for fighting, with those most culpable bearing the most harm. Ukrainian forces do nothing wrong when they target (within the laws of war) convict-soldiers who are seen as expendable by Russians, since, we can assume, this harm is necessary for Ukraine to fight a (just) war of self-defense. The second consideration concerns the justifiability of the likely risks of harm imposed by those pursuing the unjust war; in this case, the Russian military command. This harm should be distributed as justifiably as possible, such as to those who are culpable or consent (as argued above). Yet this harm should also be *necessary*. The fact that *A* agrees to the risk of major harm does not mean that it is right that *B* subjects *A* to the risk of major harm when there is the alternative of *not* subjecting them or anyone else to the harm (and the alternative is the more just scenario). Likewise, it is better that convict soldiers are not subject to harm, given that it is unnecessary; there is an option of not fighting the unjust war.

So, despite their apparent liability, we should still be concerned about the perceived expendability of convict-soldiers.

CONCLUSION

A complete picture of what it means to fight a just or unjust war must include an understanding of the complexities of using convict-soldiers. I have argued that their perceived expendability is the central problem with the use of prisoners to fight wars. In addition to all the other problems of Russia's war in Ukraine, and violations of *jus ad bellum* and *jus in bello*, the treatment of their own prisoners as, in effect, cannon fodder further establishes the injustice of the Russian "special military operation." Though the focus here has been on the war in Ukraine, it seems likely that the lessons are applicable across other conflicts as well in which prisoners are used to fight wars. Governments are likely to perceive convict-soldiers as expendable, compared to other sectors of a population, making them more prone to abuse by the military apparatus and the state.

NOTES

¹ Jaroslav Lukiv, "Putin Breaks Silence over Prigozhin's Reported Death," *BBC News*, August 24, 2023.

- ² I explicate this comparative method in more detail in James Pattison, *The Morality of Private War: The Challenges of Private Military and Security Companies* (Oxford: Oxford University Press, 2014).
- ³ Kimberly Marten, "Russia's Use of Semi-State Security Forces: The Case of the Wagner Group," *Post-Soviet Affairs* 35, no. 3 (May 2019), pp. 181–204, at pp. 190–92; and Åse Gilje Østensen and Tor Bukkvoll, "Private Military Companies: Russian Great Power Politics on the Cheap?," *Small Wars & Insurgencies* 33, nos. 1–2 (2022), pp. 130–51, at p. 138. Whether Wagner was sufficiently independent to be considered a PMSC (which requires independence from the state) is somewhat moot (see Marten, "Russia's Use of Semi-State Security Forces," p. 183), although the 2023 mutiny may suggest that it could (at least then) be deemed as such. As I define them in *Morality of Private War* (pp. 16–19), PMSCs are "private firms that provide military and/or security services that involve or assist the use of force beyond the borders of their own or their client's political community," and for this they need to be separate from the state.
- ⁴ Marten, "Russia's Use of Semi-State Security Forces," p. 193.
- ⁵ Jeremy Howell, Peter Mwai, and Grigor Atanesian, "Wagner in Sudan: What Have Russian Mercenaries Been Up To?," BBC News, April 23, 2023; Østensen and Bukkvoll, "Private Military Companies"; William Rampe, "What Is Russia's Wagner Group Doing in Africa?," Council on Foreign Relations, May 12, 2023; Benoit Faucon, "U.S. Intelligence Points to Wagner Plot against Key Western Ally in Africa," *Wall Street Journal*, February 23, 2023.
- ⁶ Christopher Spearin, "Russian Private Military and Security Companies and Special Operations Forces: Birds of a Feather?," *Special Operations Journal* 7, no. 2 (2021), pp. 152–65.
- ⁷ See, for instance, Josie Ensor, "If You Desert, We'll Execute You': 'Putin's Chef' Recruits Convicts for War," *The Telegraph*, September 14, 2022.
- ⁸ Thomas Gibbons-Neff, "How a 4-Hour Battle between Russian Mercenaries and U.S. Commandos Unfolded in Syria," *New York Times*, May 24, 2018.
- ⁹ Olga Romanova in Simon Ostrovsky, "From Prison to the Frontlines: Thousands of Russian Convicts Sent to Fight in Ukraine," *PBS NewsHour*, March 3, 2023.
- ¹⁰ UK Ministry of Defence, quoted in Sinéad Baker, "Russia's Military Is Copying the Wagner Playbook of Recruiting Prisoners to Fight in Ukraine, with up to 10,000 Signing up in April Alone, UK Intel Says," *Business Insider*, May 11, 2023.
- ¹¹ Mary Ilyushina, "Russia Prison Population Plummets as Convicts Are Sent to War," *Washington Post*, October 26, 2023; and Elizaveta Focht, Ilya Barabanov, and Olga Ivshina, "Всё, как у контрактников, но помилования уже нет. Что ждет заключенных, которые сейчас едут воевать в Украину [Everything is like contract soldiers, but there is no pardon anymore: what awaits prisoners who are now going to fight in Ukraine], BBC Russia, January 25, 2024.
- ¹² Ilyushina, "Russia Prison Population Plummets as Convicts Are Sent to War." To be sure, it is doubtful that Redut (unlike Wagner) is separate from the Russian state and so really a PMSC. See Schemes and Systema, "How Russia's GRU Set Up a Fake Private Military Company for Its War in Ukraine," Radio Free Europe/Radio Liberty, October 10, 2023.
- ¹³ "Звернення Президента України Володимира Зеленського [Address of the President of Ukraine Volodymyr Zelenskyy]," from a speech given by Volodymyr Zelenskyy, February 28, 2022, YouTube video, 5:20, posted by Office of the President of Ukraine, www.youtube.com/watch?v=Lc8GP_XiWkI&t=23s. It was alleged by British tabloid newspapers in late 2023 that Ukraine was set to use prisoners to fight. See, for instance, Will Stewart, "Ukraine Follows Russia's Example in Releasing Prisoners to Fight in the War," *The Express*, December 20, 2023.
- ¹⁴ "Should Convicts Join the Army?," BBC News, November 8, 1999. The U.S. Army has also reportedly recruited former prisoners. See Justin Rohrlach, "How the Army Recruits Straight Out of Prisons," *Daily Beast*, April 23, 2018.
- ¹⁵ Cameron McKay, "Likely to Make Good Soldiers': Mobilizing Britain's Criminal Population during the First World War," *Historical Research* 94, no. 265 (August 2021), pp. 578–600. Penal units were also used by the Soviets (and Germans) in World War II on the Eastern Front. See Alex Statiev, "Penal Units in the Red Army," *Europe-Asia Studies* 62, no. 5 (July 2010), pp. 721–47.
- ¹⁶ Pattison, *Morality of Private War*.
- ¹⁷ For analysis of this case, see Herbert M. Howe, "Private Security Forces and African Stability: The Case of Executive Outcomes," *Journal of Modern African Studies* 36, no. 2 (June 1998), pp. 307–31.
- ¹⁸ Ostrovsky, "From Prison to the Frontlines." According to BBC Russia, since September 2023 prisoners have been enrolled in units with a new name—Storm V—and new prisoner recruits no longer have their sentences pardoned after six months; they now receive the same terms as contract soldiers—being required to remain fighting until the end of the conflict. This was the result of a backlash from the families of contract soldiers, who believed that the former prisoners were in a more privileged position. See Focht, Barabanov, and Ivshina, "Everything is like contract soldiers."

- ¹⁹ Unnamed convict-soldier, “From Prison to the Frontlines,” interview by Ostrovsky.
- ²⁰ Quoted in Matthew Luxmoore, “The Violent Homecoming of Russian Convicts Freed to Fight in Ukraine,” *Wall Street Journal*, December 5, 2023.
- ²¹ There is a somewhat analogous literature in the ethics of prisoner experimentation. This literature examines whether prisoners’ consent can be said to be voluntary, given their incarceration. See, for instance, Colleen M. McCarthy, “Experimentation on Prisoners: The Inadequacy of Voluntary Consent,” *New England Journal on Criminal and Civil Confinement* 15, no. 1 (Winter 1989), pp. 55–80.
- ²² If one adopts a strict view of consent, and so is uneasy about still calling this “consent,” one might frame prisoners’ agreements as morally transformative “preferences” instead. See, further, Franklin G. Miller and Alan Wertheimer’s influential fair-transaction model in “Preface to a Theory of Consent Transactions: Beyond Valid Consent,” in Franklin G. Miller and Alan Wertheimer, eds., *The Ethics of Consent: Theory and Practice* (New York: Oxford University Press, 2010), pp. 79–106; and Franklin G. Miller and Alan Wertheimer, “The Fair Transaction Model of Informed Consent: An Alternative to Autonomous Authorization,” *Kennedy Institute of Ethics Journal* 21, no. 3 (September 2011), pp. 201–18.
- ²³ According to a *New York Times* report on the prisoners recruited by Wagner from IK6 prison, the prisoners signed up for a variety of reasons, including patriotism, a desire to escape the harsh prison conditions, and a craving for action, as well as a longing for redemption and to regain their sense of self-worth. See Anatoly Kurmanaev, Ekaterina Bodyagina, Alina Lobzina, and Oleg Matsnev, “A Prison at War: The Convicts Sustaining Putin’s Invasion,” *New York Times*, December 4, 2023.
- ²⁴ Jan Strzelecki, “Russia behind Bars: The Peculiarities of the Russian Prison System,” OSW Commentary 293 (Warsaw, Centre for European Studies, June 2, 2019).
- ²⁵ Dasha Litvinova, “Inside Russia’s Penal Colonies: A Look at Life for Political Prisoners Caught in Putin’s Crackdowns,” Associated Press, June 3, 2023.
- ²⁶ “‘They Used Them as Cannon Fodder’: The Migrants Sent from Prison in Russia to Death in Ukraine,” Radio Free Europe/Radio Liberty video, 6:36, August 28, 2023, www.rferl.org/a/central-asia-migrants-prison-russia-death-ukraine-wagner/32568047.html.
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- ²⁸ Olga Ivshina, “Russia Conscription Laws Change, Leaving Some Fearful of Ukraine War Call-Up,” BBC, August 4, 2023.
- ²⁹ See, for instance, William A. Galston, “A Sketch of Some Arguments for Conscription,” *Philosophy & Public Policy Quarterly* 23, no. 3 (2003), pp. 2–7; David M. Kennedy, “The Wages of a Mercenary Army: Issues of Civil-Military Relations,” *Bulletin of the American Academy of Arts and Sciences* 59, no. 3 (Spring 2006), pp. 12–16; and George Klosko, *Political Obligations* (Oxford: Oxford University Press, 2005).
- ³⁰ See, for instance, Ilan Zvi Baron, “Dying for the State: The Missing Just War Question?,” *Review of International Studies* 36, no. 1 (January 2010), pp. 215–34, at p. 231.
- ³¹ Take the case of France, where 78 percent of those with a university diploma escaped military service. See Anna Leander, “Drafting Community: Understanding the Fate of Conscription,” *Armed Forces & Society* 30, no. 4 (2004), pp. 571–99, at p. 586.
- ³² “Where Are Russia’s Newest Soldiers Coming From?,” *Economist*, October 24, 2022. Many have also fled Russia to avoid the draft.
- ³³ Veronika Melkozerova, “Putin Sends Cannibals to Fight in Ukraine,” *POLITICO*, November 24, 2023.
- ³⁴ See, for instance, Pjotr Sauer, “Wagner Mercenary Admits ‘Tossing Grenades’ at Injured Ukrainian PoWs,” *Guardian*, April 18, 2023.
- ³⁵ See, for instance, Amelia Hoover Green, “The Commander’s Dilemma: Creating and Controlling Armed Group Violence,” *Journal of Peace Research* 53, no. 5 (2016), pp. 619–32.
- ³⁶ Yevgeny Prigozhin, quoted in “32K Russian Ex-Convicts Return Home after Fighting—Wagner,” *Moscow Times*, June 19, 2023.
- ³⁷ See, for instance, Arsenii Sokolov, Tim Whewell, and Nina Nazarova, “Russian Convicts Released to Fight with Wagner Accused of New Crimes,” BBC, August 9, 2023; and Diana Magnay, “Pardoned Russian Ex-Cons Recruited by Wagner Group Return from War in Ukraine to Kill Again,” Sky News, September 24, 2023.
- ³⁸ Jane Deith, “‘One in Eight Soldiers’ Commits Violence on Return to UK,” News, BBC, July 24, 2012.
- ³⁹ “32K Russian Ex-Convicts Return Home after Fighting,” *Moscow Times*; and Sokolov, Whewell, and Nazarova, “Russian Convicts Released to Fight with Wagner Accused of New Crimes.”
- ⁴⁰ In December 2023, the *New York Times* reported that, of the 120 confirmed surviving IK6 prison recruits, court records show that nine have been charged with driving drunk, drug offenses, or fraud. See Kurmanaev et al., “A Prison at War.”

- ⁴¹ “32K Russian Ex-Convicts Return Home after Fighting,” *Moscow Times*.
- ⁴² Sokolov, Whewell, and Nazarova, “Russian Convicts Released to Fight with Wagner Accused of New Crimes.”
- ⁴³ Filipp Lebedev and Felix Light, “Wagner’s Convicts Tell of Horrors of Ukraine War and Loyalty to Their Leader,” Reuters, March 16, 2023.
- ⁴⁴ Aleksandr, quoted in Anatoly Kurmanaev and Ekaterina Bodyagina, “‘We Are Not Human to Them’: Life for Convicts in Russia’s Army,” *New York Times*, August 14, 2023.
- ⁴⁵ Dmitri, quoted in *ibid*.
- ⁴⁶ Quoted in Vitaly Shevchenko, “Ukraine War: Russia Goes Back to Prisons to Feed Its War Machine,” BBC, October 26, 2023.
- ⁴⁷ Nicolas Camut, “Over 20,000 Wagner Troops Killed, 40,000 Wounded in Ukraine: Prigozhin-Linked Channel,” *Politico*, July 20, 2023.
- ⁴⁸ Kurmanaev and Bodyagina, “We Are Not Human to Them.”
- ⁴⁹ See Jon Jackson, “Putin’s Soldiers Are Rapidly Dying: Report,” *Newsweek*, September 21, 2023.
- ⁵⁰ American Civil Liberties Union, *Victims of Complacency: The Ongoing Trafficking and Abuse of Third Country Nationals by U.S. Government Contractors* (New York: ACLU, June 2012).
- ⁵¹ I set aside the issue of the degree of culpability of the convict-soldiers. My claim is comparative, comparing to the conscripted forces.

Abstract: One of the most pronounced features of the war in Ukraine has been the heavy reliance of the Russian forces on convict-soldiers, most notably by the private military and security company (PMSC) the Wagner Group. In this essay, I explore the ethical problems with using convict-soldiers and assess how using them compares to other military arrangements, such as conscription or an all-volunteer force. Overall, I argue that the central issue with using prisoners to fight wars is their perceived expendability. To do this, I present three arguments. First, although many prisoners have been under major duress, using convict-soldiers may be somewhat preferable to using conscripts in this regard. Second, convict-soldiers are more likely to be subject to human rights abuses than other types of soldiers and this should be seen as the main problem with their use. Third, convict-soldiers’ liability to lethal force for fighting in an unjust war does not render it permissible to treat them as expendable.

Keywords: Wagner, Ukraine, Russia, just war theory, prisoners, convict-soldiers, liability, expendability, consent, duress