ON WAR AND MORALITY

Robert L. Holmes
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CAN WAR BE MORALLY JUSTIFIED?
THE JUST WAR THEORY

[There are] men who assert that the contradiction between the striving and love for peace and the necessity of war is terrible, but that such is the fate of men. These for the most part sensitive, gifted men see and comprehend the whole terror and the whole madness and cruelty of war, but by some strange turn of mind do not see and do not look for any issue from this condition. — Leo Tolstoy

Augustine makes a powerful case for the justifiability of war. Grant just a few of his premises, and all the rest follows, enveloped in a theological-metaphysical-eschatological wrapping that renders it impervious to countervailing evidence and argument. Virtually every major just war theorist in the Western tradition, as I have said, builds upon his work.

This is not to say there is not other important work on morality and war outside of the Western tradition. Both Judaism and Islam give attention to the issue, particularly to the question of how war should be conducted, as does some Eastern thought. It is clear, for example, from the Old Testament that wars commanded by God are considered righteous and that definite rules have been laid down for the conduct of war. These two considerations—the conditions under which one may have recourse to war and the manner in which war may be conducted—are components of any complete just war doctrine. And Islam, in the concept of Jihad, has a clearly developed just war doctrine that represents the war of Islam against the non-Muslim world as a permanent condition (at least until the establishment of a Moslem world). The war need not be, or at least need not be exclusively, military, and Moslems may participate in the Jihad "by the heart, the tongue, or the hands, as well as by the sword." 1

apply to it. Such claims require disentangling complex religious and moral elements in the thinking about war from other cultural, technological, and military developments that shape its character. This is a difficult task at best. Even if it could be accomplished, it would be hard to be certain that any resultant correlation between the acceptance of the just war theory in a given period and the documentable horrors of war in that same period represented a causal connection. To my knowledge, this has never been convincingly shown.

The second objection bears upon the changing character of war in the nuclear age. It holds that the nuclear age, with the threat of annihilation in the case of an all-out war between the superpowers, has rendered the just war theory obsolete. Michael Walzer, for example, speaks of the "monstrous immorality that our policy contemplates, an immorality we can never hope to square with our understanding of justice in war," adding that "nuclear weapons explode the theory of just war." Various just war theorists, including James Turner Johnson, William O'Brien, and Robert L. Phillips, defend the theory and argue that it is relevant to the contemporary age and, indeed, represents the only defensible way of thinking about the problem of morality and war.

I want to examine this second objection in greater detail. Before that, however, it is important to consider certain aspects of the evolution of the just war doctrine, since there are developments there that are important to understanding the newer forms of the theory as well as to understanding my own argument concerning the morality of war.

The second main stage in the development of the just war theory following Augustine comes with St. Thomas Aquinas in the thirteenth century, who takes over Augustine's requirements that a war be declared by a legitimate authority and be for a just cause but adds to them a third requirement of his own. What this is can best be appreciated by recalling Augustine's subjectivistic understanding of the morality of warfare. The real 2


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have public authority for the act, use no more violence than necessary, and act for the common good.

In the case of the resort to war, it is expressly required that one have a right intention. This means that one must intend to promote the good and avoid evil; merely having a just cause and legitimate authority is insufficient. What constitutes a right intention during the conduct of war is less clear. It has been taken by subsequent writers to require that one not "directly" intend the killing of persons as persons but only intend the killing of them as combatants, or that one pursue peace and avoid unnecessary destruction, or that one protect rights. In any event, the emphasis is subjectivist, dependent upon inner purity. (There is a similar emphasis in Islam in the requirement that the jihad fight with a good intention, specifically to promote Islam rather than, say, to achieve personal gain.)

II

The troublesome question of whether both sides can be just in a war arises here, however. For the first and third of the preceding conditions—legitimate authority and right intention—could easily be met by both sides. Even Hitler, as we saw in the preceding chapter, argued that the legitimate authority to declare war in World War II. And it might just as easily be the case that both sides have a right intention in the required sense, good Christians and good Moslems will have no less, as the crusades attest. The crucial question concerns whether both sides could have a just cause, and this issue engaged just war theorists for years and led to some of the most significant developments in the evolution of the theory, particularly in its relationship to international law.

Vitoria in the sixteenth century came close to making explicit a distinction that has its origins in Augustine. He denied that war could be just on both sides, saying that "if the right and justice of each side be certain, the unlawful to fight against either, either in defence or offence." But he qualified this by adding: "Assuming a demonstrable ignorance either of fact or of law, it may be that on the side where true justice is the war is just of itself, while on the other side the war is just in the sense of being excused from sin by reason of good faith, because invincible ignorance is a complete excuse." He said further, in the spirit of Augustine, that although a prince may knowingly carry on an unjust war, his subjects may not know that the war is unjust and "in this way the subjects on both sides may be doing what is lawful when they fight." Two senses of justice emerge here: an objective sense designating the actual moral status of a war, which is unaffected by whether people think the war is just; and a subjective sense, according to which a war is just if it is believed through invincible ignorance to be just, even if in fact it is objectively unjust. In this way a war might be subjectively just on both sides but it could never be objectively just on both sides.

This is a useful and important distinction, and it is elaborated by more recent ethical theorists. But an even more sophisticated handling of this problem is found in the eighteenth century in the writings of E. Vattel, whose influential analysis becomes the prevailing view into the twentieth century. Central to it is the distinction between legality and morality. While Hugo Grotius had clearly recognized the distinction in the seventeenth century, and

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2 A war that is truly just in the Augustinian sense would be objectively just in this sense, and vice versa. But a war that is subjectively just in this sense, that is, which is merely believed to be just, might or might not be temporally just in the Augustinian sense. The sixteenth-century writer A. Gessii is sometimes thought to have maintained that justice can reside with both sides in war. But despite some misleading statements, his position is not far from Vitoria’s. He maintains, for example, that the bellicose, led by the voice of God, justly made war against the Canaanites and that the latter nonetheless justly resisted in self-defense, through ignorance of divine law. But even he distinguishes between “that purest and truest form of justice, which cannot conceive of both parties to a dispute being in the right” and justice as it appears from man’s standpoint, and asserts that “therefore we ask at justice as it appears from man’s standpoint.” As undeveloped as the point is, he has tacitly invoked a similar—though not identical—distinction to that made by Vitoria. He hedges still further by adhering to his normative definition of war as “a just and public contest of arms” and claims that if one side is committing, “without any sedate reason, that party is merely practising brigandage and not waging war”; and thus he says that “if it is doubtful on which side justice is, and if each sideaims at justice, neither can be called unjust.” For quoted material see Abbe’s Collect. Traict. de Jure Belli, Law 2, in The Classics of International Law, ed. James Brown Scott, trans. John C. Rolfe (Oxford: Clarendon Press, 1933), pp. 31-32. Hugo Grotius, sometimes thought of as the father of international law, clearly recognizes different senses of justice in his treatment of this topic in the seventeenth century. See Hugo Grotius, De Jure Belli et Pacis Libri Tre, in The Classics of International Law, ed. James Brown Scott, trans. Francis W. Kelsey (Oxford: Clarendon Press, 1925), pp. 565-566.
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some awareness of it can be found in Vitoria and possibly even in Augustine, Vattel brings it to bear upon international problems in a way that sheds important light on the interrelationships between law and morality in connection with war.

Let us consider first the nature of international law, after which we will be in a better position to appreciate Vattel's argument.

III

Philosophers and jurists are not fully agreed as to precisely what international law is, but they largely agree that its modern origins lie in the rise of the nation-state in the sixteenth and seventeenth centuries. It was at that time that diverse and often tenuous loyalties to monarchs, princes, and feudal lords began to congeal around larger, politically and territorially definable units having a monopoly of force. The command of such a monopoly came to be a defining characteristic of the state in later writers like Weber. Not only did this process establish nation-states as the principal actors in the interrelationships among peoples but it also added new fuel to the furnace of war. For by the time of the Napoleonic wars between 1792 and 1815 patriotism became an added ingredient in the mixture of emotion, fear, hope, and courage that was to impel peoples to fight and die for the state, a factor that, combined with the advance in weaponry brought by the industrial revolution, made possible the unprecedented capacity for warfare possessed by the industrial nations of the twentieth century.

Both the emergence of states and the increased destructiveness of war contributed to the development of rudimentary international law, but they did so in different ways. The emergence of states altered the character of the entities, or "juristic persons," who are subject to that law. In antiquity the subjects of such rudimentary international law as there was were peoples: the Athenians, the Corinthians, the Romans, the Vandals, and so forth. Today they are states, and it is their conduct that international law seeks to regulate. It is also their rights and obligations that are largely at issue in disputes over international law. I say largely because the Nuremberg trials challenged that view and attempted to extend international law to the conduct of individual persons as well as to states. This raises questions about what sorts of entities states are, what it is for a state to "act," how they can have rights and obligations, and what those rights and obligations are—questions that underlie many of the problems of contemporary international law as it bears upon the problem of war.

The destructiveness of war, on the other hand, contributed to the development of international law by creating a perceived need to mitigate war's horrors. We saw in the preceding chapter that the warlike footing Christianity was put on by Augustine. By the seventeenth century the militarization of Christianity had progressed to the point where Grotius, in explaining his reasons for writing his major study on the laws of war and peace, lamented:

Throughout the Christian world I observed a lack of restraint in relation to war, such as even barbarous races should be ashamed of; I observed that men rush to arms for slight causes, or no cause at all, and that when arms have once been taken up there is no longer any respect for law, divine or human; it is as if, in accordance with a general decree, frenzy had openly been let loose for the committing of all crimes.8

The concern for the most part was not to do away with war; it was rather to civilize it and bring it into line with humanitarian ideals. This led to efforts to formulate so-called "laws of war." Early discussions of the laws of war had two concerns. One, dealing with jus in bello, was to establish rules for the conduct of war once it had begun. It dealt with such issues as the legitimacy of killing noncombatants, the treatment of prisoners, the use of poisons, appropriation of property, and the use of especially terrible weapons. The other, dealing with jus ad bellum, which in its moral dimension was the primary concern of Augustus, was to establish rules governing the resort to war in the first place and to lay down conditions under which war could justifiably be waged at all. On this view war, no matter how scrupulously waged, could be unjust depending upon how and why it began. The distinction between these concerns is central to Vattel's analysis.

I have been speaking of international law as though there were a clearly specified body of rules comprising such law. But there is not. There is an International Court of Justice (World Court) but no world legislature that enacts legislation and sets penalties for its violation. Nor has there ever been. International law has other origins. What these are is a matter of disagreement among scholars, but three alleged sources stand out: natural law, custom, and convention.

* Prolegomena, De Jure Belli et Bellorum Tres, p. 20.
Natural law dates back at least as far as the Stoics, and perhaps to Anaximander. The Stoics conceived of nature as a rational manifestation of God and took rightness and duty to be determined by what accords with it. "This, then... has been the decision of the wisest philosophers," Cicero wrote in one of the clearest classical statements of this idea, "that law was neither a thing contrived by the genius of man, nor established by any decree of the people, but a certain eternal principle, which governs the entire universe, wisely commanding what is right and prohibiting what is wrong." Natural law so conceived contains the criteria for judging moral rightness and wrongness. It is unchangeable and transcends man-made laws. It provides a natural standard by which to judge human, or "positive," law as well as the conduct of peoples of different countries who may not be bound together by positive laws. Sometimes such law is represented as taking the form of precepts impressed by common sense upon the minds of all persons, sometimes as taking the form of natural inclinations that are a part of human nature. Aquinas, who Christianized the concept, represents it in both ways. In his view natural law is part of eternal law, God's plan for the governance of the whole of creation, and as such it perfects man unto well-being and happiness in his relation to the natural world and his fellow men.

This sets natural law theory in a metaphysical or theological framework concerning the nature of man and his relationship to the cosmos. The theory varies according to the underlying philosophies of those giving accounts of it. In a more general sense, however, natural law theory is simply the view that moral considerations are or should be the governing considerations behind positive law. In this sense it need not have the implications associated with the formulations of Cicero and Aquinas, and may simply represent an appeal to morality in the formulation and assessment of laws.

Custom, or customary law, on the other hand, designates practices that develop of their own accord without benefit of design or legislation. It represents a kind of international common law, which in turn represents legal norms for the conduct of states.

Natural law also can be seen to underlie the Nuremberg Charter and the Human Rights Declaration of the United Nations. In connection with warfare, natural law was implicit in a statement by the prosecution at Nuremberg: "The law of war is to be found not only in treaties, but in the conduct by taking custom to be prescriptive.

Despite the preeminence of customary law, natural law can be seen to underlie the Nuremberg Charter and the Human Rights Declaration of the United Nations. In connection with warfare, natural law was implicit in a statement by the prosecution at Nuremberg: "The law of war is to be found not only in treaties, but in the


The defendants were indicted before that charter existed. The prosecution seemed at times to concede that new law had been created, or at least that existing law had been supplemented, but for the most part it argued that all the charter did was to codify existing law. Here it appealed to the League of Nations Covenant, the Kellogg-Briand Pact, and the Hague Conventions. Germany, of course, had withdrawn from the League of Nations in 1930 and had renounced the Kellogg-Briand Pact.

The defense argued that even if the relevant laws had been in effect, they would not apply to individuals but only to states. They called attention to the fact that only states had customarily been considered the subjects of international law. The reasoning was that, even though it was true, as the prosecution pointed out, that acts of states are acts of men, nonetheless individuals are not personally responsible for such acts and should not be punished for them. They pointed out that at the conclusion of World War I the United States had argued against punishing the Kaiser on the ground that such punishment would imply a limitation upon the sovereignty of the state to punish its citizens for acts performed by them in their capacity as its agents.

The defendants argued that they had been under orders with regard to at least certain of the alleged crimes. The orders were embodied in the Führerprinzip, according to which Hitler’s orders were binding upon the citizens of Germany. These defenses were repudiated by the prosecution. While the tribunal did not accept the plea of having acted under superior orders as exculpatory, it did allow that it might mitigate punishment in some cases. Nearly all of the major figures among the accused were found guilty, and most were executed.

Vattel recognizes each of the preceding sources of international law. In addition, following Christian Wolff, he recognizes voluntary law, which along with conventional and customary law makes up what he calls positive law. According to natural law, a war cannot be just on both sides. In this he agrees with Vitoria. But he holds that natural law dictates a number of more specific rules to govern the conduct of nations in light of their nature and the circumstances in which they act. The particularly relevant circumstance is that they are free, independent, and sovereign moral persons, and in a state of nature such as exists among nations none

12 International Military Tribunal, Trial of Major War Criminals, Proceedings (Nuremberg, Germany, 1948), 32: 464.
can dictate morally to others. These rules make up what he calls the voluntary law of nations. And thus it is that "the necessary [or natural] law prescribes what is of absolute necessity for Nations and what tends naturally to their advancement and their common happiness; the voluntary law tolerates what it is impossible to forbid without causing greater evils." Nations are presumed to consent to voluntary law whether they do so in fact or not because otherwise they would be violating the liberties of all.

One of the rules of voluntary law holds "that regular war, as regards its effects, must be accounted just on both sides." A regular war is one that is authorized on both sides by the sovereigns and is accompanied by appropriate formalities. This does not mean that from the standpoint of natural law both sides are in the right; only that from the standpoint of legality they should both be accounted in the right. It is the consequences of failing to do this that concern Vattel: "If an unjust war can give rise to no legal rights, no certain possession can be obtained of any property captured in war until a recognized judge, and there is none such between Nations, shall have passed definitely upon the justice of the war; and such property will always be subject to a claim for recovery, as in the case of goods stolen by robbers." This suggests that territorial acquisitions through war, even if the war is unjust, should be regarded as legitimate lest there be continuing claims for recovery. Because such acquisitions cannot effectively be prohibited, tolerating them will have better consequences than denying their legitimacy.

This would seem to give carte blanche to nations to take what they want whenever they can get away with it. But this, in fact, is the way most nations have conducted themselves throughout history, including the period of European colonialism and the appropriation of North America from the Indians. They have done so to such an extent that if existing territorial boundaries, not to mention the ownership of various kinds of national treasure, were to be subjected to review from the standpoint of historical justice, few claims to legitimacy would survive. Except perhaps in the Middle East, where memories are longer than elsewhere, time generally legitimates the results of war—at least from the standpoint of legality—if the acquiring nation consolidates its position and is able to achieve stability. For better or worse, this tends to be the accepted principle of international affairs.

Thus, paradoxically, in Vattel's view the very law of nature according to which at least one side in a war must be acting unjustly dictates that for the good of all peoples it is best from a legal standpoint that both sides be considered just. This marks a clear separation of the conditions for a morally just war from those for a legally just war. It establishes that nations may wage war for any reason without violating international law. This view prevailed into the twentieth century when, following World War I, with the League of Nations Covenant and the Kellogg-Briand Pact, international law was taken once again to govern recourse to war as well as the conduct of war, a conception reaffirmed at Nuremberg and built into the United Nations Charter.

Renewed attention to jus ad bellum, the justice of going to war, has, however, brought some changes in the thinking about war.

Classical just war theorists, as we saw in the case of Augustine, believed it was sometimes just to initiate war. The question of who initiates a war was not in itself of particular concern to them. However, in the League of Nations Covenant, the Kellogg-Briand Pact, and the London Charter (Charter of the International Military Tribunal), the emphasis is upon aggression. The crimes against peace for which the defendants at Nuremberg were tried covered "planning, preparation, initiation or waging of a war of aggression." And it is the notions of aggressive and defensive wars that have come to dominate the discussions of war throughout much of the twentieth century. Whenever hostilities break out, each side accuses the other of aggression and proclaims that it, on the other hand, acts only in self-defense. Aggression is commonly regarded as a criterion of the illegality of war as well as the immorality of war.

This means there have emerged two sets of distinctions: one between just and unjust war, the other between defensive and aggressive war. Their interrelations are complex in light of the fact that both are subject to different interpretations. If aggression is understood in a neutral sense (let us call it aggression), as standing simply for the initiation of hostilities without regard for the rights or wrongs of doing so, then it is clear...
that a just war in the traditional sense can be either aggressive or defensive. Who initiates a war is irrelevant. What is relevant is whether he has a just cause, is acting from legitimate authority, and so forth. This, however, is at odds with the more recent use of these notions according to which an aggressive war is unjust virtually by definition. In this normative sense (call it aggression) aggression stands not simply for the initiation of hostilities but for the unjustified initiation of hostilities. To call something a war of aggression is not only to classify it; it is to judge it as well.25

But even a third use of the notion can be discerned. In Michael Walzer's Just and Unjust Wars, it is used in a way that does not even require the initiation of hostilities. Walzer contends that aggression can be made out not only in the absence of a military attack or invasion but in the (probable) absence of any immediate intention to launch such an attack or invasion. The general formula must go something like this: states may use military force in the face of threats of war, whenever the failure to do so would seriously risk their territorial integrity or political independence. Under such circumstances it can fairly be said that they have been forced to fight and that they are the victims of aggression.26

Such an implicit definition as this (let us call it aggression,) enables one to render just and unjust wars virtually coextensive with defensive and aggressive wars. It expands the notion of aggression to cover cases of mere threats, provided the threats are serious enough. If one assumes further that such threats provide a just cause for going to war in self-defense, this would enable one to hold that it is possible to initiate a just war. In this way, the apparent proscription of the initiation of war in the League of Nation's Covenant, the Kellogg-Briand Pact, the London Charter, and the United Nations Charter is overridden in favor of an approach more in keeping with the traditional just war theory.

This is at some cost, however. For as one moves from aggression, to aggression, to aggression, the conceptual content of the notion changes. In aggression, there is an objective and neutral criterion for deciding when aggression has occurred, namely, when someone fires the first shot. It may not always be easy to apply in practice, but it is simple and clear. In aggression, the idea of initiating hostilities is retained, but whether aggression has occurred requires showing that the initiation of hostilities was unjustified. Reference to the initiation of hostilities drops out altogether in aggression, and is replaced by reference to a "threat of war," where this does not even require an immediate intention to attack. Aggression, has the shortcoming that many people, including heads of state, some just war theorists, and experts in international law, feel there are circumstances in which one is justified in initiating war; in other words, that aggression, is sometimes justified. Israel's attack upon Egypt initiating the 1967 Arab-Israeli War is a case in point. This means that to incorporate this sense of the

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25 For a somewhat different way of drawing the distinction among kinds of aggression, see Yehuda Metzer, Concepts of Just War (Leiden: A. W. Sijthoff, 1975), pp. 86-87. Aggression, I have suggested, is the sense found most often in discussions. A theoretical basis for a somewhat similar account is provided by David Lubin in his essay "Just War and Human Rights," Philosophy and Public Affairs 9, no. 2 (Winter 1980): 160-181. He argues that aggression should be regarded as a crime against individuals, not states. States, he reasons, have a right against aggression only insofar as they enjoy legitimacy, where legitimacy must be understood in terms of the honoring of human rights. Thus he believes that unjust war can be defined as a war subversive of human rights. Aggression, though it does not figure explicitly in the characterization of a just war, is then understood in terms of the subversion of human rights. This makes it an evaluative notion, though not one that entails the initiation of hostilities. In any event, his characterization of a just war as "(i) a war in defense of socially basic human rights (subject to proportionality); or (ii) a war of self-defense against an unjust war" (p. 175) enables him to say, in keeping with classical theorists, that aggression is not the sole criterion for a just war.

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The legality of war is, as we have seen, but one concern of jus ad bellum; the main concern is with the morality of war, and parallel problems arise here. Does one, for example, treat the concept of aggression as neutral for purposes of moral judgment, implying nothing one way or the other about the justifiability of the use of force it represents, or does one require as part of the definition that the use of force in question be unjustified? And does one allow that aggression may be committed without the use of force, as allowed by aggression? In the absence of the resolution of these and related issues, neither the legal nor the moral dimensions of the just war theory can provide adequate criteria for jus ad bellum.

Most modern theorists, however, devote little attention to the question of whether war is justified; they assume that it is and ask only under what conditions it is justified and how it is to be conducted justly. Their actual prescriptions, in fact, differ little from those of political realists, and apart from the underlying rationales they provide for them it would be difficult to tell them apart. If anything, the just war theorists may be more hardline than political realists, which suggests that adopting a moral perspective does not per se make it less likely that one will be militaristic. They tend to be strongly anticommunist, particularly anti-Soviet, to be pro nuclear deterrence, and to feel that one is sometimes justified in initiating a war. All of them agree, however, that jus in bello requires that the conduct of war be limited, and most of them favor a counterforce as opposed to a countervalue (or countercities) policy with respect to the targeting of nuclear weapons.

No single statement of the conditions of just war would do justice to all of the just war theorists, since the number of conditions vary from writer to writer, ranging from about five to ten for both jus ad bellum and jus in bello combined, and their interpretation regarding aggression. But then Article 4 states that "the acts enumerated above are not exhaustive and the Security Council may determine that other acts constitute aggression under the provisions of the Charter." This opens up still further the possibility that acts which do not involve the imminent or actual first use of force might nonetheless constitute aggression, which is the essential idea contained in aggression. It also suggests that the U.N. attempt to define aggression is hopelessly muddled.
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often varies as well. But they all include just cause for *jus ad bellum* and principles of proportion and discrimination for *jus in bello.* A fairly representative statement is that of the National Conference of Catholic Bishops in their pastoral letter on war and peace.

For one to be justified in resorting to war, they say, the following conditions must be met:

1. Just Cause: "War is permissible only to confront 'a real and certain danger,' i.e., to protect innocent life, to preserve conditions necessary for decent human existence, and to secure basic human rights."

2. Competent Authority: "War must be declared by those with responsibility for public order, not by private groups or individuals."

3. Comparative Justice: In recognition of the fact that there may be some justice on each side, "[e]very party to a conflict should acknowledge the limits of its 'just cause' and the consequent requirement to use only limited means in pursuit of its objectives."

4. Right Intention: "[W]ar can be legitimately intended only for the reasons set forth above as a just cause."

5. Last Resort: "For resort to war to be justified, all peaceful alternatives must have been exhausted."

6. Probability of Success: This criterion is not precisely stated, but the bishops affirm that "its purpose is to prevent irrational resort to force or hopeless resistance when the outcome of either will clearly be disproportionate or futile."

7. Proportionality: "[T]he damage to be inflicted and the costs incurred by war must be proportionate to the good expected by taking up arms. . . . This principle of proportionality applies throughout the conduct of the war as well as to the decision to begin warfare."

Two principles, finally, govern the conduct of war, even when justifiably resorted to:

8. Proportionality: as above.

9. Discrimination: "[T]he lives of innocent persons may never be taken directly, regardless of the purpose alleged for doing so . . . . Just response to aggression must be . . . directed against unjust aggressors, not against innocent people caught up in a war not of their making."\(^{20}\)

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See the Pastoral Letter of the National Conference of Catholic Bishops, The Challenges of Peace: God's Promise and Our Response, pp. 28-34.

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We find here an elaboration of the conditions set forth by Augustine, with explicit recognition that justification must be given both for the resort to war as well as for the manner of conducting it. There is also recognition here of the problem of whether there can be justice on both sides during a war. The bishops imply there may at least be degrees of justice, that these must be compared, and that war must be kept limited in light of this possibility. Finally, it is notable that the notion of innocent life plays an important role in both areas of *jus in bello,* its protection being a central element in the constitution of a just cause and the prohibition against taking it being a central condition of the just conduct of war. In this, modern just war theorists depart from Augustine, for whom the importance of protecting innocent life is at best implied in the notion of a just cause and virtually absent in the few things he says about the conduct of war. In fact, the idea of protecting innocent life has today become one of the chief justifications for resorting to violence in general. By extension it has come to play an important role in most accounts of *jus ad bellum.* What it is for innocent lives to be "directly" taken, however, is crucial to understanding *jus in bello,* for in most accounts it is only the direct taking of innocent life (and of the lives of noncombatants, as it is about equally as often put) that is prohibited. I shall examine this question in the next chapter.

Although just war theorizing has been closely identified with the Catholic tradition, there has been wide interest in it among Protestant and secular writers as well in more recent thought, with Paul Ramsey leading the way among Protestants.\(^{20}\) He is one of the relatively few to devote much attention to the origins of the just war tradition, and we have considered in the preceding chapter his analysis of Augustine on the matter of noncombatant immunity. We may add here that he breaks with tradition on the issue just considered and reads Augustine as allowing that there may be justice on both sides in war. However, he seems to regard the sense of justice involved in this claim as a subjective one, representing the good will and intentions of a people bound together by agreement on common aims, this constituting a form of political justice. In this he is more in the tradition of Vitoria and Gentili. But he is skeptical about the possibility of discerning true or "universal" justice in war, and in this his orientation is strongly Augustinian, as the distinction between true and temporal justice was...
central for Augustine. This leads Ramsey to give limited attention to *jus ad bellum* and to concentrate almost exclusively upon *jus in bello*. His thought also marks a return to another important feature of the classical just war theory in that he allows that sometimes an aggressive (or offensive) war can be just if, at the very least, that a strict adherence to the distinction between aggressive and defensive war is unreasonable. Finally, he virtually identifies just war in the modern age with counterforce war (that is, war targeting only military forces and installations) as opposed to countercities or counterculture war. But although he attaches great importance to noncombatant immunity, he does not see this as precluding the use of nuclear weapons or the destruction of homes that may be used as sanctuaries by the enemy. We shall in the next chapter examine the principle of double effect to which he subscribes, which allows such acts so long as the intention is not to kill innocent persons.

James Turner Johnson likewise focusses almost exclusively on the question of the conduct of war, saying that his concern is with "the *jus in bello* of the just war tradition, the broad cultural consensus on the appropriate limits to force that has developed over Western history." He sees it is how to limit the violence of war. The assumption is that certain values are so important that their defense sometimes requires going to war; as he says, "It is sometimes necessary to oppose evil by force unless evil is to triumph." The just war tradition, he contends, has full relevance to the contemporary situation, and he examines the applicability of *jus in bello* criteria both to nuclear deterrence and to such conventional conflicts as the Falklands War and the Israeli invasion of Lebanon. Indeed, he claims that the ideas contained in the just war tradition represent the "only way actually open for persons in our culture to think about morality and war." Although he thinks an all-out nuclear war between the superpowers would strain the limits of a just war conception of proportionality, he believes there are sufficient restraints operating in the international situation to make such an outcome unlikely. Nonetheless, he favors the strengthening of conventional forces and the development of weapons that can be used effectively with minimum risk to noncombatants. "In this regard," he says, "the continued

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21 Can Modern War Be Just? p. 3.
22 Ibid., pp. 31, 84.
23 Ibid., p. 29.
24 Ibid., p. 186.

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VII

This issue is important for the just war theory. For however justifiable war is taken to be, one cannot help but wonder whether waging it all-out with nuclear weapons can ever be justified. And if it cannot, can the just war theory remain relevant in the nuclear age?

William V. O'Brien, like Johnson, believes it can, arguing that limited nuclear war need not necessarily escalate into all-out war. But the deeper issue is whether the conditions that make for justice in the recourse to war, whether it be conventional or nuclear, can justify violations of moral constraints in the conduct of war; that is, whether *jus ad bellum* can override *jus in bello* in circumstances in which they conflict. Michael Walzer maintains there may be such violations in the case of what, following Churchill, he calls supreme emergencies, such as was represented by the Nazi threat in World War II. If this should be correct, it would at least open the way (though Walzer does not argue this) to justifying such violations in the case of nuclear war as well. And that is crucial to showing that the just war theory can demonstrate the permissibility of war in the nuclear age, since it is virtually certain, as I shall argue in the next chapter, that one cannot wage modern war of any sort, much less nuclear war, without killing innocent persons.

Walzer's appeal to supreme emergencies has been taken by O'Brien to represent an alternative to the just war theory, and O'Brien argues that the just war approach is the more defensible of the two. I believe it can be shown, however, that there is no significant difference between the ethics of supreme emergency, as O'Brien characterizes it, and the just war theory as he conceives it. This requires taking a closer look at Walzer's theory.

Walzer devotes rather more attention to *jus ad bellum* than do most recent writers, but he also assumes with little argument that...
war is justified. Although he sometimes speaks as though aggression only creates a presumption in favor of armed resistance, he usually affirms that aggression suffices to justify the resort to war. He says, for example, that "[a]ll aggressive acts have one thing in common; they justify forceful resistance"; and again that "[a]ggression is a singular and undifferentiated crime because, in all its forms, it challenges rights that are worth dying for." He states unequivocally, however, that only the defense of rights can justify war.

His analysis of aggression centers about the legalist paradigm. He analogizes the international order to the civil order, except that the international order "is unlike domestic society in that every conflict threatens the structure as a whole with collapse. Aggression challenges it directly and is much more dangerous than domestic crime, because there are no policemen." Because of the gravity of aggressive violations of the international order, the violation of those rights must be vindicated; the members of international society have not done enough if they "merely contain the aggression or bring it to a speedy end."

The theory of aggression as he construes it consists of six points: (1) that "[t]here exists an international society of independent states"; (2) that this society has a law establishing the rights of individual members, above all to territorial integrity and political sovereignty; (3) that "[a]ny use of force or imminent threat of force by one state against the political sovereignty or territorial integrity of another constitutes aggression and is a criminal act"; (4) Aggression justifies a war of self-defense by the victim and a "war of law enforcement" by the victim and any other member of society; (5) "Nothing but aggression can justify war"; and (6) "Once the aggressor state has been militarily repulsed, it can also be punished." Walzer then proposes revisions to take account of the disanalogies between domestic and international society. I shall mention only the one of these that bears most directly upon our preceding discussion. It is the revision of (3) above, to count as aggression certain acts that fall short of the first use of force or even an immediate intention to initiate hostilities. It is this which commits him to the concept of aggression. He finds this revision justified by the 1967 Arab-Israeli War. Though the Israelis launched the initial attack, he believes that circumstances justified the attack be-
any event, is consistent with the few remarks he makes about the moral theory underlying his position. That theory is a morality of human rights, with considerations of utility secondary. But when it comes to justifying the violation of the rights of the innocent—apparently to the point of being willing to kill them—the situation is reversed. In a tantalizingly equivocal passage, Walzer says first that the rights of innocent people "cannot simply be set aside, nor can they be balanced, in utilitarian fashion, against this or that desirable outcome," and then:

And yet the case for breaking the rules and violating those rights is made sufficiently often, and by soldiers and statesmen who cannot always be called wicked, so that we have to assume that it isn't pointless. Anyway, we know its point all too well. We know how high the stakes sometimes are in war and how urgent victory can be. . . . The very existence of a community may be at stake, and then how can we fail to consider possible outcomes in judging the course of the fighting? At this point if at no other, the restraint on utilitarian calculation must be lifted.

As though unable to let stand a decision on the dilemma he has posed between collective security and individual rights, he then adds: "Even if we are inclined to lift it [the restraint on utilitarian calculation], however, we cannot forget that the rights violated for the sake of victory are genuine rights, deeply founded and in principle inviolable." He seems, in the last analysis, then, to say that utilitarian considerations sometimes override rights. But whatever the justification, the appeal in the above passage is to the survival of the "community," presumably meaning the nation or state; which suggests that national survival, or more basically, national egoism, is the governing norm. He does not always say how we can fail to consider possible outcomes in judging the course of the fighting? At this point if at no other, the restraint on utilitarian calculation must be lifted.36

Whatever the actual practice of the Germans in World War I and the allies in World War II, there is nothing in the notion of military necessity to authorize killing and destruction beyond what is militarily necessary; while it does not preclude going beyond that, military necessity provides no authorization for doing so. And in circumstances of supreme emergency, exceptional measures are called for precisely because they are militarily necessary; there would be no warrant in Walzer's view for violating the rights of innocent persons were that not the only way to preserve the community or to combat "immeasurable evils." As circumstances change, those measures may no longer be justified. But that is because they are no longer necessary. By the same token, measures that are militarily necessary in one set of circumstances may cease to be so in others. Their justification on grounds of military necessity then likewise ceases. So whatever the end for which one is fighting, and however justified the resort to war in the first place, Walzer's supreme emergency provisions justify the same measures as military necessity. For this reason, if Walzer believes that it is the preservation of the state that justifies the resort to war and the resort, when in war, to the extraordinary measures called for by supreme emergencies, his position begins to look indistinguishable in practical import from that of political realism.

O'Brien contends that Walzer's position, though resembling that of the German doctrine of Kriegsraison during World War I (basically, an unqualified principle of military necessity), differs from that position in that Walzer allows that measures warranted by supreme emergencies are justified only so long as the emergency lasts.37 When they are no longer necessary one must conform once again to moral constraints in the conduct of war. The allies during World War II failed to recognize this limitation. O'Brien argues, in their bombing of cities; hence although their policies differed from those of the German proponents of Kriegsraison of World War I in that their justification was much more plausible, "they resembled the Germans in their propensity to use exceptional and morally impermissible means beyond the point where they could be justified by even a bona fide argument of necessity."38

36 Walzer, Just and Destructive Wars, p. xvi.
37 Ibid., pp. 259-260.
38 Ibid., p. 228.
39 Ibid.
during World War I held that "the German state possessed superior worth and had the right to greater latitude in self-preservation and self-advancement than other states." He discounts this claim, saying that "Germany would be eligible for a supreme-emergency claim if its very existence and its fundamental values were at stake, but no more eligible than any other state." This is an important observation. It reflects the fact that if a principle is to have any claim to being moral it must extend equally to all and be equally usable by them in the same sorts of circumstances. But would one be willing to acknowledge the right of Nazi Germany to make such a claim? Few even consider the kind of justification the Nazis gave for their policies; as O'Brien says, "I take it that it is unnecessary to discuss justification for the conduct of the Third Reich in World War II." 40

But Mein Kampf represents the German nation (meaning the German people, not the state) as confronting the very kind of threat to its survival and values that Walzer takes to justify supreme emergencies and that just war theorists almost universally take to constitute a just cause. Hitler saw the German nation as threatened by a Marxist-Jewish conspiracy of diabolical proportions, sapping its life, poisoning its blood, and dragging it down from its prior heights of cultural achievement. Reason of state demanded strong measures. This led to the Nuremberg Laws of 1935, to increasing persecutions of Jews and Communists (and others considered undesirable for other reasons), and eventually to exterminations of both as war broke out. That many more Jews were exterminated than non-Jews should not obscure the fact that in Hitler's mind Jews and Communists were part of the same threat. That he was mistaken in these views is beside the point. One acts necessarily upon what he believes. People can only apply principles that seem to them relevant. And this allows for error. So, if one lays down such requirements for a just war as that one have a just cause, what this means in practice is that nations may resort to war when they believe they have a just cause. By the same token, to justify the killing of innocent persons when necessitated by a supreme emergency is to say, in effect, that nations may resort to such measures when they believe they confront such an emergency. And in Walzer's account, as well as those of just war theorists, it is always the nation proposing to resort to war that is needed in order to have even a prima facie warrant to being moral, they must be available equally to all to use.

Do Walzer and O'Brien differ sufficiently on these issues to warrant saying that their analyses represent different approaches to the morality of war? I suggest they do not. Their accounts will likely justify precisely the same sorts of acts and in the same sorts of circumstances, with only the rationales differing in certain points of detail.

Walzer contends that in supreme emergencies one may override the rights of innocent persons. And O'Brien says repeatedly that violations of the principles of proportionality and discrimination by the allies during World War II and by the United States in Korea and Vietnam did not prevent those wars from being just. 41 The violations were wrong; unlike Walzer, he is unequivocal about this. It is just that they were offset by the overwhelmingly just causes for which the United States was fighting. But to say that a war can be just overall despite violations of jus in bello criteria differs little from saying that a war can be just even though supreme emergencies justify violating these criteria. It is just that in the one case the rights of the innocent are violated, in the others they are "overridden." The overwhelmingly just cause and the supreme emergency become practically equivalent. Both Walzer and O'Brien think war may be a justifiable response to aggression, and both think that response may necessitate violating the moral constraints upon the conduct of war (with O'Brien holding further that such a war may be just even if such violations occur but are not necessitated). That is, both believe that there may be conflicts between jus ad bellum...
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and jus in bello and that when they occur jus ad bellum may override jus in bello.

If now we return to the second of the objections considered at the outset of this chapter, concerning the relevance of the just war approach to the nuclear age, we may observe that for all of this O'Brien may nonetheless be correct in saying in response to that objection that a limited use of nuclear weapons would not necessarily escalate into an all-out war. No one can know for certain. If that is what is meant by saying that the just war theory is relevant to the nuclear age, the point can be granted and the second objection considered met.

But there is another reply to the objection that is more telling. It is that even if O'Brien and others should be wrong about the possibility of keeping a limited nuclear war limited, all that would follow is that by just war criteria themselves an all-out war would be unjust. The fact that a certain type of war turns out to be unjust does not show that the just war theory is inapplicable to it; it shows only that it yields a certain outcome when applied to that type of war. So if the question is whether the nuclear age has rendered the just war theory obsolete in the sense of showing that its criteria are no longer appropriate for the assessment of war, the answer is that it has not. Whether some, or all, or no nuclear wars turn out to be just by just war criteria is immaterial. That those assessments can be made shows the relevance of the theory to nuclear war in the sense its advocates intend.

The preceding discussion suggests a third and more serious objection to the just war doctrine. We have seen that there are serious problems in reconciling the claims of jus ad bellum with those of jus in bello with regard to whether a just cause sometimes warrants, or at least excuses, violations of moral constraints in the conduct of war. A more fundamental question is whether even a war that is just according to both jus ad bellum and jus in bello criteria will still unavoidably involve the violation of moral constraints; whether, that is, there is something in the very nature of war that renders it wrong and that is not dealt with directly by the just war theory. The just war theory says that if certain conditions are met, it is permissible to go to war, and it says further that if certain other conditions are met, one’s manner of conducting the war is moral. What it does not do is to ask whether there are things that one unavoidably does even when all of these conditions are met.

8 This point is well made by Phillips in War and Justice, p. xl.

VIII

A war, once again, is justified if it is characterized by jus ad bellum: if, that is, the conditions constituting justice in the resort to war are met. These include but are not limited to a just cause. Traditionally, as we have seen, one had to have legitimate authority and a right intention as well, with various other requirements often added, such as that the war be a last resort, have a likelihood of success, that the use of force be restrained, and that there be proportionality in the resultant good and evil.

A justified war, however, is not necessarily a just war. To be fully just a war must be characterized by both jus ad bellum and jus in bello. A war obviously cannot be just if one is unjustified in entering upon it in the first place, but neither can it be just, however just the cause and right the intention, if it utilizes indefensible means.44 Even those like Walzer who think that normally indefensible means may sometimes be used affirm this. Though the earliest just war theorists gave insufficient attention to this issue, there must be rules or principles governing the conduct of war as well as governing the decision to enter into it.

Notice that I am concerned here with what is morally justified in the conduct of war, not with what is legally justified. There exist certain rules, known as the laws of war, generally accepted as governing the conduct of warfare on all sides. These, as we have seen, are part of international law. Individual soldiers, whether fighting for a just cause or not, are not considered accountable for their participation in a war so long as they observe these rules. This, however, is not my concern at the moment. My concern is with what is morally justified in warfare, whether or not it coincides with what is legally permissible. The laws of war, as Grotius recognized,44 might as a matter of fact allow many things that in the last analysis cannot be justified morally.

8 On the issue of the relationship between jus ad bellum and jus in bello, see Melzer, Concepts of Just War, esp. chap. 2.

44 De jure Belli et Pacis Libri Tres, bk. 3, chap. 10.
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In the eighteenth century William Paley proposed a principle to govern the conduct of war in his Principles of Moral and Political Philosophy, writing that "if the cause and end of war be justifiable; all the means that appear necessary to the end, are justifiable also."60 Súarez before him had written even more simply that "if the end is permissible, the necessary means to that end are also permissible."61 Except that they are intended to apply only to just wars, and that Súarez expressly added a prohibition against the killing of innocents, these formulations resemble the principle of military necessity. If one is justified in going to war, they say, he is justified in doing whatever is necessary to win. Moderation in the prosecution of a just war, in the sense of refraining from doing what is necessary to achieve your objectives, would be no less an absurdity on this reasoning than Clausewitz thought it to be in the prosecution of any war.

Let us call the principle that one may do whatever is necessary to prosecute a just war a principle of just necessity. Though only occasionally expressly formulated, it probably has many adherents. One often hears that it is wrong to send men to fight and be killed unless you are willing to fight to win. If one adds to this the qualification that it applies only to justified wars, as often seems the intent, one has just necessity.

According to this view, then, whatever justifies resorting to war in the first place justifies the means necessary to winning it (or achieving one’s objectives, if they fall short of victory). There are no independent moral constraints upon the conduct of war. This represents what may be called an internalist view of the relationship between *jus ad bellum* and *jus in bello*, in the sense that the standards for judging *jus in bello* are already, as it were, contained in the standards for judging *jus ad bellum*.

Distinguished from this, however, is an externalist view, which holds that there are independent standards for judging *jus in bello*—independent, that is, of *jus ad bellum*. Whatever the justice of one’s resort to war, there are in this view limits to what one may do in conducting it. The most prominent of these concerns the treatment of innocent persons, with writers like Ramsey, Phillips, and Anscombe maintaining that there is an absolute prohibition against the intentional killing of such persons.7

The issue between internalism and externalism in the theory of *jus in bello* is important because whatever undesirable consequences follow from the principle of military necessity also follow from the principle of just necessity in a justified war. Any action that one principle legitimizes the other will also. It is easily imaginable that the only way to win an otherwise just war (assuming there may be such) would be to demoralize the civilian population by terror bombing. This, indeed, was much the rationale for the saturation bombing of German cities during World War II, except that the bombing was probably thought necessary only to hasten victory, not to achieve it. But if World War II was a just war on the side of the allies, and if such bombing had been necessary to win, just necessity no less than military necessity or supreme emergency would have dictated it. If, moreover, Elihu Root was correct that adherence to military necessity would spell the end of international law, then one should expect the same to be true of adherence to just necessity; or at least that it would have a strong tendency to that end (unlike military necessity it will be implementable only by the side acting justly, and hence its bad effects may reasonably be thought to be less than in the case of military necessity). Circumstances can bring military necessity into conflict with international law. These may have nothing to do with the justice of the war and can arise as easily in a just war (meaning for the side that is warring justly) as in an unjust one.

To justify the pursuit of victory in war requires showing that the necessary means to that end are justified. The permissibility of going to war provides no assurance they will be. One may not even know fully what those means are until the war has progressed, perhaps nearly to its conclusion. Yet, according to the usual thinking in just war theory, one may know in advance of going to war whether or not he is justified in so doing. If that is true, then the standards for *jus ad bellum* cannot by themselves determine the standards for *jus in bello*.

This means that the internalist position, and with it the principle

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61 Selections from Three Works of Francisco Suárez, specifically On the Three Theological Virtues: On Charity (disputation 13; On War, sec. 7, p. 640), in The Classics of International Law, ed. James Brown Scott (Oxford: Clarendon Press, 1944). See also Hugo Grotius, De jure Belli et Pacis Libri Tres, p. 599. In a more recent approximation, Robert W. Tucker says that "the ethics of war may justify the use of almost any weapons and the employment of any methods which realize the ends or purposes of the just war" (The Just War: A Study in Contemporary American Doctrine, p. 79).
62 See Anscombe, "War and Murder," in Wasserstrom ed., War and Morality, pp. 42-55; Phillips, War and Justice, chap. 2; and Ramsey, The Just War, especially chap. 7.
of just necessity, must be rejected. It is not the end that justifies the means but the means (among other things) that justify the end.\textsuperscript{46}

This has even more far-reaching implications. Both the internalist and the externalist assume that war may be just; they differ only over the criteria for \textit{jus in bello}. But if the impermissibility of the means necessary to win a war means that one may not justly pursue victory in that war, then the impermissibility of the acts necessary to the very waging of war mean that one may not justly wage war, whatever one’s objectives. Waging war requires justifying the means of so doing as much as winning a war requires justifying the means to that end.\textsuperscript{46}

To justify going to war, then, that is, to establish \textit{jus ad bellum} in the first place, requires showing that what one would be doing by waging it is justified. If a war is justified, then the necessary means to waging it will indeed be justified—but not because they are legitimated by the justice of the war assessed independently of those means. They will be justified because to be justified in going to war requires establishing antecedently that those means are permissible. Again, it is not the end that justifies the means but the permissibility of the means (including the killing and destroying).

One is justified in performing an act only if he is justified both in employing the means necessary to its performance and in performing any subsidiary acts constitutive of it. I cannot be justified in watering my garden unless I am justified in attaching the hose and turning on the water; or in mowing my lawn unless I am justified in cutting the grass. The justification of the act is not one thing and the justification of the means another. What one justifies in the first place are those means; to justify the act is to justify the means (and/or the constitutive acts). This is the truth in the saying that the end does not justify the means.

Some, of course, would argue that if the end is justified, then so must be the means. And this is true, if properly understood. But it does not follow from it that the end justifies the means. For there is an asymmetry here. One must justify the necessary means before one can justify pursuing the end, whereas the reverse is not the case. I do not need to justify watering my garden before I justify hooking up the hose and turning on the water; I may do these things as a means to a different end, such as washing the car. If the end is justified, the means will in fact be justified. But that is because one must justify them in the course of justifying the end, not because the justification of the end in isolation somehow justifies them.\textsuperscript{46}

I am, for the sake of simplicity, speaking here as though what one must do in order to wage war constitutes the means to waging war. In actuality, these acts are constitutive of waging war. There are two related but distinguishable relationships here. One is that of means to end. One must justify the selection of means by which to achieve them. This means that to justify going to war requires justifying the selection of means from the outset. There are not two separate acts here, the embarking upon war and the implementing of chosen means. To embark upon war is to implement chosen means. What one justifies doing, in applying the standards of \textit{jus ad bellum}, is inseparable from the conduct of war. Not that there cannot still be a conflict between \textit{jus ad bellum} and \textit{jus in bello}; as I have said, one may not always know in advance precisely what means the successful prosecution of a war will require. As events unfold, to prevail in a war may require the resort to morally impermissible tactics that could not have been foreseen at its outset. This notwithstanding, one can never justify the resort to war without justifying the means by which one proposes to fight the war.

On the other hand, there is no presumption at all that a war that meets the conditions of \textit{jus in bello}, as these are usually conceived, will meet those of \textit{jus ad bellum}. I am speaking here of the usual conditions that comprise the rules of war (regarding noncombatant immunity, treatment of prisoners, and the like). War is not a
gane. Following the rules is not exculpatory if you should not be involved in the enterprise in the first place. Even when the conditions are intended to be moral, like those of proportionality and discrimination, they do not ensure the justifiability of resorting to war. It would be different if they included all of the morally relevant considerations pertaining to the treatment of persons. For then, if those conditions were met, a war could hardly fail to be just, since everything one did in the course of fighting it would be permissible. To say one might still be acting wrongly by fighting it would then be vacuous. So, if \textit{jus in bello} were understood in this way (which it is not by just war theorists), the satisfaction of its standards would virtually guarantee the satisfaction of those of \textit{jus ad bellum} as well.

The relevant question, then, is whether all of what one does in the course of fighting a war can be morally justified (by which I mean, all of what one does that is associated with the nature of war; obviously one can do many gratuitously barbarous things that are unessential to the aims of war and that are morally prohibited). This is why I say that in addition to justifying the means of conducting war as part of justifying the resort to war, one must also justify those acts which are constitutive of the waging of war by whatever means. War by its nature is organized violence, the deliberate, systematic causing of death and destruction. This is true whether the means employed are nuclear bombs or bows and arrows. Often it is the doing of psychological violence as well. And, as we saw in Chapter One, it is presumptively wrong to do violence to persons in these ways. So given that one can know to a virtual certainty that he commits himself to doing these things in going to war, fully to justify going to war requires justifying these acts as well. A necessary condition of the justifiable pursuit of any objectives in war, by any means whatever (hence a necessary condition of the satisfaction of the criteria of both \textit{jus ad bellum} and \textit{jus in bello}), is that one be justified in engaging in such killing and violence in the first place.

Second, and relatedly, this means that most attempts to justify war from the early just war theorists to the present day are inadequate. For they do not meet this necessary condition.

Discussions of \textit{jus in bello}, if they deal with the conduct of war in moral rather than just legal terms at all, talk mainly about whom one may kill and in what proportions one may cause destruction, not about whether that which they seek to regulate should be taking place at all. That is supposedly the province of \textit{jus ad bellum}.


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tutes a just cause, what constitutes aggression, whether nuclear war can ever be justified, and so forth— their satisfactory resolution can never by itself justify the resort to war. In short, the just war theory in its historical and contemporary forms fails to do justice to the central moral problems in war's justification.

The Killing of Innocent Persons in Wartime

But of course one can't just say to a million mothers: "I want your sons," and then six months later: "Sorry, they're all dead." If war is to be made tolerable, the romantic tradition must be handed on. "Madam, I took away your son, but I give you back the memory of a hero. Each year we will celebrate together his immortal passing."

—A. A. Milne

If the means necessary to waging war cannot be justified, then war cannot be justified and no war can be just. Not only must there be moral constraints upon the conduct of war even if the war is in all other particulars justified; the possibility must be recognized that there are moral constraints upon the treatment of persons that prohibit the waging of war in the first place, that is, even engaging in the limited killing and destruction that otherwise just wars entail.

Although Augustine gave this little attention, most just war theorists impose limitations upon the conduct of war. As we have seen, some recent theorists deal almost exclusively with the conduct of war in their preoccupation with jus in bello. The limitations deal with such things as the treatment of prisoners and with the use of certain kinds of weapons, whose violation constitute war crimes in international law; but the most prominent of the concerns is with the killing of noncombatants and innocent persons. My concern shall be with the killing of innocent persons. Nothing is more central to the moral assessment of war, and this issue is at the heart of the question whether the waging of war can be justified, whatever other limitations are imposed upon its conduct. As we saw in Chapter One, there is no stronger moral presumption than that against the doing of violence to innocent persons. And knowingly killing them against their will is to do violence to them.