

Edited by FLORIAN DEMONT-BIAGGI

The Nature of Peace and the Morality of Armed Conflict



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Contents

1	Introduction	1
	Florian Demont-Biaggi	
Part I Kantian Perspectives		
2	Recognition Theory and Kantian Cosmopolitanism	19
	Paul Giladi	
3	<i>Pax Kantiana</i> and <i>Res Militaris</i>: Kant's Views on Peace, War and Military Affairs Revisited	39
	Franz Kernic	
Part II Just War Debates		
4	Standards of Risk in War and Civil Life	65
	Saba Bazargan-Forward	

- 5 **Military Necessity Through Peace?** 83
Florian Demont-Biaggi
- 6 **Just War Thought and the Notion of Peace** 105
James G. Murphy
- 7 **Terrorism, *jus post bellum* and the Prospect of Peace** 123
Anne Schwenkenbecher

Part III Religious Perspectives on Peace

- 8 **Peace, Justice and Religious Humanism: A Jewish Perspective** 143
Noam Zohar
- 9 **Once the Buddha Was a Warrior: Buddhist Pragmatism in the Ethics of Peace and Armed Conflict** 159
Stephen Jenkins

Part IV Technology, War and Peace

- 10 **Civic Virtue and Cybersecurity** 181
Don Howard
- 11 **Weapons for Pacifism: Reconciling Ideas in Conflict** 203
Adam Henschke
- 12 **Virtues for Peace: What Soldiers Can Do and Where Military Robotics Fails** 223
Bernhard Koch
- 13 **Is Cyberpeace Possible?** 243
Markus Christen and Endre Bangerter

Part V Peace in the Real World

14 Psychological Contributions to Philosophy: The Cases of Just War Theory and Nonviolence	267
Levi Adelman, Bernhard Leidner and Seyed Nima Orazani	
15 Medical Care During War: A Remainder and Prospect of Peace	293
Daniel Messelken	
Bibliography	323
Index	325

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List of Figures

- Fig. 13.1 Fraction of “cyberwar publications” compared to all publications containing the terminology of “cyber” in their title or abstract. The search was performed on April 21 2016 in the database *Web of Science* (See <https://apps.webofknowledge.com>) (scientific literature) and *Factiva* (See <https://global.factiva.com>) (various types of publications in general media including business sources). The Boolean search expression for “cyberwar papers” was “cyberwar OR (cyber* AND warfare) OR (cyber* AND conflict),” the expression for publications on cyber topics was “cyber*.” The time span was 1991 to 2015; we display the relative fraction of cyberwar publications in each database per year 251
- Fig. 14.1 Participants’ perceptions of the justness of the attack as a function of whether the attack complied with or violated distinction, necessity, and proportionality 273
- Fig. 14.2 Hypothesized model of the effect of nonviolent (vs. violent) movement strategy on support for the movement through perceived moral patiency, perceived morality, and perceived distinction between victim and perpetrator 282

xvi **List of Figures**

Fig. 14.3	Willingness to support and join a nonviolent vs. violent social movement	283
Fig. 14.4	Participants perceived nonviolent movement as more of a moral patient. Nonviolent movements have also been perceived as more moral and this in turn, made it easier for participants to distinguish between victim and perpetrator	284
Fig. 14.5	Participants perceived nonviolent movement as efficacious and powerful as violent movement	284

List of Tables

Table 14.1	Effect of endorsing individual morality on likelihood to select just war information	275
Table 14.2	Effects of people's endorsement of individual morality on likelihood to select just war information based on their own country's involvement in the conflict	277

1

Introduction

Florian Demont-Biaggi

Peace has been an important topic of philosophical enquiry for a very long time. But while some other central philosophical topics that we inherited from antiquity (such as truth, reason, and the nature of phenomena around, above and within us) often remained distinctly philosophical, political and theological issues and ideas have always influenced people's understanding of peace in ways that make it difficult to separate a distinctly philosophical kernel from such influences. Still, it is possible to discern two basic perspectives that allow us to identify and contextualize attempts to understand peace.

The first perspective goes at least back to Homer. Homer's understanding of peace is negative in that it envisages peace as an intermission granted by the gods.¹ This perspective, which was influential in antiquity and can also be traced in modern thought, sees war as a natural state of affairs between humans. And based on it, peace can be nothing more

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than a correlative of war, which in turn enjoys conceptual priority and is constitutive for interpersonal relations. For some endorsing this view, laws are nothing more than a means to arrange oneself with the basic fact of war and their sole purpose is to ensure victory.² Still, the perspective does not always yield itself to a political realism, but does sometimes also allow for moral prescriptions. In Xenophon's *Hellenica* we find the following passage (ascribed to the Athenian commissioner Callias):

But if, as it would seem, it is a fixed decree of heaven that war shall never cease among men, yet ought we—your people and our people—to be as slow as possible to begin it, and being in it, as swift as possible to bring it to an end.³

We may speculate whether and to what degree such a statement amounts to an opposition to divine order, a possible autonomy from nature achievable through pursuing peace. If there is such an opposition, however, we can only hope to understand it against the backdrop of war. Based on this perspective, peace may have much moral appeal, as it constitutes some independence from a grim natural order. But be that as it may, the general idea remains that war is prior in the sense that, as far the nature of peace is concerned, there is not much more than an absence of war. Philosophers interested in a peace envisioned along these lines should thus better begin with a thorough analysis of war.

The second perspective came later and was probably the result of seeing war not only as a lamentable state of affairs but also as unnecessary and avoidable. The main idea here is that peace is a positive, natural force somewhat independent of war. A classical source for this view is Hesiod, who lists the goddess of peace (*Eirene*), together with the goddesses of lawfulness (*Eunomia*) and justice (*Dike*), among the three *Horae*, who are goddesses of order in general and (natural) justice in particular.⁴ Pax, the Roman goddess of peace, was a bit more closely associated with juridical and social aspects than Hesiod's *Eirene* and depictions, such as Virgil's mythical exaggeration in his *Eclogue IV* and those on the *Ara Pacis Augustae*, suggest that she was often seen as an epitome of a comprehensive, harmonious order of life—a concord

between human beings that has socio-juridical and natural aspects and that protects against external and civil war.⁵

During its career in Western philosophy, the concept of peace has oscillated between these two perspectives.⁶ When we turn to moral questions within the domain of war, we can also distinguish two general ways of seeing peace as morally valuable. On the one hand, and in accord with the perspective described by Homer, whatever value peace has, it is derived from the fact that war is bad and that we should seek an escape from it—but if war is an inescapable natural state we, in the long run, simply have to live with its badness and peace is, though it might be valuable, blatantly inert and a temporary intermission at best. On the other hand, and in accord with the myths and cults of Eirene and Pax, peace is a concord between humans, valuable in itself and closely related to lawfulness and justice.

Moral discussions about peace can, however, hardly ever be conducted in abstraction from concrete pressing questions. Who would want to discuss a peace that is not threatened or lacking? Such threats and lacks are, however, never really absent. Wars, smaller armed conflicts, cases of terrorism, crises and political violence have always been a topic. And common sense often quickly alleged to have a firm grasp on what counts as not peaceful or as a possible threat to peace and the first result from that was not usually a fine piece of abstract philosophy, but more often concrete policies and actions. Such policies and actions, in turn, did in the long run also inform more abstract political, philosophical and even theological thinking, which then influenced and formed practices in more sustained (and sometimes more rational) ways.

But this is not to say that we should expect to see such a neat sequence of three steps in every case. It seems that war and peace did always make people think and act in ways that both touch on fundamental questions of human existence and, at the very same time, yield concrete consequences for individuals, societies and nation states as well as more abstract analyses. It is therefore quite natural to address a variety of issues when discussing the upshot of peace for the morality of armed conflict today. And providing such a discussion, while trying to avoid a mere aggregation of barely related expert voices, is the aim of the present volume.

The volume includes fourteen essays that explore different issues in military ethics by according a central role to peace. Starting with Kantian perspectives on perpetual peace and its implications for policies (Sect. “[Kantian Perspectives](#)”), Sect. “[Just War Debates](#)” addresses issues in Just War debates, followed by two essays on religious perspectives on peace in Sect. “[Religious Perspectives on Peace](#)”. Section “[Technology, War and Peace](#)”, containing four essays, addresses technological issues and tackles the question whether and how peace plays a role in the cyber realm, in weapon engineering and military robotics—all focused on ongoing trends and new challenges in the current, still early stages of the Information Age. Section “[Peace in the Real World](#)” is probably a bit more accessible for readers with an exclusive interest in ongoing policy discussions, but still preserves reliable roots in philosophy, notwithstanding important evidence from psychology and legal studies.

Kantian Perspectives

The first chapter is Paul Giladi’s *Recognition Theory and Kantian Cosmopolitanism*. Giladi argues that, despite it being usually construed as a paradigmatic instance of deontology, Kant’s moral work on war and peace is best read as presenting a form of moral perfectionism: incessant wars and periods of armed conflict lead rulers to recognize the value of peaceful negotiation, because war and armed conflict prevent human beings from achieving self-realization. For Kant, in order to enable self-realization, states must work together to establish a federal union of republican governments. What is left unclear on Kant’s cosmopolitanism are the actual details of a substantive account for how the ideals of a federal union can be practically accomplished. Giladi argues that this lacuna can be filled by Honneth’s model of conceptualizing social conflicts as social pathologies, which sees armed conflicts as arising from especially traumatic asymmetrical intersubjective recognition orders and proposes genuinely practical therapeutic solutions to resolve conflicts by advocating specific transformations of the problematic asymmetrical intersubjective recognition order.

Franz Kernic’s *Pax Kantiana and Res Militaris: Kant’s Views on Peace, War and Military Affairs Revisited* discusses Kant’s views on *res militaris*,

in particular his philosophical and political ideas on the linkage between law, peace, republican constitution and military affairs. The focus is on the question how armed forces should be designed in order to contribute to a peaceful development of modern democratic societies. It argues that Kant's ideas, although largely put aside in contemporary security and military policies, could well provide modern societies with important policy guidelines regarding civil-military relations and the design of future armed forces and defense systems.

Just War Debates

It is a characteristic of war that risks are imposed on innocent lives. But also in a peaceful social order, people impose risks on each other: we drive cars, build power plants and put airports in populated areas. There is, therefore, a question how risk imposition works in these two contexts. In his *Standards of Risk in War and Civil Life*, Saba Bazargan-Forward argues that, though the duties of care we owe toward innocents in war and in civil life are at the bottom univocally determined by the same ethical principles, those very principles will yield in these two contexts different “in-practice” duties. But whereas others who have made this point argue that the duties of care owed to our own innocents are *more* stringent than those owed to foreign innocents, Bazargan-Forward argues that there are reasons for thinking that the opposite is the case—that the duty of care we owe toward our own innocents is *less* stringent than the duty of care we owe toward innocents in war. This is because, he argues, risks associated with civil life but not war (a) often increase the expected welfare of the individuals upon whom the risk is imposed, (b) are often imposed with consent, and (c) are often imposed reciprocally. The conclusion—that we have a *pro tanto* reason for adopting a more stringent standard of risk-imposition toward foreign innocents in the context of war—has implications not only for what standards of risk we should adopt in war, but also how we should weigh domestic versus foreign civilian lives in war.

In *Military Necessity through Peace?* the starting point is the traditional idea that military necessity rules out acts of military violence that are

not directed at a just cause or at least incompatible with achieving such a just cause. According to the Eirene/Pax myth, as we find it in Plato's *Laws* and Augustine's *De Civitate Dei*, military actions should be geared at peace as the ultimate goal and, thus, only count as necessary if they are indispensable for peace. Peace, according to Plato and Augustine, is understood in terms of a well-ordered concord between individuals, which is analogous to the relation of biological parts and their functions in a healthy body. While the general idea will be found sensible, the proposition that peace is best understood in terms of an order analogous to the relation of biological parts and functions in a healthy body will be rejected. In its stead, peace should be understood in terms of vital needs of individuals in concord.

In James Murphy's *Just War Thought and the Notion of Peace*, a possible misconception of peace is discussed. Heavy focus on *jus in bello* issues such as when and whom one may kill in war tends to conflate the ethics of war with the law on war, thereby reifying peace as a (legal) state of affairs. That works well enough in *jus in bello* thought, but most *jus ad bellum* criteria require a notion of peace that is political, relational and developmental. Two of those criteria, just cause and right intention, have significant implications for an appropriate notion of peace. As relational, peace is an extrinsic good. As developmental, it is good both as an end and as a means or practice. The upshot is that understanding peace as a merely legal state of affairs will fall short of what *jus ad bellum* requires.

Bringing in a conception of peace as a standard for military necessity and *jus ad bellum* criteria in general also means focusing on a just post-war order, thus increasing the importance of *jus post bellum* for the legitimacy of military campaigns. In her *Terrorism and the Prospect of Peace*, Anne Schwenkenbecher asks whether similar standards apply to terrorist campaigns. Assuming that at least some terrorist actors pursue legitimate goals or just causes, the first part of the chapter discusses whether it is more difficult for terrorists to achieve their political goals as such. In other words: is it more difficult for terrorist actors to satisfy the *prospect-of-success* criterion of *Just War Theory*? Schwenkenbecher argues that as an indirect strategy, it is less likely to secure concrete positive long-term political goals. The second part discusses whether it is

more difficult for terrorist campaigns to lead to a lasting peace. First, does the use of the *terrorist method* as such—state or non-state—jeopardize a lasting peace in a way that other violent, for instance military, strategies do not? Schwenkenbecher’s answer is a qualified “no.” Second, do non-state violent agents who employ terrorism have greater difficulty in ensuring that their violent campaign leads to a lasting peace due to the *kind of agents* they are? Again, Schwenkenbecher argues that this is not necessarily so, but instead shows that non-state terrorist agents are in fact more likely to meet *jus post bellum* (justice after war) criteria and secure a lasting peace than military agents.

Religious Perspectives on Peace

Not only Greco-Roman thought on war and peace often had religious aspects. The Roman Pax myth was taken up by Ambrose, Augustine and other medieval Christian thinkers who associated it with the message from the New Testament and the resulting assimilation has directly influenced what is now known as the *Just War* tradition as well as the *ad bellum* and *in bello* rules of international law derived from it. Christian influences can therefore still be found in many secular academic works in military ethics.

For the present volume two other religious perspectives on peace have been chosen in order to complement the more secular discussions. First, we have the Jewish intellectual tradition, which offers an alternative to the Greco-Roman myths of peace and their Christian successors. The other religious perspective is Buddhism, a tradition whose subtle scrutiny of violence and compassion offers ways of understanding peace that are independent both of political realism and basic assumptions of most philosophical traditions we find in Europe and the Americas.

Noam Zohar’s *Peace, Justice and Religious Humanism: A Jewish Perspective* offers an accessible entry point into the wide landscape of Jewish thought on the nature and value of human concord without neglecting the reality of war. Throughout most of the biblical corpus, war is recognized as a salient feature of human affairs, and God is often depicted as a warrior-king, leading His people in battle. Yet

the overarching biblical vision—grounded in the founding chapters of Genesis, and portrayed by the classical prophets—looks beyond present conditions and practices, toward a future world peace. Crucially, this peace of the messianic era is not depicted as a realm beyond history, wherein a miraculously transformed humanity will exist in simple harmony without conflicts. Rather, world peace is envisioned as a realm of justice: a worldwide political community of nations, in which conflicts shall be resolved by a universally honored authority. Yet this prophetic dream—however wonderful—cannot inspire a program for action without attending to the critical issue of enforcement, unaddressed by the prophets. If ongoing enforcement requires regular resort to military action, how is this a realm of peace? The inherent challenge is all the more poignant considering the core religious humanism of the Judaic tradition, wherein every human being is cherished as the image of the divine. In the Rabbinic tradition, the concomitant abhorrence of bloodshed led to the eschewal of capital punishment, even where prescribed by biblical law. Still, the Rabbis endorsed killing as an emergency measure in the defense of self and of others. Zohar delineates an approach to the prophetic vision of world peace and the enforcement of international justice, compatible with rabbinic religious humanism and its supreme valuation of human life.

Buddhist traditions offer a richly nuanced ethic for the compassionate use of violence, including warfare, torture and punishment, which has effectively supported regimes of vast geographical and cultural diversity for millennia. In *Once the Buddha Was a Warrior: Buddhist Pragmatism in the Ethic of Peace and Armed Conflict* Stephen Jenkins explicates the Buddhist ideology of compassionate violence as presented in a broad range of classical treatises and scriptures. Particular attention will be given to the *Jātakas*, legends of the Buddha's past lives revered by all Buddhists that serve as a fundamental source for Buddhist social ethics, where the Buddha exemplifies ideal characters engaged in warfare. In the "Ship Captain *Jātaka*," Buddha must kill in a classic terrorist situation. Another key source is *Satyakaparivarta Sūtra*, a Mahāyāna scripture that explains when a king may go to war, limits on how war may be conducted, treatment of prisoners, the practice of torture and impact on environment and infrastructure. *Ahiṃsā*, generally mistranslated

as “nonviolence,” has always meant non-harm, and sometimes failure to engage in violence is harmful. Strong attention is given to how one’s own policies create conditions of hostility and generate enemies. Buddhist texts argue that compassionate policies literally protect both the individual and society, even in war. Superficially selfish policies of economic exploitation and conquest based on greed undermine national security. Compassion is in the national interest and leads to general human flourishing and prosperity. International, national and personal peace and security, through strong alliances, absence of enemies and social contentment, are created through commitment to the wellbeing of others.

Technology, War and Peace

Technology, especially digitalization, has not only changed our everyday lives but also the way we wage war and plan to wage war in the future. Are these technological innovations, at least as far as war and peace are concerned, on a par with technological developments in the past or are they *sui generis*? And, whatever the answer to the first question is, what are the consequences for military ethics?

Some of the more basic questions regarding information technology are discussed in Don Howard’s *Civic Virtue and Cybersecurity*. Cyberspace is emerging as one of the most important conflict arenas in the twenty-first century. The challenges of cybersecurity and cyberpeace are among the most urgent such today and will be in coming decades, all the more so as the line between cyberconflict and conventional kinetic conflict is gradually erased. This chapter argues that the traditional “rights” framework is not adequate to the task of both theorizing cybersecurity and cyberpeace and constructing effective institutional systems for their maintenance. What is recommended, instead, are theoretical and institution-building approaches based upon the “civic virtues” framework. Foremost among the arguments for employing the “civic virtues” framework is that it is far better adapted to the complex and constantly changing community structure within cyberspace, wherein the practices conducive to the achievement of

community-specific goods cannot be adequately facilitated and protected by means of a general and static specification of rights. The chapter concludes with consideration of specific civic virtues especially pertinent to life in the cyberworld, prominent among them being comity and peaceableness.

Weapon design is another domain that has changed much due to technological progress. What sort of weapons, if any, do we want? The unlikely and, at first glance, enigmatic answer Adam Henschke proposes is: pacifist weapons. Right at the beginning of *Weapons for Pacifism: Reconciling Ideas in Conflict* Henschke concedes that the very idea of a pacifist weapon seems to be an oxymoron—pacifism is the opposition to killing and war, yet weapons are designed to kill. However, given the large and primarily negative impacts of war, if we take seriously the notion of Value Sensitive Design (VSD), that the design of technologies is not value neutral, we may have a moral duty to design pacifist military weapons. Exploring this idea further, focusing on the issues that arise around pacifism, VSD and weapon design, Henschke's discussion sheds light on both VSD and pacifism. The chapter discusses four sorts of weapons—a space defense system like the US “Star Wars” program, nuclear weapons, cyberweapons and “warbots”—to present a matrix of “pacifist weapons” that differ significantly in how the design of the weapons relates to the value placed on pacifism. On the axes of analysis, the first axis looks at whether pacifism is to be seen as an outright rejection of the notion of violence or an opposition to war, while the second axis looks at whether the value should be *designed into* the technology, or whether the design should aim at the value as an *outcome*, a desirable end-state. This analysis, Henschke suggests, shows that pacifist weapons are indeed plausible, that the term is not oxymoronic *but* that our underpinning notions of pacifism and design impact the sorts of weapons that pacifism might require.

When discussing new military technology, and especially when it comes to automated and remote killing, the status of soldierly virtues vis-à-vis programmable virtues becomes an issue. In *Virtues for Peace: What Soldiers can do and where Military Robotics Fails* Bernhard Koch considers the standpoint of Just War Revisionism, which takes war as an enlargement of individual defensive force. He then argues that this approach

overlooks an important aspect of justified military force: the directedness to peace. If peace were simply the suppression of violence and the creation of a “churchyard,” it might be achieved by robots. A proper understanding of peace, however, shows us that we need human engagement even in peace because only humans can convince other human beings that peace is indeed valuable. Just warfare, according to Koch, requires human soldiers who behave humanly. This brings in a traditional concept of moral acting that has become a bit out of fashion: *virtue*.

As we already speak of cyberwar, surely we can also conceive of a cyberpeace? Markus Christen and Endre Bangerter address this question in their chapter, *Is Cyberpeace Possible?* The digitalization of the modern world has created new vulnerabilities in society, making cybersecurity a matter of global importance. State actors have developed capacities to counteract cyber threats—but they also have established defensive and offensive means for cyberwar. There is still a debate on what constitutes acts of war in the cyber environment; and some authors proposed to focus on cyberpeace, i.e., the positive side in the war-peace antinomy. Christen and Bangerter question the attempts of defining cyberwar in terms of certain types of attacks. Instead, they suggest focusing on the transgressive nature of both digitalization and war, namely that both tend to infect all spheres of human life. In that sense, peace is a state where immoral acts have limited effects—and cyberpeace is a system property of cyberspace such that the effects of malicious activities can be contained. Cyberpeace thus consists in a sufficient level of cybersecurity in all domains of the digital society. Such a level requires limiting the complexity of information and communication technology (ICT) systems as well as counteracting (to some degree) the interoperability of devices and systems, in particular in likely targets of cyberattacks such as critical infrastructures.

Peace in the Real World

The last section of the volume features contributions that might, at first glance, appear more relevant for policy-makers. There are two topics. First, policymakers must take people’s opinions into account and,

therefore, the moral intuitions informing such opinions will matter considerably. Second, the status of a neutral agent on battlefields has become questionable, because health care providers and other providers of war aid are not only frequent targets of attacks, but the very status of moral neutrality has become questionable to a degree that governments and NGOs must consider substantial revisions of their policies. Such revisions do, of course, also take in moral intuitions of experts and non-experts on matters of war and peace. Such intuitions are sometimes biased and this is, of course, where the two topics converge.

With *Psychological Contribution to Philosophy: The Cases of Just War Theory and Nonviolence* Levi Adelman, Seyed Nima Orazani and Bernhard Leidner present empirical research that complements the picture not only for policy-makers, but possibly also for philosophers focusing on more traditional forms of analysis. Adelman et al. start with the observation that moral philosophy has laid out prescriptive theories for conduct during wartime and the use of nonviolence. Yet, how do these theories map onto people's *actual* behavior? Do humans behave like "lay philosophers?" A first set of studies tested people's use of Just War principles in evaluating wartime conduct. Adelman et al. show that people utilize the *jus in bello* principles of necessity, discrimination and proportionality to judge the justness of wars. When people only have access to *limited* information, however, those subscribing to "humanitarian-based morality" focus more on discrimination than on necessity. This is particularly true when people's own country participates in the war. Thus, people intuitively use all *jus in bello* principles, but to different degrees, depending on their moral principles. A second set of studies experimentally investigates whether nonviolence is a viable strategy for social movements struggling against oppression. The authors provide converging evidence for a model of nonviolent struggles in Bahrain, Iran and the United States, demonstrating that a social movement's use of nonviolence (rather than violence) leads others to see it as a "moral patient" deserving of support, and occupying the moral high ground. Importantly, nonviolence is not perceived as lacking agency. As a result, nonviolent movements are more effective at generating support and increasing membership. In sum, people do largely seem to behave as philosophical theories have prescribed, but sometimes in a way limited by psychological bias.

The topic of bias regarding the application of moral principles in matters of war and peace is also an important aspect of the last chapter of the volume. Daniel Messelken's *Medical Care during War: A Remainder and Prospect of Peace* focuses on a particular set of questions surrounding war aid and whether those providing it should be neutral with regard to whom they help. Messelken begins with one influential way of motivating war aid: in line with the appeal of Henri Dunant, the fundamental ideas of the Red Cross movement and the principles of International Humanitarian Law (IHL), medical care should be provided during armed conflict to all wounded and sick without any distinction. Ideally thus, the (ethical) principles of medical care remain unaltered during armed conflicts and can be interpreted as a remnant of peace during war. Healthcare providers also support future peace by not discriminating according to the conflict roles between enemy and friend or fighter and civilian, but by respecting everybody, in a non-conflict logic, as human beings. The antithetical view identifies medical care for wounded soldiers as a contribution to a threat. The chapter rejects such an interpretation, which can be found in parts of the revisionist Just War Theory, because it carelessly ignores the non-conflict logic that is fundamental to the medical role. The aim of the chapter is twofold: (i) to show that and for which reasons medical care should not count as a contribution to a threat and (ii) to remind us how medical care should be understood in order to implement and defend its inherent peace-logic.

Concluding Remarks

There is, of course, a current literature on peace and one might wonder how this volume contributes to some ongoing discussions not explicitly mentioned in the chapters. Let me briefly say something about two topical issues of this kind. The first is asymmetric warfare and one may ask how a concept of peace is to be applied to it. The second concerns the broader discussion of *jus post bellum*: How does a concept of peace figure into our discussions of transitional justice? And are some instruments of transitional justice (war crime tribunals, truth commissions,

illustration policies, etc.) more appropriate than others for promoting and achieving peace?

The concept of asymmetric warfare is not explicitly discussed in the current volume and one might wonder how present discussions are to be related to it. First of all, asymmetric warfare is best understood as comprising groups with disparate military capabilities and strategies. And picking up a central issue from that context, Anne Schwenkenbecher (Chap. 7) offers an approach on how to evaluate the actions of terrorist agents from a perspective of peace. The two chapters on cybersecurity by Don Howard (Chap. 10) and Markus Christen and Endre Bangerter (Chap. 13) do also discuss how peace allows us to reassess a domain typical of asymmetric warfare, because strategic decisions concerning cyber threats do belong to current discussions of asymmetric warfare. It thus makes sense to claim that a concept of peace can be used to elucidate the moral dimension of at least two central aspects of asymmetric warfare: terrorism and cybersecurity.

This is, of course, not yet enough to infer that peace has a special relevance for conceptually framing the morality of asymmetric warfare. But prospects for such an endeavor are good. Considering the contributions by Franz Kernic (Chap. 3) and Daniel Messelken (Chap. 15), we may want to argue that peace puts two constraints on asymmetric warfare that it already put on more traditional warfare: the constitution of those groups morally allowed to participate in armed conflicts of any sort must envisage a coherent understanding of peace as a final end and whoever participates in warfare should allow for (or at least not interfere with) medical care to be distributed to anybody who needs it in a conflict area.

For those who prefer to eschew cosmopolitan commitments, there are also Saba Bazargan-Forward's (Chap. 4) standards of risk-imposition, which allow us to assess proportionality regardless of whether we are dealing with disparate military capabilities and strategies or not. There is, thus, much sense in a further project that outlines precisely, for purposes of policy and practice, how peace considerations constrain the various aspects of asymmetric warfare. Many central ideas that should find their way into such a discussion are, however, already available here *in ovo*.

Let us turn to the second topical issue, the relation between a concept of peace and transitional justice. The focus on *jus post bellum* in many recent works in military ethics seems to suggest that war is often not seen as an inescapable natural state anymore—if we literally mean what we say when we use such expressions as “*jus ex bello*,” “*jus post bellum*” or “*transitional justice*,” it becomes very hard to see peace as an inert and temporary intermission between wars. Using such expressions suggests that there is an alternative to war. And perhaps—as James Murphy and Paul Giladi argue—that alternative is best understood in terms of an intersubjective process. So, the *jus post bellum* discussion may be understood as an attempt to formulate a coherent alternative to war and how a state of war can be transformed into something more humane. Following Murphy (Chap. 6) and Giladi (Chap. 2), the beginning of a transformation process itself could, if it takes certain directions, count as a mark of peace.

If, as I suggest in my chapter, we put vital needs of individuals at the center of attention, we might be able to derive criteria for what sort of instruments may count as appropriately applied in concrete situations. But without more detailed information on what needs there are, what the situation is and what instruments are available, carving out an appropriate set of criteria (not to speak of a recipe) for resolving problems might, I conjecture, not be possible. This, however, is just one line of argument one may want to pursue and it cannot replace a thoroughgoing discussion about how we can best deal with the different practical issues that transitional phases raise. But again, there is much in the present volume that is relevant to current debates.

Allow me to end here with some general, programmatic remarks.⁷ Regarding ongoing discussions of peace, the chapters of this volume neither provide complete theories and isms nor do they propose reductions to already established views. They do, instead, provide more options. In military ethics, we cannot afford the sort of exclusivism one finds too often among armchair academics and among manual practitioners, because the theoretical and practical difficulties we have to deal with are not distinct. We must make the most of what is conceivable, understanding what is irreducible between options and carving out mutual relations. It is hard to see how else we can go about doing military ethics in a world that needs it.

Notes

1. Compare his *Odyssey*, Chap. 24 (Powell 2014), where Athene asks Zeus whether the fighting should go on.
2. Platon has Kleinias say this in Bury (1926, 626 a).
3. Xenophon (1891, VI: 3.6.15); even though Callias's personal moral qualities are questionable, there is no reason to suppose that, in this passage, he does not express widespread ideas on war and morality.
4. Hesiod (1920, 901) and following lines.
5. Compare Virgil (1977) and, concerning Pax, her cult and the Ara Pacis, Thomson de Grummond (1990); Weinstock (1960).
6. Cf. Biser's entry on peace in Ritter (1972, 114–117).
7. I take my cues from David Wiggins (2002: viii) who follows Bernard Williams and, I believe, Aurel Kolnai.

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Part I

Kantian Perspectives

2

Recognition Theory and Kantian Cosmopolitanism

Paul Giladi

Kantian moral theory is construed as the paradigm of deontology, where such an approach to ethics is opposed to consequentialism and perfectionism. However, in *Idea for a Universal History with a Cosmopolitan Aim*, Kant understands historical progress in terms of the realisation of our rational capacities, to the extent that such emphasis on capability actualisation amounts to a form of moral perfectionism: wars and incessant periods of armed conflict lead rulers to grasp the value of peace, because war and armed conflict prevent human beings from achieving self-realisation. For Kant, in order to enable self-realisation, states must work together to establish a federal union of republican governments.

The aim of this chapter is to (i) articulate and defend a perfectionist dimension of Kantian ethics; and (ii) propose that an insightful way of articulating Kantian Cosmopolitanism can be provided by paying significant

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attention to recognition theory. Following Honneth's model of diagnostic social philosophy, I argue that armed conflict is best understood in terms of a particularly complex form of social pathology, where the peaceful resolution of such conflict requires a complex form of diagnosis and therapy. Under such an account, leadership involves taking the lead in diagnosing armed conflict as arising from an especially traumatic asymmetrical recognition order, and in proposing genuinely practical therapeutic solutions to resolving conflict by advocating specific progressive transformations to the current asymmetrical recognition order.¹

I

In her "A Habitat for Humanity," Barbara Herman relays an anecdote from her Kantian intellectual autobiography. As she writes, "I first read the *Idea* as a graduate student, at a time when I was in the grip of an austere reading of Kant's moral theory drawn mostly from the *Groundwork*. The dissonance between Kant's views about history in the *Idea* and what I understood to be his core moral views was at once disorienting and exhilarating."² What I find especially interesting here is that I find myself sharing the same formal phenomenology of disorientation and exhilaration when looking at the *Idea* and the central tenets of Kantian moral theory as presented in the *Groundwork*. For Herman, what underpins her sense of disorientation and exhilaration here is how she thinks, "Kant oriented historical thought around a global moral purpose that challenged the austere versions of the moral philosophy."³ To understand what exactly Herman means, a brief return to the basics of Kantian ethics and a brief explication of the principal feature of the *Idea* is required.

According to Kantian ethics, the moral worth of actions consists in having a good will and correctly enacting the moral law: as rational autonomous agents, we are naturally sensitive to the deontic prescriptive demands of practical reason, "the legislation that comes from our own rational will."⁴ Crucially, such sensitivity is *natural* for us, since human reason is self-legislating: the normative demands of the moral law are not imposed on us by any external authority, whether that

external authority is a divine commander or the world itself in some way, rather moral norms derive their authority from the demands of practical reason *itself*. Correspondingly, we understand human agency—specifically the normative dimension of *moral action*—in terms of formulating the moral law and then performing it successfully (or not).

Kant, famously, offers three ways of formulating the moral law, where the formulations provide a picture of the categorical demandingness of moral normativity and the concomitant picture of what human agency looks like. The first formulation of the law, the Formula of Universal Law tells us that we may not adopt a maxim that we cannot will to be a universal law, a morally valid law for all rational beings.⁵ The second principal formulation,⁶ dubbed by Kant as the Formula of Humanity as End in Itself, tells us that we must treat fellow human beings as ends in themselves and never as a means to an end.⁷ The third form of the moral law, namely the Formula of Autonomy and its variant, the Formula of the Realm of Ends,⁸ demands of human agents that we obey the laws that we are sensitive to through the use of our practical reason, and “whose universal observance would result in a ‘realm of ends’.”⁹

Given that Kant explicates agency here in terms of a genus of cognitive procedures wherein each autonomous being determines whether or not their beliefs/attitudes adequately pass the test of universalisability, and acts in the way the moral law demands autonomous beings to do so, I think it would not be unreasonable to claim that the overall view of human agency painted by the *Groundwork* is one of agency as “autarky.”¹⁰ All that is required of rational subjects is that they judge and act on the moral law without having to recourse to other rational subjects to make sense of the sources and authority of moral norms—intersubjectivity and sociality are deemed unnecessary for this cognitive endeavour here. This is not to say that other agents do not figure in our normative deliberation; rather, what Kant seems to be articulating is the notion that an individual rational agent need only reflect on the moral law within themselves in order to understand what is and what is not morally acceptable.

A difficulty, however, starts to emerge when we consider this conception of agency in relation to the conception of agency developed in both

the *Idea* and in *Anthropology from a Pragmatic Point of View*: while the *Groundwork* focuses on an understanding of morality solely focused on respect for the moral law and the self-legislation of a rational will, the understanding of morality as it appears in the *Idea* is one that is focused on a perfectionist dimension.¹¹ For, Kant places significant emphasis on the development of the rational capacities of the human species as central to our self-realisation. As he writes:

[Human beings] shall not partake in any happiness or perfection other than that which they attain free of instinct and by means of their own reason.¹²

Human beings have an inclination to *associate* with one another because in such a condition they feel themselves to be more human, that is to say, more in a position to develop their natural predispositions.¹³

Such a commitment to perfectionism also appears in the *Anthropology*:

... [the human being] has a character, which he himself creates, insofar as he is capable of perfecting himself in accordance to ends that he himself adopts. By means of this the human being, as an animal endowed with the *capacity of reason* (*animale rationabile*), can make out of himself a *rational animal* (*animal rationale*) – whereby he first *preserves* himself and his species; second, *trains*, *instructs*, and *educates* his species for domestic society; third, *governs* it as a systematic whole (arranged according to principles of reason) appropriate for society.¹⁴

By advocating a perfectionist criterion for the human good, Kant thinks our rational species-nature is not only constituted but also gradually improved. There seems to be compelling reason to suppose the picture of agency in both the *Idea* and the *Anthropology* appears to be dissonant with the autarky and deontology of the *Groundwork* stance. For, as Herman writes, “[a]mong the things that the *Idea* implies is that moral justificatory principles cannot stand alone—they do not describe and cannot guarantee an ethical life.”¹⁵ In other words, what we find absent in the *Groundwork* but present in the *Idea* is an apparent *post-Kantian*/proto-Hegelian commitment

to regarding agency and normativity as being constituted intersubjectively in social and historical contexts.¹⁶

The reason why intersubjectivity is favoured here over autarky is that autarky and procedural reflection on the *form* of moral norms fail to be *completely* illustrative of our moral phenomenology, our ethical *Erlebnis*. For, a central feature of human agency and a central feature of our normative practices is how we find ourselves *answerable to one another*, to the extent that “rational capacities are realised through response to developmentally salient experiences.”¹⁷ This reveals the extent to which we find ourselves embedded in the *social* space of reasons, wherein each rational agent plays the game of giving *and* asking for reasons.

Understood in this way, the perfectionist emphasis on development and the inherent sociality of self-actualisation is significant for two reasons: firstly, “[i]t is to say something about the conditions in which persons can come to recognise themselves and others as subject to moral authority ... If autarky is not a possible moral state, if the moral agency and sensibility of each (and so the best) person is partly constituted by background social institutions, we are not just adding something to the traditional *Groundwork* picture of the moral agent, we are changing it.”¹⁸ We are changing it, insofar as, to quote Karl Ameriks, we view Kant as holding “that morality calls us not merely to respect the moral law but also to be active rational agents.”¹⁹ Such a moral subject is active to the extent that they are not passive “in the use of [their] reason,”²⁰ where the sense of passivity here is one that is formally similar to that of the logical egoist, namely someone who considers themselves “to be cognitively self-sufficient.”²¹ As Kant writes in the *Anthropology*:²²

The *logical egoist* considers it unnecessary to test his judgement also by the understanding of others; as if he had no need at all for this touchstone (*criterium veritatis externum*). But it is so certain that we cannot dispense with this means of assuring ourselves of the truth of our judgement that this may be the most important reason why learned people cry out so urgently for *freedom of the press*. For if this freedom is denied, we are deprived at the same time of a great means of testing the correctness of our own judgements, and we are exposed to error.²³

As *active* rational agents, we do not view ourselves as normatively self-sufficient. However, this does not mean that we thereby relinquish our status as *independent thinkers*. Rather, this means that we continuously check our individual commitments and judgements against the commitments and judgements of our fellow moral agents.²⁴ Crucially, though, the practice of assenting to and acknowledging normative constraints and normative entitlements does *not* involve a crude constructivism or crude anti-realism. What this particular form of social engagement involves is that “the precise content of those implicit norms is determined through a ‘process of *negotiation*’ involving ourselves *and* those who attribute norms to us.”²⁵ By virtue of being a process of *negotiation* as opposed to a non-negotiated process, what is deemed appropriate or inappropriate is never *fixed* but always subject to “further assessment, challenge, defence, and correction.”²⁶

Secondly, Kant’s perfectionist emphasis on the social development of human rational capacities plays a central role in his critique of war and his arguments for peace. Arguably, his most powerful condemnation of war and armed conflict is made in the following passage from the *Idea*:

As long as states use all their resources to realise their vain and violent goals of expansion and thereby continue to hinder the slow efforts to cultivate their citizens’ mind and even to withhold all support from them in this regard, then nothing of the sort can be expected, because such moral cultivation requires a long internal process in every commonwealth in order to educate its citizens.²⁷

Though Kant appears to restrict war and armed conflict to military campaigns of territorial expansion,²⁸ his principal objection here to these kinds of practices is one made on perfectionist grounds: the use of capital by the state for the purpose of military engagement over a sustained period of time prevents citizens from achieving self-realisation, since such a use of capital is not being directed to the development of the rational capacities of the citizenry. In other words, there is a significant and damaging opportunity cost in the diversion of capital and resources from the effort to gradually improve the *Bildung* of the community. Of course, by this, Kant is not suggesting that the *only* terrible

and condemnable feature of war and armed conflict is that the state is misusing its resources. Nor is Kant suggesting that the *only* concern of the state should be spending *all* its capital on developing a rational group of citizens. Rather, the specific focus of his critique here is on the ways in which war acts as a barrier to the rational development of the human *species in general*: a paradoxical feature of human nature, for Kant, is that we possess “unsociable sociability,”²⁹ namely a social disposition towards forming communal relations with others, which is also offset against an anti-social disposition towards wanting to dominate and control others.³⁰ Our principal means of overcoming our unsociable attitudes in favour of realising our inherent sociability is through the development of our rational capacities, because as we refine our critical thinking and become *progressively* enlightened, we gradually learn to rid ourselves of “prejudices and superstition.”³¹ However, warfare “... tends to stifle the developmental process within states,” because funds necessary for educative endeavours are diverted to the military, and civil rights are often violated for the sake of national security.³² Since the developmental process is stifled, our capacity for critical thinking is not refined, meaning that we fail to become more enlightened and therefore remain asleep in our dogmatic slumbers. Not only that, as our unsociable disposition grows stronger, we want to dominate and control others thereby creating a sort of social alienation. The extent to which we are social is then also the extent to which the unsociable disposition alienates us from ourselves as well. By consequence, our failure to be roused from such dogmatic slumbers prevents us from achieving self-realisation and attaining human perfection.

If we are to develop our rational capacities and thereby progress on the road to self-realisation, then it is clear, on the Kantian picture, that the *only* environment conducive to such anthropological development is an environment of peace. Crucially, though, Kant’s understanding of peace is one that does not merely involve the obvious commitment to a cessation of hostilities (whether such hostilities are military or diplomatic ones). Kantian peace is also committed to a particular geopolitical order that provides the conditions for pacific internal and international relations. As he writes:

... through wars, through the excessive and ceaseless preparations for war, through the resulting distress that every state, even in times of peace, must ultimately feel internally, nature drives humankind to make initially imperfect attempts, but finally, after the ravages of war, after the downfalls, and after even the complete internal exhaustion of its powers, [nature] impels humankind to take the step that reason could have told it to take without all these lamentable experiences: to abandon the lawless state of savagery and enter into a federation of peoples.³³

The formation of a cosmopolitan federal union of republican states with coercive powers to enforce its laws, what Kant calls the “*cosmopolitan condition*,”³⁴ is deemed to provide the required conditions for peace insofar as such a political and legal order exemplifies our concerted wish to overcome unsociability and realise our sociability. Much like Hegel’s account of the development of *Geistigkeit* as an arduous pathway of despair that eventually culminates in rational satisfaction,³⁵ Kantian cosmopolitanism views the process of rational development of the human species in terms of necessarily requiring to *pass* through periods of significant strife and challenges: we do not envision bringing about a federal union simply because we naturally prefer such a socio-political legal ordering *from the outset*. Rather, our unsociable sociability forces us to engage in all sorts of unpleasant and morally reprehensible practices, whose consequences are so harrowing that they *rationality* compel us to overcome those normative *Weltanschauungen* that are symptomatic of the unsociable aspects of our nature,³⁶ so that we can fully development our sociality. This is what I take Kant to be saying in the following passages from the *Idea* and the *Anthropology*:

It is only in a refuge such as a civic union that these same inclinations subsequently produce the best effect, just as trees in a forest, precisely by seeking to take air and light from all others around them, compel each other to look for air and light above themselves and thus grow up straight and beautiful, while those that live apart from others and sprout their branches freely grow stunted, crooked, and bent.³⁷

So it presents the human species not as evil, but as a species of rational beings that strives among obstacles to rise out of evil in constant progress

toward the good. In this its volition is generally good, but achievement is difficult because one cannot expect to reach the goal by the free arrangement of *individuals*, but only by a progressive organisation of citizens of the earth into and toward the species as a system that is cosmopolitically united.³⁸

Having explored the perfectionist dimension to Kantian ethics, and having sketched the central claims of Kantian Cosmopolitanism, in what follows, I shall propose that Kantian Cosmopolitanism can be articulated in terms of recognition theory. Following Honneth's model of diagnostic social philosophy, I argue that armed conflict is best understood in terms of a particularly complex form of social pathology, where the peaceful resolution of such conflict requires a complex form of diagnosis and therapy. Under such an account, leadership involves taking the lead in diagnosing armed conflict as arising from an especially traumatic asymmetrical recognition order, and in proposing genuinely practical therapeutic solutions to resolving conflict by advocating specific *progressive transformations* to the current asymmetrical recognition order.

II

One of the key developments in practical philosophy over recent decades has been the rise of diagnostic social philosophy.³⁹ In the words of its leading contemporary exponent, Axel Honneth, such a tradition "... is primarily concerned with determining and discussing processes of social development that can be viewed as misdevelopments, disorders or 'social pathologies' ... Its primary task is the diagnosis of processes of social development that must be understood as preventing the members of society from living a 'good life'."⁴⁰ Under such a framework, the methodology of diagnostic social philosophy roughly follows the approach of curing some kind of ailment or disease: just as a physician will first diagnose the condition and then administer some cure, the diagnostic social theorist must first diagnose the relevant social

problem and then work out a cogent means of curing the malady.⁴¹ As Christopher Zurn writes:

First, each theorist points to some malady or ailment that troubles their own society, and identify some particular causes of that disorder which are specifically social. That is, the disorder is said to be rooted in the particular ordering or structuring or practices of the society. Further, the disorder identified is said to be a social problem or pathology because it impedes the ability of individuals to live fulfilling, or fully realised, or ethically praiseworthy, or happy lives. Thus the inability of individuals to live the “good life” according to the standards of the theory is said to be caused by particular features of the present social ordering.⁴²

For Honneth, the touchstone concept for articulating the formal complexities of social pathologies is *recognition*, the practice of acknowledging and being acknowledged by others: under recognition theory, one understands the form of social conflict and pathology in terms of uncovering the moral grammar of the society in question. By uncovering the moral grammar of society, one is able to *reveal the moral and social commitments* governing how members of that society interact with one another. Social conflict, then, is understood to arise from how certain collective groups within a given society experience either *misrecognition* or *nonrecognition*: in cases of misrecognition, the recognition order of a society acknowledges the subjectivity of a group or minority, but, incorrectly, does not afford that particular subjectivity the *same* level of respect and value as that of the majority. In cases of nonrecognition, the recognition order of a society incorrectly fails to acknowledge the subjectivity of a group or minority, incorrectly affording that group or minority *no* positive normative status at all. Both misrecognition and nonrecognition are severely detrimental to human development, since they are not genuine forms of *intersubjective recognition*: “[t]hrough intersubjective recognition, [one] is engaged in the process of self-realisation with respect to [one’s] practical relation-to-self,”⁴³ to the extent that the self-realisation of any individual can only be achieved in a progressive social environment. To quote Fred Neuhouser on this subject, “[t]he idea here is that each type of identity has a distinct value for

individuals and that possessing them all is essential to realising the full range of possible modes of selfhood. To miss out on any of these forms of social membership, then, is to be deprived of one of the basic ways of being a self and hence to suffer an impoverishment of one's life."⁴⁴

However, as Honneth writes, "[i]f one interprets social struggle from the perspective of moral experiences in the manner mentioned, there is no theoretical pre-commitment in favour of either non-violent or violent resistance. Instead, at the level of description, it is left entirely open whether social groups employ material, symbolic, or passive force to publicly articulate and demand restitution for the disrespect and violation that they experience as being typical."⁴⁵ Though recognition theory is *neutral* with regard to explicating social conflict as *necessarily armed* social conflict or non-armed social conflict, I think there are compelling reasons to think that the conceptual and methodological resources of recognition theory can be used *along with* those of a plurality of social sciences, namely anthropology, social psychology, economics, politics, and culture theory, to provide an explanation for why a social conflict is an armed conflict.⁴⁶ An especially illuminating feature of recognition theory is the way in which it articulates the complexities of the phenomenology of disrespect and the rational motivation to express resistance to such disrespect in a collective way—to use a Hegelian *tournure de phrase*, the manner in which the "I" becomes the "We." As Honneth writes:

Feelings of having been disrespected ... form the core of moral experiences that are part of the structure of social interaction because human subjects encounter one another with expectations for recognition, expectations on which their psychological integrity turns. Feelings of having been unjustly treated can lead to collective actions to the extent to which they come to be experienced by an entire circle of subjects as typical for their social situation ... [T]he models of conflict that start from the collective feelings of having been unjustly treated are those that trace the emergence and course of social struggles back to moral experiences of social groups who face having legal or social recognition withheld from them ... [In this case] we are dealing with the analysis of a struggle over the intersubjective conditions for personal integrity.⁴⁷

What the analysis of a struggle over the intersubjective conditions for personal integrity provides is an additional social perspective on why armed conflict occurs: one can diagnose armed conflict as arising from an especially traumatic asymmetrical recognition order, where the phenomenology of disrespect is so intense and unbearable that those affected by the debilitating effects of such trauma feel that the only way of expressing outrage and a desire for restitution is through armed activity. Crucially, however, this framework for making sense of the aetiology of armed conflict is *not* meant to replace or reject those models that account for the materialist issues at the heart of the conflict. Rather, the aim of the recognition model is to provide a hitherto neglected but significant dimension to an incredibly complex *explanans*. Moreover, just as a physician's diagnosis of a pathological condition is refined by considering a wide variety of causes and explanations, a social theorist's diagnosis of a social pathological condition is refined by engaging in critical interdisciplinary enquiry. By consequence, when a diagnosis is refined more and more, there is less chance of misdiagnosing the condition with potentially fatal therapeutic results.

For the recognition theorist, since they offer a social diagnosis of a social malady in terms of uncovering the moral grammar underlying an asymmetrical recognition order, the kind of therapeutic programme suggested is one rooted in developing the conditions required to bring about genuine intersubjective recognition. Given this, I think there is compelling reason to regard the efforts to bring about genuine intersubjective recognition as a way of articulating the Kantian cosmopolitan condition: the formation of a cosmopolitan federal union of republican states with coercive powers to enforce its laws is deemed to provide the required conditions for peace insofar as such a political and legal order exemplifies our concerted wish to overcome unsociability and realise our sociability. The practice of *overcoming unsociability and realising our sociability* seems to effectively be the same as the process of *transitioning from asymmetrical recognition orders to genuinely intersubjective and symmetrical recognition orders*, since *true* sociality does not merely consist in interacting with others *simpliciter*, but rather in interacting with others in such a way that enables self-realisation. Moreover, what is crucial about *this* particular conception of sociality, one that is grounded

in the concept of intersubjective recognition, is how the *logic* of intersubjective recognition *naturally aims at* cosmopolitanism: the “I” first finds itself in the “We” of the family; then in the “We” of a community; then in the “We” of a state-citizensry; then in the “We” of continental federal citizensry; and then finally in the “We” of a global federation.⁴⁸

In response, a potential critic of my account may well object to the putative virtues of articulating the Kantian cosmopolitan condition and realising the goals of perfectionism under the framework of intersubjective recognition: from the perspective of Foucault’s and Judith Butler’s variety of post-structuralist social theory,⁴⁹ not only does the concept of intersubjective recognition fail to explain how power operates in the normatively integrated social spheres—the ways in which “power relations centrally structure intersubjective recognition”⁵⁰—the concept also fails to show adequate sensitivity to how forms of recognition themselves produce and endorse unequal power between people.⁵¹ Given this, there appears to be significant reason to think that recognition theory fails to be a properly *critical* social theory.

Though the post-structuralist critique of Honneth seems compelling—even the most sympathetic defender of recognition theory would recognise the lack of a satisfactory theory of power—I would not regard this limitation to be a “call for rejection, but for further work in broadening and diversifying the basic social theory”:⁵² there seems to be nothing in the conceptual resources of either theories of power or the current iteration of recognition theory to suggest that they cannot be compatible with one another, not in the least because *both* approaches to social and political philosophy are exemplars of *anti-ideal* political philosophy.⁵³ For, that Honneth puts significant emphasis on sociology and historiography gives one *prima facie* reason to hope that the power relations theorist and the recognition theorist can pool their respective resources to understand social struggles, thereby having important consequences for the concept of leadership:

The motor and the medium of the historical process of realising institutionalised principles of freedom is not the law, at least not in the first instance, but social struggles over the appropriate understanding of these principles and the resulting changes of behaviour. Therefore, the fact that

contemporary theories of justice are guided almost exclusively by the legal paradigm is a theoretical folly. We must instead take account of sociology and historiography, as these disciplines are inherently more sensitive to changes in everyday moral behaviour.⁵⁴

Under such an account, leadership involves taking the lead in diagnosing armed conflict as arising from an especially traumatic asymmetrical recognition order, and in proposing genuinely practical therapeutic solutions to resolving conflict by advocating specific *progressive transformations* to the current asymmetrical recognition order. Just like the Machiavellian Prince must be completely embedded in his socio-political environment and be attuned to a multiplicity of internal and external political relations, leaders, according to recognition theory, must be completely attuned to the moral grammar of societies and take clear initiatives to enact meaningful *progressive policies* to realise genuine intersubjective recognition.⁵⁵ While, of course, very few ever approximate such standards, this idea of leadership, as Kant would say, is “an idea to be diligently pursued as the vocation of the human race.”⁵⁶

Notes

1. As armed conflict is understood in terms of a complex social pathology, requiring complex diagnosis and therapy, leadership might not always involve taking the lead. Sometimes, it may be enough to simply be open to possible diagnoses and therapies proposed by others (subordinates or externals). In other words: positive change (and, of course, problems) can come from many directions and good leaders should be able to recognise this early and adapt their plans accordingly.
2. Herman (2009, 151).
3. Ibid., 152.
4. Schneewind (2002, 85).
5. Cf. “The categorical imperative is thus only a single one, and specifically this: *Act only in accordance with that maxim through which you can at the same time will that it become a universal law*” (Kant 2002, 421).

6. I have written ‘second principal formulation’ here, as Kant introduces a second formulation, which is a *variant* of the Formula of Universal Law, namely the Formula of the Law of Nature.
7. Cf. Kant (2002, 429).
8. Cf. Kant (2002, 431–433).
9. Wood (2009, 121).
10. Herman (2009, 159).
11. Perfectionism has its roots in Aristotle’s *Nicomachean Ethics*, where he famously writes: “The function of man [is] a certain kind of life, and this [is] an activity or actions of the soul implying a rational principle, and the function of a good man [is] the good and noble performance of these, and if any action is well performed when it is performed in accordance with the appropriate excellence, human good turns out to be activity of the soul in conformity with excellence” (Aristotle 2005, 1098a12–16).
To quote Terry Irwin here: “(1) Human nature consists in rational agency, that is, in exercising the capacity to guide behaviour by practical reason. (2) The human good consists in the full actualisation of this capacity in fulfilling our other capacities. (3) The virtues are the different ways of actualising this capacity” (Irwin 2009, 882).
12. Kant (2009, 19).
13. *Ibid.*, 20–21.
14. Kant (2006, 321–22).
15. Herman (2009, 152).
16. One should note here that the task of the *Groundwork* is *not* one that aims to provide the socio-historical material conditions of moral agency. Rather, all the *Groundwork* focuses on is understanding the formal and rational conditions of moral agency under various formulae for universalisability. Under this formal account, it does not follow that there are no socio-historical conditions for such agency. Still, the *Idea* goes a step further by claiming that such agency is constituted intersubjectively.
17. Herman (2009, 160).
18. *Ibid.*, 161.
19. Ameriks (2009, 66).
20. Deligiorgi (2002, 150).
21. *Ibid.*, 150.
22. See also his *Lectures on Logic*: §740.

23. Kant (2006, 128–29).
24. Cf. the following passage from the *Lectures on Logic*: “An *external* mark or an *external* touchstone of truth is the comparison of our own judgements with those of others, because the subjective will not be present in all others in the same way, so that illusion can thereby be cleared up. The *incompatibility* of the judgements of other with our own is thus an external mark of error and is to be regarded as a cue to investigate our procedure in judgement, but not for that reason to reject it at once” (Kant 1992, §57, 563).
25. Houlgate (2007, 139).
26. Brandom (1994, 647).
27. Kant (2009, 26).
28. Here, Kant only condemns goals of expansion and, indirectly, any other political goals that hinder intellectual and moral cultivation. However, it is not immediately clear if this Kantian condemnation *also* extends to wars of defence (where states simply defend their efforts and means to enable their citizens’ flourishing), or what we now call humanitarian intervention (especially when we use armed force to secure another state’s efforts and means of flourishing).
29. Kant (2009, 26).
30. This is reminiscent of Freud’s *Thanatos* (death-drive) and its sublimation. Marcuse’s *Eros and Civilization* brings this together with his own views on alienation (which, in turn, are much influenced by his interpretation of Hegelian recognition theory). A precise analysis, tracking down similarities between Kant’s unsociable sociability and Marcuse’s interpretation of Freud, is very interesting and worth pursuing.
31. Kleingeld (2009, 173).
32. *Ibid.*, 173.
33. Kant (2009, 24).
34. *Ibid.*, 28.
35. Cf. the following section of the *Phenomenology of Spirit*: “[Philosophical critique] can be taken to be the path of natural consciousness which presses forward towards true knowledge, or it can be taken to be the path of the soul as it wanders through the series of the ways it takes shape, as if those shapes were stations laid out for it by its own nature so that it both might purify itself into spirit and, through a complete experience of itself, achieve a cognitive acquaintance of what

it is in itself. This path can accordingly be regarded as the path of *doubt*, or, more properly, as the path of despair ...” (Hegel 1977, §77–78)

36. By this, I mean ideologies of conquest and colonisation, to name a few.
37. Kant (2009, 22).
38. Kant (2006, 333).
39. The diagnostic social philosophical tradition has its historical roots in the work of de Tocqueville, Rousseau, Hegel, Marx, Mill, Nietzsche, Tönnies, Durkheim, Weber, Lukács, Spengler, Dewey, Plessner, Fromm, Horkheimer and Adorno, Marcuse, Bataille, Gehlen, Heller, Márcus, Arendt, Habermas, Foucault, and Taylor.
40. Honneth (2007, 4).
41. An important qualification should be made here: what counts as health is a matter of empirical fact and the relation between therapy and achieving physical health is a nomological relation. But what counts as a good life or a flourishing society (where it is possible for all citizens to live a good life) is not a matter of empirical fact. Furthermore, it is not clear that the relation between ethical actions and political programmes on the one hand and goals like a good life or a flourishing society on the other hand need be nomological. So, I would argue that whatever social pathologies are, they are categorically distinct from the sort of pathologies we find in medicine. My feeling is that social pathologies are best understood in terms of alienation (and this is why Hegel, Marx and Nietzsche—among others—play a special role in understanding social pathologies).
42. Zurn (2015, 93).
43. *Ibid.*, 25.
44. Neuhouser (2008, 223).
45. Honneth (1995, 163).
46. Of course, this is not to claim that any social conflict is also an armed conflict.
47. *Ibid.*, 165.
48. Consider this in parallel with the Stoics’ understanding of the development of collective identity: “Each one of us is as it were entirely encompassed by many circles ... The first and closest circle is the one which a person has drawn as though around a centre, his own mind. This circle encloses the body and anything taken for the sake of the body ... The second one contains parents, siblings, wife, and children ... The third one has in it uncles and aunts ... The next residents, then that

- of fellow citizens ... The outermost and largest circle, which encompasses all the rest, is that of the whole human race" (Hierocles, *Stobaeus* 4.671, 7–673, 11, quoted in Long and Sedley 1987, 349).
49. See Butler (1997).
 50. Zurn (2015, 209).
 51. See Allen (2010) and McNay (2008).
 52. Zurn (2015, 205).
 53. Some concept of social alienation à la Marcuse can play a central role in explaining both asymmetrical recognition orders and how power operates.
 54. Honneth (2014, 329).
 55. Of course, Machiavelli's image of a perfect leader envisages her or him as a *heroic* leader. But, it seems recognition theory simply requires a leader that is sensitive to and can cope with certain social processes where disrespect and reactions to disrespect are involved. Such a leader need not be heroic or take clear initiatives as long as he or she can disentangle the asymmetrical recognition order. A leader who corresponds more to a *fatherly*, *motherly* or the *éminence grise* archetypes may have other ways to take influence and change things for good.
 56. Kant (2006, 331).

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3

***Pax Kantiana* and *Res Militaris*: Kant's Views on Peace, War and Military Affairs Revisited**

Franz Kernic

Immanuel Kant has had a significant impact on modern political thinking and ethics as well as international relations theory regarding the phenomena of war and peace. Interestingly, his thinking about military affairs (*res militaris*) and, more broadly, on the relationship between war, republican constitution and military organization has been widely neglected, particularly in modern social sciences as far as the study of the military and the relationship between armed forces and society is concerned. Liberal theories of international relations have frequently resorted to Kant's understanding of peace and his theory of rights, particularly emphasizing his cosmopolitan approach to international security.¹ In recent decades, the danger of a nuclear war and the phenomenon of terrorism in general have led to a philosophical re-evaluation of the question of war and peace in world politics, including a widespread debate on Kant's ideas in the context of democratic peace

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theory.² However, this debate has had only limited policy impact on military affairs, civil-military relations and the design of modern armed forces in Western democratic societies.

The aim of this chapter is to shed light on Kant's thinking on war and military affairs in the wider context of his philosophical theory of peace. It attempts to revisit Kant's thoughts on the relationship between society and the military system. I will argue that his thinking about the interrelationship between society, state, war and military organizations can enrich today's political debates about the design of armed forces in modern democracies.

The chapter is structured in the following way: First, I will look at the concept of eternal/perpetual peace and its key elements as it evolves in Europe in the context of the Enlightenment. Kant's theory of peace, the *Pax Kantiana*, also reflects the historical developments of the late eighteenth century, particularly its numerous wars and revolutionary movements. In this context, the crucial question for Kant and his contemporaries whether or not war needs to be seen as a state of nature will be addressed. Second, I will review Kant's comments on war and military affairs. This part will focus on (a) how Kant addresses the phenomenon of war and how he incorporates it into his theory of peace, (b) the linkage between war and military affairs and Kant's categorical imperative, and (c) structural and organizational questions regarding the military institution as well as the political framework in which the armed forces are embedded. Finally, the chapter will highlight some of Kant's ideas regarding the military and examine how they could provide policy recommendations for today's security and defense policies. I will argue that Kant's basic ideas regarding military affairs could well serve as policy guidelines for contemporary civil-military relations and military policy.

Kant's Understanding of War and Peace in the Context of the Enlightenment

Kant's philosophical approach towards the phenomenon of war needs to be seen in the context of the Enlightenment, which not only challenged the traditional natural law theory and just war doctrine (*jus bellum iustum*),³ but also helped to advance a secular view on the justification of war and promoted the idea that a *perpetual* or *eternal* peace among peoples could well be established.⁴ To many of Kant's contemporaries, peace—demanded by reason itself—not only appeared to be the primary objective of historical development, but also seemed to be linked to the concept of a *republican form of government*, because that was construed as the one politico-juridical constitution of society inclined towards perpetual peace.⁵

What appears conspicuous in all of the concepts of peace of this time influenced by Enlightenment ideas, including Kant's influential philosophical sketch *Perpetual Peace* (1795),⁶ is the fact that the new orientation towards perpetual/eternal peace was not associated with an absolute “discreditation of war itself”⁷ or any form of radical pacifism. War was still seen as an important promoter of civilization and reason itself did not primarily stand up against war as such (that is, as a historical and political phenomenon), but rather against war as a *perpetual* phenomenon (Alexander Lips).⁸ Most politico-philosophical concepts of peace emerging at the end of the eighteenth century are not a radical rejection of war itself, but rather an analysis of the phenomenon of war as to its “inherent *dignity*”⁹ and its permanent *repetition* in the course of history.

Seeing armed conflict and war as permanent figures in human history leads to the question of whether war needs to be seen as a “state of nature” (*status naturalis*). This question had already played an important role in political philosophy before Kant. In his *Leviathan* (1651), Thomas Hobbes argued that the state of nature is in fact a state of war of each person against every other, a war of all against all (*status bellum omnium contra omnes*), which, at any cost, needed to be subdued. In contrast to this, John Locke described in his *Two Treatise on the Government* (1690) the *status naturalis* not as a state of war of

each person against every other, but rather as a state of general juridical uncertainty, thus clearly differentiating between a state of war and a state of nature. Therefore, Locke's social contract no longer corresponds to a "contract of subjection" (as for Hobbes), but rather to a "contract of commonwealth." Jean-Jacques Rousseau did not share Hobbes' view either, but considered the natural man's (*homme sauvage*) isolated and simple way of living a peaceful one. According to Rousseau, however, this state was to gradually deteriorate due to the division of labor, the appropriation of private property along with the inequity associated therewith, thus leading to a war of each person against every other. In this controversy, Kant took the following contrasting stand:

A state of peace among men living together is not the same as the state of nature, which is rather a state of war. For even if it does not involve active hostilities, it involves a constant threat of their breaking out. Thus the state of peace must be *formally instituted*.¹⁰

This quote shows that Kant adopts Hobbes' conception of the *status naturalis* only in part and, unlike Hobbes, supports the view that the state of nature only holds the *possibility*, yet not the *necessity* of a war of all against all.¹¹ To Kant, the notion of a state of nature is primarily a state devoid of justice.¹²

Peoples who have grouped themselves into nation states may be judged in the same way as individual men living in a state of nature, independent of external laws; for they are a standing offence to one another by the very fact that they are neighbors. Each nation, for the sake of its own security, can and ought to demand of the others that they should enter along with it into a constitution, similar to the civil one, within which the rights of each could be secured.¹³

Kant's concept of the *status naturalis*—and this marks the foundation of his political thinking—is primarily linked to the idea of a lawless state. The state of nature and the state of war are construed as equivalents to a state devoid of justice (*status iustitia vacuus*) to which Kant counterposes the state of right and the state of peace, thus repudiating the equation

of the state of nature with the state of peace (as was suggested by Locke, Pufendorf, or Achenwall) and drawing a sharp distinction between a rational (right/peace) and an irrational (nature/war) state of affairs. The institution of this state of right, and, subsequently, perpetual peace is to Kant an “irresistible veto” of moral-practical reason.¹⁴

Now, moral-practical reason within us pronounces the following irresistible veto: *There shall be no war*, either between individual human beings in the state of nature, or between separate states, which, although internally law-governed, still live in a lawless condition in their external relationship with one another. For war is not the way in which anyone should pursue his rights.¹⁵

Kant's Views on War and Military Affairs

In *Metaphysics of Morals* (1797), Kant shows how to overcome the state of nature.¹⁶ Following Hobbes, he argues in favor of a general rationality of mistrust. He also refers to the concept of the *ius ad bellum* of the traditional international right, which sees war as a normal condition with no need to regard it as moral evil.¹⁷ Kant takes up this traditional stand when analyzing the right to make war in a state of nature.¹⁸ However, he goes beyond the theories of natural law as established by the most influential scholars of the sixteenth to eighteenth centuries by assigning *justice* to the right of anticipatory attack launched by threatened states.¹⁹

Kant outlines three major reasons for the right to make war: (1) an active injury or act of aggression; (2) military preparations of a potential aggressor, thus allowing preventive measures (*ius praeventionis*); and (3) an alarming increase of power of another state (*potential tremenda*).²⁰ However, Kant concedes validity of this right to make war only to the state of nature, which shows the difficulty to presume a “right before the law” in the state of nature. Kant himself addresses this problem also in the context of applying the term “unjust enemy” in a state of nature, which itself is a state of injustice.²¹ It is important to note that Kant's comments on war and military affairs, particularly in other writings

than *Perpetual Peace* and *Theory of Right*, have opened a wide horizon for possible interpretations, subsequently leading to controversial stands in the history of interpretations.²² For a better understanding of how Kant links his theory of peace to political and military aspects, it is necessary to review some of his thoughts and remarks on war and military affairs.

In his *Critique of Aesthetic Judgment* (1790), Kant justifies a high esteem of the warrior or soldier by emphasizing his specific characteristics.²³ He even argues that aesthetic judgment should give the military commander preference to the statesman:

And so, comparing the statesman and the general, men may argue as they please as to the pre-eminent respect which is due to either above the other; but the verdict of the aesthetic judgment is for the latter. War itself, provided it is conducted with order and a sacred respect for the rights of civilians, has something sublime about it, and gives nations that carry it on in such a manner a stamp of mind only the more sublime the more numerous the dangers to which they are exposed, and which they are able to meet with fortitude.²⁴

However, in the *Metaphysics of Morals* (1797) Kant uses quite a different language.²⁵ Here, peace is elevated to the level of the highest good; perpetual peace is the objective of a state of law and the endpoint for Kant's rational approach towards society and politics. But it is difficult to put together Kant's comments on peace and war into a coherent rational political theory and, more specifically, into a coherent theory of military affairs. Several paragraphs in Kant's writings and philosophical sketches regarding war as a crucial momentum for history and culture give even clearer evidence of the difficulty to interpret his thought on war. Regarding the course of history, Kant views war itself as a natural condition: war is also the decisive momentum causing the crude state of nature to evolve into a civil condition; it is war that makes men move to "the most inhospitable regions" of the world in order to settle down; and it is war that compels man to "enter into more or less juridical relationships."²⁶ War also appears to be an indispensable means of cultural development. However, Kant's reservations about war—and

in particular about philosophers glorifying war—become evident in the following paragraph:

War itself, however, does not require any particular kind of motivation, for it seems to be ingrained in human nature, and even to be regarded as something noble to which man is inspired by his love of honor, without selfish motives. Thus warlike courage [...] is held to be of great and immediate value—and not just *in times of war* (as might be expected), but also *in order that* there may be war. Thus, wars are often started merely to display this quality, so that war itself is invested with an inherent *dignity*; for even philosophers have eulogized it as a kind of ennobling influence on man, forgetting the Greek saying that ‘war is bad in that it produces more evil people than it destroys’.²⁷

Another interesting point that Kant makes is that he writes that states may pursue their rights even through war, but that at the same time victory does not determine what is right. Therefore, he demands from the winner a day of penance in order to ask heaven—in the name of the state—

for mercy for the big sin the human race is still burdened with, i.e., not to be willing to obey to any juridical constitution in its relationship among peoples, but rather-being proud of its independence-make use of the barbaric means of war.²⁸

The law of nations (*ius gentium*) with its right to make war is facing the problem that there is no established legitimate authority that can serve as an instance of moral law entitled to enforce this right by means of punitive measures. This explains, according to Kant, why states still refer to Grotius, Pufendorf, Vattel, and others in order to justify any military action, although their codes of rights “do not and cannot have the slightest legal force, since states as such are not subject to a common external constraint.”²⁹ From Kant’s perspective, the dynamics behind the phenomenon of a permanent repetition of war in history are clear: without the foundation of the law of nations (*ius gentium*), every war

will finally only lead to a peace treaty. It will not, however, put an end to the state of war itself, but rather will give rise to subsequent wars.³⁰

War, Military Affairs and the Categorical Imperative

Another cardinal issue in the analysis of Kant's ethical approach towards a justification of peace is the categorical imperative according to Kant's end-in-itself formula: "So act that you use (*treat*³¹) humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means only."³² Kant distinguishes between persons and things in the manner that things, since they are always conditioned by specific ends, have only relative worth as a means, whereas persons are according to their nature ends in themselves. So, every rational being, every person, exists as an end in itself, given by pure practical reason, and can, therefore, not serve as a means for other ends.

Following this distinction between persons and things, one can argue that there is a general incompatibility between any military action and the categorical imperative. War-fighting seems incompatible with the categorical imperative insofar as it implies an *instrumentalization* of human beings.³³ In his *Theory of Right*, Kant clearly puts forward his arguments based on such a distinction and by radically undermining the self-perception of the absolutist sovereigns. He does this by posing the following questions:

We must first ask what right the state has *as against its own subjects* to employ them in a war on other states, and to expend or hazard their possessions or even their lives in the process. Does it not then depend upon their own judgment whether they wish to go to war or not? May they simply be sent thither at the sovereign's supreme command?³⁴

Kant argues that each human being needs to be regarded "not just as a means, but also as an end in itself."³⁵ According to him, it is impermissible to regard human beings as some kind of "property," "particularly in

their capacity as citizens. For a citizen must always be regarded as a co-legislative member of the state.”³⁶

Interestingly, Kant draws various conclusions from this line of argumentation: first, every citizen has the right to give “his free consent” through his representatives to every particular declaration of war.³⁷ Second, Kant explicitly argues against mercenary troops, against the hiring of troops of one state by another to fight an enemy who is not common to both.³⁸ His critique of the political self-understanding of the absolutist sovereign becomes very clear: to the sovereign, fame, honor, and glory consist in “his power to order thousands of people to immolate themselves for a cause which does not truly concern them.”³⁹ Kant’s permanent condemnation of any form of instrumentalization of the human being in the name of a previously posed end, therefore, implies a radical critique of military power, and even war as such. Since all traditional maxims concerning war-fighting seem incompatible with the categorical imperative, Kant finds the traditional distinction between a just and an unjust war not in accord with his conception of ethics. Any attempt to justify a certain type of war already contains in itself the acknowledgement of certain war-related ends, therefore leading to an ethical concept complying with the principle that “the end justifies the means.” Kant, however, revokes this approach.⁴⁰

Kant’s critique of the wars waged in his own lifetime focuses on two major aspects: first, the observable general tendency to solve political issues through war. Second, the escalation caused by the arms race of the standing troops, as it incessantly poses a threat of war to other states. According to him, the constant preparedness and readiness for war creates an atmosphere of distrust, of continuous insecurity and threat. The mere fact that troops are available may entice the sovereign to irresponsibly use them as a political lever or to actually send them to war. In addition, an inclination to constantly enlarge troops in order to be superior in wars (at least as far as the number of soldiers is concerned) significantly helps to aggravate the situation.

Kant does not provide any economic analysis of war activities, except for a discussion of public debt in the context of war in article 4 of his *Perpetual Peace*. He puts much stronger emphasis on the “*depravity of human nature*”⁴¹ than on economic interest or the sovereign’s personal

desire to wage wars. Kant's theory of peace is based on the concept of war as such, which we can summarize through the following catchphrase: peace needs to be prepared during as well as through war. Since war is always a *possibility* inherent to the state of nature of peoples, the foundation for a transition from war to a state of right (and simultaneously to a state of peace) has to lie in the general possibility and capability for waging a war itself.

The Military in the Framework of a Republican Constitution

Kant sees the rational basis for all political constitutions whatsoever⁴² in the republic based on natural human rights. For him, the republican constitution is a rational idea and, therefore, the objective of the development of a state. The process of its realization has its moral foundation in human nature itself:

Firstly, there is the right of every people to give itself a constitution of the kind that it sees fit, without interference from other powers. And secondly, once it is accepted that the only intrinsically rightful and morally good constitution which a people can have is by its very nature disposed to avoid wars of aggression (i.e. that the only possible constitution is a republican one, at least in its conception), there is the aim, which is also a duty, of submitting to those conditions by which war, the source of all evils and moral corruption, can be prevented. If this aim is recognized, the human race, for all its frailty, has a negative guarantee that it will progressively improve or at least it will not be disturbed in its progress.⁴³

The republican constitution seems to Kant to be the constitution, which, in itself, cannot be "addicted to wars" and must detach itself from all wars.⁴⁴ The republican constitution, then, is "the only lasting political constitution in which the law is the sole ruler, independent of all particular persons," that is, all traditional sovereignties find an end.

Any true republic, however, is and cannot be anything other than a representative system of the people whereby the people's rights are looked after on their behalf by deputies who represent the united will of the citizens.⁴⁵

The fact that the republican constitution is basically oriented towards peace corresponds, according to Kant, to a type of military system totally different from the one found in absolutist states. "Standing armies (*miles perpetuus*) will gradually be abolished altogether,"⁴⁶ says the brief demand of his third preliminary article in his *Perpetual Peace*, by which he takes up a demand already voiced by Saint-Pierre.⁴⁷ The aggressiveness of standing armies constitutes the greatest hazard to peace as they incessantly encourage states

to outdo one another in arming unlimited numbers of soldiers, and since the resultant costs eventually make peace more oppressive than a short war, the armies are themselves the cause of wars of aggression which set out to the end burdensome military expenditure.⁴⁸

It is conspicuous that in this context Kant is in favor of a gradual and slow reduction of troops. Here again he shows a preference for political reforms, clearly rejecting radical measures. In contrast to many of his contemporaries, Kant never vehemently criticizes the armed forces or the military profession as such. In particular, it was the coercive character of the army and the fact that a special emphasis was placed upon discipline that caused an increasing aversion among Kant's fellow citizens, notably with the educated middle class, to the military profession.⁴⁹ Therefore, Kant's critique of the wars of his time needs to be seen primarily as a critique of the system of standing armies and the military-related policies adopted by absolutism, which perceives standing armies as a dominant factor in politics.⁵⁰ By adopting the formula of the end in itself, Kant rejects mercenary armies set up by absolutist powers as instruments for the sovereign ("... to use human subjects as mere machines and as instruments in the hand ... of the state") and he also rejects the idea of a military machine designed to function mechanically, with soldiers obliged to blind obedience as cogs in a martial machine.

In contrast to this, Kant expresses a preference for the *militia system*, a defensive character of the armed forces and voluntary military service (from time to time), which, of course, stands in clear opposition to the system of standing armies of his era and the coercive recruitment of mercenaries. The general discussion about the concept of militia, primarily held in France, Denmark, and America in the second half of the eighteenth century (also taken up by Kant) was mostly about Machiavelli's vehement support of civic troops (*arme proprie*) and his plead against mercenary troops.⁵¹ The *Virginia's Declaration of Rights* (1776) for instance, objects in its article 13 to standing armies and endorsed a militia system:

a well-regulated militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defense of a free state; that standing armies, in time of peace, should be avoided as dangerous to liberty; and that in all cases the military should be under strict subordination to, and governed by, the civil power.⁵²

In contrast to Machiavelli's justification of a militia as the more effective instrument for the waging of wars, Kant favors the concept of militia for a totally different reason, namely that such a military system could best secure peace.⁵³

In the context of the first definitive article of *Perpetual Peace* saying that every state's civic constitution should be a republican one, the demand for a military system on the basis of a militia becomes even more evident: only a republican constitution could guarantee that military actions are exclusively performed upon demand of the people. Only when the people's free approval is required to enter into war, is it guaranteed that the sovereign cannot decide all by himself to wage war "as a kind of amusement and unconcernedly leave it to the diplomatic corps (who are always ready for such purposes) to justify the war for the sake of propriety."⁵⁴ This goes together with a rejection of absolutism, because the undivided power to decide over war or peace is one of the principal characteristics of an absolutist sovereign:

The monarch who (out of his own omnipotence) may say 'let there be war', and there is war, is an unrestricted monarch (with his people not being free)-However, the monarch who first has to hold a public referendum to find out whether his people approves of whether there be war, and in case the people says that there not be war, and there is no war, (is) a restricted monarch (with his people being truly free).⁵⁵

But Kant argues that if given the power to decide whether the country should go to war the people would consider very carefully whether to enter into such a situation:

If, as is inevitably the case under this constitution, the consent of the citizens is required to decide whether or not war is to be declared, it is very natural that they will have great hesitation in embarking on so dangerous an enterprise. For this would mean calling down on themselves all the miseries of war.⁵⁶

Pax Kantiana and Res Militaris Yesterday and Today

Kant's idea of perpetual peace can be seen as an effort to abandon the state of nature, which is characterized by a constant threat of war due to a lack of the rule of law with respect to their external relations ("just like lawless savages"), "even if there is no actual war or continuous active fighting (i.e. hostilities)."⁵⁷ The state of peace is a state of right, which according to Kant constitutes a *duty* imposed upon mankind through pure practical reason. Kant states that reason, "as the highest legislative moral power, absolutely condemns war as a test of rights and sets up peace as an immediate duty."⁵⁸

Kant's theory of right and his concept of peace have had an impact on both academic debates and practical political endeavors over the last 200 years. Kant's cosmopolitan ideas of a federation of free republics based on the rule of law and human rights as well as his demand for creating an institution for the settlement of international disputes still play a significant role in world politics. In addition, modern military ethics

has intensively taken up Kantian thoughts and largely incorporated them into their theoretical debates and lines of argument.⁵⁹ But Kant's analysis of military affairs enjoyed only a very short history of academic reception. This development may be due to the fact that already in the course of the nineteenth century Kant's concept of peace became the foundation of a new way of justifying military power. One brief look at the history of the political interpretation of Kant's *Perpetual Peace* shows that the third preliminary article was used by various authors of the late nineteenth century to justify the existing military system, in particular by Rühl, Pfeleiderer, and Stein.⁶⁰ They argued that Kant's demand for the abolishment of standing armies had become obsolete with the establishment of national armies.⁶¹

Conscription and mass armies contributed throughout a large part of the twentieth century to an extremely weak influence of Kant on military affairs even in modern Western democracies. Nevertheless, in the following final section of this chapter I shall summarize and highlight some of Kant's ideas on military affairs and evaluate their potential relevance for today's debate on security and defense matters. In this context, I will also pay attention to the question of how democratic armed forces in the security environment of the twenty-first century, which of course differs significantly from the late eighteenth century, need to be designed and embedded into policies in order to give peace a real chance.

Summing up, the *Pax Kantiana* can be seen as an intellectual effort to shift away from the historically dominant orientation toward *perpetual war* and to open the mind for the general possibility of *perpetual peace*. War is seen as a basic fact of social interaction in a state of nature. However, it is no longer viewed as an absolute *necessity* of social interaction, but rather as the starting point for a process towards building—through reason—a better form of social interaction governed by moral law. The imperative of practical reason *let there be peace* (or *there shall be no war*) is in fact a call for action towards the *preparation for* and *actualization of* peace, that is the creation of social and political conditions that allow peace to evolve and endure. Since the state of peace is a state of right for Kant, one can argue that the pledge for creating a state of right is valid for all spheres of social interaction where peace is

conceivable as regulative, including the political and military realm. To my mind, this implies two important elements: (1) a general duty to establish a state of right and a rational well-developed normative framework for all social interactions between a military institution and society and inside the armed forces themselves, and (2) a general shift in the orientation of the armed forces away from an exclusive *war-fighting* focus toward a new “*peace/war*”-paradigm that obliges the armed forces to pursue peace even in their war preparations and, in the worst case, in warfare.

Whereas the first element has had a significant policy impact in recent decades reaching from the development of humanitarian law in armed conflicts to numerous well-developed legal frameworks for military institutions and military activities, including the use of force, the second one has been heavily contested due to the fact that it clearly aims at a limitation and containment of military violence and stands up against the totalitarian dynamics of war and military combat preparations (often referred to as “military logic”). Of course, such a shift would also imply the end of the historically predominant orientation of military thinking towards military victory, unconditional surrender, and a total destruction of the enemy. Instead, it calls for a rather defensive character and structure of the armed forces, which has the advantage of not posing a serious military threat to others. In other words, the design of the armed forces has to avoid giving any impression of aggressiveness and offensiveness so that other states cannot claim a legitimate right of anticipatory attack.

Kant's concept of peace links normative ethical arguments with structural and organizational considerations. But the *Pax Kantiana* does not advocate a radical pacifism calling for the abolition of the military institution, but aims at restructuring the armed forces in a way that war becomes less likely or even unlikely. Consequently, a reform of the armed forces appears desirable in order to fit into a comprehensive state of right and peace. In sum, the constitution of the military institution needs to meet the following requirements: (1) standing armies need to be replaced by militia-structured armed forces, which are to be linked to a republican form of government; (2) armed forces need to be controlled by the people themselves and not by individual rulers; and (3)

military service is to be understood as a service of a large number of responsible citizens willing to defend their countries but clearly orientated towards peace.

The *Pax Kantiana* accepts the idea of a soldier but narrows it down to liberated and responsible citizens in arms, who are no longer involuntary instruments in the hands of any sort of ruling elite, but rather mature and responsible citizens capable of war-fighting (as *ultima ratio*) and knowing their duties toward peace. Consequently, civil-military relations need to be built upon the free will of the people and a strong public control (exercised by the free citizens themselves) of all military activities, including recruitment, training, mobilization, and combat engagement.

Although Kant has not elaborated a comprehensive military theory, he undoubtedly provides general principles and guidelines for military policy, particularly concerning the design of armed forces, military ethics and education, and the status and role of a soldier in a democratic society. In this respect, modern liberal democracies should revisit Kant's basic ideas and examine the question of how well they could contribute to the *preparation and actualization of peace* in today's security and defense environment. Such a re-evaluation of a *Pax Kantiana* with respect to current military affairs quickly will reveal that at present many democratic countries follow an opposite way in their respective military policies. In particular, the trend toward professional forces and the professionalization of the armed forces as well as the build-up of new expeditionary forces needs to be seen as incompatible with Kant's approach to *res militaris*. This final remark may serve as a warning, particularly taking into account that Kant's main concern with respect to the military and the threat of total war lies in the potential dynamic of an unleashed use of force and the danger of uncontrolled and unlimited military violence.

Notes

1. Ion (2012), Kleingeld (2012).

2. Compare: Cavallar (1992), Dülffer and Niedhart (2011), Hook (2010), Orend (1999), Rasler and Thompson (2005), Williams (2012).
3. Williams (2012).
4. Krimmer and Simpson (2011).
5. For details on the concepts of peace on the threshold of the eighteenth and nineteenth centuries in the German-speaking world compare: Batscha and Saage (1979), Raumer (1953), Chapter 6.
6. Immanuel Kant, "Zum ewigen Frieden (1795)," in Kant (1900ff), Akademieausgabe vol. VIII (1923); in the following cited as: AA. The translation follows Kant (1991c); in the following cited as PP.
7. Janssen (1975, 593).
8. Lips (1814).
9. PP 112.
10. Cf. PP 98 (AA VIII 348f.).
11. In this context, please see also part two of Kant's work "Theory and Practice" (On the platitude: This may be correct in theory, however, is no use in practice, 1793; in Kant (1900ff), AA vol. VIII (1923)). Full acceptance is conceded to Kant's statement "exeundum est estate naturalis," being a consequence of the first. Compare Reflexion 7735, in Kant (1900ff), AA XIX 503: "The statement: exeundum est estate naturali means: Everyone can be forced to enter into a statum civilem, either with us or our republic. Therefore, war is only just in this intention."
12. Immanuel Kant, "Die Metaphysik der Sitten (1797)," in Kant (1900ff), AA vol. VI (1914). The translation follows Kant (1991b); in the following cited as MM; here MM § 44.
13. PP 102 (AA VIII 353f.). Cf. as well MM § 54.
14. Cf. PP 174 (AA VI 354). The veto of moral-practical reason that there shall be no war has its roots in the necessity to leave behind the lawless state of nature: "either between individual human beings in the state of nature, or between separate states, which, although internally law-governed, still live in a lawless condition in their external relationships with one another" (Kant PP 165; AA VI 343; MM § 174). Although the state of nature has to be left behind both on an interpersonal as well as an interstate level, there are different paths leading out of these two states of nature, out of those lawless conditions holding no other alternative than war. In addition cf. Ripstein (2016).
15. MM Conclusion.

16. MM § 41–44.
17. MM § 57; AA VI 346.
18. See MM § 56.
19. See MM § 56, MM § 167 and MM § 60.
20. MM § 56.
21. MM § 60.
22. Cf. Baumann (1950), Bloch (1976), Hoffmeister (1934), Natorp (1924), Saner (1967), Vaihinger (1900), Weyand (1963), Zickendraht (1922).
23. Cf. MM § 28. Kant uses the expressions “*Hochachtung für den Krieger*” and “*Unbezwingbarkeit seines Gemüts durch Gefahr*.”
24. Ibid. The Critique of Judgement (1790) § 28. Translation, Meredith (1911).
25. MM Conclusion.
26. PP 110 (AA VIII 362f.).
27. PP 111f. (AA VIII 364f.).
28. PP 103 (AA VIII 355). Also compare: “Der Krieg ist eine Art von Rohigkeit, Ungezogenheit, Barbarism wie unter Wilden statt der Argumente Schläge,” in Vorarbeiten zum ewigen Frieden, 162ff., reprinted in Batscha (1976, 63).
29. PP 103 (AA VIII 355f.).
30. PP 103 (AA VIII 355f.).
31. The term ‘*treat*’ is frequently used in English translations of Kant’s end-in-itself formula. Compare Kerstein (2009).
32. Kant (1785), in the following quoted as GMS in parentheses along with the respective page numbers according to the Reclam edition, based on the second edition of Kant’s *Grundlegung zur Metaphysik der Sitten*, published in Riga by Johann Friedrich Hartknoch in 1786. Endnotes give the page numbers of the edition according to the *Akademieausgabe* (AA) vol. IV (1911). Here: GMS 79 (AA 428f.). The English translation follows: Kant (1996, 429).
33. GMS 78. Cf. Cavallar (1992, 51). Concerning this point, Cavallar argues that Kant himself eventually rejected this conclusion. So, this paragraph is “genuinely Kantian as far as the spirit is concerned, however, not in the way it is written.”
34. MM § 55.
35. MM § 55.
36. MM § 55.

37. MM § 55.
38. PP 103 (AA VIII 354f.).
39. PP 103. Also compare Raumer (1953, 127–207 and 369–378).
40. PP 103 (AA VIII 354f.).
41. Immanuel Kant, Der Streit der Fakultäten. Zweiter Abschnitt. Der Streit der philosophischen Fakultät mit der juristischen (1798). The translation follows: Kant (1991a, 187).
42. Kant (1991a, 182f). Compare the German version: “Erstens die des Rechts, dass ein Volk von anderen Mächten nicht gehindert werden müsse, sich eine bürgerliche Verfassung zu geben, wie sie ihm selbst gut zu sein dünkt; zweitens die des Zwecks (der zugleich Pflicht ist), dass diejenige Verfassung eines Volks allein an sich rechtlich und moralisch-gut sei, welche ihrer Natur nach so beschaffen ist, den Angriffskrieg nach Grundsätzen zu meiden, welche keine andere als die republikanische Verfassung, wenigstens der Idee nach, sein kann, mithin in die Bedingung einzutreten, wodurch der Krieg (der Quell aller Übel und Verderbnis der Sitten) abgehalten und so dem Menschengeschlechte bei aller seiner Gebrechlichkeit der Fortschritt zum Besseren negativ gesichert wird, im Fortschreiten wenigstens nicht gestört zu werden,” quoted according to Kant (1985, 190f).
43. Kant (1991a, 182); compare: Kant (1985, 193, 196f).
44. MM § 163; cf. AA VI 341. For exact explanation of terms, be referred to: PP 99–102.
45. MM § 52; PP 94f.
46. PP 94.
47. Cf. Cavallar (1992, 117), de Saint-Pierre (1922).
48. PP 94f.
49. Cf. Cavallar (1992, 153).
50. Cf. Fiedler (1980). For further reading on the military system at the time of absolutism be referred to Kunisch (1986a), Section II, Chapter 6; Kunisch (1973, 1986b, 1992), Gembruch (1990). PP 95; cf. AA VIII 345.75; Cavallar (1992, 152).
51. Further reading: Machiavelli (1986), chapters XII–XIV.
52. Virginia's Declaration of Rights, adopted by the Virginia Constitutional Convention on 12 June 1776, article 13 (Charters of Freedom 2016).
53. Cf. PP 100. In addition, see Williams (1983, 248f).
54. Cf. PP 105–108 (AA VIII 357f.).

55. Immanuel Kant, *Ausgewählte Reflexionen aus dem Nachlass*, in Kant (1985), Chapter VIII, Reflexion 8077, II, 248. Cf. PP 100.
56. PP 100.
57. MM § 54.
58. PP 104.
59. Fabre (2012). In addition see Ficarrotta (2012).
60. Pfeiderer (1895), Stein (1896), Rühl (1892).
61. Rühl (1892, 213–227).

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Part II

Just War Debates

4

Standards of Risk in War and Civil Life

Saba Bazargan-Forward

Background

We often act in ways that foreseeably but unintentionally (i.e., collaterally) risk infringing the rights that other people have. We routinely do this in war. We put innocent enemy civilians at risk *directly* by attacking military targets with civilians nearby. And we put innocent enemy civilians at risk *indirectly* by disrupting or destroying civilian facilities and infrastructure.¹ Risky conduct is not limited to war, however. We also act in ways that risk infringing the rights of innocents in everyday civil life. We construct dams and nuclear power plants posing small but significant risks of catastrophe, we construct airports in densely populated zones, we build factories that emit carcinogens, we fund and maintain a criminal justice system and a health care system that risk harming innocents, and so on. And individuals routinely

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impose risks on each other in civil life as well, most notably by driving automobiles.

There are presumably moral standards that govern imposing risks on innocents in both the context of war and in the context of civil life. We might think that the moral standards governing risk-imposition in civil life are more stringent than the moral standards governing risk-imposition in warfare. After all, warfare—even ethical warfare—is ineliminably a *destructive* activity, whereas the risks we impose in a technologically advanced society are the side effects of individual and collective *constructive* endeavors. Accordingly, we might think that the norms governing risk-imposition would reflect this difference.

But according to revisionism² about the ethics of war, there are no *sui generis* moral principles governing the resort to or conduct in warfare. The moral principles governing our conduct in everyday civil life are at the most fundamental level the same as those governing our conduct in war, in the following sense: in either context, we are permitted to put innocents at substantial risk of lethal harms if doing so is necessary to avert a harm of sufficient moral importance. It just so happens that this condition is fulfilled more often in the context of warfare than in context of domestic civil life. But the stringency of the constraint articulating (a) *what goods* can be legitimately sought by way of putting others at substantial risk, and (b) *how much good* must be achieved by doing so given the degree of risk imposed, applies univocally.

Revisionists are correct in arguing that there are no *sui generis* moral principles governing the resort to or conduct in warfare. But I will argue that there are nonetheless contingent differences between warfare and domestic civil life that ground contingent differences in standards governing risk-imposition in the two contexts. In particular, I will argue that there is at least one reason for thinking—perhaps surprisingly—that the moral standards governing risks imposed on innocents in warfare will tend to be *more* stringent than the moral standards governing risks imposed on innocents in civil life.

I argue that in the context of civil life there are at least three factors affecting the permissibility of imposing a risk of a given degree on an innocent. The first is whether imposing that risk increases the expected welfare of the individual upon whom the risk is imposed. The second

is whether the individual upon whom the risk is imposed consents to that risk. And the third is whether the individual upon whom that risk is imposed reciprocally imposes that risk on others. These factors, when present, individually and jointly reduce the stringency of the standards governing risks imposed on innocents relative to contexts in which these factors are absent. And I argue that these factors are routinely present in civil life but rarely present in warfare. The result is that there is at least one important reason for thinking that the standards governing risks imposed on innocents in war are actually *more* stringent than those governing risks imposed on innocents in the context of domestic civil life.

Some writers seem to assume that if a standard governing risks imposed on innocents is acceptable in domestic civil life, then certainly it must be an acceptable standard for imposing risks on innocent enemy civilians in war. The assumption, in other words, is that warfare does not raise the standards governing risk imposition. Take, for example, Jeff McMahan's argument against what I call 'proportionality-based' contingent pacifism.³ He argues against this type of contingent pacifism by attempting to show that the restriction against killing innocents is not as strong as proportionality-based contingent pacifists think.⁴ Contrary to what contingent pacifists believe, he argues, the restriction does not prohibit killing a few innocents as a necessary means or side effect of preventing the wrongful killing of many others. Crucially, McMahan attempts to show this by arguing that if under conditions of uncertainty we adopt a very stringent constraint against killing, we thereby commit ourselves to denying that accepted practices in domestic civil life are in fact morally impermissible. And herein lies the problematic assumption that I've alluded to: namely, that the standards governing risks imposed on innocent enemy civilians in war are no more stringent than the standards governing risks imposed on innocents in civil life. But if I am right, there are consistently present contingent factors that pry apart these two standards of risk imposition in that there will typically be a reason favoring greater standards of care toward innocent enemy civilians than toward our own.

How we compare standards of risk imposition in war and in civil life is also relevant to the broader issue in just war theory of how we comparatively weigh domestic versus foreign civilian lives. Sometimes the

only way to save the lives of our own civilians is by collaterally killing enemy civilians. Whether doing so is permissible depends in part on how we weigh these lives in the calculation of proportionality. Thomas Hurka has argued that in such cases co-national partiality permits us to partially discount the weight that the lives of innocent enemy civilians receive relative to the weight that the lives of innocent domestic civilians receive.⁵ I also argue in favor of such discounting, but for very different reasons: civilians can vest an agent-relative privilege to weigh their own lives more heavily in the combatants fighting on their behalf in furtherance of achieving just aims, which thereby permits those combatants to partially discount the lives of enemy civilians in the calculation of proportionality.⁶ Now, if the operative standard governing risks imposed on enemy civilians in war is more stringent than the operative standard governing risk in civil life—which is what I argue here—it will have consequences for how we comparatively assign weights to domestic versus foreign civilian lives in the context of war. Specifically, it will imply that we ought to add in the mix of considerations relevant to comparatively evaluating domestic versus foreign civilian lives an important *pro tanto* reason (which does not vitiate the reasons running in the opposite direction) in favor of weighing the lives of innocent enemy civilians more heavily than the lives of innocent domestic civilians.

In what immediately follows, I discuss three factors morally relevant to assessing the permissibility of imposing a given risk on an innocent. I then argue that the relevance of these factors provides an important consideration in favor of the view that we have more stringent duties of care toward foreign innocents in war than toward our own in everyday civil life.

Consent, Benefit, and Reciprocation

Organizations both public and private often provide goods and services that impose small but significant risks of catastrophe upon those to whom the goods and services are provided. But (ideally) these risk-imposing projects and policies generally accrue net benefits to those

who are put at risk. To reiterate several examples presented earlier: transportation facilities, factories, power plants, the criminal justice system, the health care system, and so on, are all supposed to make everyone better off, which is partly what justifies the risks that these projects impose. Or more accurately, these projects and policies increase everyone's expected welfare; it is accordingly antecedently rational in the evidence-relative sense⁷ to accept the risk in question, which I will call a 'beneficial risk'. Of course, often such risks are illicitly shifted to populations with less political, economic, and social capital, while the benefits accrue to other, more privileged individuals. This is an injustice. But part of what explains why this is unjust is itself parasitic on the view that certain risk-imposing activities and policies are justified by the benefits accrued *to those upon whom the risks are imposed*.

This is not to say that so long as a risk increases expected welfare imposing it is permissible. Respect for the autonomy of others requires that we defer to them by seeking their consent where possible for imposing even those risks it would be antecedently rational for them to accept. In democracies, the decision to impose beneficial risks is (supposed to be) made via a decision procedure whereby an individual's participation in it (or even an individual's voluntary decision not to participate in it) confers consent to the outcome of that procedure—even if the outcome is contrary to that individual's preferred outcome. A referendum is an obvious example of such a procedure. More often, though, an official or group of officials makes the decision to impose (or to allow imposing) the beneficial risk in question. As long as those officials are fairly voted into office, and as long as the decision to impose or allow the beneficial risk resides legitimately within the ambit of their authority, their decision preserves the consent of the people—or so goes the theory. The upshot is that fairly distributed beneficial risks imposed under these circumstances satisfy the requirement of consent.

Suppose, though, that the risk of harm manifests—the nuclear power plant has a meltdown, the hydroelectric dam bursts, the refinery or the manufacturing plant causes those living in its vicinity to suffer from a disproportionately high rate of cancer, the criminal justice system imprisons some innocents, the health care system harms some of those it's tasked with providing medical assistance, and so on. How do

we morally evaluate these harms? Supposing that—(a) those who suffer these harms consented to the risk, and (b) those who suffer the harms were nonetheless antecedently expected beneficiaries of that risk—we ought to substantially discount the weight that those harms receive in a proportionality calculation.

To see this, suppose that we have to decide between two courses of action. The first course of action imposes a risk statistically likely to result in a hundred deaths over the next decade, but which also results in substantial gains for the survivors who number in the tens of millions. The risk was imposed consensually and it increased the expected welfare of everyone on whom it was imposed. We can, alternatively, take a course of action that is overwhelmingly likely to reduce the number of deaths from 100 to 75. However, it does so by shifting the risk from those who are antecedently expected to benefit to those who are not (and accordingly do not consent to being put at risk in this way). Though this alternative course of action saves 25 lives, *it is arguably less preferable*.

We might make sense of the moral difference between the two courses of actions in one of two ways. The resulting deaths in either course of action receives negative weight in the proportionality calculation determining the permissibility of each course of action. But perhaps the 75 deaths in the second course of action receive greater negative weight than the 100 deaths in the first course of action *because the 75 but not the 100 were wronged*. Alternatively, we might think that the victims in both courses of actions were wronged, but that the 75 were wronged more severely than the 100 precisely because the 75, unlike the 100, were not antecedent beneficiaries and did not consent to bearing the risk. I tend to think that the first explanation is correct on the grounds that the victims suffer bad option luck. Others might demur. But regardless of which explanation is correct, the 75 deaths would be weighed more heavily than the 100 deaths. I will call this upshot:

‘The Consent Principle’

We ought to partially discount the disvalue that a harm receives in a proportionality calculation if that harm is the result of a manifested risk imposed on individuals who consented to that risk.

One might point out, though, that most people in the world do not live under conditions that satisfy the conditions specified in the Consent Principle. Even in advanced democracies, the prevalence of social injustices cast doubt on whether those who are antecedently expected to benefit from a risky project consent to it given that such risks are often disproportionately borne by those with less political, social, and economic capital.

Does, then, imposing a beneficial risk on those who do not consent to that risk violate their right not to be harmed? Not if risks of harm do not themselves qualify as harms.⁸ Still, by imposing that risk upon them we violate their autonomy even if the risk does not manifest. If the risk does indeed manifest, the victims are certainly wrongfully harmed, and egregiously so. But whether they were expected beneficiaries still has a role to play in assessing the wrongfulness of that harm. I contend that it is morally worse to harm an innocent by imposing a risk that ultimately manifests where that risk antecedently *decreases* the victim's expected welfare than it is to harm an innocent by imposing a risk that ultimately manifests where that risk antecedently *increases* the victim's expected welfare. This is certainly not to say that we are morally permitted to impose non-consensual risks that increase the victim's expected welfare. Rather, the claim is that doing so isn't *as* wrongful as imposing a non-consensual risk that decreases the victim's expected welfare.

Why this is so depends on the sort of transformative work consent does. We might think that that there is merely a *prima facie* reason to increase the expected welfare of others; the reason is *prima facie* in that the absence of consent does not merely outweigh but eliminates the considerations in favor of that reason. The result is that absent (available) consent there is *no* residual reason—not even an outweighed one—to increase the expected welfare of that individual. Alternatively, we might think that there is always at least a *pro tanto* reason to increase the expected welfare of others, but a stronger reason to refrain from acting contrary to the way that the individual consents to be treated. Absent that (available) consent, the *pro tanto* reason is still operative but is outweighed by the strength of the reasons to refrain from acting non-consensually.

Which characterization of consent's transformative power is correct? I believe that the second is. To see why, assume that by *reductio* the first were correct. Now, suppose for example that we have no choice but to treat one of two persons non-consensually: we can either prohibit Person A from smoking or we can prohibit Person B from exercising. In both cases, we'll be acting against the victim's will in that Person A's considered preference is to continue smoking and Person B's considered preference is to continue exercising. If we have to choose one, it makes sense to choose the former rather than the latter in that it seems we can repair to paternalistic reasons where we have no choice but to violate autonomy. But this reasoning is unavailable if the absence of consent does not merely outweigh but *eliminates* paternalistic reasons. Accordingly, I take it that consent as it applies to the permissibility of imposing benefits does not function by transforming the normative valence of the reason to provide that benefit, but rather functions by providing a distinctive reason—one of substantially greater strength than paternalistic reasons—to act in accordance with the person's (considered) wishes. If this is correct, we should think that imposing non-consensual risks *increasing* the victim's expected welfare is wrong, but not as wrong as imposing non-consensual risks *decreasing* the victim's expected welfare. I summarize this as follows:

"The Beneficiary Principle"⁹

The disvalue that a harm to an innocent receives in a proportionality calculation, where that harm is the result of imposing a risk that increases expected welfare, ought to be partially discounted relative to the weight that an equally severe harm would receive where that harm is the result of imposing a risk that decreases expected welfare.

So even in places—such as in non-democratic countries or in countries with malfunctioning democracies—where beneficial risks are imposed non-consensually, the weight that the resulting harms receive in the calculation of proportionality will be less than the weight that harms receive resulting from non-consensually imposing *non-beneficial* risks.

The discounting in the Consent Principle is presumably greater than the discounting in the Beneficiary Principle. But the point here is that

in both cases the harms will be discounted relative to those resulting from risks that decrease expected welfare. And even if the discounting in the latter case is relatively small, they are aggregative, as I will argue.

So far, I have argued that when imposing beneficial risks results in a harm, we ought to partially discount the weight that those harms receive in the proportionality calculation if the risks were imposed in a way that respected the victim's autonomy. And even when this condition is not satisfied, we still ought to partially discount (albeit less so) the weight that the harm receives in the proportionality calculation on the grounds that imposing the risk increases the expected welfare of the victim.

But there are some risks imposed on many of us on nearly a daily basis in domestic civil life that are not antecedently expected to benefit us. Notably, most of us on nearly a daily basis are put at risk by other drivers. And unlike the risk of being harmed by malfunctioning public projects and policies—such as power plants, the criminal justice system, the health care system, and so on—the presence of other drivers presumably does not yield a net increase to any given driver's expected welfare.

If drivers nonetheless consent to a regime permitting such risks, then imposing such risks is presumably permissible. The result is that the harms resulting from such risks ought to receive diminished weight in the proportionality calculation, in accordance with the Consent Principle, even if they do not increase any given individual's expected welfare. But what about drivers who do not consent to such a regime? I argue that even for such individuals the harms that result from the manifestation of the risk imposed upon them by other drivers ought to be partially discounted in a calculation of proportionality when and if such risks manifest—even if they do not consent to being subjected to such risks. This is because most individuals reciprocally impose such risks on others, substantially reducing their standing to complain about being subjected to such risks themselves. I am not relying on the claim (true though it might be) that it is permissible to impose unconsented risks on others in furtherance of achieving your legitimate aims if they do the same to you. Rather, I am appealing to a more conservative claim: even if imposing reciprocally non-consensual and non-beneficial risks on

others is impermissible, the stringency of the requirement not to do so is substantially diminished when they are doing it to you. This diminishes the negative weight that such harms receive (when they manifest) in the proportionality calculation, yielding the following:

‘The Reciprocation Principle’

There is a moral requirement that you refrain from imposing a non-consensual, non-beneficial, and non-trivial risk on another in furtherance of your otherwise legitimate aims. But the stringency of this requirement is substantially reduced if the individual upon whom you impose that risk is likewise imposing a non-consensual, non-beneficial, and non-trivial risk of roughly the same degree upon you. Hence, such harms ought to receive diminished weight in the calculation of proportionality.

Of course, not all drivers impose the same risks on each other. Some people drive more often, more dangerously, and in crash-incomparable vehicles.¹⁰ But take a driver who imposes on average a smaller risk on others than the typical driver imposes on her. This imbalance in risk-imposition gives her a *prima facie* basis for complaint should a more risky driver cause her harm. But her standing to complain is still diminished relative to someone who imposes no reciprocal risk at all. The strength of the standing to complain is determined in part by the difference in the degree of mutually imposed risk. The badness of the harm that the more risky driver causes to the less risky driver is still diminished relative to the badness of the harm that the more risky driver causes someone who imposes no such risk.

But what about individuals who not only refrain from consenting to a regime permitting driving but who do not drive? Even such individuals derive *pro tanto* benefits from the driving of others. Stores are stocked—schools, hospitals, and a variety of other socially beneficial institutions both public and private are staffed and maintained—through the use of automobiles. It is true that an alternative regime restricting or eliminating private auto use in favor of mass transportation would substantially increase everyone’s expected welfare. Relative to that possible regime, the status quo does indeed diminish expected welfare. Nonetheless, accepting the *pro tanto* benefits of the

risk-imposing activities of others in ways that create demand for and thereby contribute to the risk-imposing driving of others might (arguably) reduce one's standing to complain about being exposed to such risks for reasons similar to why reciprocally imposing that risk likewise diminishes one's standing to complain. But most of these contributions will be marginal and indirect relative to the risks we impose by actually driving. Consequently, it is unlikely that these sorts of contributions will substantially diminish the negative weight that the deaths of these contributors receive in the proportionality calculation.

But we need not belabor this issue since the fact remains that the presence of *some* individuals who refrain from driving on principled grounds does not vitiate the general thesis that the Principles of Consent, Benefit, and Reciprocation provide reasons for thinking that the duties of care toward foreign innocents in war are more stringent than toward our own civilians in peacetime—or so I will argue.

Comparative Duties of Care

The Consent, Benefit, and Reciprocation Principles, if correct, generally provide reasons for partially discounting the harms resulting from many of the risks we impose on innocents in civil life. Yet the Principles have little to no purchase in most wars in that they do not generally provide reasons for partially discounting the harms resulting from the risks we impose on foreign innocents in the course of waging even just wars.

In the context of killing innocents collaterally in war, the Consent Principle has little application. The civilians we collaterally put at the risk in furtherance of achieving a just aim generally do not consent to that risk. Exceptions include those wars of humanitarian intervention in which the people of a country consent to the risks we would have to impose upon them in furtherance of defeating a threat they face—either an oppressive domestic regime or an invading foreign aggressor. Such cases, though, are rare.¹¹

The Beneficiary Principle also has little application to morally assessing the risks we impose on foreign civilians in war. Generally, we do not benefit the civilians of the country we are warring against when

we collaterally put them at risk of being immiserated, maimed, and killed—even if the war is just. The benefits derived from doing so accrue to *us* rather than to them. So a particular reason in favor of subjecting them to risks of harm and death—a reason articulated in the Beneficiary Principle—is absent. Again, wars of humanitarian intervention might serve as an exception in this generalization. Such wars, if they are just, will benefit the civilian population—or more likely a sizeable segment therein—of the country being assisted. If these civilians are in fact expected beneficiaries of the military intervention, then the Beneficiary Principle might partially discount the negative value of some of the harms we impose upon them. This is tantamount to saying that the standard of care owed to them is less stringent than it would be if they were not expected beneficiaries.¹²

The Reciprocation Principle likewise has little relevance to morally assessing the risks we impose on foreign civilians in war. Except in a *levée en masse* or in guerilla warfare in which civilians serve as ‘part-time’ combatants (a characteristic of how some of the Viet Cong operated during the Vietnam War), civilians do not reciprocally impose threats on combatants. Recall that according to the Reciprocation Principle, when you impose a non-consensual, non-beneficial risk on an innocent, that act diminishes your standing to complain should that individual reciprocally impose a non-consensual, non-beneficial risk on you. This in turn affects how we weigh any harms resulting from that exchange. Now, the sense in which a typical civilian in a war imposes a non-consensual, non-beneficial risk on combatants fighting on the other side is so attenuated, compared to the sense in which a typical combatant imposes a non-consensual, non-beneficial risk on civilians, that it cannot be said to substantially diminish the civilian’s standing to complain about the harms she collaterally suffers. The upshot is that the Reciprocation Principle provides virtually no basis for diminishing the negative weight of the collateral harms civilians suffer in war.

I have claimed that in general there are *pro tanto* reasons to partially discount the harms resulting from risks imposed on individuals who either (a) consent to the risks imposed upon them, (b) are expected to derive a net benefit from such risks, or (c) refrain from reciprocally imposing such risks on others. This applies univocally, to wars and civil

life. It just so happens that it tends to apply far more often in the latter. The vast majority of civilians we put at risk in furtherance of pursuing just aims in war do not consent to those risks, are not expected to derive a net benefit from such risks, and are not reciprocally imposing such risks on our soldiers. It is safe, then, to make the following statistical claim: for the vast majority of foreign civilians we put at risk in war, and the vast majority of domestic civilians we put at risk in civil life by way of undertaking public projects and policies, the constraint against imposing risks on the foreign civilians is greater than the stringency of the constraint against imposing risks on the domestic civilians. (Or, more accurately, there is a *pro tanto* reason for thinking that the constraints differ). The result is that there is at least one important albeit contingent reason for thinking that we have greater duties of care toward enemy civilians in wartime than toward our own civilians in peacetime.

So when it comes to weighing the harms resulting from imposed risks on innocents in the context of domestic civil life, there tends to be for the vast majority of individuals a ‘thumb on the scales’ in favor of imposing that risk. But in the context of war, that ‘thumb on the scales’ is absent. Of course, the risks we impose on foreign civilians in war are far, far greater than the risks we impose on each other when we build nuclear power plants, allow private transportation, develop health care and criminal justice systems, and so on. The claim I am making, though, is that when the imposed risks manifest by causing death or some other grievous harm, how we ought to weigh that harm depends in part on whether the Beneficiary, Consent, and Reciprocation Principles apply. Hence, whether imposing the risk in the first place satisfies the proportionality constraint likewise depends on whether those principles apply. And since whether those principles applied reliably track whether the risks are imposed on our own people in civil life or on enemy civilians in the context of war, it turns out that we ought to weigh the harms we collaterally inflict on innocents in civil life differently from how we weigh the harms we collaterally inflict on innocents in war.

This point can be put differently. Whether it is permissible to impose some risk of harm— $n\%$ of death—on an innocent will of course

depend on what the value of 'n' is. But it also depends, I claim, on whether the Beneficiary, Consent, and Reciprocation Principles apply. This is because, in determining the permissibility of imposing that risk, we have to morally weigh the prospect of its manifestation against the loss of whatever goods would be gained by imposing the risk. In morally weighing the prospect of its manifestation, we (standardly) multiply the probability of its manifestation by the disvalue of its occurrence. And how we weigh the disvalue of its occurrence depends on whether the Beneficiary, Consent, and Reciprocation Principles apply to the risk that resulted in the harm. If any of them do, then the disvalue of the harm is partially discounted. Consequently, its expected value is less than it otherwise would be, which in turn can affect whether the risk satisfies the proportionality constraint. Consequently, the Beneficiary, Consent, and Reciprocation Principles can affect the calculation of proportionality regardless of what the value of 'it' is. The risk of the harm might be very high or very small—either way, the Beneficiary, Consent, and Reciprocation Principles have a role to play in determining how we assess the permissibility of imposing the risk.

One might argue, though, that as 'n' increases to certainty—that is, as the probability of imposing a lethal risk approaches certainty—the amount of good that imposing the harm must do to be justified becomes *disproportionately* greater. So, for example, suppose that we can permissibly impose a 5% chance of death on an innocent (who does not benefit from, consent to, or reciprocally impose that risk) in order to prevent a 100% chance of death from befalling some other innocent. At first, this might seem to suggest that imposing a harm on an innocent is permissible so long as it prevents 20 times that harm from befalling someone else. Accordingly, we can kill one innocent to prevent 20 other innocents from being killed. But against this, we might be morally required to be risk averse with respect to the risk of harm we impose. If this is correct, the relationship between the risk of harm we impose and the amount of good that must be done in order for the risk to be justified is not linear. So we can consistently say that it is permissible to impose a 5% chance of death on an innocent in order to prevent a 100% chance of death from befalling some other innocent, while simultaneously denying that we can kill one innocent to prevent

20 other innocents from being killed. If the claim that we ought to be morally risk averse is correct (which is an issue beyond the scope of this chapter), then it suggests that the large risks we impose on foreign civilians in war ought to receive *disproportionately* greater weight than the small risks we impose on our own people in civil life.

So if we morally ought to be risk averse, it follows that the standards governing risks imposed on civilians in war are more stringent than the standards governing risks imposed on civilians in civil life, since the risks we impose on the former tend to be far greater than those we impose on the latter. This would serve as an additional reason for thinking that we ought to weigh the harms inflicted collaterally on innocent civilians in war more heavily than the harms we inflict collaterally on our own people in the context of civil life. But regardless of whether we morally ought to be risk averse in this way, I have argued that there are additional reasons, reflected in the Beneficiary, Consent, and Reciprocation Principles, which generate a greater duty of care toward foreign innocent civilians in war than toward our own in civil life.

Conclusion

The civilians upon whom we impose risks in war rarely see the benefits of doing so (except, perhaps, in wars of humanitarian intervention), whereas those put at risk by socially beneficial projects and policies will typically see the benefits. And the civilians upon whom we impose risk in war rarely consent to our acts (again, excepting wars of humanitarian intervention), whereas those put at risk by socially beneficial projects and policies often do. Finally, many of the risks we impose in civil life are imposed reciprocally; a relationship of mutual risk-imposition is typically absent between civilians and combatants in war.

I argued that these factors give us reasons to decrease the negative weight of the harms resulting from beneficial, consensual, or reciprocally imposed risks. Since risks satisfying such conditions are far more prevalent in domestic civil life than in war, we will in general have a reason to adopt more stringent standards of risk-imposition in war than we do in civil life. So though the standards for imposing risks on innocents

in war and in domestic civil life are at the bottom univocally determined by the same ethical principles, those very principles will yield in these two contexts different ‘in-practice’ standards of risk-imposition. Put differently, there is at least one important reason for thinking that the duty of care we owe toward foreign innocents in war is greater than the duty of care we owe toward one another in domestic civil life.

I believe this has an interesting implication for how we think in the broadest terms about the morality of war. We often think of war as a context in which, morally speaking, much is permitted that is usually prohibited, in order to secure a just peace. On this view, morality slackens in war. But if what I have argued is correct, this gets things exactly backwards. In waging war, we impose risks on innocents. But the standards for imposing risks on innocents are a central element governing not just war, but a peaceful social order as well. But they do not apply in the same way: the duties of care as they apply to warfare, I have argued, are more stringent than the duties of care as they apply to civil life. If this is correct, the constraints governing the risks we can impose *in furtherance of* a just peace are more stringent than the constraints governing the risks we can impose *within that* just peace. In this respect, morality is more restrictive in war than it is in domestic life. Comparing what we owe innocents in domestic life with what we owe them in war lends some credence to contingent pacifism.

Of course, there might be other moral considerations from the other direction ultimately swamping the reasons for thinking that the duties of care toward innocents in war are more stringent than the duties of care toward innocents in domestic life. But the lesson here is that addressing the morality of imposing risks in war requires appreciating the fact that duty of care owed to our own innocents can come apart from those owed to the innocent foreign civilians we put at risk in waging even just wars.

Notes

1. The Geneva Declaration Secretariat states, based on data from armed conflicts between 2004 and 2007, that “a reasonable average estimate would be a ratio of four indirect deaths to one direct death in contemporary conflicts” (Geneva Declaration Secretariat 2011, 32).

2. For examples of revisionist work in the ethics of war, see McMahan (2009), Fabre (2012), Frowe (2014), Draper (2015), among others.
3. This type of pacifism states that wars, as they are currently fought and will continue to be fought in the foreseeable future, are unjust on the grounds that the good they achieve cannot justify the harm they cause. For more on contingent pacifism see Bazargan (2014).
4. McMahan (2010a).
5. Hurka (2005).
6. Bazargan-Forward, Forthcoming.
7. This is Derek Parfit's terminology. See Parfit 2011, 150–174. For a defense, see Tadros (2011), 214–240.
8. For a modern classical on this issue, see Finkelstein (2003).
9. Daniel Butt, among others, discuss a related principle that states that the unwilling beneficiary of wrongful acts have duties of restitution to that act's victims. Such a principle is largely orthogonal to the one I'm espousing here. See Butt (2007).
10. For discussion, see Husak (2004).
11. See Scheid (2014).
12. For a thoroughgoing discussion of this issue, see McMahan (2010b).

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5

Military Necessity Through Peace?

Florian Demont-Biaggi

Introduction

As it is currently used, the concept of military necessity is a legal concept and refers to a principle of the international law of armed conflict governing the application of armed force to achieve military objectives in accord with international law.¹ One common way of thinking about military necessity takes it as one main factor in proportionality considerations, while other important factors are civilian casualties and damage to civilian property. From that point of view, only proportionate military actions can possibly count as military necessities and an analysis of military necessity will depend heavily on how the concept of proportionality has been spelled out beforehand.

In philosophy, this approach to military necessity has been endorsed by Sidgwick² and (in a more restricted way) by Walzer. There is at

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least one good reason to step back from such an approach. We should reexamine the idea that necessity is to be understood partly in terms of proportionality, because the relation between a military action and its military goal will count as necessary only if it satisfies proportionality constraints. This does not tell us what a good military goal consists in. Any military action that aims at military success and satisfies proportionality will count as permissible according to the basic idea behind this utilitarian approach.³ We should, however, insist that we need an account of what a good military goal consists into obtain a full understanding of the moral dimension of military necessity. For, if we leave that open, as Sidgwick seems willing to, political and military leaders with a preference for *realpolitik* only have to tell a lofty story about larger expected benefits (usually of economical nature and supposedly relevant for sufficiently many) or about the moral wickedness of the opponent to make the balance tip in favor of the military goals they wanted to achieve anyway—there will be no other check for what counts as necessary.⁴

Walzer⁵ himself is not happy with these consequences, even though he endorses Sidgwick's general approach. He writes:

The utility of fighting limited wars is of two sorts. It has to do not only with reducing the total amount of suffering, but also with holding open the possibility of peace and the resumption of pre-war activities.⁶

The concept of peace (together with values attached to certain pre-war activities) can, thus, be employed to restrict a purist utilitarian approach to military necessity. But if we want to understand what good military goals are and apply this understanding to the real world, we cannot stop here, but must instead look for a better starting point. We need good goals rather than sensible constraints. So, is there a suitable alternative to making military necessity depend on proportionality in the way suggested?

Of course, military necessity need not be understood solely in terms of proportionality. A look at the Lieber code, which contains a canonical statement of the legal concept of military necessity, is instructive⁷:

Art. 14: Military necessity, as understood by modern civilized nations, consists in the necessity of those measures which are indispensable for securing the ends of the war, and which are lawful according to the modern law and usages of war.

The article draws attention to the fact that military necessity is a teleological concept: it concerns what is indispensable for achieving the goals for which the war, if it is a legitimate war, is fought. This already sheds light on a more subtly differentiated relation between military necessity and proportionality, because proportionality can now be understood as being all about weighing different goals (or sorts of goals) while necessity focuses on the content of goals and the means to achieve them. Of course, if goals and means are illegal or if an application of armed force is disproportionate, necessity will not obtain—but the concepts of proportionality and necessity nevertheless remain neatly separated concepts.

Art. 16: Military necessity does not admit of cruelty [...] It admits of deception, but disclaims acts of perfidy; and in general, military necessity does not include any act of hostility which makes the return to peace unnecessarily difficult.

In paragraph 16 we find details on how peace constrains military necessity. Military necessity is constrained by prospective considerations about what will make the return to peace unnecessarily difficult. Of course, whether prospective considerations should morally constrain military actions is a difficult issue and does merit philosophical scrutiny. But I shall not discuss this issue here. More central for present purposes is the relation between military necessity and peace. In the Lieber code, the prospective return to peace constrains military necessity in the sense that it must not be jeopardized by military action, but older classical positions of the Just War tradition went even further and took peace to be the ultimate goal of war.⁸

Augustine writes in his *City of God* that perpetual peace is the highest good and that war itself has no other goal than peace itself.⁹ He goes on to draw an analogy between the well-ordered relation of parts in a body with the well-ordered concord between men. In both cases he speaks of

peace and then explicitly states that civil peace is a concord between citizens similar to the sort of well-being experienced when the body and its parts function well. “Well-ordered” and “concord” are then explained in terms of allotting goods in harmony with the natural order.¹⁰ Augustine carries the analogy even further and claims that, just as much as there can be life without pain but no pain without life, there can be peace without war but no war without peace. Just as pain presupposes the existence of life, war presupposes the existence of peace. Pain is uncomfortable, because life is possible without pain. And we can thus extrapolate from Augustine’s text that war is unbearable, because peace—a just order between states and within them—is possible without war.¹¹

Now, because war presupposes the existence of peace, has it as its only goal and because peace without war is possible, military necessity according to Augustine is not only *constrained* by a prospective peace, but also has it for its ultimate goal. From an Augustinian point of view, Art. 14 of the Lieber code should therefore be revised along the following lines:

Art. 14: Military necessity, as understood by modern civilized nations, consists in the necessity of those measures which are indispensable for securing peace as an ultimate goal, and which are lawful according to the modern law and usages of war.

A somewhat similar position can be found in Plato’s *Laws*.¹² Not only does Plato have the Athenian say that peace is the ultimate goal of war, he also has him draw an analogy between a healthy body and a peaceful city-state. For Plato’s Athenian, just as much as for Augustine, a well-ordered state is in peace and a state for which things are not in order is in war (with adversaries inside and outside). Two points, however, are slightly different in Plato’s text. First, war is explicitly likened to an illness that has to be purged with medicine—I shall call this the Medical Analogy. Second, a well-ordered and peaceful state is explicitly associated with the happiness of individuals—I shall call this the Peace-as-Happiness Thesis. In what follows in this chapter, these two points will be brought to bear on an analysis of the concept of military necessity.

First, Plato's Medical Analogy will be examined in detail. Is military necessity anything like medical measures necessary to cure an illness? The answer to this question will be negative, because physical health (what medical measures aim for) has a material basis that peace (what military necessity aims for) does not have. Second, the Peace-as-Happiness Thesis will be discussed. The main question here will be whether and how peace as an ultimate goal of war must be related to individual happiness. The affirmative answer then requires that the resulting account of military necessity envisages a special role for individuals' vital needs.

The Medical Analogy

At the beginning of this chapter, military necessity was introduced as a legal concept largely depending on proportionality. Considering ideas by Augustine and Plato has then led to a different proposal, according to which military necessities are geared to peace independently of proportionality considerations. This second account of military necessity presupposes that peace without war is possible just as much as it is possible to have a healthy human body without illness. Plato is more explicit about this point than Augustine and even compares war to an illness that has to be purged with medicine. From Plato's perspective, military necessity can be understood in analogy to medical measures necessary to cure an illness. The question is, however, whether this understanding is correct and correctness here depends on whether "necessity" means the same in the military as in the medical case.

That "necessity" can express different concepts is not a new point.¹³ It is therefore warranted that we take a closer look at possible differences between military and medical necessity. A first concept of necessity has it that only truths, propositions or declarative sentences can be necessary and that necessity can be defined as the impossibility that some truth does not obtain. This *alethic* concept is, obviously, not the concept of necessity we need here. Military and medical necessity concern actions deemed necessary and not truths, propositions or declarative sentences. Furthermore, military and medical necessity are, as we have

already mentioned, teleological in the sense that some goal can only be attained through the action deemed necessary.

Something we find in all cases where “necessity” is used correctly, however, is counterfactual stability. This means that a necessary action must be done in all possible circumstances just as much as a necessary truth obtains in all possible circumstances. In the case of metaphysical and natural necessity, this counterfactual stability concerns what things are. In the case of military and medical necessity, in contrast, counterfactual stability concerns the relation between an action and the goal that is to be achieved through it. This will become clearer when we turn to concrete examples.

Starting with medical necessity, consider a case of a patient with a serious condition that requires surgery. Suppose the patient has a heart attack and surgeons must place a stent, otherwise the patient will die within a short time. The goal is health and, in this particular case, to have blood flowing in the coronary arteries in order to keep the heart functioning. The medical measures to achieve this are (at least) two: to unblock blocked coronary arteries and to place a stent to keep them from closing down again. There is, of course, a nomological connection between achieving health for the patient and the medical measures to be applied. Unblocking and securing the arteries are causes for a normal blood flow and, thus, secure the patient’s health—and that nomological connection obtains in all possible circumstances of surgical heart attack treatment.

Observe, however, that the nomological connection between medical measures and health needs not be an essential connection. There might be other metaphysically possible ways to achieve normal blood flow, but if we consider what is practical (as well as legal and ethical) in an emergency situation, there might be only one sequence of actions that reliably leads to the desired result.¹⁴ Medical necessity hence requires there to be a nomological connection between medical measures and health, but does not presuppose deep metaphysical points. To see this, consider that there are also practical considerations constraining what is possible and there may also be ethical considerations that eventually play a role in determining what counts as medically necessary (and what might merely be possible in a theoretical and practical sense, but counts

as illegal or unethical). Counterfactual stability requires that the same measures will reliably produce health (or at least reasonably increase the probability of a healthier state) in all circumstances of surgical heart attack treatment and whether there is such a counterfactual stability is an entirely empirical question. Where no such stability prevails, talk of medical necessity is incorrect.

Turning to military necessity, a seemingly analogous case can be constructed. The supply chain to an important local headquarter is blocked. The headquarter is under attack; if the supply chain cannot be re-established and if reinforcements cannot reach the headquarter in time, it will be captured by the enemy. The military measure is, roughly, to unblock and secure the supply chain and to send enough reinforcements into defend the headquarter. But what is the goal? Of course, the tactician says, the goal is to keep and secure the local headquarter. We may concede to the tactician that this is indeed a military goal. But is it the right sort of goal for actions that count as military necessities?

According to the Lieber code we must make sure that the military measures to be employed are not cruel and so on; but that is probably sufficiently similar to ethical constraints applying to surgeries. Furthermore, and more importantly, neither the military measures employed nor the goal (keeping and securing the local headquarter) must make a return to peace unnecessarily difficult. If we follow Plato and Augustine, we should demand that keeping and securing the local headquarter must be indispensable for achieving peace as an ultimate goal. So, unlike in the medical case, just bringing about a certain state of affairs is not enough. Keeping and securing the headquarter must either not make future peace too difficult (according to the Lieber code) or it must even play a positive role in achieving peace as an ultimate goal (following Plato and Augustine).

Nevertheless, we might still think that what the tactician does on a macroscopic level is sufficiently similar to what a surgeon does on a microscopic level. One might think that lasting health and lasting peace are both sometimes hard to achieve, but for different reasons; and that fact should, one might continue, not make us doubt the value of the Medical Analogy.

This last thought is, however, wrong. Military goals on any level (strategic, operational or tactical) are categorically distinct from medical goals. The difference lies in how they are constituted. Medical goals are the result of scientific research into how healthy bodies function, what threats there are to these functions and how we can deal with them. What counts as health and what is conducive to it are a matter of natural fact and what we know about these things can be known through empirical research. Military goals, however, are political goals—they are, therefore, decreed.

The difference appears clearly if we compare how a surgeon and how a military commander identify their goals. For the surgeon, identifying what should be done to achieve health is a matter of empirical facts and differences between what, on the one hand, he believes health consists in (and what is conducive to it) and what, on the other hand, health really consists in are always possible. Facts about health, in other words, possibly transcend a surgeon's knowledge. For the military commander, identifying a military goal consists ultimately in deciding what counts as a military goal. Every military goal is the result of a decision and there is, therefore, no difference between what commanders believe the military goals are and what the military goals actually are. Medical goals and the medical measures allowing a surgeon to achieve them are, therefore, objective in a way that has no analogy in the military domain.¹⁵

There is, of course, a straightforward story about what the objectivity of medical necessity consists in. The counterfactual stability involved in medical necessity depends mainly on whether we have managed to track healthy corporeal functions and whether reliable causal connections between medical measures and those healthy functions obtain. The stability is entirely natural and our knowledge of it is subject to empirical research. But when it comes to the counterfactual stability involved in military necessity, much depends on what military goals have been set. If military goals were chosen poorly, no stable relation between military actions and goals can be established. Another problem is that the goals themselves are not counterfactually stable unless the same goals would be pursued by different people—possibly with different beliefs and values—facing the same strategic, operational or tactical situation. Stability in the military case is a matter of consent.¹⁶ The sort of consent we need

to save military goals from arbitrariness must be such that it can make these goals impartial enough to secure a stability comparable in strength to the medical case. To achieve this, military goals must be made generalizable to the degree that they can be rationally consented to by anybody with the appropriate training, who finds him- or herself in that or a sufficiently similar strategic, operational or tactical situation.

Fortunately enough, we already know one sort of consideration that can possibly secure military goals to make them generally acceptable. The Lieber code, Plato and Augustine envisage choosing military goals that either make the return to peace not unnecessarily difficult or that make lasting peace the ultimate goal of any military action.

In order to counterfactually strengthen a military goal, the view by Plato and Augustine seems more promising than the one put forth in the Lieber code. This is so, because whether a return to peace is rendered unnecessarily difficult by some military action may also depend on the agent. If we take the headquarter case from earlier, it might make a big difference for local civilians whether the headquarter is secured by troops towards which they are neutral or by troops that have maltreated them at another occasion. Military actions by abusive troops will normally have lower chances for contributing to a quick return to a stable peace than military actions by neutral troops (or troops perceived as liberators). And, of course, military actions of an unjust attacker normally also have lower chances to contribute to a stable peace than military actions of a just defender.

As counterfactual stability requires that the same peaceful goals would be pursued by different people facing the same strategic, operational or tactical situation, the Lieber code does not provide a conception of peace that can secure such stability: here, different people pursuing the same militarily necessary actions in accord with the Lieber code will further a return to peace to different degrees. In contrast to this, putting down peace as an ultimate goal for military necessity will not result in a position where the status of a military action does depend on the agent. A military action will count as necessary precisely if the same peaceful goals would be pursued by different agents—including commanders on the opposing side—facing the same strategic, operational or tactical situation. So, even though the concept of peace in the

Lieber code might initially seem more feasible, only the more abstract proposal by Plato and Augustine accords peace the sort of generality required for counterfactual stability.

Note, however, that even if we gear military goals at peace as an ultimate goal, the medical analogy still remains imperfect. Health is an empirical fact, possibly transcending what we can know. Military goals, even if geared at peace, still are decreed and cannot transcend human knowledge, because as political goals they must remain within the reach of our intentions and beliefs.¹⁷ The goal of peace might, however, stabilize military necessity and provide it with the sort of impartiality that renders it commendable to rational consent.¹⁸ And how exactly should peace be understood now? How, in detail, can it secure counterfactual stability?¹⁹ These are the questions we turn to in the next section.

The Peace-as-Happiness Thesis

We have seen that for Plato and Augustine peace enjoys conceptual priority over war, because peace is conceivable without war whereas it is impossible to understand war if not as an absence of well-ordered concord between men (Augustine) where individual happiness prevails (Plato). Plato and Augustine did, however, employ an analogy between medical and military matters that we should reject. And without that analogy, the main ideas that remain are the conceptual priority of peace over war and the characterization of peace as a well-ordered concord for which individual happiness matters. In what follows, I shall flesh out an account of peace that closely follows these ideas in order to prepare the grounds for an argument that commends a suitably stable notion of peace as the ultimate goal governing military necessity.

We have, in our discussion of the Medical Analogy, found elements that allow us to say more about how we can understand Augustine's well-ordered concord between men.²⁰ We took military goals to be instances of political goals and about the latter we observed that they can be stabilized by making them generalizable to the degree that they can be rationally consented to by any party in that or a sufficiently similar situation. It is this sort of counterfactual stability that is the basis for

a well-ordered concord. Without this stability, a society is neither well ordered nor a concord. It is not well ordered, because without counterfactual stability there will be norms that arbitrarily hold for some individuals in some situations but not for others. It is no concord, because without generalizability we cannot speak of an agreement that is binding over time and at different places. This is what “well ordered” and “concord” mean once the Medical Analogy (together with its metaphysical implications concerning the naturalness of a certain societal structure) has been rejected.

If we switch from a perspective looking at a society as a whole, where we speak of a well-ordered concord, to a perspective looking at individuals and how they react and interact, we may characterize peace as a positive presumption of individuals that killing and maiming will not happen. Wartime is a time when we *expect* that killing and maiming can happen any time and that expectation will govern our thinking, feeling and acting. When there is no war (and even if violent crimes do happen from time to time) we find events where people are intentionally harmed in serious ways not only surprising but appalling. But why do we find such events appalling?

Of course, it is better to live in circumstances where we can positively presume that killing and maiming do not happen, because we care about our lives, our freedom and the people we love. But there is more. Perhaps happiness is also linked with the positive presumption? Well, it is hard to imagine a happy life in circumstances where killing and maiming can happen any moment. In such circumstances we must always expect that we will soon lose what makes us happy (at the latest when we lose our lives). But in circumstances where we can positively presume that killing and maiming do not happen, we may also presume that physical violence leading to premature death and permanent damage to body and mind will not put an end to our prospects for happiness and individual flourishing. Of course, surprises are always possible, but in war premature death or permanent damage to body and mind are never a surprise. We can thus agree with Plato that there is a connection between individual happiness and peace. And the connection is that the positive presumption is a vital need.

The idea of peace as positive presumption does, however, tell us more about happiness. If members of a society can presume that killing and maiming will not happen, they will find it easier to work together and establish binding contracts. It is, again, hard to imagine a society with a working legal order and a working economy that does not require the positive presumption to prevail. So, no matter how we flesh out the concept of a well-ordered concord—or even the concept of flourishing—for a society, the positive presumption is a prerequisite. And it is such an important prerequisite, because it is a vital need for individuals and a condition for social stability.

These points about the Peace-As-Happiness Thesis might have *prima facie* plausibility for many and some philosophers may even be inclined to regard such lines of reasoning as common sense—enough to treat some version of the positive presumption as a basal element of moral thinking that rational minds simply accept. Despite sympathies with such an attitude, I think we can and should offer a bit more to a sceptic, because there is also empirical evidence for the claim that the positive presumption should be regarded as a basal element of moral thinking.

Let me begin by sharpening the concept of positive presumption. In domestic cases, the cases individuals constituting a state will be most interested in when it comes to their everyday lives, the positive presumption centrally rules out cases of goal-directed harmful contact, inflicted without consent or justification, that are usually subsumed under the legal concept of harmful battery.²¹ The positive presumption might require more than simply ruling out harmful battery to provide stable grounds for a viable analysis of peace and, based on that, a viable analysis of military necessity. There might also be other things tacitly implied when individuals positively presume that killing and maiming do not happen in everyday life. But for present purposes, I shall begin with harmful battery and see to which extent it helps us to understand the positive presumption and its role for a well-ordered concord in a society.

We can understand the familiar trolley cases and similar dilemmas as probing our intuitions about what uses of violence between individuals constitute harmful battery and, thereby, violate the positive presumption.²² Seen from that point of view, all the empirical and

philosophical research trying to pin down precisely what our intuitions concerning justified and unjustified harm come to can be reframed as endeavours to delimit the scope of the positive presumption.²³ Precisely accounting for these intuitions and applying them to contemporary issues in applied ethics and jurisprudence can, therefore, be brought into accord with the Peace-As-Happiness Thesis and its focus on the individual. It is within this domain where we should expect to find the most important additions to the perspective adopted from Plato and Augustine.

The point I want to make here does, however, not depend on what precisely our best moral judgments on interpersonal violence come down to. All I need for the purposes of this chapter is warrant for the claim that within these discourses there is a general consent that philosophical analysis and empirical research largely presuppose the positive presumption and that much good research is currently devoted to delimiting precisely the scope of the positive presumption. What remains to be done here is to make clear how the individual level—where we discuss moral judgements on interpersonal violence—is related to a level of groups of people, where we have groups sufficiently large to employ concepts like that of military necessity and peace.

First, I shall introduce a trolley case to clarify how the positive presumption can figure in moral judgements about harming people. Then I go on to discuss moral judgements on interpersonal violence and finish by arguing that precisely the sort of worry that led to the rejection of the Medical Analogy can also be employed to argue against the idea that findings from trolley cases or cases of interpersonal violence translate directly to insights into military necessity. Here is the trolley case:

Footbridge with a Switch

FD is on a footbridge over the trolley tracks. He sees a trolley approaching that is out of control, heading towards a right-hand railroad switch. On the straight track there are five workmen who will be killed if nothing is done. Next to FD there is a button with which he can operate a point machine, thereby diverging the trolley on the sidetrack where there is a single workman who will be killed if the trolley hits him. Alternatively, FD can jump down on the tracks and stop the trolley with the weight of his body—in that case, FD would die.

FD has three options:

1. *Do nothing*: FD might not interfere, telling himself that he does not want to be responsible for the death of one person, because he values the positive presumption.
2. *Press button*: FD might press the button, telling himself that he values the positive presumption and, where there is a choice, favors the lesser evil of allowing one to be killed for the sake of saving five others' lives.
3. *Jump down*: He might jump on the tracks, thereby sacrificing himself, because he values the positive presumption so much that saving one person is more important to him than his own life.

First, what is crucial here is that FD has an overview of the nomological structure of the case. He knows what causes what and he also knows how he can interfere with that structure to bring about the results mentioned.²⁴ So, whatever choice he makes, that choice will rest on knowledge that reliably tracks empirical facts. And the empirical facts most relevant here are facts about nomological interdependencies. So, whatever we learn about harm from this case will be most relevant for situations where agents are aware of nomological interdependencies relevant to their choice.

Second, valuing the positive presumption can take on different forms. For each option FD has a reason to do it: he values the positive presumption. But the options differ in respect to *how much* he values the positive presumption. Is it worth somebody's life if five others can thereby be saved? Is it worth FD's own life? The moral implications of the difference between option 1 (*do nothing*) and option 2 (*press button*) can easily be fleshed out in terms of rights and duties, moral responsibility, values, virtues or utility. But the difference between option 2 (*press button*) and option 3 (*jump down*) is harder to pin down without presupposing that the positive presumption is valuable and that it can be valued to different degrees.²⁵

Third, there is also a difference in moral value concerning options 2 and 3 for the society in which this takes place. They are two cases of moral heroism, where somebody (FD) acts for the sake of the positive

presumption everybody shares and, thereby, provides evidence that the positive presumption is true.²⁶ The more heroic such an action is, the more it strengthens the positive presumption, because the evidence then supporting it will be stronger.

In order to make this trolley case and the insights from it relevant for our discussion of military necessity, we have to consider a structurally similar case of interpersonal violence.

Footbridge and Terrorist

FD is on a footbridge over the trolley tracks. He sees a terrorist who is obviously in a killing frenzy. The terrorist has a grenade launcher with one grenade. Further down on the track there are five workmen who will be killed if nothing is done. In FD's hand there is a remote controller with which he can operate a wrecking ball that he could easily direct at the terrorist, thereby killing him. Alternatively, FD can yell and direct the terrorist's attention to himself—in that case, the terrorist would kill him instead of the five workmen.

FD has again three options, which are based on nomological interdependencies similar to those we had in the trolley case. Consequently, the relation between nomological interdependencies and choice is the same as before: whatever choice FD makes, that choice will rest on knowledge that reliably tracks empirical facts. But due to the fact that a person—the terrorist in a killing frenzy—is the source of harm, valuing the positive presumption will suggest releasing the wrecking ball, thereby crushing the terrorist.

No matter how we explain why it is permissible to harm the terrorist, not doing anything or drawing the terrorist's attention towards FD (who is innocent) will both not count as doing anything in accord with the positive presumption, because in both cases evidence *against* the presumption will thereby be generated. Releasing the wrecking ball, by contrast, can count as evidence for the positive presumption, because it warrants believing that impermissibly violating the presumption will have had consequences for the perpetrator.

Viewing the case from the perspective of an entire society, the society should have a lively interest to consist of as many individuals as possible

who would be willing to release the wrecking ball. This is so because a majority of such individuals will see to it that there is mostly positive evidence (and only little negative evidence) for believing that the positive presumption prevails—and, thus, that the vital need of not getting maimed or killed is secured in everyday life.

Arguably, we must be careful if we want to infer anything about military necessity based on considerations on the individual level, for which we adduce trolley cases and cases such as the *Footbridge and Terrorist* case.²⁷ On the collective level, where groups of individuals may pursue military necessities, nomological interdependencies are never as evident as in the constructed cases just considered. And on the individual level these nomological interdependencies did inform the choices available and, thereby, also informed the moral assessment of the choices.

The nomological interdependencies in *Footbridge with a Switch* and *Footbridge and Terrorist* are conceptually linked with what counts as upholding (or acting in accord with) the positive presumption. If FD chooses an option in the two cases, that will have certain effects and it will be clear whether those effects can be taken as positive or negative evidence for believing that the positive presumption prevails. So, in these cases, due the clarity of nomological interdependencies—together with the plausible supposition that FD or any other person in those circumstances intuitively knows them—there is of course not much question about how (possibly different ways of) acting in accord with the positive presumption depends on empirical facts. Here, the positive presumption itself depends on nomological interdependencies, because whether the positive presumption prevails must always be judged based on facts that are immediately recognizable as relevant for the presumption. And we have nothing else to go by than the evidence certain outcomes afford us to believe that the positive presumption is true. This is analogous to the evidence physicians have for assessing whether a patient is healthy. So, *Footbridge with a Switch* and *Footbridge and Terrorist* can be used to show that the Medical Analogy obtains on the individual level of analysis and that the positive presumption has a tracking epistemology that is indeed similar to what we find in the case of physical health. Furthermore, the two cases can be used to make specific claims about what it means to value the positive presumption

and how upholding or acting in accord with the presumption rests on nomological interdependencies.

For military necessity, in contrast, the picture is different. On the collective level, it is less certain that those making decisions can reliably track all (or even sufficiently many) morally relevant nomological interdependencies, because pursuing military goals on the strategic, operational and tactical levels is highly complex and involves many uncertainties.²⁸ This is also why a military organization needs to rely on hierarchy, drills, obedience and a wide variety of means to gather and process information: these things are absolutely required to deal with the complexity and the uncertainties related to most military operations.²⁹ Furthermore, as we have seen, military goals are decreed and do not have the sort of tracking epistemology we encountered in the cases of physical health or the positive presumption.

At this point, however, the concept of peace comes in again and bridges the gap between the collective and the individual level. Sure, it is rather difficult (if not impossible) to track whether peace—a well-ordered concord between individuals in a society—obtains, because that may involve tracking whether a large collection of socio-economic and political factors indicating human flourishing obtains (which possibly includes detailed assessments of whether individual needs, especially vital needs, are satisfied). But it is not so difficult to track *breaches* of peace, because it is not so difficult to track violations of the positive presumption on the individual level. Every piece of evidence indicating that the positive presumption prevails (or does not) can also be counted as evidence for whether peace (or at least the necessary preconditions for peace) prevails (or not). And because peace is the ultimate goal of military necessity, particular events regarding violence on the individual level will impinge on the moral assessment of military actions on the collective level.

So, despite there being categorical differences between the collective and the individual level, the concept of peace (if analyzed in terms of the positive presumption) provides a hinge that allows us to judge breaches of peace on the collective level through evidence on the individual level that the positive presumption does not prevail. Militarily

necessary actions must, hence, avoid generating negative evidence and seek (if possible) to generate positive evidence.

Notes

1. More precisely: in the context of modern laws of armed conflict, military necessity is probably best understood as limiting the use of force, arguably restricting it to weakening the opposing military forces (Dill and Shue 2012, 320–322).
2. Sidgwick (1897, 254).
3. It does make little difference for what I am arguing here whether we read “satisfies proportionality” as implying that such satisfaction only obtains if military actions are restricted to weakening opposing military forces. Nevertheless, there are proportionate military actions in the course of which a unit, for example, secures a particular terrain in order to achieve a political goal (maybe, to mark presence), even though there are no opposing military forces.
4. I take this to be common ground in contemporary debates. Under the pressure of actual warfare, military necessity as conceived of by Sidgwick will easily be reduced to *kriegsraison*—“a way of speaking in code, or a hyperbolic way of speaking, about probability and risk” (Walzer 2006, 144, see pp. 147–151 for a historical example).
5. Walzer (2006, 129–130).
6. *Ibid.*, 132.
7. My source for this is Schindler and Toman (1988, 3–23).
8. Note that on the classical view one can easily argue that prospective considerations should not morally constrain military actions and still believe that peace must not be jeopardized by military action. If a military action is unnecessarily cruel, it might jeopardize peace even though we cannot foresee precisely what consequences the unnecessarily cruel military action will have. This is so, because peace need not be a foreseeable state to which our military action contributes, but a model social order to which we subscribe and which is simply incompatible with employing excessively cruel means (such as, for example, strategic bombing of civilian targets with incendiaries). Of course, this sort of argument is also available to other perspectives, as long as they are committed to peace as a social order that rules out certain military

actions as incompatible, regardless of what foreseeable effects these actions might bring about. Later in this chapter, I shall be more specific on what “peace as a social order” means.

9. See chaps. 11 and 12 of book XIX in Augustine (1998).
10. Of course, for Augustine (and Plato) the concepts of peace and of justice are intimately related.
11. See chaps. 13 and 14 of book XIX in Augustine (1998).
12. I am referring here to 628d and 829a (Bury 1926).
13. Kit Fine (2005) observes that there are different concepts of necessity and argues that some of them are not reducible to others.
14. This is precisely why I wrote a few lines back that the nomological connection obtains in all *possible circumstances of surgical heart attack treatment*.
15. I am utilizing a minimalist conception of objectivity, which involves what Crispin Wright has called “Cognitive Command.” He writes (1992, 146): “that where we deal in a purely cognitive way with objective matters, the opinions which we form are in no sense optional or variable as a function of permissible idiosyncrasy, but are *commanded* of us—that there will be a robust sense in which a particular point of view *ought* to be held, and a failure to hold which can be understood only as a rational/cognitive failure.” There is no such cognitive command for military goals because, as has been argued, there is no difference between those in command believing that such-and-such is a military goal and such-and-such indeed being a military goal. Somebody may disagree with what those in command have decided and that disagreement need not involve a rational or cognitive failure, because diverging political interests alone can be enough to cause such a disagreement.
16. I disagree with Dill and Shue’s presumption on this. They assert without further arguments (2012, 326): “What is militarily necessary is a matter of empirical, largely technical judgment, consisting of the selection of means that are in fact necessary to ends. To incorrectly judge that a particular means is necessary to a particular end is to make an empirical error, to get the facts wrong.”
17. Naturally, even if peace is understood very abstractly, it must remain within the reach of human intention and belief. This does, of course, not mean that rational demands on those in charge will not be high; it just means that they must not be impossibly high. Where they are impossibly high, those in charge must not claim to act in accord with

- military necessity, but should admit that they merely take a stab in the dark.
18. Note that, even if stabilized, military necessity in itself does not require *cognitive* command. This is why stabilized military necessity is impartial, but not objective.
 19. Note that instead of rendering reasons for military actions impartial by gearing them at peace, we might want to gear them at justice or liberty, where “justice” and “liberty” refer to concepts sufficiently distinct from peace and sufficiently general to secure counterfactual stability and to commend rational consent. I shall not consider these possibilities here, but I do submit that a detailed discussion—especially of whether peace can be fully understood in terms of justice—might prove fruitful.
 20. While it might be acceptable to speak of a “concord between men” when referring to Augustine’s own position, this superseded wording will not be used for what follows below. To mark the difference between Augustine’s position and what is to be developed from it after the rejection of the Medical Analogy, I shall simply write “concord” or, if necessary, “concord between individuals.”
 21. Contact here includes not only direct and indirect bodily contacts (e.g., hitting somebody or throwing a rock at him), but also other cases where an agent causes objects (or people) to make harmful contact with people. The adaption of the legal terminology associated with harmful battery that I use here comes from Mikhail (2014).
 22. This is a point John Mikhail (2011, 2014) has, as far as I can see, convincingly argued for. Whether he is right about action representation and moral intuitions is a more delicate issue that I cannot enter here.
 23. From that point of view, Frowe (2014), for example, is a comprehensive philosophical account of how the scope of the positive presumption can be delimited. Cf. Greene (2014), 36–38 for a quick overview (and further references) on empirical research supporting the claim that humans and some other animals are normally averse to violence.
 24. Note that it is very likely that FD has intuitive knowledge about the sort of nomological structure involved in this case (Greene 2014, 228–240, who follows Mikhail 2011). It should also be noted, however, that if this knowledge is intuitive, it also has limits (Greene *loc. cit.* discusses them).
 25. What would an account of the difference between options 2 and 3 require? Apart from a story about valuing the positive presumption, it

also requires a story about when and how self-sacrifice can be regarded as morally good. We will then need to have, at least, an answer to the question whether the positive presumption sometimes demands self-sacrifice (that is, whether there are cases in which morally laudable self-sacrifice is not supererogatory) and whether there are circumstances where individuals, groups of people or even societies can demand of others to sacrifice themselves without thereby violating the positive presumption.

26. I borrow Aurel Kolnai's conception of valuational evidence (Kolnai 1969–1970, 97): "Evidences in general are completely detachable from their origins in the person's 'apprenticeship' and the authority of their transmitters; but in regard to valuational evidences this separability may be much less complete, and particularly so as regards moral evidences—in virtue of the very close though not quite simple or uniform connexion between moral experience as such and the experience of reciprocity, mutual responsibility, and 'demands' both binding *upon* the moral agent and represented *by* him in relation with others. Society as a medium of morality means an indefinitely open field of virtual accountability, or reciprocal inspectorship as it were, between men and their fellow-men, a tribunal extending beyond all particular group limits, with the correlate of *self*-judgement expected from everyone's part. A consensual attunement between claims and the recognition of claims constitutes, I do not say a definition but a focal characteristic of moral emphasis and meanings."
27. Lazar (2012, 25) argues that the normative content of the necessity principle in war is different from its content in self- and other-defense on the individual level, because of the uncertainty of war and the fact that, in war, the necessity principle applies at a collective level, where we have groups of individuals rather than individual agents. Lazar's worries probably apply not only to the necessity principle he proposes, but also to necessity proposals in general. Otherwise, there would be possible accounts of necessity that can explain away (or afford to ignore) the difference in certainty on the two levels. And that is something that is, as I argue later, implausible for reasons independent of Lazar's.
28. Consider also the complexity of orchestrating different military actions across these different levels while pursuing a military goal. This is obviously not comparable to the relatively simply nomological

interdependencies that we track rather effortlessly in *Footbridge with a Switch* and *Footbridge and Terrorist*.

29. I write “most military operations” because there might be missions outside of war zones and subsidiary employments that are relatively easy to manage.

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6

Just War Thought and the Notion of Peace

James G. Murphy

The goal of this chapter is to explore the notion of peace appropriate to just war thought. Some just war principles generate a number of inferences about peace.

Traditionally, just war thinking has been divided into two areas of moral concern: *jus ad bellum*, concerned with the political decision to go to war, and *jus in bello*, addressing the conduct of war. In recent years, two new areas have emerged: *jus post bellum* and *jus ex bello*. Both are concerned with the end or aftermath of war: *jus post bellum* focuses on what ought to be done after victory, *jus ex bello* looks at the moral aspects of continuing or exiting a war under circumstances where victory is unlikely.¹ Each derives from *jus ad bellum*, since treatment of war's goals and the conditions under which it should be terminated have in the past come under *jus ad bellum*.

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***Jus in Bello*: Peace as the Absence of War**

In discussing peace in relation to war, I deal first with *jus in bello*, since there is less to be said than is the case with *jus ad bellum*.

Jus in bello thought became prominent in the early modern period of the sixteenth and seventeenth centuries, as *jus ad bellum* thinking receded owing to the recognition by legal theorists that, while there might be such a thing as natural law, there was no supranational authority or, for most purposes, any enforceable international law. Without them, the notions of legitimate authority and just cause were inapplicable in any informative sense. Among early modern theorists, Vitoria notes the difficulty of determining that only one side has just cause. Gentili holds that there can be justice on both sides, so the “rights of war” must apply to both parties. Grotius follows Cicero in holding that waging war is not inconsistent with the “laws of nature.” Hobbes takes that position to its logical conclusion in holding that natural law requires states to fight to promote their interests.² Their views (though not Suarez’s) amounted to abandoning *jus ad bellum* principles.

Jus in bello concerns the conduct of war, as well as the treatment of enemy soldiers, prisoners, and non-combatants. Back then, it also dealt with the forms to be observed when initiating war, in particular the state-to-state formal declaration of war, along with notifying their respective citizens that a state of war now existed.³ It could also include issuing a formal ultimatum prior to declaration of war. Some of these forms have evolved into the contemporary notion that UN permission should be obtained before going to war (except when under direct attack).

In the *jus in bello* perspective, peace is simply the absence of formal war. War is legally and morally permissible only if it observes certain norms and limits, and *jus in bello* norms aim at minimizing the negative effects of the state of war.

***Jus in Bello*: War and Peace as States-of-Affairs**

Thus, in *jus in bello* thinking, war and peace are mutually exclusive states-of-affairs, with peace constituted by the absence of war. Grotius is probably the first to make explicit the notion of war and peace as states-of-affairs:

Cicero defined war as a “contention by force.” A usage has obtained, however, which designates by the word not an action but a state (*non actio sed status*); thus war is a state of those contending by force, viewed simply as such.⁴

This legal view of war and peace as mutually exclusive states captures the core idea of early modern *jus in bello* thinking by jurists and rulers. Arguably, it has continued to be a, if not *the*, foundational element in what we today think of as traditional just war theory up to 1914.

It indicates a rough notion of peace, characterized by the following elements. First, peace is to be understood as a legally normative state of affairs, equivalent to a state of non-war. In a given instance, the peace in question may be characterized by an arms race, border tensions, economic or technological sabotage, or (internally) civil unrest and ethnic resentment. But that would still be peace, within the meaning of *jus in bello*'s legal notion of peace. In the *jus in bello* perspective, the Cold War that lasted nearly half a century was not a war.

Second, only established states have the right to engage in war, and that right is subject to their fulfilling various legal formalities in launching war and in treating the other state's soldiers and civilians. Outside of those boundaries, any military action, particularly rebellion, was deemed criminal, analogous to piracy and banditry. Social injustice and internal political oppression were normally excluded from being relevant to the morality of war.

Third, war and peace are all-or-nothing states; they are not matters of degree, e.g., being more peaceful or less peaceful. Fourth, political trends towards war or towards peace can play no role within *jus in bello*.

Fifth, considering war and peace as states-of-affairs abstracts from the agents, i.e., the governments, responsible for creating or choosing war, as well as from its causes and justification (if any), and the belligerents' intentions. It is concerned only with the agents' conduct of the war.

Accordingly, *jus in bello* implies that peace is: (a) a state of affairs, (b) defined legally, not politically or morally (where morality is independent of law), as a formal absence of war, and (c) committing states to elaborate procedures and restrictions if they decide to terminate it by going to war.

***Jus ad Bellum's* Paradox: War Intends Peace**

Jus ad bellum thought addresses the war decision and the use of war to achieve certain goals that include peace. It concerns moving from peace to war and from war to peace. Accordingly, it has significant implications for how peace is to be understood.

Classical or pre-modern *jus ad bellum* thought (e.g., Aquinas) looked to notions of legitimate authority, just cause, and right intention to provide the basic framework for evaluating the morality of war-making. Restoring a lost or threatened peace and stability was the duty of legitimate authority, just cause was constituted by threats to peace and order or to the lives of a significant number of the populace, and right intention aimed at the defeat of those who had unjustly started war or insurrection and the restoration of peaceful order.

A contemporary version of *jus ad bellum* thought (1) might expand who could qualify as legitimate authority to include the leaders of insurrectionary groups and a variety of non-state institutions, (2) would support in principle the claim that the seeds of war are sown by oppression and injustice, and (3) would (at least in the line of thinking found in recent *jus post bellum* thought) consider that the victorious powers had a moral responsibility to establish some elements of a just social order in the defeated state. Items (2) and (3) are relevant to the kind of peace just war thought is interested in. They also appear to set standards for peace.⁵

As regards just cause, if peace were simply the absence of a state of war, any going to war would be an attack on peace and hence morally unjustifiable. But in taking it that war could be justified or even morally required, the *jus ad bellum* tradition indicates that the emergence of just cause means the formal peace that may still exist is significantly reduced in moral value. Augustine goes so far as to say it is no longer a genuine peace, since its continuance now depends upon submission to aggression or worse.⁶ Even if none of the other *jus ad bellum* conditions were met, the possibility that a just cause for going to war could sometimes exist implies that the value of peace is not absolute or always overriding. That is the first key element in the just war tradition's notion of peace.

Right intention has traditionally been taken to mean intending or aiming at peace. But (as Augustine remarked) even the wars of aggressors ultimately intend peace.⁷ Right intention must therefore aim at a peace that meets certain moral standards: peace with justice, or peace with a sufficiently just international order. The notion of right intention implies that, as well as the value of peace, other values would have to be promoted, both for their own sake and because they make peace more secure. The second key element in the *jus ad bellum* notion of peace is that the right intention criterion indicates that the value of peace can be realized only when its implementation is integrated with at least partial realization of certain other values.

In the ideal scenario, where the aggressor has been defeated, the victors' intention would be to undo or rectify the injustice or aggression that gave just cause for the war. But it may be that as the war progresses it becomes clear that they may have to settle for less than complete rectification of the injustice, since the cost of such rectification may now be disproportionate to the good to be attained. This is the scenario where the value of peace may outweigh some of the other values. In short: while the formal peace of the absence of war may be of lesser value in *jus ad bellum* thought, a comprehensive peace may not be morally possible, so that the wronged party may have to settle for an imperfect peace that does not rectify all or even most of the injustices that constituted just cause for going to war in the first instance.⁸ The rationally assignable relative weighting given to peace and other particular values may change during the course of the war. This is a third element in the *jus ad bellum* notion of peace.

Like War, Peace Emerges from a Context

In *jus in bello* thought, peace and war are relatively static notions, defined (in part) by various legal criteria, for the purposes of identifying the duties and rights of combatants and non-combatants. *Jus in bello* concepts and principles do not address peace or war as such, since they apply only within the framework of an ongoing war.

By contrast, while most attention is paid to *jus ad bellum* thought at times when war is imminent, it is also relevant during times of peace. At the time of writing (2016), the US government is aware that there is some probability of future conflicts with Russia, China, North Korea, or Iran. War with any of those countries is not at present imminent or likely, so there is scope for crafting and implementing policies that might avert war with those states. Not merely would that be generally desirable, it is also what *jus ad bellum* implies should be done. If a crisis occurred in a few years' time between the United States and one of those states, it would be hard for the United States to claim it had just cause for going to war or to persuade anybody (including itself) that it was capable of morally realistic right intention if in the previous years it had been oblivious to the risk of war and had done little to manage conflict or deter aggression, or if its earlier responses had been overly placatory or overly aggressive. Similarly, if a few years from now the United States found itself deciding on war with one of those states, what would be required to meet the right intention condition then would probably be required now as a matter of political prudence.

Historiographical works on the causes of particular wars usually have much to say about states' political failures and miscalculations in the years prior to the war. While law plays a primary role with respect to *jus in bello* requirements, its role is smaller—and more ambiguous—with respect to *jus ad bellum*. Here, the historian and political scientist play a larger role, since the causes of war are rooted in cultures, national needs, and state policies that precede the war, often by many years. While the range of what could count as just cause and as right intention is limited by legal constraints, their specification cannot be ahistorical and apolitical: what qualifies as just cause and what qualifies as right intention are to a significant degree contextual, which means that it is not just a matter of ethics and law, but also a matter of history and politics. History indicates that the just cause criterion has two implications for governments: (1) Don't give other countries just cause to go to war with you; (2) Within reason, so conduct your policies that you do not unexpectedly find yourself with a just cause for war under circumstances in which war is hard to avoid. The law cannot replace the political art of historically informed management of international relations.⁹

Ontologically, in *jus ad bellum* thought, peace is more aptly viewed as a relation than as a state-of-affairs. The development of effective international law is unquestionably desirable, and helps reduce the scope for war. But its enforcement depends upon the good will, the power, and the interests of the sovereign states, and these change, for better or worse, through their relations with other states.

The classical just war tradition viewed the state's right as based upon its duty to protect the people. Its contemporary version refuses to conflate protection of the people with national self-defense, noting that the people ought not necessarily be thought of as just the state's own citizens.¹⁰ The possibility of morally warranted resort to war is part of a theory of good governance, which includes helping to maintain international order and protecting the oppressed, and to build whatever peace would be politically practical in the context of that twin commitment.

While international law is important in relation to those goals, it is not enough: there is no algorithm or formal decision procedure that could *fully* replace the role of human political judgment of when war is necessary, prudent, or justified (three different judgment types). (Even if there were such a formal decision procedure, implementing or imposing it would amount to an undemocratic disempowerment of the peoples of the various nations.) Law can go some way towards determining the conditions under which going to war would be permissible, but it offers less with respect to when going to war would be necessary, and even less with respect to when going to war might be morally required of one's own country.¹¹

Just cause and right intention notions imply that peace, of the "thick" politically substantial kind, as distinct from the formal kind, is not a given, once a peace treaty has been signed. To use a common slogan: after one has won the war, one must then win the peace. That is a matter of developing a certain kind of relation between the two states, and maybe even their peoples as well. Building the peace relation between the state and other states or relevant non-state agents requires a number of coherent policies consistently followed over a number of years. These policies and actions should aim to promote order and protect people's rights, by a range of policy tools including: military intervention, peace enforcement, armed deterrence, arms reduction, outright war, measured concessions, being willing to suffer and tolerate certain provocations, and other options.

The Practical Goal of Imperfect Peace

In the mid-nineteenth century, British jurist Sir Henry Maine remarked: “War appears to be as old as mankind, but peace is a modern invention.”¹² This counterintuitive idea merits teasing out.

While there were short-lived peace movements in medieval Christendom, it was not until the Enlightenment that the idea of abolishing war was seriously mooted. The catastrophe of two world wars and the arrival of nuclear weapons generated a new urgency about eliminating war. Under modern conditions, it was hard to credit the view that war was anything but fundamentally irrational. Yet despite general acceptance of that claim, peace remained elusive. On occasion, governments might find they no longer knew how *not* to go to war. Sometimes, controlled initial moves towards preparation for war, intended to deter, might trigger a chain of events leading to an out-of-control escalation into full-scale war.

On the other hand, calls for universal or unilateral disarmament were neither plausible nor persuasive when proposed in a way that cavalierly ignored nations’ reasonable and durable interests. Given these complexities, the idea of inventing peace expressed the intuition that the only way to find out what peace is to see what works first, leaving theorizing until afterwards.

Mere absence of armed conflict, even when accompanied by serious injustice, might still in some contexts be enough peace to satisfy people. Where a war drags on with no end in sight, with high casualties and considerable collateral harm to the civilian population, the populace would probably be glad of a simple cessation of the violence.¹³ Formal peace is not completely without value.

At the other end of the scale would be the Kantian idea of perfect peace. While unrealizable, and dangerous if taken to be realizable, it could function as a kind of regulative ideal shaping the way governments and peoples work for peace. What people would view as a decent peace, imperfect enough to be practically achievable, would still involve considerably more than the mere absence of violence. That is the kind of peace to which *jus ad bellum* is oriented.

(1) *An imperfect decent peace depends on building a political relationship.*

After the formal peace settlement, the political relations that ground peace must be built. After World War II, relations between West Germany and its former enemies in the West were uncertain and sometimes uneasy into the early 1960s. The German leaders were unsure of whether its former enemies would allow it to reindustrialize or to create its own army, later whether they would sustain it against encroachment by the USSR, and later yet whether they were merely tactical allies against the USSR or were genuine friends. At the time of German reunification in 1990, German uncertainty about its allies' attitudes received some confirmation in French and British reluctance to endorse reunification, which was counterbalanced by the United States' unequivocal support. Even half a century after World War II, the peace process was not entirely complete.

(2) *An imperfect decent peace is the morally appropriate goal.*

In modern times, while ethics is seen in certain quarters as nebulous or even subjective, law is viewed as more serious and objective in relation to establishing a global justice. Yet the legal approach is inevitably drawn to absolute notions of war and peace, for once the law is in place it must be obeyed, regardless of political circumstances or prudential judgment. *Jus in bello* principles can be given a significant degree of legal embodiment. But attempting to come up with law that determines, for any government, the circumstances under which it is prohibited, permitted, or required to go to war would be overreach that might on some occasions do more harm than good, not to mention that it would effectively eliminate governments as legitimate authorities relative to war and peace, replacing them solely with the law (or the UN).¹⁴ Such perfectionism in this area is politically naïve, and that is a moral failing. *Jus post bellum* thought perhaps relied on an image of war overly focused on the United States' military engagements in the 1980–2003 period with the hope that great military power should be able to guarantee comprehensive political justice thereafter. Here, war's end and subsequent peace could be thought of primarily in legal terms. But such cases represent only a tiny minority of wars and their endings.

A morally and legally perfect peace is rarely attainable. The Enlightenment dream that with enough law and just social structures

war would (as Marx said of the state) “wither away” naturally died in the horrors of the twentieth century: we now know too much history, and know far more than did the Enlightenment about the dark side of the human subconscious and its atavistic impulses.¹⁵ To the extent that the tacit ideal of perfect peace easily attainable shapes people’s interpretation of the *jus ad bellum* criteria, it generates an excessively stringent apolitical interpretation of them that will either point towards the waging of total war, or else make the just war tradition converge on pacifism. Each outcome undermines *jus ad bellum* thinking.

(3) *That an imperfect decent peace may be a cause of later wars is morally tolerable, provided the peace holds for a significant period of time.*

Most peace settlements contain the seeds of future wars. No matter how carefully the peace settlement is crafted, sooner or later subsequent historians will trace at least some of the causes of a later war to that settlement. But it would be unreasonable to take this fact as necessarily rendering the settlement morally flawed. Just as there could be no war to end war (other than one that wiped out the human race), so there can be no peace settlement that eliminates the need for future such settlements.

Where it is obvious to the relevant governments at the time of the settlement that the peace they propose has a high probability of leading to war in the not-so-distant future, they act wrongly in imposing such a peace. A similar verdict can be rendered in cases where the peace terms are so onerous for the defeated parties (e.g., the terms of the March 1918 Treaty of Brest-Litovsk between the Central Powers and Russia) that they will probably repudiate them at the first opportunity. In such cases, there are good grounds for arguing that the treaty fails to intend peace, and intends instead either conquest or strategic positioning for a future war with the defeated power, neither of which could be morally acceptable.

Here I am concerned with the cases where the peace treaty is not obviously flawed in such a fashion, and seems to reasonable observers to give some hope for future peace between the former belligerents. Even in such cases, it is the rare peace settlement that lasts for more than a century.

Even where the defeated power is not meditating revenge or resumption of the war at the earliest opportunity, even where the victor’s government is not planning on ignoring the restraints of the treaty to take unfair advantage

of the defeated country, it is still the case that some of the unintended consequences of the war and its conclusion may include conditions increasing the probability of a subsequent war. Compared to the 1918 Treaty of Brest-Litovsk, the various treaties of 1919–1920 with the defeated Central Powers were less predatory, and to some extent aimed at doing justice to formerly subject peoples, and yet they too were bitterly resented by the defeated countries, notably Germany and Hungary. As can be expected, grossly unjust peace-treaties have a high probability of generating future war, but even relatively just and moderate peace treaties may, in historical hindsight, serve to make war more likely.¹⁶

The 1815 Congress of Vienna was relatively successful in stabilizing Europe after the upheaval of the Napoleonic wars, if the fact that there was no general European war for the next 100 years can be taken as evidence for that claim. Of course, since there were numerous smaller European wars after 1815, it would be foolhardy to claim that the Congress settlement had no causal role in relation to subsequent wars. But, since eighteenth century Europe had suffered four major continent-wide wars, and since no general European war occurred between 1815 and 1914, the Congress of Vienna's peace settlement appears comparatively successful.

That imperfect achievement, even if partly a matter of luck, must suffice from a moral viewpoint: the way a war is ended must be judged relatively successful if it is followed by at least 30 years' peace between the belligerents. Even the armed stalemate between North Korea and South Korea since 1953 would seem, certainly to Koreans who lived through the ravages of the Korean war (1950–1953), to count as a relative success in providing peace and stability for a half century.

In cases where former enemies become allies, perhaps friends, as Japan and Germany became US allies and friends after World War II, or Prussia and Austria became allies and friends after their brief war in 1866, it counts as a very successful peace-making, even if one of the causes of its success is the fear of a mutual enemy. These outcomes or aftermaths of war suggest the value for a government (like the United States), envisaging the rising probability that it may have to go to war with a certain country, of thinking through what *jus ad bellum*'s right intention criterion would mean, not just for the war and its termination, but also for the subsequent future relationship with that country.

(4) *An imperfect peace provides the opportunity for, and a fragile peace may even give impetus to, reforms that promote justice, thereby reducing the probability of future conflict.*

This condition is particularly applicable in the case of intercommunal or ethnic conflict. People value peace not just for the good of not having armed clashes in their towns and cities, but also for the goods that are made possible by the absence of armed conflict.¹⁷ The goods of a populace that is fed and reasonably secure, of a working economy, of a functioning legal system and some protection of people's rights, depend on the existence of an organized society not torn apart by war or even constantly destabilized by low-level conflict. Such a society where those goods obtain might still fall short of being a just society, but at least it is a functioning society, of some value to ordinary people compared to prolonged anarchy. The point is: such a society is sufficiently secure that it can afford to spend less on its military and more on feeding, educating, and enriching its citizens. The fruits of peace enhance the peace.

Approaching the issue from the other side, wars and social disorder arise from the failure of good governance, and failure of the state to provide those social goods makes for war and conflict.¹⁸

The idea that peace has to be constructed can sound either utopian or grim. The utopian sound occurs when it is taken (often by pacifists) to mean that with good will, peace can be constructed and going to war will never even seem necessary.¹⁹ The grim note is struck by the political realist who holds that, while no particular war is inevitable, the world is unlikely ever to be completely free of war. The pacifist says: "If you want peace, work for justice, and you won't have to fight." The realist says: "If you want peace, work for justice, and be prepared to fight for them." Michael Howard remarks that the victors in World War II drew the realist inference: "In the process [of the war] it had become clear that military power was necessary not only to the *establishment*, but also to the *preservation* of peace."²⁰ After 1945, small European countries like Norway, Denmark, Netherlands, and Belgium abandoned their previous neutrality in favor of collective security; so, notably, did the United States. The option for collective security is based on the hard lesson that preserving peace requires a realistic military policy and a proportionate military establishment capable of fighting a serious war. A peace-preserving military must also actively keep up to date, for just

as certain forms of war become obsolete, so the forms of feasible peace may also change over time.²¹

Building the Peace-Relation

I have argued that peace is better understood as a relation than as a state of affairs. Classifying it as a relation directs attention to the entities that it relates, which, in the context of the ethics of war, are political agents (whether individual heads of government or communities). A number of points can be added.

First, the quality of the relation will vary from instance to instance. In 2017, the United States is at peace with Japan and at peace with China, so here are two peaceful relations involving the United States. The US–Japan peace-relation is considerably deeper and stronger than is the US–China peace-relation. Japan is an ally of the United States and has a similar political system, whereas China has a different political system, and is not an ally but a rival that aims to reduce US influence in East Asia. Outbreak of war between the United States and Japan has miniscule probability, war between the United States and China at some point in the next 20 years has a non-trivial probability.

Second, relations evolve and change. Assuming neither the United States nor China wants war, each government has to develop the relation between them, while seeking to protect its own interests, in a way that ensures war does not happen. The development of the relation can be expected to include both progress and setbacks. I have, earlier in this chapter, argued that *jus ad bellum*'s just cause and right intention require taking cognizance of the ups and downs of international relations, as well as the danger of misunderstanding and miscalculation when the quality of the peace-relation between two states is poor. In the crisis when war looms, consideration of just cause cannot be confined to focusing on one particular action taken by the other side; it must be retrospective on the recent history between the two states. The right intention condition will require not merely consideration of what strategic defeat of the other state would amount to but also some projection, of a realistic kind, of the future relation between the two states.

Third, the idea of peace as a relation has intuitive appeal in the context of ethnic, religious, or racial intercommunal tensions periodically erupting into armed conflict. In the case of such divided communities recovering from or seeking to avoid future intercommunal conflict, treaties and other legal instruments may be infrequent. But even where they are used, it is usually in relatively acute awareness of the fact that no set of legal arrangements will alone suffice to keep the peace.²²

Fourth, when each side recognizes that there are goods and benefits available to it provided it cooperates with the other side, and recognizes that international relations are not a zero-sum game and that its own long-term interests may sometimes be served by judicious assistance of the other, this amounts to a recognition of there being common goods—common because only cooperation can achieve them.²³ Even the United States and the USSR, avowed enemies throughout the Cold War era, recognized that they shared an interest in avoiding a nuclear war.

For any relation between states, communities, and persons, the bottom line of “What do I get out of it?” has to be factored in. Building peace depends upon seeing one’s own state benefiting from providing some space for the other to flourish. An important part of the peace-relation will be the give-and-take of negotiating with each other, bargaining, persuading and conceding, learning from the other, and slowly working out the specifics of the concrete good of a peaceful relation.

Peace: What Kind of Good?

Christine Korsgaard has drawn attention to the difference between two distinctions in goodness or value²⁴: the means/end distinction and the extrinsic/intrinsic distinction.²⁵ That clarification is helpful in relation to specifying the kind of value peace represents.

As regards the means/end distinction, the just war tradition deems peace important enough to qualify as of value as an end. There seems no need to argue for that. Interestingly, it is also good as a means. In most cases, the end of peace is promoted by peaceful means and practices, including diplomacy and judicious concessions to the interests of others, even down to using non-aggressive language, as already noted. In the case of

two countries sliding towards war, where there is past unhappy history, yet where neither wants war and is open to negotiation, the peaceful means of renewed dialogue, compromise, mediation by others and the like are the most likely to avert war. Here peace has instrumental value, for there is just enough of a peace-relation remaining between them to make it possible to move away from war without losing face or suffering political disadvantage. Under happier conditions, where two states are friends and allies, the peace-relation is also enjoyed in the very activity of deepening that peace.

Turning to the extrinsic/intrinsic distinction, peace being a relation means that it is an extrinsic and not an intrinsic good. One of Korsgaard's purposes in making the distinction was to draw attention to the fact that something being good as an end did not mean that it was intrinsically good. That is illuminating in this context. Her distinction challenges the temptation to assume that peace being good as an end is thereby intrinsically good so that it necessarily has significant value in all circumstances, no matter how unjust or life-threatening the relational context in which it is grounded. For reasons given earlier, this view is incorrect.

Where it is realized or instantiated in a relation between two states or communities, it will be part of a network of relations between them. The holistic concrete relation between two states, where the peace between them is so deep-rooted and established that they are not merely not at war, nor even merely allies, but friends, instantiates several distinct relational or extrinsic values. The deepening of the peace-relation and the realization of its value requires a heuristic approach that can perceive that the political and public policy steps creating that concrete good may become available only as time goes by and earlier steps have been taken. Peace is a relation, and the process of deepening it does not quickly reach a terminus.

Notes

1. For a summary of *jus post bellum*'s thought, see Orend (2005). On *jus ex bello*, see the Symposium on the topic in *Ethics* 125 (April 2015), in particular Dill (2015).
2. Reichberg et al. (2006): for Vitoria see pp. 311, 318–322; for Gentili see pp. 374–375; for Grotius see pp. 393–395, 414; for Hobbes see pp. 444–447.

3. For convenience, I shall speak of states in this chapter. However, the UN and other international bodies, as well as the non-state political leadership of ethnic groups or communities can also qualify as legitimate authorities.
4. Reichberg et al. (2006, 393).
5. Later-developed criteria (reasonable prospect of success, last resort, proportionality) add little more to the content of *jus ad bellum's* notion of peace.
6. Augustine (1972), Bk XIX, chapter xii, 869: "One who has learnt to prefer right to wrong and the rightly ordered to the perverted sees that the peace of the unjust, compared with the peace of the just, is not worthy even of the name of peace." See Clausewitz (1984, 370), for a related idea: "It is only aggression that calls forth defense, and war along with it. The aggressor is always peace-loving; he would prefer to take over our country unopposed."
7. Augustine (1972), Bk XIX, chapter xii, 866–867.
8. See Murphy (2014, 102–112), and Fabre (2015, 631–652).
9. See Murphy (2014), particularly chapters 4 and 5.
10. For a fine overview of the classical theory, see Neff (2005). There are interesting parallels in Rodin (2002), with respect to self-defense not being the primary purpose of justifiable resort to war.
11. While I am in sympathy with the contemporary "Responsibility to Protect" doctrine, it is what Kant called an imperfect duty; determining its moral and political implications for particular states is not easy, and seems likely to be highly qualified.
12. Howard (2000, 1).
13. A case in point might be the Syrian civil war, which commenced in 2011 and still continues at the time of writing (2016), and has caused about half-a-million deaths and the displacement of 7 million people, including more than 4 million refugees.
14. See Murphy (2014), chapter 3 for argument to the effect that there is often more than one legitimate or competent authority relevant to war decisions.
15. On the aggressiveness that can drive war, see Kainz (1987), chapter 5.
16. Kennan (1951, 69), cites the French historian Jacques Bainville's comment on the 1919 Peace of Versailles as a peace "too mild for the hardships it contained."
17. See Murphy (2014), chapter 2, on the goods of peace.

18. Spinoza, *Political Treatise*, chapter 5, section 2; cited in Reichberg et al. (2006, 452). The idea goes back to Cicero and Augustine. Aquinas states that the building of peace is the work of justice and charity; see Aquinas, *Summa Theologiae*, II. ii, q. 29, a. 3; cited in Reichberg et al. (2006, 174). Clausewitz's thesis that war is a continuation of politics conducted by additional means is consistent with the idea; Clausewitz (1984, 80–81, 87–89, and 605).
19. It also assumes that human beings are highly rational. See Cherniak (1986).
20. Howard (2000, 73), emphasis in text.
21. See Pasquino (1993, 80), where he remarks that war is “the concept that makes it possible to understand the forms as well as the existence of peace and order.”
22. The 1998 Good Friday (or Belfast) Agreement that largely terminated conflict in Northern Ireland was a beginning, more than a conclusion. Violence was ended or suspended, in order to start on a project to which each community had politically committed itself. The project set a mutually agreed agenda for how to live with difference, acknowledge the other's political right to exist, forgive the violence inflicted by the other side and move on. They were aware that the Agreement itself would solve nothing if they didn't “work” it.
23. On these themes, see Axelrod (1984) and Cronin (2003).
24. Here, I ignore possible distinctions between goods and values.
25. Korsgaard (1996).

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7

Terrorism, *jus post bellum* and the Prospect of Peace

Anne Schwenkenbecher

Introduction

According to traditional Just War Theory's *jus ad bellum*, a warring agent must have the right intention, that is, the intention to achieve the just cause by way of a military campaign and that campaign must have a significant chance of succeeding. Contemporary just war scholars focus increasingly on the importance of *jus post bellum*—justice after war—for the legitimacy of military campaigns. Some authors argue that violent agents must have strategies for establishing a peaceful and just rule after military operations cease.¹

Most recent wars (including military interventions, for example, in Libya 2012) have failed both in their (narrow) political goal of stopping human rights violations, but also in their (wide) political goal of pacifying the respective regions and promoting transitions towards more

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legitimate regimes. And terrorism's 'success record' seems even worse: when has terrorism ever secured a just political cause and led to a lasting peace? Conflicts like that between Israel and Palestine seem to suggest that terrorism perpetuates violence and nothing but worsens political conflicts. With a growing number of random suicide attacks in Europe at the moment, it is tempting to conclude that all that terrorists ever (aim to) achieve is destruction and despair.

The most common moral argument against terrorism is that it directly and deliberately targets innocents or non-combatants. One may or may not agree with this argument.² However, quite independently, it would seem to undermine the legitimacy of terrorist campaigns if they were unlikely to secure their (potentially just) cause or to achieve a lasting peace, that is, if their violent campaign would perpetuate violence rather than bring it to an end. Is there something about terrorist violence that makes it more difficult to meet these two criteria?

Let us call 'prospect of success' the *narrow success criterion* and '(achieving) a lasting peace' the *wide success criterion*. A violent group has a solid 'prospect of success' if it has a good chance to secure its just cause. That is, if recurring human rights violations provide a group with a just cause for starting a violent campaign then the just cause is secured if the group's activities bring these rights violations to an end. It is much harder to say what exactly should be meant by a 'lasting peace' and I will discuss this criterion in more detail later. For now, let us simply say that it requires an agent to take positive actions towards political stability, non-violence and minimal justice within the community in which they operate after the violent campaign ends.

Assuming that terrorist actors can, in principle, fight for a just cause (and have in the past fought for just causes) and that they can, in principle, strive for a just and peaceful society, can their campaigns ever meet these criteria?

In other words, does the use of terrorism as such—state or non-state—jeopardize a lasting peace in a way that other violent, for instance, military, strategies do not? Terrorist actors would seem to have greater difficulty than military actors in satisfying the relevant conditions of *jus ad bellum* (narrow success criterion) and *jus post bellum* (wide success criterion) and, consequently, terrorist campaigns

would seem more difficult to justify. In the following, I will address both issues in turn. In doing so, I will leave another important—and in many scholars' view *the most* important—moral challenge to terrorist violence aside: the problem of violence against innocents, non-combatants, or civilians.³ This problem has been discussed at length elsewhere⁴ and at least *some* authors have argued that even direct attacks against members of that group *may* be permissible under certain circumstances.⁵

This chapter tries to answer the following questions:

1. Assuming that at least some terrorist actors pursue legitimate goals or just causes: Is it more difficult for terrorists to achieve their political goals? In other words, is it more difficult for terrorist actors to satisfy the *prospect-of-success* criterion of *Just War Theory*, our narrow success criterion?
2. Second, is it more difficult for terrorist campaigns to lead to a lasting peace, that is, to satisfy the wide success criterion, because of
 - a. the method used (in other words, is the terrorist method worse than other violent methods in that it makes certain *jus post bellum* requirements harder to achieve)? or
 - b. the agents employing this method (in other words, is it harder for non-state agents to deliver on *jus post bellum*)? Let me narrow down this question: In my view, both state and non-state agents can employ terrorism. The interesting question is whether or not non-state violent agents have greater difficulty in ensuring that their violent campaign leads to a lasting peace than military agents?

Before turning to our main discussion, let me briefly point to another interesting question that may arise in this context but cannot be addressed here. Some scholars, such as Uwe Steinhoff, have argued that violent resistance against oppression need not meet the success criterion in certain cases:

If the American cavalry in the Indian wars has surrounded a tribe and now wants to slaughter men, women and children, must these refrain

from defence only because it is hopeless, that is, because it would by no means save them?⁶

Steinhoff thinks that those confronting genocidal violence need not refrain from defending themselves when their defense is futile. Rather, Steinhoff argues, self-defense is legitimate even when it is not likely to succeed. It should be pointed out, however, that the case described by Steinhoff is rather different from the kind of cases we are concerned with. Individual self-defense has different moral implications than defensive war. As Christopher Finlay observes, greater standards of care should apply to non-state violent campaigns than to self-defense, because the former often causes the death of innocents.⁷ In the following, I will simply assume that we should have a safeguard against using political violence for lost albeit just causes.

Terrorism and *Prospect of Success*

My starting assumption is that at least some violent actors who have employed terrorism have done so to pursue legitimate goals or just causes. This section discusses whether there is something about terrorism that makes it harder for its agents to meet the success criterion. Is it more difficult for terrorist campaigns to satisfy the narrow success criterion than it is for military campaigns, for instance? Some might even ask whether any terrorist violence has ever succeeded in achieving its political goals. I think this question must be answered affirmatively. I will give several historical examples in the sections that follow.

But before we the success criterion, we must clarify what exactly is meant by “terrorist campaign” or “terrorist violence.” It is a good starting point to contrast terrorist violence with military violence:

According to Brian Orend,

[w]ar should be understood as an *actual, intentional* and *widespread* armed conflict between political communities.... it seems that *all warfare is precisely, and ultimately about governance*. War is a violent way for determining who gets to say what goes on in a given territory.⁸

I have discussed the distinction between war and terrorism at length elsewhere.⁹ For the purpose of this chapter, let us understand warfare to be “a physical, military method of forcing an enemy” while “[t]errorism aims at people’s beliefs, perceptions and actions and is, thus, a fundamentally psychological strategy.”¹⁰ Understanding both as distinct ways of employing violence for political ends or, in other words, as different violent political strategies, means that terrorism can form part of a war.

In *Terrorism: A Philosophical Enquiry* I argued that terrorism is an *indirect* strategy for achieving one’s goals, where violence (or the credible threat thereof) is used against one target group (direct targets) to influence another target group (indirect targets) by way of the fear or terror induced by the violent attacks against the direct targets. “Terrorist acts are the violent acts that form part of such a strategy.”¹¹ A terrorist campaign is a set of terrorist acts sustained over a specific period of time by a specific (group) agent with a specific goal. This can be a standalone goal or part of a larger campaign. A violent campaign can pursue its goals using different strategies—terrorist, guerrilla or military.¹²

My question is whether there is any principled reason that terrorist campaigns would have more difficulty satisfying the narrow success criterion, that is, whether it is more difficult for actors employing terrorist methods to achieve their political goals than for those using military violence.

Prospect of success is a requirement meant to prevent the use of violence (and the moral harms related to it) for defending lost causes. Its rationale is simple and compelling at first glance: if there is no chance of winning a war then it should not be waged. Why? Because it is wrong to waste human lives and resources for no benefit.¹³ What level of probability is required? According to Suzanne Uniacke,

“Reasonable prospect of success” is not a precise standard and ... is intended to allow prudent judgment about how low an expectation is too low... [A] political authority can be justified in resorting to war only if it believes on reasonable grounds that success is significantly more than an outside chance.¹⁴

As mentioned, the *prospect of success* requirement has been challenged as counterintuitive in some cases. Since I believe the challenge to be unfounded, I will therefore leave this problem aside here.¹⁵ Another challenge is to do with conceptual parsimony. According to this challenge, *prospect of success* is a sub-criterion of *ad-bellum proportionality*, not an independent consideration.¹⁶ This is because if *ad-bellum proportionality* is met, then *prospect of success* is met—the satisfaction of the former entails the satisfaction of the latter. However, we need not worry about this challenge here because it only concerns the relationship between different criteria of Just War Theory as such.¹⁷ If the success criterion is indeed a sub-criterion of proportionality, then failure to meet it will entail a failure of *ad-bellum proportionality*. Satisfying the former criterion is a necessary condition for satisfying the latter.

Let us now return to our question of whether or not terrorist violence is less likely to meet the narrow success criterion than military violence is. Importantly, the empirical question of whether terrorism has ever achieved (one of) its political goals is to be separated from the principled question of whether it is more difficult for terrorism to achieve its goals.

As to the empirical question, both state and non-state terrorist campaigns have in the past been successful. State terrorism can mean (1) the employment of terrorist methods or the support of terrorist groups *occasionally and for certain purposes*, as was the case with the *Operación Condor* in South America, the *Grupos Antiterroristas de Liberación* in Spain or the US support of the *Contras* in Nicaragua, and (2) the use of terror to *sustain an oppressive political regime* such as Nazi Germany or the Soviet Union during the Stalin era.¹⁸ I will leave aside the second type of state terrorism here, because terror regimes are quite different from kind of terrorist violence I am concerned with.¹⁹

However, state terrorism of both types has often been successful and so has non-state terrorism: Some would argue that the Zionist organization *Irgun* was successful in undermining British rule in Palestine in the 1940s and therewith contributed to the creation of a Jewish state.²⁰ The West-German *Red Army Faction* (RAF) violence had a catalyzing effect on West-German society and democracy, shaking up the rigid political establishment and forcing an overdue critical discourse onto a

society, which had turned away from its Nazi past without sufficiently confronting the crimes committed. The 2003 Madrid bombings arguably lead to a regime change in Spain and the subsequent withdrawal of Spanish troupes from Iraq. Palestinian terrorism against Israel has been successful at least with its short-term political goals of drawing attention to the Palestinians' plight and shifting the discourse from the humanitarian aspect of the problem to that of liberation and self-determination.²¹

What about the principled question concerning terrorists' prospect of success? The terrorist method consists in exploiting fear in order to achieve (political) goals. Terrorism requires an audience to shock, intimidate and coerce, and it functions indirectly by influencing attitudes, beliefs and behaviour.²² It is a way of communicating a—more or less clear—message to its indirect targets, but also to potential sympathizers. As Christopher Finlay argues: “An attack might impress or inspire the constituency in the name of which the terrorists claim to act.”²³

Insofar as terrorism is used to violently communicate a particular political message, it is in principle very likely to succeed merely because of the relative modesty of its goal and the attention-generating nature of terrorist acts. In other words, terrorist violence is an effective way of attracting attention for a political cause. In the past, terrorist strategies have been employed towards a variety of ends, including demoralizing governments and their supporters, challenging a government's effectiveness and demonstrating its vulnerability, often by “undermining its claim to be able to maintain basic levels of security for those it claims to protect.”²⁴ Sometimes they have involved more concrete goals such as demanding the release of prisoners, the withdrawal of troupes or—in the long term—political independence of a nation or a community. However, insofar as terrorist campaigns aim at tangible political change, as an indirect method terrorism may well be less likely to succeed than direct (military) campaigns. More complex and long-term goals such as self-determination for peoples like the Palestinians or the Basques seem to be significantly less likely to be achieved by the use of terrorism alone.²⁵ This means that they are not justified in resorting to terrorism, despite arguably having (had) a just cause.

Terrorism and *jus post bellum*

Let me now turn to the wide success criterion. Larry May, one of the protagonists of recent debates surrounding justice after war, argues that *jus ad bellum* and *jus post bellum* are not entirely independent:

certain *jus post bellum* considerations, such as the duty to rebuild, can affect the *jus ad bellum*, at least understood broadly to include likelihood of success. If there is a duty to rebuild on part of the victor, then war should normally not be initiated unless State A has the means and will to rebuild the vanquished State B's infrastructure that will be damaged by State A's military actions.^{26, 27}

In other words, an agent is not justified in resorting to war unless they are likely to be able to deliver justice after the war, that is, after violent hostilities are over. May argues that “[t]he proper moral answer to the question ‘why do we fight’ must be ‘to achieve peace’.”²⁸ and that “[i]f the object of war is a just and lasting peace [the only legitimate cause for war, according to May, A.S.], then all of Just War considerations should be aimed at this goal.”²⁹

If applied to terrorist violence, this would mean that a terrorist actor could never be fully justified in resorting to terrorism unless they are able to satisfy (at least some of the) *jus post bellum* criteria. The claim that *jus ad bellum* and *jus post bellum* are linked in this way is worthy of discussion, but cannot be debated here.³⁰ But quite independently, we can discuss the question of whether or not terrorist actors have greater difficulty than other violent actors to satisfy *jus post bellum* requirements as such.

According to May, it is important to distinguish the justice of ending war (*jus ad terminationem belli*) from the justice after war (*jus post bellum*). The former is more concerned with regulating the end of violent hostilities while the latter focuses on (re)establishing lasting peace. May identifies six *jus post bellum* requirements, which aim at creating a just and lasting peace:

(1) rebuilding; (2) retribution; (3) restitution; (4) reparation; (5) reconciliation; (6) proportionality³¹

He adds, “for a just peace to ensue, these principles must all be met, at least to a certain extent.”³² It is important to note that May does not think that these requirements apply to one of the conflicting parties alone. Both previously warring parties must work together to achieve peace. The victor has some duties regardless of whether or not he was the aggressor or defender³³ and even a “defending vanquished state may have duties of restitution and repair.” Both just and unjust actors must work towards reconciliation.³⁴

Assuming that at least in some cases terrorist violence is employed with the aim of establishing a just and lasting peace, is this goal more difficult to achieve for terrorist actors? How can the six *jus post bellum* criteria be relevant to terrorist campaigns? Let us consider the possibility of a successful campaign with a clear political goal—such as granting independence and self-determination a particular people or nation (we could imagine that Euskadi Ta Askatasuna’s (ETA) campaign in the Basque Country had been successful).

It is not clear that all criteria of justice after *war* should equally apply to justice after a terrorist campaign. First and foremost, the line between “war” and “peace” is seldom a clear one when it comes to terrorist campaigns. In fact, terrorist violence regularly exploits precisely this lack of delineation, conducting acts of violence in times of peace when they are least expected and most disturbing. However, terrorist organizations have in the past formally declared their violent campaigns to be ended—e.g., ETA did this in 2011. Second, the amount of destruction and the sheer quantity of violence are significantly lower for most terrorist campaigns compared to military ones, rendering the problems of rebuilding and reparation less relevant. Let us therefore focus on the one aspect that will be relevant to achieving a just and lasting peace in the aftermath of most—if not all—terrorist campaigns: *reconciliation* will be crucial for any peace process.

May puts forward the following principles of reconciliation, roughly:

- an obligation to treat people with equal basic respect regardless of which side they were on; and
- “an obligation to initiate and conduct war in such a way that one does not unduly antagonize the people with whom one will eventually have to reach a peaceful accord.”³⁵

I am particularly interested in the second principle of reconciliation here. This principle points back to *jus ad bellum* and *in bello* and suggests that what it means to have in mind a lasting peace is to make an effort from the outset to not antagonize people unduly.³⁶ Of course, a lot depends on what is meant by “unduly” here and May admits that this needs further specification and cannot be determined outside a particular context.³⁷

Is reconciliation more difficult to achieve for terrorist actors due to the methods they employ? The first thing to note is that terrorism is usually defined as violence against non-combatants, innocents or civilians. While I have argued against this so-called narrow definition, defending instead a wide definition of terrorism, which includes acts perpetrated against non-innocents,³⁸ it remains true that much terrorism does directly target those who have not forfeited their right not to be attacked. This in itself would make it very difficult for terrorist actors to adhere to the second principle of reconciliation introduced earlier: terrorists seem to conduct their violent struggle in a way that usually does antagonize those with whom they are aiming to reach an accord. In the context of terrorism in support of self-determination, these would be the people both in the country from which the terrorists wish to secede as well as those within their own territory and community who do not necessarily support the terrorist aims but with whom the violent actors will have to live.

Reconciliation, then, is probably more attainable to terrorist agents who do not use violence against innocents or civilians. This is the case if violence is only directed at non-innocents or against infrastructure and property, without physically harming humans at all. Some may argue that this would no longer constitute terrorism. I think that terrorism as a strategy as described previously can well be employed with so-called non-innocents as the primary or direct targets of violent

acts. One example for this kind of terrorism is the Argentinean group *Montoneros*, who in the 1970s targeted above all members of the government and administration as well as people who represented foreign commercial interests in the country.³⁹ The South African *Umkhonto We Sizwe* (MK) seem to have generally adhered to the principle of discrimination and were mostly engaged in acts of sabotage. In 1980, together with the ANC, MK even signed a declaration to conform to the Geneva Conventions of 1949 and Protocol 1 of 1977. The Basque ETA usually issued warnings ahead of bomb attacks with a view to minimizing harm to human lives. Furthermore, according to Peter Townshend

Its use of indiscriminate attacks remained sparing (though, as in the bombing of Madrid airport and railway stations in July 1979, still very shocking). Overall, its targeting was focused primarily on the Guardia Civil and the police. It showed a marked preference for the use of comparatively accurate weapons – small arms rather than explosives – and a determination repeatedly to attack high-ranking officials and officers, the highest being Admiral Carrero Blanco in 1973, and others, including the military governors of Madrid and Guipúzcoa in 1979.⁴⁰

Terrorism, understood as a method involving selective high-impact attacks, is by its very nature more discriminating than military operations. Gaining territorial and political control over one's enemy will subjects military actors to much greater strategic necessities.

Because war aims at controlling a territory, its agents can often not be too discerning about individual manoeuvres. The terrorist agent need not worry about the demands of military and strategic necessity and is certainly more flexible when it comes to operational and tactical matters. She can be highly selective of her targets. In fact, because she chooses her targets so carefully as to maximize her actions' visibility, she is by necessity discriminating (which is different from saying that she adheres to the principle of discrimination). This commonly means that terrorist actors choose to target innocents, but it need not mean that.

Finally, terrorist agents regularly engage in some kind of public discourse over their aims and seek to explain their actions to the general public, usually with the aim of eliciting attention for what they perceive

to be a morally just struggle or sometimes even to generate sympathy. Terrorists often seek to convince rather than to conquer. In fact, I believe that engagement in public discourse of this kind is crucial to the overall legitimacy of terrorist and other non-state violence. In *Terrorism: A Philosophical Enquiry*, I argued that

Before resorting to violence, an agent *X* must make her objectives known to the general public and must provide a justification for the employment of violence. She must expose herself to a critical debate of those goals and their justifying principles. This condition averts the abuse of violence by misled and ignorant persons. It furthermore ensures that the violent campaign is endorsed by those on whose behalf it is being led. It forces the terrorist actor to relate to the moral and political mindset of the society in which she lives and which she will impact with her violent campaign. The discourse-condition keeps socially and morally detached individuals from employing terrorist violence, those who, owing to their alienation from their surroundings, misjudge the necessity to induce political change violently.⁴¹

In sum, there is no principled reason why terrorist violence would threaten reconciliation *more* than other forms of political violence. That is, unless one believes that terrorism involves—by definition—the direct targeting of innocents. Possibly, there are few things that will antagonize people more than attacks on those who rightfully believe themselves to be immune from violence. It should be noted, however, that contemporary military campaigns take a much higher toll on human life than terrorism, including innocent lives. Some might say that military violence at least does not directly target innocents, but rather incidentally (and sometimes accidentally) causes innocent fatalities. Even if there is a moral difference between intentional attacks on innocents and incidental attacks (see Schwenkenbecher 2014), it seems fair to say that contemporary warring agents would struggle greatly to satisfy May's reconciliation criterion.

Is it more difficult for terrorist campaigns to achieve reconciliation due to the *kind of agents* employing terrorism? In particular, do non-state violent agents have greater difficulty in realizing that goal, which, according to May, is instrumental to a lasting peace?

It may sound surprising, but I believe that terrorist actors might be better placed than military actors to deliver on *jus in bello* discrimination (therewith providing the basis for reconciliation) for several reasons. First, members of terrorist groups tend to be unified by a common (usually ideological) aim much more than members of a military organization. Intrinsically motivated agents would seem better suited to enact the group's decisions in a way that is true to its goals. In other words, they are less likely to go "off the rail" and act against the group's adopted aims. If the group has adopted a strategy of discrimination, its members would usually be intrinsically motivated to adhere to that strategy.

Second, terrorist groups usually operate under better epistemic and psychological conditions than military agents. Operating in hiding, with all its uncertainties, would allow for better decision-making than the midst of a battlefield. War's complexities generate epistemically and psychologically challenging conditions and decisions must often be made under great pressure. While the terrorist is in fear of being arrested, those partaking in war will fear to lose their lives. By avoiding the battlefield, terrorists eliminate the impact that fearing for one's life tends to have on one's decision-making (and those terrorist actors who pay for an attack with their life have often made a conscious decision to do so).

In sum, terrorist campaigns are not in principle less likely to secure (or contribute to) lasting peace than military campaigns, in particular if their violent attacks are discriminate and accompanied by an engagement in public discourse. To the extent that the level of destruction they bring about is significantly lower for terrorism than it is for war or military intervention, they may even be better suited to fostering lasting peace.

Conclusion

In this final section, I will make a few comments regarding the prospect of peace as such. May subscribes to a contingent pacifism and holds the view that most wars should not be waged. Richard O'Meara, in contrast, argues that "peace is not a condition, but an ongoing process" and that "*lasting peace* is often an elusive goal."⁴² Is it too much to ask of a

violent actor that she achieve that goal? *Jus post bellum* would indeed appear to be overly demanding if it required that violent agents only wage war if they can guarantee something that many political communities cannot guarantee their citizens. If non-state violent agents (terrorist or not) can significantly improve the political conditions in a given community, while falling short of establishing a lasting peace, this should arguably suffice. If peace is indeed a process, their campaigns could in principle – as odd as this may sound – contribute to that process.

Moreover, the duty to establish a peaceful and just regime in the aftermath of a violent conflict does not pertain to the violent actor(s) alone, as May argued. For terrorist campaigns this means that after the violence ceases, be it because the terrorists gain political power (as in the ANC's case) or because they achieve their political goal (while remaining clandestine) or because they give up (as in ETA's case), all conflict parties, not only the victors, must contribute to reconciliation, restitution and rehabilitation.^{43, 44}

In conclusion, there appears to be little reason to believe that terrorist campaigns are in principle less able to secure or at least contribute to a lasting peace than military campaigns; quite to the contrary. Or, put differently, if terrorism is an unlikely method for securing peace, then war is an even more unlikely one.

Notes

1. May (2012), May and Forcehimes (2012), May and Edenberg (2013), Orend (2006), Patterson (2012).
2. I, in fact, do not agree either with the view that terrorism is necessarily (that is, per definition) violence against innocents or non-combatants (see Schwenkenbecher 2012, 30ff) or with the view that violence—military or terrorist—against innocent or non-combatants is always morally wrong (ibid, chapter 5).
3. While these terms are not interchangeable, scholars have drawn the lines between them in different ways and all three terms have been used in the debate. All three terms roughly stand for “those who have done nothing to forfeit their right not to be attacked.”

4. E.g. Coady (2008), Steinhoff (2007).
5. Schwenkenbecher (2012), Primoratz (2007), Honderich (2003), Held (2004).
6. Steinhoff (2007, 29).
7. Finlay (2015, 129).
8. Orend (2008).
9. Schwenkenbecher (2012, 41ff).
10. *Ibid.*, 41.
11. *Ibid.*, 38.
12. For comprehensive discussions on the definition of terrorism, see for instance Nathanson (2010), chapters 1 and 2; Messelken (2005).
13. See e.g. Orend (2006, 58f).
14. Uniacke (2010, 70).
15. For my response to Steinhoff see Schwenkenbecher (2012, 97). See also Hurka (2005).
16. See for instance Finlay (2015, 131), Schwenkenbecher (2012, 98), Hurka (2005), Steinhoff (2007).
17. In my view, the narrow success criterion does not involve any assessment of the moral acceptability of the goals. It is, in this sense, a purely “technical,” that is, morally neutral, criterion. However, I will not argue for that here. The wide success criterion, in contrast, is morally charged, as it presupposes a certain kind of—morally worthwhile—goal. See also the discussion in Toner (2010).
18. For a detailed discussion of state and non-state terrorism, see Schwenkenbecher (2012, 21ff). See also Primoratz (2004).
19. Schwenkenbecher (2012, 29f).
20. For a more detailed discussion of Irgun, see Shughart (2006), Hoffman (2006), Townshend (2002).
21. For an excellent discussion of this conflict, see Primoratz (2013, 148ff). I agree with Primoratz’ assessment that Palestinian terrorism has failed to achieve its long-term political goals.
22. Schwenkenbecher (2012, 38ff).
23. Finlay (2015, 251).
24. *Ibid.*, 251.
25. Sadly, terrorist campaigns tend to be enormously successful at securing “negative” aims such as destabilizing a political system, undermining public order and safety, and curtailing basic liberties. However, I would regard these as short-to-mid-term goals, usually meant to promote

- some long-term goal that signifies a positive political outcome for the group (independence, ending occupation and interference, triggering an uprising against the existing political order).
26. May (2012, 15–16).
 27. Similarly, Todd A. Burkhardt argues for “incorporating *jus post bellum* obligations into a state’s reasonable chance of success calculation” (2013, 120).
 28. May (2012, 12).
 29. *Ibid.*, 13.
 30. This question has been debated for instance in May (2012), Bass (2004), and Pollard (2013). A rejection of the ‘dependence thesis’, that is, the thesis that the *jus ad bellum* depends on *jus post bellum* can be found in Pattison (2015).
 31. May (2012, 19–21).
 32. *Ibid.*, 22.
 33. *Ibid.*, 17.
 34. *Ibid.*
 35. *Ibid.*, 96.
 36. This points back to the discussion of the relationship between the different sets of Just War criteria. Similar to May, Toner (2010, 96) argues for the interdependence of *jus in bello* with *ad bellum*, arguing that *in bello* ‘right intention’ mirrors the *ad bellum* right intention criterion (that the war be led with the end of a just peace in mind).
 37. May (2012, 96).
 38. Schwenkenbecher (2012, 30ff).
 39. Shughart (2006).
 40. Townshend (2002, 84).
 41. Schwenkenbecher (2012, 104–105).
 42. O’Meara (2013, 107).
 43. May (2012).
 44. Some authors even argue that *jus post bellum* ought to be taken care of by the international community if need be, on the basis of principles of global justice. James Pattison defends in particular the duty to rebuild institutions is “an international, collective duty to promote and establish just political institutions” (2015, 12) in the aftermath of war. According to Pattison, “there should be a presumption against belligerents rebuilding. ... [O]ther agents may be in a better position to rebuild. This seems to be particularly the case for post-war

occupation, when the warring parties' involvement in the conflict can lead to significant antagonism among the local population and therefore mean that effective rebuilding may be difficult ... Instead, it seems that the rebuilding process should not only be authorized by the UN Security Council, but also generally be carried out by it (for example, by UN peacekeepers or a UN transitional administration)." (2015, 24) However, this point seems less relevant for terrorist violence.

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Part III

Religious Perspectives on Peace

8

Peace, Justice and Religious Humanism: A Jewish Perspective

Noam Zohar

One cannot honestly claim to present a single, unified Jewish position on almost any topic; all the more so on such vexing and complex issues as war, peace and justice. Instead, I will endeavor to portray here one Jewish perspective, recognizing that other approaches are also possible. Still, my purpose is not merely to put forward an arbitrary, idiosyncratic conception; rather, I will try to reflect central themes and texts as well as core values of this tradition.

In order to make a sensible presentation, I shall first describe some features of the Judaic tradition, especially its constitutive dual basis in biblical and Rabbinic strata. This is particularly pertinent to the subject at hand since the Rabbis lived in an era when the Jewish people lacked sovereignty; hence, their explicit teachings on war and peace are relatively rudimentary. To construct a more meaningful Jewish perspective on peace and justice, I shall thus lead up to our central questions

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through examining some of the more nuanced Rabbinic teachings on the value of human life and the mandate for killing in self-defense.

Jewish Teachings: Torah, Bible and Rabbis

In exploring any topic from a Judaic perspective, it is important to distinguish between two strata of the Judaic tradition, namely, between biblical texts and the discourse of Rabbinic Judaism. Both are indicated by the key term *torah*, a Hebrew word that means instruction; The Torah includes the entire body of cherished instruction. The foundational, biblical stratum starts with the Five Books of Moses, whose text is regarded as divine revelation (the “Written *torah*”); together with the additional 19 books of “Prophets” and “Writings” it comprises the Hebrew Bible. The Torah’s second stratum begins with post-biblical Rabbinic discourse (the “Oral *torah*”), classically recorded first in its core document, the Mishnah, and then in the comprehensive, 20-volume Talmud. But unlike the Bible, the Oral *torah* is an ongoing enterprise: scholarly reasoning and interpretation of both the biblical text and the received Rabbinic tradition continue to contribute to the ever-growing and ever-evolving Torah.

These two strata stand in a dialectical relation to each other. In one sense, the Bible, as God’s revealed words, has obvious primacy; accordingly, Rabbinic discourse throughout bases its teachings on the biblical text, and is undoubtedly constituted by the biblical heritage. Yet, it is the vast Rabbinic work of interpretation and specification that gives actual form and substance to Judaic instruction. This instruction comes in a great variety of forms, often classified as *aggadah* (which includes exposition of biblical narratives, homilies, Rabbinic stories and more) and *halakhah*, the Judaic tradition of normative discourse.¹ In some areas—especially those in which the biblical materials had little bearing on contemporary life (such as the sections on constructing the tabernacle, on anointing a king, or on going to war)—Rabbinic discussion mainly explicated the biblical message, usually preserving the text’s sense as received. Yet, in areas that were live issues for their own community, Rabbinic interpretations, noted for their extensive

freedom—indeed, their stark creativity—often diverge significantly from the biblical perspective.² My treatment here will thus begin with the Bible and then move on to Rabbinic sources, tracing how the latter both preserve and rework the biblical heritage.

Distinguishing between the two strata is particularly important for the subject at hand, due to the radically different historical-political situation of the Jewish people in the biblical era compared to the subsequent times of Rabbinic Judaism. Most of the biblical texts reflect the realm of the Israelites in their land following their exodus from Egypt: from the conquest of the Promised Land and the establishment of the so-called First Commonwealth and through the centuries of Davidic monarchy. The Rabbinic tradition, by contrast—with its roots in late antiquity—reflects the existence of the Jews in Palestine as a Roman province, initiating failed revolts that led to the end of the Second Commonwealth with the destruction of the Jerusalem Temple; and beyond in diaspora communities, primarily that of Babylonia, where the Talmud was created. Thus, the biblical texts are set against a background of triumphal conquest and then eventually an Israelite monarchy (actually, during most of the period, split into two kingdoms), sometimes living in peace and sometimes engaged in wars—whether defensive or offensive—though overshadowed at the end by destruction and exile. Rabbinic discourse, though certainly affected by recollection of a recently lost thriving indigenous existence centered upon the Jerusalem temple, essentially consists in the effort to preserve Judaism as a minority community under foreign sovereignty. For the Rabbis, the destructive wars that had sealed the fate of the Second Commonwealth were a recent traumatic memory, and hopes of military power and victory were by and large deferred to the messianic future.

War, Peace and Justice in the Hebrew Bible

It is perhaps unremarkable that wars figure prominently in the Bible, and that several of its heroes lead their people in war—notably Moses and Joshua, Samuel and David. More strikingly, God is glorified as a “Man of war” (Exod. 15:3) and the priest is instructed to tell the

people, upon their approach to battle, that “it is the LORD your God who marches with you to do battle for you against your enemy, to bring you victory” (Deut. 20:4).³

Thus biblical history is, in this regard, of a piece with human history in general: wars—both offensive and defensive—play a significant role in the affairs of the Israelite kingdoms, and the practice of warfare as such is accepted as uncontroversial. This is certainly the case throughout the so-called historical books of the Bible, from Joshua through Kings. These books are designated the “Early Prophets,” though they are not records of prophetic teachings; rather, they take the form of national narrative, in which prophets (like Elijah) figure along with judges, kings and generals. But a salient aspect of the biblical canon is the books of the “Latter Prophets,” recording the cadences of individuals whose scathing moral critique of their contemporary society (at the eighth century BCE) was coupled with visions of a radically better future. Prominent among these is the vision of everlasting peace, expressed in these famous lines of Isaiah:

In the days to come,
The Mount of the LORD's House
Shall stand firm above the mountains
And tower above the hills;
And all the nations Shall gaze on it with joy.
And the many peoples shall go and say:
“Come, Let us go up to the Mount of the LORD,
To the House of the God of Jacob;
That He may instruct us in His ways,
And that we may walk in His paths.”
For instruction shall come forth from Zion,
The word of the LORD from Jerusalem.
He will judge among the nations
And arbitrate for the many peoples,
And they shall beat their swords into plowshares
And their spears into pruning hooks:
Nation shall not take up Sword against nation;
Nor shall they train for war anymore.
(Isa. 2:2–4)

Without detracting from the radical novelty of this vision, it is possible to trace its roots to the first chapters of Genesis. In the biblical account of the world's beginnings, humankind originates from a single couple, Adam and Eve, who were created in God's image (Gen. 1:26–27). In the covenant with Noah and his sons after the Flood, the severity of murder is thus grounded both in human fraternity and in the divine image inherent in each human individual:

But for your own life-blood I will require a reckoning; I will require it of every beast; of humans, too, will I require a reckoning for human life, of every human for that of his brother.⁴

Whoever sheds the blood of a human,
By humans shall his blood be shed;
For in His image
Did God make humans
(Gen. 9:5–6).

Thus, according to the foundational chapters of the Bible, not only the first murder (of Abel by Cain) but every act of bloodshed constitutes fratricide. Moreover, murder is sacrilege, for it destroys a human being, and every human individual is created in the divine image. This biblical view, which plays a central role in Rabbinic Judaism, can be characterized as religious humanism.⁵ When this perspective is applied to the large-scale bloodshed of combat, it points clearly toward the negation of all warfare.

Yet somewhat paradoxically, the selfsame verse contains also a sanction for authorized bloodshed. The insistence on capital punishment for murder is set forth in chiasmic parallel, reflecting the compelling idea of *jus talionis*—a life for a life: the demands of justice override the value of the divine image.

This suggests a similar possibility regarding war. Despite its terrible toll in human life, it might be mandated by the requirements of justice. Most straightforward, and in line with contemporary Just War theory, is the case of self-defense—along with its flipside, the unjust war

of aggression. As Jephthah says, through messengers, to the attacking king of Amon: “What have you against me that you have come to make war on my country?... I have done you no wrong; yet you are doing me harm and making war on me. May the LORD, who judges, decide today between the Israelites and the Ammonites!” (Judg. 11:12; 27). Akin to this are battles fought for liberation from subjugation and oppression, such as those repeatedly narrated in the Book of Judges.

What, then, of wars of conquest undertaken by the Israelites? Most prominent of these, in the biblical narrative, is the conquest of Canaan and the concomitant dispossession of its peoples, collectively called “the Amorites.” The classical biblical legislation regarding the conduct of warfare (Deut. chapter 20) addresses mainly this war of conquest, though it speaks also of faraway conquests, for which it mandates less ruthless treatment of the vanquished enemy. In that chapter, no justification is offered for initiating the wars in question. Yet elsewhere, biblical authors seek to provide reasons for the harsh decree of total dispossession, mainly in terms of retributive justice. In the so-called Priestly Code, this is conceived as a reaction of the land itself against its defilement by “abhorrent things” (chiefly including incest and adultery). The Israelites are warned:

Do not defile yourselves in any of those ways, for it is by such that the nations that I am casting out before you defile themselves. Thus the land became defiled; and I called it to account for its iniquity, and the land spewed out its inhabitants.

(Lev. 18:24–25)

Strikingly, the desperate plight of the Israelites themselves, wandering in the desert after their own liberation from slavery in Egypt, is not presented as sufficient justification for the conquest. Much earlier in the biblical narrative, God promises the Israelites’ patriarch Abraham that his offspring shall come to possess the land of Canaan, in which he is a sojourner; but the conquest must be deferred, leaving the Israelites meanwhile landless, vulnerable to oppression and enslavement:

He said to Abram, “Know well that your offspring shall be strangers in a land not theirs, and they shall be enslaved and oppressed four hundred years; but I will execute judgment on the nation they shall serve, and in the end they shall go free with great wealth. ...And they shall return here in the fourth generation, *for the iniquity of the Amorites is not yet complete.*”
(Gen. 15:13–14; 16; emphasis added)

The expectation (to be sure, already supposedly vindicated by the time of narration) is that the Amorites will persist in their iniquitous practices and become fully liable to dispossession.⁶

Yet once the Israelites secured possession of the land, consolidated under the rule of David, they embarked upon subjugation of neighboring nations, and the Bible seems content to glorify these wars of conquest, feeling no need to offer any justification.⁷ The period of ascendancy was not long lasting, partly because after the reign of David’s son Solomon, the Israelite kingdom split along tribal lines into two kingdoms. Eventually, both were subdued by the newly expanding empires of Mesopotamia—first the Assyrians and then the Chaldeans (Babylonians). Observing empire building now from the victims’ perspective, the prophet Habakkuk complained bitterly against the cruel injustice of aggressive wars of conquest:

...the Chaldeans, That fierce, impetuous nation,
Who cross the earth’s wide spaces
To possess dwellings not their own.
They are terrible, dreadful;
They make their own laws and rules.

...
They all come, bent on rapine.
The thrust of their van is forward,
And they amass captives like sand.

...
You [God] whose eyes are too pure to look upon evil,
Who cannot countenance wrongdoing,
Why do You countenance treachery,
And stand by idle

While the wicked devours one more righteous than he?
You [thus] render humans like the fish of the sea,
Like creeping things that have no ruler.
He [=the conqueror] has fished them all up with a line,
Pulled them up in his trawl,
And gathered them in his net.
That is why he rejoices and is glad.

(Hab. 1:6–7; 9; 13–15)

Habakkuk's moral indictment of wars of conquest emphasizes their illicit objectives—seizing land and captives—as well as their brutal, dehumanizing treatment of people. Of special interest is the finesse in moral comparison: the victim is not necessarily righteous, all things considered, but merely “*more righteous* than [the aggressor].” In juxtaposition, it is the latter nation that is deemed wicked, simply by virtue of its aggression. One might ask why the question of the vanquished peoples' guilt is not raised, as in the justification cited earlier for the conquest of Canaan. Indeed, asserting that the victims' fate is well deserved might have served as a retort to the protest against God for allowing Babylon's triumphs.⁸ Admittedly, that would have been rather implausible in face of the sweeping, indiscriminate character of imperialist conquests. But more crucially, such a rationalization would be entirely at odds with Habakkuk's stance: the prophet speaks in moral anguish to condemn aggression, not to justify it.

As I noted at the outset, there is certainly more than one way to piece together the diverse strands of biblical teachings about war. To me, the most convincing way is to regard Habakkuk's position as the final judgment on military aggression. Even if this is a lesson learned the hard way, it is the right lesson: wars of conquest are in general unjust, and many of David's wars ought to be retroactively condemned. On this view, the only way to justify a war of conquest is by eschewing conquest itself as a legitimate goal, and positing that the victims deserve to be attacked and uprooted on account of their immensely evil practices. Significantly, that kind of judgment is cited only with respect to the peoples of Canaan, and it is pronounced not by human assessment but by divine decree. Beyond that, justice condemns any aggressive war; by the same token, it allows a war of self-defense.

Rabbinic Teachings on Human Life, Justice and Self-Defense

Rabbinic teachings that directly address the grounds and aims for going to war are understandably not extensive. They distinguish between “commanded” (or “obligatory”) wars and those that are merely “permitted” (or “optional”). The discussion is oriented toward the past, seeking to classify the “wars of Joshua”—that is, the conquest of Canaan—and “the wars of David,” aimed at expanding his realm. The sole addition to these are wars “to help Israelites [attacked] by an enemy.”⁹ Commenting on this, Michael Walzer¹⁰ notes that “a Jewish war was, for almost 2000 years, a mythical beast... Jews are the victims, not the agents, of war. And without a state or an army, they are also not the theorists of war.” So it seems fair to wonder: If the Rabbis were to face the actual challenges of responsibility for warfare, what might be their response? A fruitful path toward answering this question is to look beyond the few Rabbinic dicta on warfare, focusing instead on the basic values at stake—human life, justice and peace.

As mentioned, the biblical reaction to murder contains a paradox. The severity of the transgression is emphasized through pointing to the divine image inherent in every human being; yet this yields an insistence on reciprocal bloodshed through capital punishment. As observed by the renowned biblical scholar Moshe Greenberg, it was this paradox that led the Rabbis to disavow capital punishment—even though biblical law prescribes such punishment for murder as well as for numerous other offences. Applied to the collective level, this would tend to diminish the legitimacy of warfare insofar that it claims to serve retributive justice.

This does not necessarily extend, however, to a war that is deemed just on the basis of defense against aggression. Abolishing capital punishment did not prevent the Rabbis from endorsing the use of lethal force in defense of self or of others. Actually, when assessed from the perspective of justice, they regard defensive killing as much superior to capital punishment. Even though their main motivation for circumventing capital punishment was the supreme valuation of human life,

their mode for achieving this was by introducing radical doubt as to whether this irrevocable measure can ever fully meet the requirements of justice. Most strikingly, they required direct and explicit proof of *mens rea*; no one can be liable for execution unless he or she was formally warned, just before committing the crime, that it carries capital punishment, and replying: "I know that, and shall do it anyway!"¹¹

No comparable epistemic hurdle is applied to defensive action against an aggressor, even though the crime has in fact not yet been committed (and its successful prevention will preclude absolute certainty that it would have been committed, let alone that it would be accompanied by full *mens rea*). The urgent necessity of rescuing the victim dictates justification for the use of lethal force where there is reasonable expectation of imminent grievous violence. Moreover, even if the direct objective of the criminal is material gain rather than murder, the expectation of escalation to violence against the victim's person suffices to justify resort to lethal force: "A tunneling [burglar] is judged according to the [projected] outcome."¹²

It might be suggested that in the context of self-defense the demands of justice—preventing serious harm to the innocent victim—override, for the Rabbis, the deep aversion to bloodshed. But this would be imprecise, since the value of the attacker's life is balanced (at the very least) by the value of the victim's life. Since both alternative outcomes involve loss of life, justice calls for preferring the innocent victim to the culpable attacker.¹³ In the context of capital punishment, the victim's life can unfortunately no longer be saved; hence the focus on avoiding further destruction of the divine image, inherent in human life, through execution.

This yields conflicting implications for defensive war. The members of the political community that comes under attack are entitled to defend their lives as well as their vital interests, embodied in the territorial integrity of their homeland. Justice also calls for other nations to join them in opposing unjust, unacceptable aggression. Yet a supreme valuation for human life calls into question this clear mandate of justice. Unlike scenarios of individual self- or other-defense, defensive war entails large-scale loss of life not only of culpable attackers, but also

among the ranks of the defending army—and among non-combatants on both sides.

One possible response to this conundrum is to adopt pacifism: the moral rejection of all wars, even those undertaken for a just cause. Interestingly, whereas the common hope for the future messianic era involved a triumphal return to the exercise of national power, some thinkers found merit in Jewish exclusion from international strife. Notably, Abraham Isaac Kook—a prominent leader of Jewish religious Zionism, and Chief Rabbi under the British Mandate in Palestine (granted in order to enable the establishment of a Jewish state)—wrote, in anticipation of the Jewish return to statehood:

We withdrew from world politics under coercion accompanied by inner will, until the arrival of good times, when it shall be possible to maintain a state without evil and barbarity; this is the time for which we have hoped ... The delay was unavoidable, for our soul recoils from the terrible iniquities [involved in] conducting a state in bad times. Now the time is come, very soon now, that the world will be refined, and we can already prepare ourselves, since we shall be able to conduct our state based on the good, on wisdom, uprightness and clear divine illumination. (*Orot 3*)¹⁴

This was written during World War I, echoing the widespread expectation that this was “the war to end all wars.” Before the war ended, Kook was in London and witnessed the crucial Balfour Declaration, whereby Great Britain undertook to receive custody of Palestine in order to re-establish there a Jewish homeland. Published in late 1920 or early 1921, the text clearly reflects the optimism of the early Wilsonian era: henceforward, international confrontations would be resolved by the League of Nations, charged with administering justice and maintaining peace worldwide.

Such an expectation of an imminent radical “refinement” of the international arena seems the only way of averting the terrible dilemma of justified warfare. During the “bad times”—that is, historical conditions as we know them—statehood requires armed defense, which though justified entails the sacrilege of bloodshed. This comes very close

to extending the Rabbis' abolitionist stance toward capital punishment to the realm of warfare.

Soon after the penning of these words, the millennial hopes of Kook, along with those of countless people worldwide, proved exceedingly optimistic. The next decade saw the rise of Nazism and its end ushered in World War II; in the wake of the Holocaust, few Jews indeed were willing to forgo national self-defense. The state of Israel was established in 1948; its national narrative commonly adduces the books of the "early prophets," connecting to the biblical stories of securing and defending the homeland. Does this mean that Isaiah's vision of world peace must be deferred to an imagined messianic era, beyond the range of operative expectations—beyond history itself?

World Peace as a Historical Goal: A Regime of International Justice

Returning to Isaiah's vision, it is important to note that he does not describe the "end of days" as an era in which humankind has been united into a single, cosmopolitan community. Rather, he describes the future world as still divided into many nations, retaining their distinct identities and disparate interests. The prophetic poetry is admirably compact and short on details, but it seems evident that each nation retains its particular culture and, more importantly, its territorial link, naturally accompanied by a specific set of interests. The image of international ascent to Jerusalem describes not mass migration but rather pilgrimage: the nations are not coming to reside in "the Mount of the Lord" but to be instructed and inspired, and then return each to its own land. Particular and therefore, sometimes, conflicting national interests entail the need for the *political* function of the envisioned spiritual center: "He will judge among the nations/And arbitrate for the many peoples." The sequence of verses thus bespeaks their crucial dependence: it is the availability of an authoritative, accepted mode of resolving conflicts that makes possible the final promise—the universal abandonment of war.

In Isaiah's vision, acceptance of this central authority derives from the spiritual triumph of Monotheism, with its center in Jerusalem. The backdrop for this is the dichotomous view of the world, pervasive in the Bible, which sets Israel and its true religion against all the rest of humanity, where false idols and barbaric practices prevail. The onset of the messianic era thus involves the universal elevation of Israel's God. This view is no longer tenable for two reasons. First, because a large part of humanity now subscribes to monotheism outside the Jewish people and without allegiance to any central locus of authority. Second—and more importantly—because it is patently false for adherents of Judaism (or more broadly of monotheism) to regard themselves as possessing moral or spiritual superiority.

David Hartman¹⁵ thus rightly questions the central monotheistic motif of combatting idolatry:

In fact, the whole concern with idolatry no longer appears important. The modern spirit of tolerance and the celebration of cultural diversity suggest that the issue of idolatry is not only irrelevant but perhaps also dangerous.

He goes on, however, to propose a re-conceptualization of idolatry in terms of the valuation of human beings as embodying the divine image:

[A]ny religious vision that ignores the dehumanization of the stranger or of members of other faiths is similar to the sin of idolatry insofar as it can lead to a diminishment of God's reality in the world... We cannot denounce triumphalism and dehumanization in other religions or ideologies while ignoring them in our own tradition.¹⁶

In order to be significant for our world today, Isaiah's vision must be detached from its particularistic religious underpinnings. The impetus of religious humanism must be focused on bringing an end to the large-scale bloodshed of warfare. For this, we must look to the core of the prophetic vision of peace: averting threats of aggression and the necessity for defensive war require an accepted and authoritative mechanism for administering justice and for resolving international conflicts.

Notwithstanding the grandeur of Isaiah's spiritual expectations, any acceptance that might be attained will not derive from religious conversion or adoration. Rather, it must be built up through international agreement, supported by evolving mutual trust. The last hundred years have seen several steps in this direction, from the League of Nations and the United Nations to the emergent operations of international courts. Certainly, there is no need to enumerate the many failings of these institutions. But the fact that they have achieved pityingly little in the cause of justice, and not much more in reducing war, should not bring us to turn our back on the process of establishing world peace through institutions of international justice. To quote a famous Rabbinic saying, attributed to Rabbi Tarfon: "Though you are not expected to complete the work, you are not at liberty to desist from it" (Mishnah Avot 2:16).

Notes

1. See Zohar (1998); and more extensively, Elon (1994).
2. See Fishbane (2000); and Zohar (1995).
3. In reproducing the biblical texts, I relied in great measure on the New Jewish Publication society translation (Philadelphia 1985), but introduced alterations at several points. All translations of Rabbinic texts below are my own.
4. NJPS: "fellow man"; I follow the KJV and the RVS, where this word is rendered according to its common meaning.
5. For a fuller exposition, see Zohar (1997), 91–95.
6. Other biblical sources—primarily in the Book of Deuteronomy (and additional texts from the Deuteronomist school)—offer a different reason for dispossessing the Amorites: an imperative to remove all idolatrous presence from the Land of Israel. Unlike the argument focused on desert, however, this reason is not set in terms of justice. As noted by Michael Walzer, it represents an *alternative* to the Just War tradition, which he dubs "Holy War" (cf. Walzer (2012), Ch. 3). Later, Rabbinic teachings combined the perspectives of Leviticus and Deuteronomy, producing a demonized view of pagans as incestuous, murderous barbarians; this in turn inspired the thirteenth-century rabbi Menachem Meiri to relegate the prescription of enmity and violence toward

heathens to far-off, semi-imaginary barbarians. See (Walzer et al. 2003, 471–473) and 503–505.

7. See especially 2 Sam. Chapter 8.
8. Precisely such a view was taken by Isaiah, a century and a half earlier, when the Assyrians overran first the (northern) kingdom of Israel and then the (southern) kingdom of Judea, nearly capturing Jerusalem itself. The prophet asserted that Assyria was an instrument of God's wrath against Israel, delivering punishment for their sins. Still, this could not acquit the Assyrians themselves, since their motivation was to serve their own nefarious ends rather than divine justice; cf. Isaiah 10: 5–13.
9. *Babylonian Talmud*, Sotah 44b. For an argument that these categories imply a third category of prohibited wars, see Ravitzky (2006). For a morally plausible understanding of “optional war,” see Zohar (1996).
10. Walzer (2006), 150.
11. *Tosefta* Sanhedrin, 11: 2–4.
12. *Mishnah* Sanhedrin, 8: 6.
13. The attacker's culpability can be thought to *diminish the value* of his life, leading to a sort of discounted calculation; alternatively, it might be said that by his aggression he has *forfeited* his right to life. Either way, the mandate for defensive killing will apply also to a group of several attackers. It might not, however, extend to non-culpable attackers, and even less to so-called innocent threats; see e.g., (McMahan 2002, 398–414).
14. Kook (1920); 1950, 14 (in the Naor English translation 2015, 133–135; though I have consulted that edition, the translation here is my own). The original source for this passage is in *Shemonah Kevatsim* (2nd ed., Jerusalem 2004) 6: 101 (Vol. 2, p. 219). According to the brief (anonymous) introductory remarks (Vol. 1 p. 16), this was written in St. Gallen during the early years of World War I, but the evidence for this seems inconclusive. Eli Holzer (2009, 86) surmises that it was written in London, toward the end of the war, in the wake of the 1917 Balfour declaration. If the earlier dating is correct, Kook was among those—like H.G. Wells—who from the war's inception hoped and even expected it to herald the final victory of democracy and enlightenment.
15. Hartman (2000), 136.
16. *Ibid.*, 138–139.

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9

Once the Buddha Was a Warrior: Buddhist Pragmatism in the Ethics of Peace and Armed Conflict

Stephen Jenkins

Buddhism offers an ethics of armed conflict that concretely addresses basic practical issues, such as conduct of warfare, application and limits of torture, situations that directly correlate with modern terrorist incidents, psychological damage to veterans, etc.¹ Stereotypes of Buddhism as unconditionally pacifist are challenged by its history. Buddhists converted and served as ministers to leaders of expansionist military regimes, including Indian, Sri Lankan and Southeast Asian kings, Tibetan Kings and Mongol Khans. Buddhist rationales for warfare have been deployed to support the Japanese military, Korean anti-Communists, and the Communist Chinese army. The point of this chapter is not to contradict Buddhist values of compassion, but to illustrate that those values inform a nuanced understanding of the ethical use of force. Buddhist thought on these issues cannot be dismissed as impractical

The title is a play on Khoroché (1989).

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intrusions of idealistic ascetics into the realm of power politics. They suggest that what appear to be practical policies of self-interest are often not in our personal or national interest. Conversely, policies that appear idealistically compassionate actually serve the acquisition and retention of power.

Buddhist texts argue that prosperity, which depends on benevolent governance, is the key to domestic peace. Poverty results from misgovernment, and it is government's responsibility to alleviate it. Poverty is the root of crime and social violence and it leads to domestic and international destabilization.² Rulers are warned not just that they incur bad *karma* by rapacious taxation, or that their kingdom will descend into social disorder, but that they undermine the economy and encourage a culture of tax evasion that will eventually empty their coffers. Examples of compassionate use of force in Asaṅga's *Bodhisattvabhūmi*, a touchstone for Mahāyāna ethics, include overthrowing merciless kings and ministers or deposing wasteful or corrupt officials.³ By contrast, rulers who moderate taxes, develop agricultural infrastructure such as irrigation and reservoirs, facilitate safe travel, aggressively alleviate poverty, assure fair wages and profits, provide medical care and famine relief, etc. enhance their own power by developing a wealthy realm.⁴ In kingdoms with an exploitive king, agriculture fails, the economy flags, disease flourishes, and crime abounds. So religious virtues like generosity ultimately serve the practical purposes of power politics. This is generally agreed in Indian theories of effective government.

Although kings are encouraged to suppress criminals, force is seen as ultimately ineffective, since, as long as negative social conditions persist, criminality will naturally flourish. Crime is defeated by eliminating its economic causes.⁵ By the same logic, internationally, or in terms of governing vassals, inclusive prosperity is a key to domestic and international peace. Exploitation of vassals or neighbors ultimately rebounds on the exploiter by producing enemies and alienation of allies. Kings are expected to maintain armed forces, and an excellent military is one of the features of the ideal king.⁶ However, an ideal king rules without force because his people and his neighbors are contented.⁷ As shown later in the chapter, in the *Satyakaparivarta Sūtra*'s depiction of appropriate warfare, the need for war or harsh punitive measures implies

something is amiss in the ruler's ethical treatment of his subjects or neighbors. Perfect kings rule without force, so when enemies arise rulers must first consider their own culpability in creating the conditions for enmity. Furthermore, a skillful ruler is vigilant in preventing and removing those conditions.

Buddhist sources presented later offer sophisticated practical thought on violence, arguing that compassionate internal governance and benevolent international relations enhance political security and prosperity. The goodwill, trust and economic wellbeing of international neighbors is a vital political asset. Just as domestic poverty leads to violence and moral degeneration, international insecurity and exploitation are seeds of violent conflict. Exploitive international relations create conditions of hostility that produce dangerous enemies and undermine support from potential allies. Exploitive internal governance undermines the economy and creates a culture of tax evasion rather than generosity. Rapacious greed ultimately diminishes the treasury.

Failure to exhaust all alternatives, such as negotiation, intimidation and bribes, leads to unnecessary warfare, which is generally regarded in Indian political thought as a dangerous mistake entailing great risk, even for a superior military force. Warfare is considered a treacherous and unreliable tool in Indian statecraft. Ethical arguments aside, for practical reasons Indian rulers are advised to resort to warfare only after pursuing all other means to their ends, typically including diplomacy, bribes, intimidation and sowing discord amongst enemies.

Some traditions certainly support understanding Buddhism as pacifist. Buddhists are forbidden to be weapons dealers and are bound by a precept against killing. Buddha famously contradicted the Vedic belief that warriors who die in battle will go to heaven. After being pressed repeatedly, he reluctantly told his interlocutors that warriors who go to battle *with the intention to harm and kill* the enemy will actually go to hell.⁸ Obviously, this would be a powerful disincentive. There are multiple stories of kings who surrender their kingdoms rather than fight.⁹ King Aśoka is renowned, even in popular films and documentaries, as an icon of Buddhist pacifism who repented the cruelty he inflicted in warfare. The philosopher Candrakīrti unleashed a jeremiad against kings who use ethical rationalizations to justify conquest, brutality and

exploitation.¹⁰ However, such examples have been misread and over-privileged at the expense of wider perspectives that include traditions that support use of armed force.

The disparity between this apparent pacifism and the history of Buddhist cultures could be seen as a result of failing to live up to their ideals. This is the usual conclusion of Westerners when the lived reality of Buddhism does not meet their expectations, thus honoring an idealized Buddhism while disparaging Buddhist communities. Buddhists do their ethical thinking primarily through the use of narrative. When we look at narrative literature, particularly the *jātakas* or past lives of the Buddha, we are faced with a disparity with pacifism that is similar to the one we encounter with Buddhist history. This is because *jātakas* are the primary source for Buddhist statecraft. Early mainstream narrative traditions abound with stories of Buddhist warfare featuring the Buddha's past lives as a weapon-master, king, war minister, warrior prince, field commander, caravan leader, warhorse, a tiger-killing boar, a dragon-killing lion, execution elephant, war elephant, elephant *mahout* engaged in a siege, etc.¹¹ They often glorify death on the battlefield death with morbid melodrama.

Not all Buddha's past lives are exemplary, so we might wonder if these are negative examples. The Buddha tells of past lives as a criminal, even a murderer, but it is clear that these were moral failures with grave consequences. This is not so in lives of Buddha as a war hero, which are held up as auspicious examples. As noted, the ideal king is supposed to maintain a professional military and to suppress violent criminals. How can this be explained if warriors necessarily go to hell?

The *Milindapañha*, a "quasi-canonical" Theravāda dialogue between a king and a monk, asks how kings can both fulfill their Buddhist duty to suppress criminals and the seemingly conflicting duty not to harm others. King Milinda reminds the monk Nāgasena that punishment includes execution, amputation, blinding, etc., punishments found in penal codes of most Buddhist polities. Nāgasena responds that there is no conflict here, since the harm done to criminals is caused by their own *karma*, not by the king.¹² Although endorsement of such punishments is rare, this text is very influential, and it employs an idea held throughout the Buddhist world. As in Indian thought generally, the

crime of killing is not generic; the karmic outcome of killing depends on the victim's moral status. Killing a saint is entirely different from killing a murderer or an enemy of Buddhism. Those who oppose or slander the Buddhist teaching, its saints or its community have the lowest possible moral status, so the karmic consequences of killing them are minimal.¹³

In an excellent article illustrating that killing can never be completely auspicious in Theravāda thought, Rupert Gethin examined a source that uses the example of a smiling king executing a criminal.¹⁴ Even in this case, where there is no apparent inauspiciousness, there must be some subtle defiling emotion that taints this action. However, although this shows that the idea of merit-making compassionate killing was not embraced in Theravāda Buddhism as it was in the Mahāyāna, it also shows that, in cases where the moral status of the victim is extremely low, the level of inauspiciousness has to be sought on a subtle level.

This logic has been extended to warfare. In the *Mahāvamsa*, a Theravāda historical chronicle written by a monk, Buddhist king Duṭṭhagāmaṇi despairs because he has killed multitudes of Hindus in a war to control Sri Lanka. Buddhist texts criticize lust for conquest,¹⁵ so, highlighting the importance of intention, the chronicle says he fought “not for conquest, but for establishing the doctrine of the Sambuddha.”¹⁶ *Arhats* comfort the king, saying the thousands of non-Buddhists killed count no more than animals.¹⁷ The term for animals, *pasu*, is a normative Hindu term for war casualties and Vedic sacrificial victims. Hindus homologize battle and sacrifice, so those killed in battle are also called *pasu*, *paśu* in Sanskrit.¹⁸ Victims of battle and sacrifice go to heaven, so there is no negative *karma* in killing them. For Hindu kings, the argument would be normal, so there may be some intended irony in the use of the term here. Killing thousands of animals would also be a disaster for a Buddhist, but, as will be shown, defensively killing vicious animals is applauded in mainstream and Mahāyāna sources. The *Arhats* count one and a half persons as being killed by the king. One who had taken Buddhist precepts counts as a full person, while another who had merely taken refuge counted as only half a person. This case is often taken as atypical or non-canonical, but it employs typical Buddhist thinking about intention and the moral status of victims.¹⁹

The Mahāyāna's *Mahāparinirvāṇa Sūtra* tells a past life of the Buddha where he killed those who reviled the Buddhist teaching. This is said to have no more karmic impact than stepping on an ant.²⁰ The importance of the moral status of the victim is also implicit in tales discussed below of killing man-eating ogres or demonic invaders in the *jātakas*. Such tales show no concern for the karmic impact of killing, since the low moral status of the victim and positive intentions of the warrior are obvious.

The Buddha's statement about warriors going to hell makes crucial reference to intention, the key to the theory of *karma*. Unintentional killing is not murder, but those who die in battle "*with the intention to harm and kill*" are destined for hell. One's dying thought, *marañacitta*, has a crucial influence on the next life. Dying in a murderous rage leads to hell. Killing itself cannot be the issue here, since even a mass murderer, like Aṅgulimāla, or a professional executioner for 55 years, may become Arhats.²¹ But what of those who fight with different intentions? Although it is not always the case, Buddha's lives as a warrior often idealize capturing the enemy alive, sometimes winning through brilliant stratagems that avoid killing, even at the cost of his own life. We will see, in the most explicit Mahāyāna source on warfare, that warriors are directed to fight with the intention to protect life, capture the enemy alive, treat prisoners of war generously and avoid unnecessary casualties. This also applies to general motivations for war, as with Kings Duṭṭhagāmaṇi and Harṣa, both of whom went to war, not for conquest, but for Buddhism.²²

Compassion Protects

Compassionate intentions help avoid unnecessary harm to others, but also protect those that inflict harm. Killing based on unethical motivations is considered extremely harmful to the killer. This concern for the spiritual wellbeing of the warrior at first seems reducible to religious idealism. Earlier, we saw an ironic argument that generosity is self-interested, the more benevolent a king is, the more his domain prospers and the more his power waxes. This accords with the idea that

compassion protects the compassionate; an idea that often extends into what we would consider magical thinking but is often commonsensical. On the magical side, compassion protects against everything from snakebites to arrows. The story of factional intrigue between Buddhist and anti-Buddhist queens in the court of King Udayana, a contemporary of the Buddha, is a good example.²³ Buddhist Queen Śyāmavatī is falsely implicated in an assassination attempt by an anti-Buddhist queen and the king decides to shoot her on the spot. However, as he aims at her heart, she fills it with loving kindness. The arrows reverse course at the king, and he is forced to consider her innocent.²⁴ There are many such examples, and Buddhists today recite the scripture on loving kindness, the *Mettasutta*, to protect themselves from harm; according to its commentary, the text was originally produced by the Buddha to protect monks from harassing negative spirits.

The practical side of this is the fact that negative emotions are harmful to their agents. Contrary to the current attention given to mindfulness in treating veterans with post-traumatic stress syndrome, it is compassion-generating practices that Buddhist texts claim remove nightmares and heal emotional wounds. Considering the psychological damage to individual soldiers and to a nation that may have to reabsorb large numbers of veterans into families and communities, not to mention police and intelligence organizations, this seems like a pragmatic concern.

Buddhists texts assure individuals that compassion will make them popular, successful and even victorious. Indian political theory was aware that power comes from the countryside, and that rulers cannot stand without the support of their people. Kings who oppress their people meet with destruction in this world and hell in the next.²⁵ Hatred weakens individuals, societies and states, while benevolence makes them strong. Hatred is rooted in stupidity and compassion is rooted in wisdom. Violence motivated by hatred, or greed is more likely to be ill advised and damaging even to the perpetrator. Force motivated by compassion is more likely to be carefully measured and pragmatically oriented toward producing the maximum good. As illustrated later, in the Mahāyāna theory of compassionate killing and warfare, compassionate intentions protect warriors from the karmic consequences of killing.

This is in striking contrast to the usual tendency to empower violence through dehumanizing enemies.

As mentioned, the philosopher Candrakīrti was aware that ethical rationalization could be exploited by kings. But although he rails against such abuses, later in the same text, he gives many examples of killing with compassion.²⁶ This shows that cherry picking an apparently definitive passage is a mistaken approach to Buddhist thought. Whatever particular point is at hand is liable to be treated with hyperbolic emphasis. Texts must be read holistically, as it is common to find contrary elements that have to be held in dynamic tension. Many of Candrakīrti's hypothetical situations are commonsensical. A caravan leader shoots a lion attacking his companions; a father kills one son to keep two from dying; a physician amputates a limb to keep poison from spreading. There are many such stories; Candrakīrti draws on narrative literature that is broadly shared in Buddhist cultures. A version of his tale of a lion who jumps on the back of an elephant and rides to the rescue of travelers trapped by a giant venomous serpent is also found in the *Avadānakalpatā*. Here the lion and elephant rush to the rescue and succeed in killing the serpent, but tragically die from its venom.²⁷

Not all such stories are framed by motivations of compassion. In Pañcāvudha Jātaka, the martial artist Prince Five-Weapons hurls every weapon he has, including poison arrows, at a man-eating monster.²⁸ The *Avadānakalpatā* retells another past life as a sniper. He picks off his enemies one by one with his bow until a city, conquered by savages as fierce as *yakṣa* demons, is safe again.²⁹ In Siri Jātaka, a past life of Buddha's attendant Ānanda, a war-elephant trainer cleverly wins a battle. When his king falls, he rallies the troops by bribing them with money.³⁰ In Sama Jātaka, the Buddha was a war-elephant trainer. His king decides to capture Banaras, declaring: "I'll storm this city, and kill my enemy, and get his realms into my hands." When the king's elephant becomes terrified by boiling mud and projectiles hurled from the battlements, the trainer cheers him on to destroy the fortifications.³¹ However, except for suppression of revolts and brigands, this is the only case of aggressive warfare I have found in the *jātakas*.

Although these examples seem uninhibited by Buddhist ideals, in many cases we find a combination of heroism and righteous warfare.

In Bhojājānīya Jātaka, the Buddha is a warhorse, whose city is besieged by seven camps of enemy kings. Under the king's chief warrior, he breaks down six of the enemy camps. Mortally wounded, he heroically pushes on to defeat the seventh camp, capturing the seven kings alive. As he dies, he insists the captives not be killed but be treated with generosity and bound with treaties.³² This warrior fought with the intention to protect his city and avoid killing. His heroic death in battle is venerated and it is hard to imagine that such a death leads to hell. In another *jātaka* as a mighty archer, Buddha frightens away seven kings by threatening to kill them all with one shot. The story celebrates the fact that he fought and won without drawing enough blood for a fly to drink, wreaking havoc among his foes without harming a soul.³³ As will be shown, in later Mahāyāna theory, avoiding battle through intimidation, even deceptive intimidation, is encouraged.

The Vaḍḍhaki-sūkara Jātaka is a war story of two kings contemporaneous with the Buddha. King Ajātasattu repeatedly defeats King Pasenadi, so Pasenadi's courtiers spy on monks, normally forbidden from participating in or advising about warfare, in hopes of overhearing their wise opinions. In a variant, the monks are described as former officers.³⁴ They spy on Elder Dhanuggahatissa as he exclaims: "That stupid pot-bellied Kosala [i.e., Pasenadi] never has a jar full of boiled rice without letting it spoil; how to plan a war he knows not a bit. He is always being beaten and forced to pay. But what should he do?"³⁵ Pasenadi's military incompetence is clearly held in contempt. The senior monk then explains specific battle formations, fortifications and a strategy including deception and ambush, to entrap and capture Ajātasattu. This is employed successfully, and again the enemy is captured alive. Ajātasattu is released, but his army is confiscated. In the variant, Pasenadi generously marries his daughter to his defeated enemy.

The Buddha says this is not the first time Dhanuggahatissa was clever in war. In another life, he was a clever boar. An evil ascetic was employing tigers to kill helpless pigs for food. In a violent scene, the clever boar organizes the herd as a team to trap and disembowel the tiger. Realizing that, unless the evil ascetic is killed, more tigers will come, they hunt down the ascetic and find him desperately hiding in a tree. Working together, they cut down the tree and tear the ascetic apart. The story

shows no concern over the extreme violence; indeed the Buddha's identity in this *jātaka* was as “tree sprite” who simply applauds the boar's victory with verses.³⁶ Defensively killing a wicked enemy is praised without any moral reservation or hint of karmic consequences. Surely, kings would take this as a moral example.

The Mahā-Ummagga Jātaka portrays Buddha as a brilliant war minister who prepares his city's defenses and plants spies throughout India, posing as servants of local kings.³⁷ When besieged, he infiltrates the enemy camp with a spy who has been beaten up to look as if he were rejected by those in the city. The spy deliberately leads the besieging army into the part of the moat filled with crocodiles and snakes and they die under a hail of missiles.³⁸ Deadly military force is applied when necessary, but the end of the story has a typically Buddhist twist. Through brilliant trickery, the enemy king is captured alive, but the good minister surrenders his sword to the captured king and invites him to kill him if he wishes; instead, they become friends and form a lasting peace.³⁹

Mahāyāna Sources

In a *jātaka* shared by mainstream and Mahāyāna sources, we find Buddha reborn as Indra, who generally represents the ideal king.⁴⁰ For both traditions, Indra is Buddha's ever-present armed bodyguard, threatening and inflicting violence on those who oppose or disrespect him.⁴¹ In Pāli Jātaka tales and occasionally in the *nikāyas*, he menaces or takes violent action against immoral kings. In one case, Buddha is reborn as Sakka, as Indra is called in Pāli, and, “poised in midair, thunderbolt in hand,” threatens to cleave the head of a king for being disrespectful to elders.⁴² In another Pāli *jātaka*, when a king sentenced a man to death in order to get his wife, Indra lays the king on the execution block instead and has him executed. He then installs the good man on the throne.⁴³ The Mahāyāna *jātaka* describes the ideal king engaged in a battle with all the drama of splintering weapons and battle cries.⁴⁴ Indra constantly struggles with semi-demonic deities called Asuras, and goes to war for his honor and to relieve the fear of his people.

His army is routed, but, as he flees, his massive battle chariot bears down on a bird's nest. Rather than destroy innocent creatures, he turns back directly toward the enemy. The model king risks his own life, rather than harm noncombatants, even animals. But his reservations about killing include only the birds, not his opponents. Because he turns back, the enemy is convinced the battle has turned against them and flee. Once again, compassion leads to victory. The king is valorized both for engaging in warfare and for upholding the ideals of compassion in the midst of battle.

The most singularly influential story of this kind is the Ship Captain Jātaka in the *Skillful Means Sūtra*, a tale strikingly resonant with modern terrorist situations. This tale, known throughout modern Asia, was used by both sides in the Korean War to validate violence. It is also referred to almost generically by Indian Mahāyāna thinkers across a variety of philosophical traditions, including the Madhyamaka Candrakīrti and the Yogācāra Asaṅga, when explaining compassionate killing.⁴⁵ Buddha is presented in a past life as the ship captain Super-Compassionate. He knows someone plans to kill everyone on board the ship. The tale highlights the relative moral standing of the passengers, by portraying them as saintly and their potential mass murderer as motivated by greed. The captain reasons that, if he tells the passengers, they will riot and kill the villain in a rage, which will have the disastrous result of making them all murderers. This in fact occurred on a commercial air flight some years ago, when a mentally disturbed individual frightened the passengers and they literally beat him to death.⁴⁶ Captain Super-Compassionate is left with no option but to stab the villain to death himself.

He protects the passengers from murder and from the moral disaster of becoming murderers themselves. More crucially, he saves the potential mass murderer from ages in the hell realms. This raises the question whether it would be compassionate to kill a person to prevent them from becoming a suicide bomber. The story balances concern for the horrific outcome of murder with the possibility of compassionate killing in order to prevent murder. We see here again the protective power of compassion. Because the captain risked the harm to himself of becoming a killer in order to prevent others from taking on that harm, he instead generated great positive merit. Asaṅga extends the same kinds of

logic to situations where force must be used to steal back what has been stolen or to remove an immoral ruler or official.

The *Satyakaparivarta Sūtra*

The *Satyakaparivarta Sūtra* is a Mahāyāna text that explicitly addresses the questions of warfare, torture and punishment.⁴⁷ It is exceptional in directly addressing these issues, even discussing battle formations as in the *Vaḍḍakhi-sūkara Jātaka*, but its values generally correlate with those of the sources previously examined. One notable exception is in regard to punishment and torture. Unlike the Theravādin *Milindapañha*, it discourages any type of punishment that permanently damages the victim and rules out capital punishment. This excludes punishments such as maiming, amputation of limbs and scourging of sense organs. Corporal punishment must be applied with the compassionate intentions of rehabilitating the victim and protecting society. This is explained with the analogies of a parent punishing a child or a doctor taking severe action to cure someone; both inflict pain with compassionate intentions. Although the limitation of not doing permanent physical damage is far more restrained than the penal codes in most Buddhist cultures, where capital punishment and dismemberment were common, it still leaves considerable room for torture.

A perfect king rules without the need for violence, since his subjects and neighbors are prosperous and contented, so the necessity for violence therefore suggests imperfect rule. We can see this reflected in one of the most interesting directions of the *sūtra*, to consider one's culpability in the arising of enemies. This is natural in a system of thought that emphasizes that one's current conditions are largely determined by your past actions, i.e., *karma*. A good king creates strong allies and conditions of peaceful contentment through his benevolence, while cruelty and exploitation naturally lead to crime, enemies and conflict. A king with enemies, or one who constantly resorts to warfare, is therefore morally suspect. This concern for analyzing and taking responsibility for one's own culpability seems absent in many recent conflicts.

However, any king that resists the sovereignty of a true Buddhist *dharma* *rāja*, righteous king, is also morally wrong. The proper response

to a *dharmarāja* is submission, and failure to submit merits forceful domination. A king has the right to suppress attempts by vassals within his area of conquest to resist his authority and he may confiscate their properties. But warfare should be pursued only after all other options have been employed. We can see from the fact that, in addition to diplomacy, the other possible means include intimidation, bribing and sowing dissent among enemy allies that this is not just a moral consideration. Generally speaking, in Indian thought, warfare is considered an extremely costly and unreliable method of pursuing goals.

As in the *jātakas*, whenever warfare is conducted, casualties should be avoided, particularly enemy casualties; destruction of infrastructure and the natural environment should be minimized; and prisoners should be treated with humanity. Before dismissing such concerns as politically naïve, we might consider, with some shock and awe, how ignoring each of these has been an enormously costly mistake for the victor in recent wars. The concern for mistreating prisoners, wanton destruction of infrastructure, unnecessary casualties, harm to noncombatants and generous postwar treatment to the vanquished should be considered in light of the concern for multigenerational cycles of violence. Cruelty in such situations runs counter to self-interest. It is typical in Buddhist moral narratives that the person who committed a crime is the former victim of the one who has now been hurt. For instance, an employer who beats her servants was once beaten by the one she now beats. This is part of a repeating pattern that extends far into the past and threatens to extend into the future.⁴⁸ Mutual recognition of such cycles of violence is the key to reconciliation and ending the cycle.

... the reader soon loses track of who had initiated the violent acts or who was the original victim. Distinctions between protagonist and antagonist or the “good” one and the “evil” one are consciously blurred. Their roles are successively reversed. ...Both become trapped in a cycle of violence. ...rewards and punishments are not handed out according to who was originally guilty or who originally innocent. ...A daring gesture of trust and generosity on the part of one toward the other, whether by the victim or the evildoer, if the violence is to stop is needed and goodness and security be restored. Nor does the story end with the cessation of violence. It goes on to illustrate the slow arduous process of restoration.⁴⁹

Such daring gestures of trust, such as offering one's captured opponent your sword, are seen repeatedly in the *jātakas*. We need not accept the multiple-life perspective to see value in the idea that the causes of violence transcend individuals, that they are in fact multigenerational and impersonal. Cycles of violence have roots in the past and we are all implicated in them, even entrapped by them. Revenge violence is never an answer, since it only perpetuates these cycles. The basic instinct is that cruelty in the present creates conditions that will rebound on those that inflict it in future generations. From a Buddhist perspective, this reflects the conjunction between self-interest and compassion.

Here we might reconsider the post-war behavior of legendary King Aśoka, who, as the victorious conqueror of Kāliṅga, famously expressed his remorse at killing and displacing thousands.⁵⁰ We cannot directly connect his remorse to King Duṭṭhagāmaṇi's, for Buddhist traditions show no memory of the Aśokan edicts, which play a huge role in modern historical studies. Aśoka is remembered by Buddhists, particularly those who were in his disfavor, as incredibly violent even after his conversion to Buddhism. They recall him slaughtering thousands of Jains in retaliation for an instance of disrespect to a Buddha image and for forcing the Sarvāstivādin tradition to flee en masse to Kashmir by attempting to drown hundreds of their Arhats in the Ganges. (As shown elsewhere, mass violence against non-Buddhists by Buddhist kings is typical in Buddhist historiography.⁵¹)

Aśaṅga, the ethical theorist of compassionate killing, says such killers should regret what they must do, as a physician would regret amputating a limb. But this does not seem relatable to Aśoka's regret. He may have been attracted to Buddhist conceptions of the perfect king who rules without the need for violence, a convenient ideal for pacifying conquered territory, but the Aśoka of the edicts is no pacifist. He closes the edict where he expresses his celebrated remorse by plainly threatening deadly force against those who resist his authority. Among a variety of techniques to win over the "hearts and minds" of conquered people, the *Mahābhārata* recommends expressing regret over having to kill one's enemies.⁵² The *Arthaśāstra*, a Machiavellian text traditionally associated with Aśoka's Mauryan Dynasty, recommends a full blown *dharma* campaign demonstrating moral superiority. The

conqueror substitutes his virtues for the defeated enemy's vices and follows pleasing policies. He should show devotion, support scholars and ascetics, and ensure devotions are held regularly in temples.⁵³ So Aśoka's expression of remorse may simply be the gesture of a skillful ruler.

The intention in making these points about Aśoka is partly to deflate a misleading icon of Buddhist pacifism, but also to suggest that ancient kings were far more sophisticated about statecraft than sometimes assumed. We never would take idealistic statements on the part of contemporary leaders at face value. Aśoka's edicts were an exercise in statecraft that recognizes the importance of public opinion, just as we have seen attention to other intangible factors, such as the attitudes and intentions of warriors and the role of the good faith of one's neighbors in security. However, the positive point here is that the decent and generous treatment of enemies is seen, even from the *real politic* perspective of the *Arthaśāstra*, as good policy for the retention of power. Otherwise, enduring enmities will reignite the cycles of violence. Righteousness and power generally go together.

To return in closing to the *Satyakaparivarta Sūtra*, if a king goes to war with the intention of protecting his family and people and with the desire to avoid unnecessary killing, the *sūtra* explicitly states that even if he kills or harms others, he will make great karmic merit. Compassionate intentions dispel the potentially paralyzing concern with negative *karma* and even offer accumulation of merit through warfare, advancing the warrior on the path to liberation. Interestingly, along with protecting his people and attempting to capture his enemies alive, the third chief concern of a Buddhist king going to war should be to win. Rather than arguing that political pragmatism must yield to ascetic ideals of compassionate pacifism, the scripture maintains that a measured and principled use of force, governed by compassionate intentions, enhances security and serves the purposes of acquiring and retaining power while maintaining moral integrity. As in personal ethics, where Buddhist texts argue that compassion is self-interested, the *sūtra* claims that compassionate state policy is ultimately self-beneficial and rejects the idea that absolutizing national or personal interest is actually in the national or personal interest.

Notes

1. This chapter incorporates conclusions from the author's earlier publications on compassionate "violence" in Buddhism, augmenting them with attention to the *Jātakas*.
2. *Dīgha Nikāya*, iii.65. Walshe, trans. (1987, 396–402).
3. Tatz (1986, 70–71, 215, 324–326).
4. Walshe, trans. (1987, 396–402). Black, trans. (1997, 299). Hopkins (1998, 126–128).
5. *Dīgha Nikāya*, i.136. Walshe, trans. (1987, 135). Jenkins (2003).
6. J.462 even praises a king for paying the four divisions of his army their proper salaries.
7. D.i.137. Walshe, trans. (1987, 136): "He is powerful, having a four branched army that is loyal, dependable, making bright his reputation among his enemies."
8. Bodhi, trans. (2000, 1335). "...misdirected by the thought: Let these beings be slain, slaughtered, annihilated."
9. In cases found so far, compassion protects righteous kings and they get their kingdom back. For a less cited example see: Black (1997, 360). See also J.282. Rouse, trans. (2004, 273–274): "I want no kingdom that must be kept by doing harm!"
10. Lang (2008).
11. Examples will be discussed later. (Elephants were the tanks of the ancient world, and war elephants were an Indian export.)
12. Rhys-Davids, trans. (1963, 255–260).
13. Jenkins (2010b). Jenkins (2016). Rhys-Davids trans. (1963) [first pub. Clarendon 1890.], 254–257. Nāgasena explicitly advocates the worst punishment, execution, so the rest are implied. See Rhys-Davids, trans. (1963, 168–169) for similar arguments, where amputation, etc. are lesser punishments. See also 239, where a king who kills and tortures deserving criminals is said to be just and beneficial, like a doctor giving harsh treatments.
14. Gethin (2004).
15. See, for instance, J.228. Rouse, trans. (2004, 149–152). Sakka chastises an immoral king for lust for conquest.
16. Geiger, trans. (1986, 172).
17. *Ibid.*
18. Jatavallabhula (1999, 73).

19. For an extended treatment see Jenkins 2010b (2011).
20. Ibid.
21. Burlingame, trans. (1921, 218).
22. See Jenkins (2016).
23. Burlingame, trans. (1921, 286). Willemen, trans. (1999, 191–194).
24. See also *Nandiya Jātaka*, J.385. Cowell (1897, 171–174).
25. *Gaṇḍatindu Jātaka* describes an oppressive king with a brutally over taxed people that he fails to protect from robbers who arise from the resulting poverty. He tours his country and hears the curses on him from every type of person and even animals. The text warns that his children will never inherit the throne and he will come to destruction in this life and the next. J.520. Francis, trans. (2004, 54–58); Kurudhamma Jātaka describes a kingdom where everything, even the weather, goes awry until they find the right ethical principles by which to rule. J.276. Rouse, trans. (2004, 251).
26. See Jenkins (2010b).
27. Black (1997, 440).
28. Pañcāvudha Jātaka, J.55. Cowell (1895, 137–139).
29. Ibid, 452.
30. J.284. Rouse, trans. (2004, 279–282).
31. J.182. Rouse, trans. (2004, 63–65).
32. Bhojājāniya Jātaka, J.23. Chalmers, trans. (2004, 61–63).
33. Asadisa Jātaka, J.181. Rouse, trans. (2004, 60–63).
34. Taccha-Sūkara Jātaka, J.492. Rouse, trans. (2004, Vol. 4, 216).
35. Vaḍḍhaki-sūkara Jātaka, J.283. Rouse, trans. (2004, 275–279).
36. In another tale, Buddha as wise counselor reprimands a king for starting to the field of war at the wrong time of year to quell a border uprising, which appears to be an expected and generally approved duty of kings. J.226. Kosiya Jātaka. Rouse, trans. (2004, 146–147).
37. Mahā-Ummagga Jātaka, J.546. Chalmers trans. (2004, Vol. 1, 197–198).
38. Ibid. 209.
39. Ibid. 236. Compare Mahāsīlava Jātaka, where, after escaping execution, a good king who refused to fight sneaks into the invading king's bedchamber and smacks his belly with the flat of his sword. In awe of his virtue, and the fact that he is not killed, the usurper gives back the kingdom and promises to take charge of suppressing rebels. Force still has its place. J.51, Chalmers trans. (2004, Vol. 1, 128).

40. Kulāvaka Jātaka, J.31. Chalmers trans. (2004, Vol. 1, 76–83).
41. See Jenkins (2016).
42. J.202. Keḷisīla Jātaka. Rouse, trans. (2004, 100).
43. J.194. Mañicora Jātaka. Rouse, trans. (2004, 87).
44. Khoroché, trans. (1989, 81–82).
45. See Jenkins (2010b) for an extended treatment of the text and commentaries.
46. On August 11, 2000, the Associated Press reported that Jonathan Burton, a teenage passenger who became combative on a Southwest Airlines flight, was killed by the passengers.
47. Jenkins (2010a, 2014) discuss this text at length.
48. See for instance Rajjumālās Vimāna Story. Mansfield and Jayawickrama, trans. (2007, 318–335).
49. Dharmasena (1991, Xviii).
50. See Jenkins (2016), for extended discussion of the violence of Aśoka and other Buddhist kings.
51. Jenkins (2016). For an additional example, in the legend of Queen Śyāmavatī discussed earlier, King Udayana, a highly venerated Buddhist king, finds that Śyāmavatī has been framed in the assassination attempt by a competing queen who hates the Buddha. Udayana’s response is to bury hundreds of her clan up to their waists, cover them with straw and burn them alive.
52. Fitzgerald, trans. (2004, 408, 425–426).
53. Kautilya (1992), translated by L. N. Rangarajan, 740–741.

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Part IV

Technology, War and Peace

10

Civic Virtue and Cybersecurity

Don Howard

Introduction: The Problematic Landscape

Questions about cybersecurity and civil rights live in a space of antiquated and inadequate law, disparate, sometimes overlapping, sometimes conflicting jurisdictions, weak enforcement mechanisms, and weak incentives for international collaboration. Even were notions of civil rights that fit earlier forms of political life capable of adaptation to new technologies of commerce, expression, conflict, and exploration, the means to secure such rights are lacking. This chapter argues that, under these circumstances, the efforts of ethicists, legal scholars, and policy makers are helped by reframing central questions about issues including personal privacy, freedom of expression, internet access, the intellectual property claims of individual and corporate persons, and political action in the language of civic virtues as better fitting life in the cyberworld.

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Examples illustrate the challenge. With Estonia (2000) and France (2009) taking the lead, a total of six nations have now, in some manner, declared internet access a human right, and, in 2011, United Nations Special Rapporteur Frank La Rue asserted more or less the same in a report prepared at the behest of the UN General Assembly's Human Rights Council.¹ Already in 2003, the "Declaration of Principles" of the UN and International Technological Union World Summit on the Information Society asserted that:

Communication is a fundamental social process, a basic human need and the foundation of all social organization. It is central to the Information Society. Everyone, everywhere should have the opportunity to participate and no one should be excluded from the benefits the Information Society offers.²

One is hard pressed to imagine the United States, Russia, or China following suit, certainly not in the near term. And Google Vice-President Vinton G. Cerf argues that, while internet access is increasingly a crucial asset for the achievement of rights like freedom of expression, the Internet itself is simply a technology and cannot, therefore, be either a human right or a civil right.³ There will be no international consensus on a right to internet access with Google in the dissent. How, then, secure the Estonian's asserted right if that right ceases to be a right at the Russian and Latvian borders?

Consider another example. It was reported in September 2012 that Microsoft had discovered many laptops made in China that shipped with a fake version of Windows infected with malware associated with the Nitel directed denial-of-service (DDoS) botnet.⁴ In public, the finger of blame was pointed at criminal enterprises taking advantage of an insecure supply chain. China being China, one may be forgiven for doubting that attribution. I have always assumed that, from the moment I first make an internet connection while traveling in China, my computer, tablet, or smart phone will be compromised. Have my rights been violated? Or is "traveler beware" the axiom? I have always assumed that the Chinese-made Lenovo laptops my university forces me to use come preloaded with spyware, if not also malware of the

mentioned kind. Do I have a right to privacy with what I store, email, and post with my Lenovo? If my infected laptop is used in a Chinese government botnet attack on Japan, do I have a right not to be a target of Japanese retaliation? If so, who polices those rights?

There will be no structure of international law and law enforcement to secure internet access and privacy rights. The will and the where-withal is lacking. What, then, is to be done?

Failures of the Rights Framework

One of the fundamental problems standing in the way of progress on these issues is the rights framework itself. Claims about human rights are usually grounded either in claims about the status of human persons and their natures or in claims about the consequences of respect for rights as conducive to the achievement of interests. The American Declaration of Independence asserts, famously, that “all men... are endowed by their Creator with certain unalienable Rights,” and another variety of status theory grounds a right to personal freedom in a claim of property in or propriety over one’s individual body and mind. The metaphysics is questionable and contestable. No rights without theism? No individual rights for communitarians? It is surely hard to imagine that some sudden change in human nature made internet access a human right when, previously, there was none such. And does my Second Life avatar have a nature from which flow rights?

A consequentialist about rights has an easier time with internet access as a fundamental human right, arguing from the interests served by the existence of such a right. Of course, one might ask whether it is the interests of the individual internet user or the interests of the access provider that, in fact, not in theory, count for more. More generally, the consequentialist approach makes the existence of human rights a matter of contingencies, for all relevant claims about consequence are empirical, a circumstance that puts pressure on the notion of there being fundamental human rights. For example, a consequentialist like Hobbes (or is he a contractarian?), views respect for rights as a check against the slide into a barbarous state of nature, and, thus, as conducive to the

interests of those constituting a civil society. But what if people are by nature beneficent, not selfish? That's an empirical question. If, in fact, people are naturally nice to one another, as premised by the theory of the moral sentiments espoused by Adam Smith and David Hume, is respect for rights no longer necessary?

Is the situation any better with respect to civil rights, by contrast with human rights? Claims about civil rights are usually grounded in explicit, legal assignments of rights. The US Bill of Rights grants a right to protection against self-incrimination, a right of due process, a right of assembly, a right to the free practice of religion, a right to privacy, and, in the opinion of some, a right to bear arms. But each polis might confer different rights upon its members. Many other nations do not grant that last right, at least, a right to bear arms. And, absent a duly constituted political authority, are there any civil rights at all? What, for example, are we to say of the Universal Declaration of Human Rights' curious assertion that "everyone has the right to a nationality?"⁵ Which nation will be compelled, as a last resort, to grant citizenship or permanent residency to a particularly wretched or abhorrent, stateless soul, and what authority can enforce such a right? Do we constitute a new polity just for the stateless? Is the United Nations the polis of last resort?

Status approaches to human rights are as fragile as the metaphysics they all require. Consequentialism about human rights runs aground on problems of contingency about what is or is not an interest of an individual or a group and about whose interests count for more. Contingency of a different kind—accidents of political geography and topology—plagues the civil rights framework.

Forgive this breezy rehearsal of what are old laments about the rights framework. The point mainly to be stressed is that, however serious are all of these old objections, the problems grow only worse still when we ask about rights in cyberspace. This is especially true of the civil rights framework, because the notion of the polity that traditionally underpins it—a geographically contiguous (or roughly so) group of individuals living within a structure of law and custom with duly constituted and acknowledged authority over the members of the group—simply does not exist, for the most part, in cyberspace. Internet users form a group; arguably even a community and a complex network of

subcommunities, as will be discussed later. But they do not form a polity, mainly for want of the kind of duly constituted authority through which civil rights could be granted and guaranteed and partly because the community structure within cyberspace does not respect the boundaries of the traditional human communities whose political structures might otherwise have been easily extended—with their laws, rights, and policing mechanisms—into cyberspace. One might imagine a global form of cybergovernance and policing. Were there such, the argument would run differently. But, except within very limited domains, there is none such and will be none.⁶

If the customary rights framework will not work in cyberspace, what are we to do? My answer is to turn from talk of civil rights to talk of civic virtues.

Rights Versus Virtues

A deep incompatibility between the rights framework and the virtues framework is widely assumed. The most famous modern virtue theorist, Alasdair MacIntyre, is often quoted as saying in his classic, *After Virtue*, that “there are no such things as rights, and belief in them is one with belief in witches and in unicorns.”⁷ At issue for MacIntyre are both the metaphysics of status approaches to human rights and the political ontology of the liberal individualism that otherwise informs much of recent rights theory. MacIntyre is, in modern parlance, a communitarian, one whose political ontology makes the individual not an autonomous center of moral and political authority but, as it were, a functional unit in a larger social whole. For MacIntyre, there can be no individual rights because there are no individuals of the kind assumed by liberal political theory. That same organic conception of the person in the polis informs MacIntyre’s perspective on virtue as cultivated habit aiming at the good, such habits developing only through social mediation as socially inculcated and maintained patterns of action.

Some theorists would argue that the incompatibility is, more specifically, between rights and duties, the latter presumed to comport more easily with the virtue framework. Locating the problem here is a move

that I find less helpful than MacIntyre's locating it at the deeper level of political ontology. This is because I view duties as just the complement to rights, duties being obligations to act, whereas rights are immunities from action, entailing, thus, obligations on the part of the state and its agents not to act. Hence, to whatever extent rights are held to be derivative from laws, so, too, are duties. Besides, on my view, extracting duties from virtues risks exchanging the flexibility of virtues for the rigidity of duties. Part of the charm of the virtues framework is, precisely, that the expectations attached to virtues are not for always and everywhere, but, again, for the most part and on the whole.

We need not follow MacIntyre in simply repudiating talk of rights as incompatible with talk of virtues. In a moment, I want to take up the question of how to reconstruct rights talk within the virtue ethics framework, the short version being that just as laws are understood by virtue theorists as tools for policing community boundaries, so, too, are the rights derivative from some laws best understood as exercises in political perimeter patrol. But first we need a refresher course on virtue ethics and civic virtue.

Moral Virtues and Civic Virtues

For virtue theorists from the time of Aristotle and Aquinas up to MacIntyre, virtues are settled habits of action aiming at the good. Included are virtues like wisdom, generosity, prudence, justice, humility, hope, charity, and love. Neither instincts nor mechanical, repetitive behavioral routines, virtues as habits are dispositions to act, for the most part, on the whole, for the good. For MacIntyre, as for Aristotle, each virtue, such as courage, lies at some mean between two extremes, in this case the extremes of rashness and timidity. Virtues are contextual, in that where the mean lies depends upon circumstance. Rashness in the face of overwhelming odds might be timidity in the face of a weak foe.

Virtues are contextual also in the sense that they exist only among persons who live in community, being, as mentioned, socially inculcated and maintained, and reflecting, therefore, the goods of that community. Spartan courage and Athenian courage are different.

The sum of the virtues that makes a whole person is character. The person of exemplary moral character, the moral model, acts morally by nature, with “nature” understood now not as some ontologically fixed, perhaps divinely ordained kind of being but, instead, as the inscribed result of growth to moral maturity in a community. One is who and what one is, as a moral agent, as a result of one’s having been nurtured in virtue from childhood and sustained in virtue by life in a community of other moral agents whose better dispositions reinforce and complement one’s own.

Moral judgment, as understood in this framework, is less a matter of enacting a practical syllogism from moral first principles to consequent acts and more a matter of modeling one’s actions upon those of moral exemplars. The reflective moment in moral action involves not so much theory and its implications for action but a discerning survey of the exemplars of which one finds oneself possessed through a lifetime of moral experience. If anything resembles a principle, it looks less like a self-evident moral truth and more like a generalization, the product of an induction from many examples of right action in a wide variety of circumstances and, being such, it will be hedged about with *ceteris paribus* clauses and other such qualifications necessitated by the contextual nature of all virtue.

The exercise of virtue is a straightforward matter with virtue defined as a species of habit, for a habit, a disposition to act, is such only if, on the whole, one does so act. The beneficent person is generous not thanks to any external compulsion but simply because he or she is beneficent, for to be a beneficent person is, simply, to act generously in the right circumstances. This may sound like the hocus-pocus involved in a natural philosophy that explains opium’s tendency to put one to sleep as a consequence of its possessing a dormitive virtue, when the dormitive virtue turns out to be nothing more than the very tendency one sought to explain. It would be a comparable error to explain the philanthropist’s charity as caused by his or her beneficence, but the point is precisely that virtues do not cause their entrained behaviors, for a virtue simply is the tendency so to act. The causality lies elsewhere, in the social structures and the actions of one’s elders and fellow citizens whereby the virtuous habit was first instilled and then sustained. The

causality is out in the community, not in the person. There is no conscience, no bossy little homunculus inside my soul either whispering, metaphorically, in my ear or kicking my metaphorical behind. There is, instead, a community structure proper participation within which is the life of virtue.

Thus, the moral virtues in general. The civic virtues are the virtues specific to life in a community or polis, or, rather, to the flourishing of the community. A contemporary theorist, Michael Walzer, lists five such in an influential essay from roughly the same time as MacIntyre's *After Virtue*: Loyalty, service, civility, tolerance, and participation.⁸ Their cultivation and exercise among a sufficiency of the citizenry is held to be essential to the proper functioning of the community. Like the moral virtues, the civic virtues are settled habits to act toward the good, and wherein consists loyalty, service, civility, tolerance, and participation depends partly upon circumstance.

Walzer's is an interesting list, to some of which I will return later with specific reference to civic virtue in cyberspace. For the moment, and by way of anticipation, think only about the first. Loyalty to what? Walzer's answer is interesting, for it is not loyalty to the nation, per se; rather, it is loyalty to the idea of republican government as embodied in a nation. It is loyalty to an ideal, not loyalty to a people, a place, or even a specific set of constitutional arrangements. One might deride this as an all-too-typical American form of irreality, contrasted with, say, the Croat's more ethnically centered loyalty to Croatia or the Catalan's loyalty to place as well as people. But "place" and "people" are just as much abstractions as "the Slovak Republic" or "Athens." Consider the words that Michael Frayn has Heisenberg speak in the play, *Copenhagen*:

Germany is where I was born. Germany is where I became what I am. Germany is all the faces of my childhood, all the hands that picked me up when I fell, all the voices that encouraged me and set me on my way, all the hearts that speak to my heart. Germany is my widowed mother and my impossible brother. Germany is my wife. Germany is our children.⁹

Heisenberg's Germany, the Germany to which Heisenberg was loyal and the Germany where Heisenberg served as leader of the German atomic

bomb project, is another abstraction, one embodied in faces, hands, voices, brother, wife, and children, but an abstraction, nonetheless. Since loyalty to abstractions is about all that we can imagine in cyberspace, it is well to be reminded that this first among Walzer's civic virtues has about it already an air of the virtual.

Walzer wrote his classic essay, "Civility and Civic Virtue in Contemporary America" in 1974 to query the perception of a decline in civic virtue. His main point was a subtle one. He proposed an exhaustive list of the civic virtues, about the alleged decline of which he then commented:

We shall see that we are the citizens we ought to be, given the social and political order in which we live. And if critics of our citizenship remain dissatisfied, then it will be time to ask how that order might be changed.¹⁰

The task that confronts us in thinking about rights in cyberspace is of a piece. We perceive a problem and we ask how the social and political order might be changed. Like Walzer, I choose to think about that problem in the language of civic virtues.

Rights and Virtues Reconsidered

Tension between rights talk and virtues talk was noted earlier, where we located the basis of MacIntyre's objection to rights in a communitarian political ontology that precluded individual rights because it denied the existence of individuals of the kind assumed in liberal political theory. Does any room remain within the virtues framework for rights or some functional surrogate for rights? If we think of rights not as human rights but as civil rights, as rights conferred by law, then rights might well have a place alongside virtues.

The same MacIntyre who so vigorously disputes the liberal individualist conception of rights provides the clue when he writes about laws, within the virtues framework, as tools for policing community boundaries. In a properly functioning community, with a sufficiency of the

citizenry acting virtuously, law and moral principle are not as important for sustaining the community as might be imagined by those who are products of different traditions, and certainly not the children of the liberal individualist tradition. In a trivial sense, virtuous citizens simply do the right thing without compulsion or fear of punishment, so that, in a community of morally perfect citizens, law would be unnecessary.

But, of course, even in the best of all political worlds, not every citizen behaves thusly. The vicious, who lack virtue, behave badly, but so, too, sometimes, do the virtuous, for virtues, being habits, which is to say, dispositions or tendencies, are not mechanical routines, nor could they be. Thus, the actions of even the best sometimes miss the mark. Stray too far from the mark too often and one's membership in the community is at risk. In smaller communities, this happens by shunning. One who, among a tight-knit group of friends, regularly betrays secrets, harshly criticizes others, and lets favors go unpaid will soon find him- or herself without those friends. In larger, more complicated communities, exile might take the place of shunning, including forms of internal exile ranging from disenfranchisement to prison. One lives, physically, within the community but does not partake fully in the life of the community.

Law marks the boundaries of acceptable action within the community, circumscribing the limits of full citizen participation. In a sense, law applies to all, both the law-abiding citizens and the scofflaws. But in the moral psychology of the virtuous majority, neither law, nor promise of reward, nor threat of punishment act as motives. I pay my taxes, for example, not because I think that I must in consequence of the law nor because I fear the consequences of an Internal Revenue Service audit. It is, simply, what I do as a virtuous member of the community; it is my wont, to use a good old English word. Laws do not motivate the good. They function instead more like signposts: "Beyond this point lies moral and political oblivion." Stray too far from the virtuous mean and you lose your status as full-fledged member of the community.

Within the virtues framework, the boundaries marked by laws are fuzzy. Virtues being always for the most part and in the main, as well as context-dependent, lapses from virtue will be likewise. Almost never will one vicious act, except for the most heinous, suffice for complete

and permanent removal from society. Three strikes and you're out, not one. Exceptions will be numerous. Wide discretion in the application of the law will be needed. A star infielder won't be benched for one error, but a pattern of error will have the coach thinking about substitution. Likewise, pilfering from the till and a few white lies won't get one sent to prison. Only when misdemeanor becomes felonious will stronger measures be appropriate.

How does the virtue theorist think about those stronger measures? Are they punishments? Retribution? Therapeutic interventions in hope of remediation? Earlier I invoked the metaphor of internal exile. It was seriously intended. For the virtue theorist, full membership in the community is necessary for individual flourishing, and a virtuous citizenry is necessary for the flourishing of the community. Lapses from virtue that near the boundaries marked out by law then call for removal from the community. Such removal comes in many forms, the most extreme of which are imprisonment, exile, and execution. The virtue theorist regards them all as, in the first instance, modes of removal from full citizen participation. Likewise more modest measures.

Attend carefully to the language now. Notice how we speak about lesser lapses as calling for steps like the revocation of a driver's license for driving while intoxicated where no direct harm to others was done. One loses one's "right" to drive. In the United States, a convicted felon, after release from prison, loses the right to vote. A monetary fine or the seizure of one's property can be seen as limiting one's right to own property or, thanks to diminished means, one's right to the pursuit of happiness. And, after all, imprisonment entails loss of the right to liberty and the right to privacy, and execution entails the loss of the right to life. The point is that what the virtue theorist sees as lesser or greater removal from full participation in the life of the community is easily parsed as the loss of rights of one kind or another.

That is precisely the clue about how we might think about rights in the virtues framework. What is normed is not rights, in the first instance, but full citizen participation in the life of the community. It would be an abuse of language and theory to speak of a "right" to full participation, but rights talk comes quickly to mind when we talk of constraints on full participation, this in the form of talk of loss of one's

rights. If we switch from the negative to the positive, from talk of the loss of rights to talk of full possession and exercise of rights, we find ourselves naming in this manner the modes of full citizen participation.

As a friend of the virtues framework and a skeptic about the rights framework, I see here a considerable gain. No list of rights can capture the richness of the notion of the virtuous citizen's full participation in community. Furthermore, rights talk alone merely delimits spheres of the permitted without prizing the exercise of the capabilities that should flourish in those spheres. Foregrounding, instead, the notion of the virtuous citizen's full participation in community valorizes the active exercise of the virtues within the arenas access to which is correlative with full participation. In the agora, I may speak and I will, when and as appropriate.

Civil Rights, Civic Virtues, and Cybersecurity

Forgive the longish excursus through a virtue ethics landscape well known to many. But with that behind us, let us return, now, to the question of civil rights and cybersecurity, reformulating the issue in the virtues framework. The key notion will be the virtuous citizen's full participation in community. Virtues being derivative from life in community, the first problem is what counts as the relevant notion of community in cyberspace.

Much has been written, both deep and facile, about new community structures in cyberspace. They range from groups of Facebook friends and Twitermates, to the social action networks that played such a large role in Arab Spring, from crowd funders and players of massively multiplayer online role-playing games to users of the US Department of Defense's ultra-secure intranet. The Internet in its totality might be modeled as a community. These structures have a complicated topology and geography, with overlap, hierarchy, varying degrees of mutual isolation, and mutual interaction. There are also communities of corporations or corporate persons, gangs of thieves, and bands of angels doing charity on scales small and large. With progress in artificial intelligence, there are already now and soon will be more non-human and

trans-human actors in cyberspace. Most cyber communities transcend traditional geographical and political boundaries, but some—either by accident or design—respect such bounds, as with my neighborhood discussion list.

Each of these communities evokes virtues appropriate to its own goods, context, and history. Just as Athenian virtue and Spartan virtue are somewhat different, so, too, will be the virtues appropriate to the community of online genealogists and the community of Spotify fans. It follows immediately that there will be no univocal answer to the question of balancing, say, a right to privacy, or the virtue ethics surrogate for that, against the need for online security. If I have any one main point that I want to stress in this chapter it is that the community-relative nature of the configurations—by which I mean, ultimately, the social and political structures—will norm our practices. Each community will evolve different customs regarding permitted and commendable disclosure and refusal to disclose. The Facebook community is more accepting of extensive disclosure, the LinkedIn community a bit less so. Individual preferences can and do vary within each, but patterns of practice emerge. The two communities differ, as well, with regard to the degree of intrusion and control they tolerate for the sake of guaranteeing their respective expectations about privacy. The more corporate LinkedIn world tolerates tighter, top-down controls. Facebook users are quicker to complain about highhandedness on the part of the Facebook management and expect more individual latitude in setting privacy levels.

Noteworthy in my view is the manner in which customs and norms evolve from within these communities, rarely by way of explicit legislation or rule making, more often just emerging as communities mature. Since I happen to be a long-time member of the community of online genealogists (it's a hobby of mine), let me speak about examples in that domain. When the community was young and first enjoying the gains of easy data sharing, it was common for GEDCOMS (the acronym for Genealogical Data Communication) to contain birth dates for living individuals and social security numbers for even the recently deceased.¹¹ Today, one almost never sees either. The reason is simple. It was quickly realized that identity thieves were lurking in the community and harvesting such data. There exists no authority for policing genealogical practice.

No new laws have been written, and no one has been fined or jailed for a breach of privacy rights. But community practice changed nonetheless. How practice changed is interesting. First, exemplary practices were emulated, as one just noticed how wiser collaborators shared their data and then followed suit, learning along the way to be more alert to the risks of disclosing too much and more respectful of those whose lives were affected. Civility is among the relevant civic virtues here. Second, those whose practices did not mature in this way just disappeared from the community. Since there is no constituted authority, no one was forbidden to post to discussion boards or publish data online. Instead, those who cared more about best practices simply stopped sharing with those who did not. Those lacking in virtue were exiled.

Striking the right balance is an ongoing challenge within this community. There was an outcry from genealogists—but also epidemiologists, social scientists, and other researchers—when the Social Security Administration several years ago removed some four million death records from its public data base, after determining that it was not legally obligated to make this batch of data public. The government's aim was to make identity theft more difficult, a goal upon which all members of the community agree. But the research communities clearly preferred self-policing of their practices. The balance preferred within all of these communities involves open initial access to the data with strict, self-imposed restrictions on the further sharing of that data.

What about my data? Do I have a right to privacy about my birth date and my social security number in online databases? In all honesty, it has never occurred to me to think that way. Why? Consider a different online community, the community of customers of my local credit union. A lot of my personal data sits in the credit union's servers. If I were to assert a privacy right to the data in that context, it surely would not be absolute, because the reasons why I joined that community entail a necessity precisely to reveal that data to some members of the community, namely, those employees of the credit union whose jobs require access to that data. My full participation in that community, with all of the goods that such participation makes possible, from direct deposit of my paycheck to low-cost mortgage financing, requires disclosure. The problem is not disclosure per se. The problem is disclosure to the wrong

people in the wrong fora at the wrong times and in the wrong ways, or the use of the data in the wrong way. The failure, the lapse, if there is one, is not that my right to privacy has been violated but that another member of the community has not behaved as virtue demands.

Turn our attention to another asserted right, discussed at the beginning of the chapter, the right claimed in Estonia and France to internet access itself. Does one have such a right? My answer is no. But that doesn't mean that I don't want people to have internet access. I would have us ask, instead, what is required for full citizen participation in various communities and, thus, the flourishing of those communities. Internet access being a precondition for participation in any cyber community, there simply are no such communities without access, so if we deem full participation in any cyber community a good, then members of the community must have access. Internet access is not a right in part because no duly constituted authority on an appropriately international scale can declare it to be a right. But civic virtue among the relevant members of many online communities—say each official of the telecom agency in each member state of the European Union as it exists in cyberspace (and all states now exist in cyberspace)—involves their taking such steps as are necessary and appropriate to facilitate internet access for those within their area of responsibility. A good analogy would be as follows. Full citizen participation in democratic government requires access to voting. Corresponding to that is the expectation that election officials will facilitate, not impede, access to the polls. Service—in the guise of public service—is the relevant civic virtue from Walzer's list, service in this context involving the facilitation of access to both the voting booth and the internet.

Exactly how to facilitate access and who has a responsibility to help in affording access will remain a matter local to different communities. In a poor nation, internet access will probably have to be free for all. In a wealthy nation, paid access for most will suffice, with subsidized access for the few. In a community with excellent public transportation or widespread ownership of private transportation, it will suffice to open the doors to the polls. In a poor, rural community, with isolated elderly voters scattered over a wide space with no transport of their own, it may well be necessary to provide transportation for at least some voters. And

in a community such as that, responsibility for providing transportation may extend beyond election officials to ordinary members of the community who can help by giving Grandpa Jones a ride.

What if security against cyberattack, cyberespionage, or cybertheft required compromise with internet access? Would that be an impermissible breach of a right? Clearly not in all circumstances. The question, again, is not about rights per se but about what is involved in the flourishing of life in community. Shutting off internet access for someone whose laptop is infected with the Nitol botnet malware may well be necessary to protect a nation's banking industry and thereby the unhindered access of many other community members to their own bank accounts. Even if the laptop's owner is not personally responsible for the machine's having become infected through failure to update security software or incautious behavior on the Internet, the well-being of the community, and thereby, the well-being of that individual requires action. Do not object that, in this way, a license is given to let the needs of the community always and anywhere trump the needs of the individual, or that a tyranny of the majority threatens. Such objections assume a mistaken, merely additive model of community good. In the virtues framework, the good of the community is not the sum of all individual goods, and most individual goods are derivative from the individual's mode of participation in the community.

Much of the allure of rights talk comes from the suggestion that, if rights are universal—"all men are endowed by their Creator with certain unalienable Rights"—then we have premises for critiquing the practices of other nations and communities. We think a theocracy unacceptable because it limits or disallows the free exercise of religion that we think a right of all. A common criticism of the virtues framework is that, by contrast, in making all questions relevant to a community, we lose the ability to critique the practices of others. But this criticism has always failed for assuming a simplistic geography and topology of community structures. Yes, it might be a problem if Athens and Sparta were isolated communities whose members never came together in war, commerce, the Olympics, or other common endeavors. But that has never been the case in pre-internet days, and it is certainly not the community structure of cyberspace, where, as has now repeatedly been stressed, the structure of communities is extremely

complicated. I am a member of many score communities online, some of them disjoint, some of them overlapping, many of them subordinate to others, all of them subordinate to the internet community as a whole. Critique occurs when I step, momentarily, out of one community identity and into another, as when Don the United Airlines online customer exhorts Verizon to do a better job with online customer service, more like the service I get from United. Critique occurs as well when I step up to a more comprehensive community identity that I share with the targets of my critique, as when Don the citizen of the world internet community faults Chinese snooping on internet traffic when he is traveling in China. Relativity to community does not devolve into relativism.

How, within the virtues framework, can critique of practice be effective in bringing about needed change when laws and rules are not to be had or, perhaps, are not even desirable tools? Let me make a few suggestions. The first is that critique, to be effective, must be more than mere reprimand, complaint, or even exhortation. It is one thing to name a wrong; it is quite another to name it in a manner likely to effect change. Overt coercion, threats, and intimidation sometimes work, as does exile or other forms of removal from full community participation, as discussed previously. But unless those are tied to some clear plan for reshaping defective habits, for turning vices into virtues, their effectiveness is limited. The real aim is to encourage changes in practice. In this connection, shame is one underutilized tool. Putting people on display in the stocks was often quite effective in changing patterns of behavior. What is the cyber equivalent? But even shaming has its drawbacks. Far better than any of the aforementioned is critique in the form of oneself proffering a model of better, more virtuous behavior. One's making oneself an example of best practices is often the most effective way of inducing change for the good. This is my second suggestion. Think back to the case of the community of online genealogists. Better practices with respect to data like birth dates and social security numbers emerged mainly in consequence of the more thoughtful and respectful members of that community changing their practices in ways that were clearly visible to all. Critique in the form of one's making oneself a better model has much to recommend it. It avoids exposing others to ridicule or embarrassment; it leaves behind much less in the way of negative

affect. If done too ostentatiously, it can pass over into moral priggishness. But the remedy for that is tact.

There may be settings in which mere modeling is inadequate, especially in complex communities where even the best practices might not always be visible to all members of the community. My third suggestion is that, in such cases, the public promulgation of norms can be effective. There is nothing novel in this suggestion. Professional associations do it all the time when they develop codes of ethics. Such codes have little legal standing or normative force. They function as reminders, suggestions, or sketches of model behavior. We are already beginning to see the employment of explicit norms in the cyberworld, as with the years-long project to develop what are now termed the Tallinn norms for the regulation of cyberconflict. More such are needed to address the challenges less helpfully addressed by assertions of rights in the cyberworld.

One especially important area where the promulgation of explicit norms is urgently needed is in corporate cybersecurity. Even if one thinks that the notion of corporations as persons is more than a little silly, corporations nonetheless form communities, and their behaviors can be assayed within the virtues framework. There are corporate virtues, just as there are individual ones. Moreover, as recent debates in the United States make clear, there is very little chance of our adequately addressing the problem of corporate cybersecurity through explicit legislation. Progress is more likely if we work through governments, industry associations, and international organizations to develop appropriate norms for everything from outsourcing data storage to the maintenance of adequate internal security controls and granting access, as needed, to external entities such as the FBI and, in extremis, US Cybercommand, or their counterparts in other nations.

Conclusion: Duties as Well as Rights

Recasting questions about rights in cyberspace in the virtues framework, asking what promotes the flourishing of life in community, brings many advantages. Foremost among them, in my mind, is that it directs the conversation not only to questions about what rights, traditionally conceived, permit such as free association or free speech—but also to what

positive actions are required for the flourishing of community life. Call these duties, if you will. But what is intended are more than duties narrowly conceived. What is intended are all of the many forms of action that constitute the good life in a community. I may not have a moral duty to help my aged neighbor cross a busy street, but my community prospers if I do. It is an old saw that rights unexercised are no rights at all. It is noteworthy that Walzer listed last—hence first—among the civic virtues the virtue of participation itself. When I look to a remarkable event like the use of social media in Arab Spring, what impresses me the most is not that the agents of change claimed a right to access, even in the face of government efforts to thwart access to the social media, but that they acted for the good in the domain thus opened and, by example, empowered others to do the same.

Notes

1. LaRue (2011).
2. WSIS (2003).
3. Cerf (2012).
4. Lardner (2012).
5. United Nations (1948), Article 15(1).
6. Older telecommunications posed some partially analogous challenges about the polity and rights. Think about debates over propaganda broadcasts or pirate radio. But no one lived in broadcast space to the extent to which and in the manner in which life is today lived in cyberspace.
7. MacIntyre (1981, 69).
8. Walzer (1974).
9. Frayn (2000, 44).
10. Walzer (1974, 594).
11. Social security records are a genealogist's goldmine. But how extensive was once the practice of also sharing social security numbers along with the data gleaned from the records was made clear when a recent "Social Security Number Remediation" exercise on my office computer found literally hundreds of such numbers on older GEDCOMS sitting on that hard drive. I was more than a little embarrassed by that. Today I almost never find a social security number in such files.

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11

Weapons for Pacifism: Reconciling Ideas in Conflict

Adam Henschke

The concept of intentionally causing some harm to people is arguably absolutely core to understanding the concept of a weapon. Pacifism, in contrast, is about valuing peace, thus leading to an active opposition to causing particular sorts of intentional harm via the use of weapons. This chapter investigates whether there can be such a thing as a pacifist weapon.

A weapon is a “a tool that is used, or designed to be used, with the aim of threatening or causing physical, functional, or mental harm to structures, systems, or living things.”¹ The pacifist belief “is not only that violence is evil but also that it is morally wrong to use force to resist, punish, or prevent violence. This further step makes it a radical moral doctrine.”² These two concepts, weapons and pacifism, sit in mutual opposition negating each other. However, as this chapter shows, the idea of a pacifist weapon is plausible. More than this, there is a range

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of different types of weapons that can sensibly be said to express some concept of valuing peace in their design. The chapter ultimately argues that an exploration of the notion of a pacifist weapon can shed light on both concepts of pacifism and can add to discussions around the ethics of technological design.

The chapter begins with a discussion of the concept of a weapon. It then looks at the idea of value-sensitive design (VSD), suggesting that if we take the notion of actively seeking to value peace seriously, we have a moral duty to design pacifist weapons. This idea of a pacifist weapon seems like an oxymoron, something flawed in its very conception. However, the chapter will go through four sorts of weapons—nuclear weapons, automated defense systems like the US “Star Wars” program and the Israeli Iron Dome system, lethal autonomous robots (LARs) and cyberweapons—to show that each of these weapons conceptually maps to different forms of pacifism. Further, these weapons point to a key normative distinction in VSD, that one can aim for a value to be *designed into* the technology, or design the technology with the value as an *outcome*, a desirable outcome. Following this analysis, we will see that pacifist weapons are indeed plausible, that the term is not oxymoronic. Rather, our pre-existing notions of pacifism and design impact the sorts of weapons that we might choose to design.

Making Sense of a Pacifist Weapon: What is a Weapon?

The first step in understanding pacifist weapons is to conceptualise a weapon. Thomas Rid provides the following conceptualisation of a weapon as “a tool that is used, or designed to be used, with the aim of threatening or causing physical, functional, or mental harm to structures, systems, or living things.”³ Following Greg Scherkoske’s approach, for any conceptualisation to be genuinely persuasive, it must exhibit “both descriptive and normative adequacy... An account or conception...is descriptively adequate just in case, and to the extent that it fits with our more or less agreed upon experience, linguistic practice and judgments of [the conception]...By contrast, a conception...is

normatively adequate to the extent that it coheres with our intuitions about its value.”⁴ Thus, any conception of a weapon must, in order to be meaningful, be sensitive to (or even be part of) a social practice of identifying and evaluating different sorts of wrong or harm.

On this approach, we conceptualise a weapon as something used in a way that is harmful or destructive and see if such conceptualisations meet the conditions of descriptive and normative adequacy. Starting with the base notion of physical harms, consider a car, not typically considered a weapon. We can conceive of a situation where describing a car as a weapon is entirely meaningful—imagine a deranged driver who intentionally drives at a pedestrian intending to harm the pedestrian. What marks the car out as a weapon in this circumstance? Rather than the car being *designed* to harm, the driver is specifically making use of the car as a means to the harmful end and thereby turns it into a weapon. It is this use that makes it a weapon: the harmful end is specifically intended by the user, it is no mere accident or negligent impact that the other is harmed.

However this harm is described, the normative element of a weapon is essential to our understanding. Consider again our driver—should the pedestrian jump out of the way, so the car never actually harms anyone, we would still want to describe the car as a weapon here. The reason is that the driver was using the car to deliberately harm. Note that, as with Rid’s account of a weapon, the description of harm can be general and vague: the sort of harm should not be limited to a physical harm; a weapon can also cause psychological or functional harm. Moreover, the target of the weapon might not be a human; we can sensibly use a weapon against an animal or inanimate object—or even something abstract like a nation’s economy or its security: The driver could use the car to destroy the target’s house in full knowledge that the target is absent.

The point here is that while the notion of “harm” can be very broad and vague, we retain the normative accuracy in conceptualising a weapon by the recognition that the user intended something destroys a valued target—physical, functional or mental damage to destroy or disrupt something of value. Rid’s range of harm types “physical, functional, or mental harm to structures, systems, or living things”⁵ are useful here. With descriptive and normative accuracy in mind, for the

purpose of this chapter, a weapon is conceptualised as a tool that is designed or used to cause destruction to things of value—thus wronging or harming people directly or indirectly across a range of harm types, including but not limited to physical destruction.

Value Sensitive Design and Weapons Technologies

Value Sensitive Design (VSD), broadly construed, is the notion that our technologies should actively take into account key moral values at their very initiation. Rather than restrict bad use through laws or with patches/add-ons once a technology is in use, VSD considers moral considerations as integral to the technology's very design. A first element of VSD is to recognise that a designer's choices are coded into a technology. We can see this notion expressed by the default settings of a given technology. "[M]any people will take whatever option requires the least effort, or the path of least resistance...if, for a given choice there is a default option—an option that will obtain if the chooser does nothing—then we can expect a large number of people to end up with that option, whether or not it is good for them."⁶ When receiving a new mobile phone, for example, the phone will have a range of factory settings that the user can personalise. These factory settings are set by designers at some stage in the production of the phone. VSD asks us to recognise that these default settings are a design choice. Moreover, some settings express particular values. The factory settings on power usage, for example, can express high consumption or frugality. So not only do the settings express choices in the design process of technologies, but some of those choices indicate particular values.

VSD holds that particular designs instantiate various values into that technology.⁷ Further to this, VSD allows us to "front-load ethics" "by means of the pro-active integration of ethical reflection in the stage of design of architectures, requirements, specifications, standards, protocols, incentive structures, and institutional arrangements."⁸ So, more than merely recognising that designer's choices are expressed in technologies, and to extend the notion that some of those design choices relate

to particular values, VSD presents a stronger case for moral reflection in design, that we ought to design our technologies in order to express and create the best world we can.⁹

Bringing this discussion to weapons, consider that war is a terrible thing. Apart from “romantic militarism,” which places a positive moral value on the experience of warfare, war is normally seen as morally negative thing. It necessarily involves “what modern military personnel often refer to as...killing people and breaking stuff,”¹⁰ and insofar these are both to be morally disvalued, then war ought to be avoided, all other things being equal. Whether taking a just war or pacifist position, the majority of moral systems takes this negative value of war seriously—war is something that we ought to disvalue. Insofar as VSD can be about designing technologies such that they avoid or prevent war, then we ought to consider the notion of pacifist weapons. That is, VSD would hold that we ought to design weapons with pacifism in mind, such that the weapon’s design instantiates the value of peace.

Yet, on the conception of a weapon just described, this seems to sit in tension with requirements of descriptive and normative adequacy of a weapon as something intended for harm. A simplistic notion of pacifist weapons would be to design weapons that are utterly unable to harm—a gun that fires only marshmallows at low speed, for instance. However, not only is such an idea practically absurd—no military would procure/use a marshmallow gun in practice, but it is also logically inconsistent—the conception of weapon has harm as *necessary* for normative adequacy. Something designed that avoids harm in some way is no longer conceptually a weapon.

Another further obvious notion of a pacifist weapon to avoid is one that is non-lethal. As Stephen Coleman has argued, military use of non-lethal weapons carries with it a range of ethical concerns.¹¹ The relevant points raised by Coleman are that designing a weapon to be non-lethal does not necessarily mean that it cannot be used to kill people. Further, such non-lethal weapons can be used alongside other military uses as force multipliers, so a non-lethal weapon can actually be counter-productive to the notion of pacifism. Again, in order for a pacifist weapon to be descriptively and normatively adequate, we need to do more to understand the idea of pacifism than aligning it with a notion of non-lethality.

Pacifism: No War and no Violence

In contrast to the conceptually flawed notion of a harmless weapon, pacifism and VSD can actually produce a sensible combination. If we start first with the notion of pacifism as relating to value, then the notion of pacifist VSD starts to make sense: Pacifism is the attitudinal stance that war and violence are undesirable states of the world and weapons technologies and the institutional demands of being in the military ought to be designed such that those undesirable states of the world are avoided. Yet, in order to maintain the notion of a weapon, the design cannot achieve this state of the world by creating something that is no longer a weapon. Designing pacifism into the weapons requires greater conceptual sophistication.

The pacifist is someone who holds that peace is morally superior to war. However, this does not do enough to differentiate a pacifist from a just war theorist—both would think that peace is morally superior to war. The just war theorist sees that given certain conditions, a just war can be fought to prevent a greater calamity, such as invasion by an aggressor nation—the resort to war is the better option than allowing invasion. To make the pacifist conceptually distinct from the just war theorist, they need to go one step further.¹² Rather than peace simply being *preferable* to war, the pacifist sees the moral badness of war and violence as so great that one *cannot* justify resort to war or violence.

Accepting this notion of pacifism as distinctly different from just war theory, pacifism can be characterised in a range of ways. Beyond simply valuing peace (and thus not conceptually distinct from a just war theorist), the pacifist must have a deep moral opposition to the violence of war. This draws out two distinct forms of pacifism, one to do with war and one to do with violence. First is what James Sterba describes as *anti-war* pacifism: “Any participation in the massive use of lethal force in warfare is morally prohibited.”¹³ The second is what Sterba describes as *non-violent* pacifism: “Any use of violence against other human beings is morally prohibited.”¹⁴ On anti-war pacifism, war itself is the thing that ought not to be disvalued, war ought to be avoided. On non-violence pacifism, it is instead violence that ought to be disvalued, violence ought to be avoided. To put these stances in explicit moral terms,

the anti-war pacifist holds a moral prohibition on war; the non-violent pacifist holds a moral prohibition on violence.

We now have an important conceptual distinction between two types of pacifism. The first is morally opposed to war. The second is morally opposed to violence. And while it may seem that the two are synonymous, war and violence do not necessarily overlap. Consider an act of domestic violence. While violent by definition, and morally repugnant, an act of domestic violence is clearly not an act of war. Thus, we can see that violence and war come apart: the anti-war pacifist might be morally opposed to war, but might consider domestic violence a normal part of modern life. Or, they might find domestic violence morally problematic but recognise the right of the victim of domestic violence to self-defense.

In addition to the sorts of pacifism that one might endorse, there is a further important conceptual distinction about the connections between pacifism and moral theory (on the one hand) and the opposition to the war or violence (on the other hand). Consider that we define pacifism as an explicit moral rule prohibiting participation in either war or violence. Expressing the moral idea of pacifism in these ways implies a deontological position—a rule—based prohibition on war or violence. However, we are also to recast these moral positions in consequentialist terms whereby the moral foundation of opposition to war is found in the consequences of one's actions rather than the rules one must follow. On the consequentialist account then, the consequentialist anti-war pacifist holds that war is *always* a morally undesirable consequence of action, and the consequentialist non-violent pacifist holds that violence is *always* a morally undesirable consequence of action. That is, the consequences of war and violence are such horrible things that we cannot allow them to arise.¹⁵

Value Sensitive Design: “Designing in” and “Designing for”

The clarification between a deontological pacifist and a consequentialist pacifist illuminates two distinct notions in VSD. The first takes a deontological approach to the design of technology. A deontological approach holds that the value be designed *into* the technology. The

consequentialist approach, by contrast, holds that the technology be designed *for* the valued outcome. Consider the decisions that designers of self-driving cars must make in order for their passenger to be safe from harm. One approach might be to design the car such that it avoids any accident as the default—call this the “avoid” approach. Another approach might be to design the car with a range of protective features so that, should the car be in an accident, the passengers are protected from any damage—call this the “protect” approach.¹⁶

Both approaches have the same value of passenger safety as part of their design. However, in the “avoid approach,” the design has rules coded into the car such that the passenger’s safety is assured by *avoiding* any accident. In contrast, the “protect approach” takes it that the outcome of the accident is what matters—as a consequence of the design features, the passengers are not harmed. That is, on “avoid” a deontological approach is favoured, passenger safety is designed *in*, while on “protect” a consequentialist approach is favoured, passenger safety is the *outcome*.¹⁷ The point here is to draw out the distinction between designing *in* values and designing *for* values, and how this distinction tracks to two fundamentally different schools of normative ethical theory, deontology and consequentialism.

Having marked out conceptual terrain around weapons, pacifism and VSD, the chapter will now explain how the notion of pacifist weapons is in fact a coherent idea. It will do this by discussing four weapon types, and will explain how each weapon type fits into a matrix of pacifism and value sensitive design.

Nuclear Weapons: Designing for/Anti-War Pacifism

Following their use at Hiroshima and Nagasaki, for many, nuclear weapons presented a special moral kind of weapon. “Nuclear weapons explode the theory of just war. They are the first of mankind’s technological innovations that are simply not encompassable within the familiar moral world.”¹⁸ For the first time in human history, nuclear

weapons gave humans the capacity to kill and destroy at a global scale with relative ease. “[F]or a few minutes or hours in August 1945, the people of Hiroshima endured a war that was actually limitless in its horrors...war had never been like that before. A new kind of war was born at Hiroshima...Atomic war was death indeed, indiscriminate and total.”¹⁹ Nuclear weapons signalled both a new moral kind of weapon, and posed a threat so great that the possession of the weapon itself was seen as a moral problem. As Gregory Kavka put it,²⁰ a moral opposition arose to possession of nuclear weapons as “[i]t is impermissible to threaten, and impose risks of death upon, large numbers of innocent people.”²¹

Yet, despite moral concerns and fears about nuclear weapons, the Cold War saw the proliferation of nuclear weapons primarily between the United States (US) and the United Soviet Socialist Republic (USSR). This escalation was explained and justified in part by what came to be known as “mutually assured destruction” (MAD). The idea of MAD embraced the massive destructive capacity of nuclear weapons. This was used by one superpower as a way of scaring off the other superpower from using nuclear weapons, and being too scared to use them in the first instance. This capability was defined as having the nuclear capacity to “[d]eter a deliberate nuclear attack upon the United States or its allies by maintaining at all times a clear and unmistakable ability to inflict an unacceptable degree of damage upon any aggressor, or combination of aggressors.”²²

The basic idea of MAD was that a stability emerged between the two superpowers. Neither would strike first as both recognised that a first strike would lead to both being destroyed—mutual destruction was assured by one or the other initiating military action. Nuclear weapons, insofar as they actually brought about a state of peace between the superpowers,²³ present our first example of pacifist weapons. The possession of nuclear weapons brought about a state of relative peace between the two superpowers. Moreover, given the risks of escalation to nuclear warfare, US intervention in foreign affairs like the Soviet invasion of Hungary in 1956 did not occur due to the concerns that such interventions would be disproportionate.²⁴ The risks of nuclear annihilation prevented not only the United States and USSR from openly

engaging in warfare (hence the emergence of the “cold” war), but may have also counted in non-intervention by the superpowers like the United States in places like Hungary.

On this view, nuclear weapons prevented open warfare from occurring between the superpowers and prevented uprisings from escalating into wars—nuclear weapons brought about a state of non-war. Thereby, nuclear weapons brought about a state of affairs desired by the anti-war pacifists. Thus, nuclear weapons can be described as weapons for anti-war pacifism. Note that these weapons did not prevent violence—the invasion of Hungary by the USSR in 1956 certainly involved violence. Nuclear weapons meet the anti-war pacifist position, and would not count as weapons for non-violent pacifism.

Second, nuclear weapons were, at least after World War II, designed *for* pacifism, rather than having pacifism designed *in*. They obviously can be used as part of war—the US bombings of Hiroshima and Nagasaki were certainly part of war, and violent. There is nothing in the design of nuclear weapons that actively prevents their use in war or for violent ends. There is no explicit deontological rule *in* their design that achieves the pacifist ends. Rather, pacifism was an outcome of having nuclear weapons. That is, nuclear weapons are explicitly consequentialist in the ways that they achieved pacifism. By posing such immense destructive threat, the outcome was that nuclear weapons brought about peace and stability. Nuclear weapons present the first case of a pacifist weapon—anti-war pacifism was a designed outcome of nuclear weapons, they were designed *for* anti-war pacifism.

Star Wars and the Iron Dome Defenses: Designing in/Anti-War Pacifism

In contrast to designing *for* anti-war pacifism, we now turn to designing anti-war pacifism *in* weapons. The kind of weapon we look at now is a comprehensive defense system, exemplified by the US defense system proposed in the 1980s and known as the “Star Wars” system and actualised in the Israeli “Iron Dome” defense system. Such defense systems

accord with the notion of anti-war pacifism, but differ from nuclear weapons, in that—due to being defensive—Star Wars and the Iron Dome provide two examples of designing *in* anti-war pacifism.

The Star Wars defense system was initiated by US President Ronald Regan, and though his idea never came to fruition, the idea of the Star Wars program was to use missiles as a defensive shield against nuclear attack from the USSR. The Strategic Defense Initiative (SDI) emerged in response to Regan's opposition to MAD. The idea was this: to develop a missile defense system to prevent nuclear missiles from hitting the United States by destroying them mid-flight. A core element to this system was to have the defensive missiles in orbit above the earth, earning the name Star Wars. This defensive system was seen as an alternative to MAD as the Star Wars program would neutralise the threat posed by the nuclear capability of the enemy.

While the Star Wars program never came to pass, a modern variant can be found—the Iron Dome defense system used in Israel.

Iron Dome is a system for intercepting rockets and artillery shells with ranges of up to 70 km...The system uses a unique interceptor missile for shooting down rockets. Iron Dome batteries include a radar system, a command center, and three launchers, each of which carries twenty interceptor missiles. [The system can] identify the anticipated point of impact of the threatening rocket, [...] and to decide ... whether or not to engage it. This prevents unnecessary interception of rockets that will fall in open areas and thus not cause damage.²⁵

Like the Star Wars missile defense system, the Iron Dome uses weapons—specifically interceptor missiles—as core to its activity. Star Wars and the Iron Dome can be considered anti-war weapons. Consider them both this way—if they are both thought to be entirely successful in defense and targeting, they prevent the defensive country needing to respond directly to an attacking force and thus represent a form of anti-war pacifism.

Consider that such a defensive weapons system was shown to be, and widely accepted as, being 100% successful. That is, if an adversary was to launch nuclear weapons they would be effectively stopped by the Star

Wars system. Or if an adversary was to launch small terrestrial rockets, they would be effectively stopped by the Iron Dome system.²⁶ If these systems were effective and their effectiveness was well known, citizens and decision makers in the defensive country could rest easy knowing that they had reasonably reliable protection against the relevant attack. If such defense was assured, then it would be unjustified for the defensive country to engage in any further military response to the attacking force. While just cause would be met due to the aggressive acts of firing nuclear weapons or small missiles at the defensive country, the defender cannot respond militarily because any further response would be unjustified. That is, the attacker country no longer presents a threat by using the given nuclear or small missiles, respectively. Like a child hitting an adult, given that the child presents no actual threat to the adult, the adult would be clearly unjustified if they responded with violence to the child.

In order for this to be convincing, the defensive systems must be specific and limited in their targeting, and the defensive country must be certain of this targeting. The defensive systems Star War and Iron Dome cannot be used in an aggressive manner. That is, if the United States had been successful in developing a high-orbit missile system, the system could not be used for anything except defense against nuclear attack. Likewise, the specificity requires that Iron Dome is not to be used offensively, its targeting systems must be designed explicitly to shoot down attacking missiles and can do nothing else.

Should these assurances of defensive capacity be met, then the two systems, Star Wars or the Iron Dome, can be understood as anti-war pacifist weapons. They both rely on missiles themselves, tools designed and used with the intent to cause physical destruction, and so count as weapons. However, as they would provide secure defense against the relevant attacks, there would be no justification for the defensive country to do any more against the relevant acts of aggression. Moreover, if targeting were assured, then the attacker country and other countries would have no need to fear any other impacts from the defensive programs. As such, the defensive assurance would prevent the need for war—at least against the specific acts of aggression of nuclear attack in the case of Star Wars and small missile attack in the case of the Iron

Dome. Thus, the anti-war pacifist conditions would be met. While other causes for war such as physical invasion certainly remain, at least in relation to the acts of aggression as specified, war is not permitted.

In contrast to nuclear weapons, however, both of these defensive systems have the potential for anti-war pacifism designed *in*. The targeting specificity presents a particular case of deontological rule setting whereby only X kind of target can be hit, and X kind of target has been specified as (the set of) legitimate targets. If the targeting systems meet the caveats described, even if a malicious actor was to gain access to the system, they would be prevented from firing the defensive weapons in an aggressive way. This is a form of deontology programed into the technology—the very rules that are coded into the systems ensure anti-war pacifism. Nuclear weapons brought about anti-war pacifism by the fear of mutually assured destruction. Defensive weapons achieve anti-war pacifism differently. Like the car that achieves safety by avoiding accidents, these defensive systems present cases where anti-war pacifism is achieved by actively preventing war. Thus, they can be understood as having anti-war pacifism designed *in*.

Lethal Autonomous Robots: Designing for/ Non-Violent Pacifism

Lethal Autonomous Robots (LARs) present a weapon that could be considered a non-violent pacifist weapon. But they would only achieve this non-violence as an outcome, rather than having the non-violence designed in. The basic point is built on a relation between valuing peace and the conditions following war's end, *jus post bellum*. A weapon, the employment of which fulfils a necessary requirement for achieving peace after a conflict, is a pacifist weapon, designed for non-violence.

"Pacifists" writes Brian Orend "have long objected that just war theory, with its hitherto narrow focus, is fundamentally passive and complaisant about war—that it doesn't initially care why war breaks out and doesn't seek to improve things after war's end... *We know, for instance, that when wars are wrapped up badly, they sow the seeds for future*

*bloodshed.*²⁷ The first premise of how LARs would play a role is that achieving peace after a conflict necessarily requires that individuals have as little reasons as possible to maintain hostilities and that basic needs (basic security, a just legal system, basic educational and health care systems) are fulfilled. A second premise is that the less human casualties there are and the less destruction to structures and systems required for satisfying basic needs there is, the more individuals will be willing to suspend hostilities (not at least because their basic needs are satisfied).²⁸

The relevance of these points comes in as LARs, if pitted against each other exclusively in a robot battle, minimize human casualties and destruction of what is required for individuals to fulfil their basic needs. Should the levels of autonomy²⁹ reach a sufficient level of complexity and reliability, we can entertain the possibility of robot wars. Should this come to pass, “the eventual result [could] be that robots may morally only fight other robots...In my hoped-for future...one day it will come to pass that robots will do all the dying for us, and humans will never be legitimate targets...in any war.”³⁰ The idea here is the admittedly idealised future where we use robots to do the fighting, and robots are the things destroyed, not people.

Now, assuming that such a war was to take place, where LARs fight LARs and LARs by and large suffer the physical destruction, on an account of warfare that includes large levels of physical destruction, “breaking stuff,”³¹ robot battles would count as wars. Thus, LARs are not anti-war pacifist weapons. And, on the description here, such wars would be violent—LARs do not immediately meet the conditions of non-violent pacifism either. However, as per conditions of *jus post bellum* once one of the states had successfully defeated the other, the victorious state actively engages in pursuing a just peace. Assuming that the victorious country was to actively pursue justice after the war had ended, following something like Orend’s “Rehabilitation Recipe,” to include a restoration of basic security, development of a locally supported legal, educational, health care systems, etc.,³² then we have a situation of peace. Note the important role that a robot war would have—very few individuals have died, and post-war peace might be an even greater possibility arising from the use of LARs.

Assuming that the LARs do indeed reduce human casualties to a negligible level, and that the less human casualties there are, the greater the chances for post war reconciliation, we can propose that the employment of LARs may lead to individuals being willing to suspend hostilities. And, given that we consider peace in a *post bellum* sense where people do indeed adhere to a stable and lasting peace following a minimally lethal war, LARs can fulfil a necessary requirement for achieving peace *after* a conflict. That is, given the limited reasons for individuals to maintain hostilities, the LARs have played a key role in developing a long, stable and lasting peace. Such a set of conditions are to be considered war—though non-lethal, the LARs on LARs conflict is certainly destructive on a vast level like a traditional war. Despite this destruction, the LARs have achieved a stable peace, the end result being substantially reduced post-war violence. Thus, the non-violent pacifist *outcome* has been met. The end state is a state of non-violence, achieved through war, using weapons. That is, LARs have brought about a state of non-violence, they can be thought of as weapons designed *for* non-violence.

Cyberweapons: Designing in/Non-Violent Pacifism

The final case example concerns cyberweapons. Consider the following example of a cyber-attack:

On 6 September 2007 the Israeli Air Force bombed the construction of a nuclear reactor at Dayr ez-Zor in Northern Syria. To prepare the air raid, a secret Israeli agency neutralized a single Syrian radar site at Tall al-Abuad, close to the Turkish border. To do so, the Israelis probably used computer sabotage...the outcome of the cyber attack was in some ways equivalent to that of a physical attack: a disabled air defense system. But was the cyber attack violent?...The answer is clear: it was not violent. Only the combined airstrike on the soon to-be-finished nuclear reactor was violent.³³

For Rid, a cyber act is bound to occur and *remain* in the cyber realm: “[M]ost cyber attacks are not violent and cannot sensibly be understood

as a form of violent action. And those cyber attacks that do have the potential of force, actual or realized, *are bound to be violent only indirectly*.”³⁴ In short, on an account like that held by Rid, cyber-attacks are not, and should not be thought of as, violent.

By Rid’s own definition of a weapon, however, a cyber-attack, some use of computer code for deliberate harm, can still be thought of as a weapon. Recall that Rid’s account included physical, “functional, or mental harm to structures, systems, or living things.”³⁵ For instance, cyber-attacks have been shown to cause psychological harm. “For the most part...modern cyberwarfare causes no physical injury...Extrapolating from studies of cyberbullying, identity theft, and ordinary burglary, and building upon the effects of simulated cyberterrorism in the laboratory...analysis suggests that the psychological harm of cyberwar can affect well-being nonetheless.”³⁶ If—following Rid’s own account—a weapon is normatively and descriptively still a weapon when it causes psychological harms, then a cyber-weapon can be thought of as a weapon, even though it is non-physically harmful. The point here is that cyberweapons are in fact weapons.

In relation to VSD, cyberweapons can be designed such that the non-violence is designed *in*. Again, following Rid’s reasoning that cyberweapons operate as computer code acting on computer code, and that their design limits them to do this only, then they are by design non-violent. Rid holds that violence is something that occurs in the physical realm, and as long as a cyberweapon is prevented by the designers from having any direct impacts in the physical realm, then we have the non-violence designed *in*. In contrast to LARs, the non-violence is a function of the design, not the outcome of the weapon’s use. Cyberweapons present us with our final example of a pacifist weapon, something that has non-violent pacifism designed *in*.

Pacifist Weapons: Signifying Existing Beliefs About Pacifism and VSD

Some of these scenarios may seem so specified that they shift from the realm of the hypothetical to fantasy. However, that is part of the point of the scenarios—they have been deliberately presented to draw out

certain concepts of what pacifism *is* or how to approach VSD. That is, these scenarios and the larger issue of pacifist weapons serve a particularly useful purpose—they illuminate whether the reader is in fact an anti-war or non-violent pacifist, and help shed light on the concepts of pacifism, and how they may be applied. They also draw out the notion of whether VSD should take a particular motivation from deontology or consequentialism. The unrealistic nature of the scenarios is unsurprising—the notion of a pacifist weapon is conceptually challenging. However, the aim of the chapter is not to argue for one sort of pacifist weapon over another, but instead to draw out and expose readers' existing beliefs about how such weapons could be designed, and what conceptions of pacifism one holds to be most plausible or defensible. As this chapter hopefully shows, looking at pacifism through the prism of VSD challenges traditional conceptions of pacifism. And at very least challenges the conception that a “pacifist weapon” is an oxymoron.

Notes

1. Rid (2013b, 37).
2. Narveson (1965, 259).
3. Rid (2013b, 37).
4. Scherkoske (2013, 17).
5. Rid (2013b, 37).
6. Thaler and Sunstein (2009, 83).
7. Friedman et al. (2002); Friedman and Nissenbaum (2007).
8. Van den Hoven (2007, 70).
9. Insofar as war is something thoroughly undesirable, a great moral calamity to be avoided wherever possible, then VSD ought to be applied to weapons and the organisation of—national and international—political institutions, economies and trading schemes and, of course, the organisation of armed forces. Though these suggestions lead far from the idea of pacifist weapons, they nevertheless illustrate the application of VSD.
10. Coleman (2013, 150).
11. Coleman (2015).

12. To keep the pacifist conceptually distinct from a just war theorist, the pacifist's opposition to war or violence must be so great that resort to war or violence is morally impermissible. The just war theorist, however, will hold that though undesirable, a war—as long as it is just—is permissible. I thank Ned Dobos for making this point clear to me.
13. Sterba (1992, 23).
14. *Ibid.*, 22.
15. Given space constraints, this paragraph glosses over a series of theoretical points and discussions within normative ethics. See Shelly Kagan's *Normative Ethics* for more on this (Kagan 1997).
16. There's a range of ethical choices and dilemmas that designers and programmers of self-driving cars must make (Lin 2013).
17. Of course, in reality, any sensible car design takes both approaches, avoiding accidents and protecting the passengers should an accident occur.
18. Walzer (2006, 282).
19. *Ibid.*, 269.
20. I note here that Gregory Kavka's argument is that the threat principle is not convincing and must be revised to have moral weight (Kavka 1985).
21. Kavka (1985, 128).
22. Endthoven and Smith, quoted in Freedman (1981, 246).
23. Given the complexities in the relations between the United States and the USSR that arose in the Cold War, I recognise that the idea of MAD and MAD alone brought about international stability, and that this stability was akin to peace, is a controversial premise and a simplification. However, given the space limitations, one can only present a rough description.
24. Thompson (2004, 1178–1179).
25. Shapir (2013, 81–82).
26. On recent estimates, Iron Dome attained between 76.7 and 84% success at intercepting missiles that would've landed in populated areas (Shapir 2013, 83). This is short of level of success that would need to be attained for the system to count as an effective designed in, anti-war pacifist weapon. But it is certainly proof of the concept's potential.
27. Orend (2013, 185–186), emphasis mine.
28. Given space constraints these two premises will have to be stipulated, but though controversial, they do not seem without precedent.

29. Again, given space constraints, for this chapter, I'll follow Robert Sparrow's lead, where we "understand an 'autonomous' weapon as one that is capable of being tasked with identifying possible targets and choosing which to attack without human oversight, and that is sufficiently complex such that, even when it is functioning perfectly, there remains some uncertainty about which objects and/or persons it will attack and why" (Sparrow 2016, 95).
30. Abney (2013, 347).
31. Coleman (2013, 150).
32. Orend (2013, 226–230).
33. Rid (2013, 11, 34).
34. Ibid., 12, emphasis in original.
35. Ibid., 37.
36. Canetti et al. (2016, 157, 158).

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12

Virtues for Peace: What Soldiers Can Do and Where Military Robotics Fails

Bernhard Koch

The distancing of human beings from the battlefields of war through remote-controlled and fully automated weaponry has rekindled the debate on the value and significance of military virtues. Why do some ethicists—this author among them—believe that, from a moral perspective, as human soldiers retreat from armed conflict, a gap has emerged, which the most highly developed technologies cannot fill? To approach an answer to this question, the following will offer some—but in no way exhaustive—reflections that are based on a traditional concept of virtue (not the only one) and a concept of “positive” peace, which is more than the absence of violence but rather a communicative situation of mutual willingness to recognize others as moral beings and mutual benevolence. Positive peace comes in grades and is never fully attained. “Negative” peace (e.g., absence of violence) is a precondition for it. I will furthermore attempt to develop some reference points and conclusions for dealing with the military practices created by new technological possibilities. In this process, it should

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become clear that “inner” attitudes, values, and virtues¹ matter, because they are seldom purely internal, but for a morally sensitive person are externally perceptible.²Please confirm if the inserted city name is correct. Amend if necessary.I hold two positions: Deputy Director of the Institute for Theology and Peace Hamburg and Visiting Lecturer at the Goethe-University Frankfurt. Frankfurt is correct.

1. To be sure, many texts have recently spoken of virtue ethics or the necessity of virtue, but the concept of virtue often shimmers in various nuances.³ The hope placed in the (ethics of) virtue feeds above all on the *aporiae* into which deontological and teleological approaches seem to have fallen.⁴ Virtues ethics then appears on the horizon as a promising third way that could lead out of the normative dilemma. Aristotle’s moral philosophy—especially his *Nicomachean Ethics*—still gives the most illuminating answer to the meaning of the concept of virtue and shows that virtue is not beyond deontological and teleological reasoning.

Aristotle’s concept of virtue can only be reconstructed on the basis of his moral psychology. With regard to the soul, he distinguishes between a rational and a non-rational (a-rational, not irrational) part of the soul. The non-rational part of the soul includes the vegetative parts, such as the causes of nourishment and growth. Their virtues take place without organized action—for example, in sleep.⁵ They are not relevant to ethics. Another part of this portion of the soul, while separate from reason, is connected with reason through its struggle with it (“clashing and struggling”⁶). But because, in a controlled person, this portion permits itself to be governed by reason, it seems to partake in reason. In the rational portion of the soul, a distinction is therefore possible between reason as such and the appetitive faculty (*orektikon*) that can follow reason. “The virtue of the rational portion of the soul we call dianoetic virtue ... the virtue of the appetitive is ethical virtue, that is, virtue of character.”⁷

Virtue, then, is of two sorts, virtue of thought and virtue of character. Virtue of thought arises and grows mostly from teaching; that is why it needs experience and time. Virtue of character [i.e., of *ethos*] results from habit [*ethos*].⁸

Virtues of character are thus practiced and need practice to be developed and sustained. Virtues are not affects, for they are not based on decisions. Ethical virtues are attitudes (*hexeis*), specifically those “on the basis of which we act correctly towards the affects.”⁹

In the interpretation of virtue that I try to apply here, it is practical judgment (*phronesis*), not the virtues, that tells us about the morally required action.¹⁰ Simply relying on virtues is thus not enough to help us escape actual or apparent normative dilemmas. Hercules at the crossroads is not helped with an imperative of the “Be brave!” or “Be prudent!” type. He needs criteria for deciding which road to take. These criteria are communicable and can be discussed in an inter-subjective way. When the left road proves to be the better one, but Hercules is afraid to take it, his ethical virtue is shown in the attitude he takes towards his fear.

Thus virtues ensure that people can first of all make careful deliberations (for the dianoetic virtues), and second of all actually act on those thoughts (ethical virtues). Cicero’s *De officiis*—which is based on the middle-Stoic account of Panaitios, which in turn is indebted to Peripatetic thinking—says,

Since, therefore, there can be no doubt on this point, that man is the source of both the greatest help and the greatest harm to man, I set it down as the peculiar function of virtue to win the hearts of men and to attach them to one’s own service.¹¹

Virtue links the heart with correct actions. In this sense, virtues are quite central to the motivation for correct behavior.¹²

2. We have already said that virtues of character require practice. The task of politics, according to Aristotle, is to create laws in such a way that virtuous practice is the result. But we must also address other important aspects of his political philosophy. The following reflections are based on ideas from the early conception of the ideal state in Book 7 of *Politics*.¹³ Like Plato, Aristotle parallels the situations of individual human beings and the *polis*:

Life as a whole is divided into business and leisure, and war and peace, and our actions are aimed some of them at things necessary and useful, others at things noble.¹⁴

The life of an individual human being is devoted to either business or leisure, while the “life” of the state is devoted to either war or peace. But business and leisure, war and peace, are not of equal value: the purpose of the less-good is the better.

War must be for the sake of peace, business for the sake of leisure, things necessary and useful for the purpose of things noble.¹⁵

Just as we work to create the necessary goods for leisure, the *polis* sometimes makes war in order to restore peace. War is not an end in itself, just as work is not an end in itself. The virtues practiced and carried out in war are only morally valuable if they are maintained in peacetime as well. The state form of the Lacedaemonians provides a telling example of a political community that focused entirely on war-making, and thus neglected the proper *telos* of a *polis*. War cannot be a stable condition. A *polis* focused on war falls to ruin once war ceases (1334a). The lawmakers in such a city have failed to train people for leisure, or for peace.¹⁶

Aristotle’s realism takes it as a given that a polis will always need to deal with external enemies. If it wishes to survive, it must be prepared to defend itself. The exercise of virtue in the process can be valuable for peace:

Courage and fortitude are needed for business, love of wisdom for leisure, temperance and justice for both seasons, and more especially when men are at peace and have leisure; for war compels men to be just and temperate, whereas the enjoyment of prosperity and peaceful leisure tend to make them insolent.¹⁷

War reduces the resources of a *polis*. Thus it essentially demands, from the outside, limitations on the actors that virtue alone must ensure in peacetime. For Aristotle, a life that urges constant expansion has missed its purpose. This is true both for the life of the individual, who sacrifices

her or his self-sufficiency, and for the political life of a city, which loses its autarky. But it would nevertheless be absurd to refrain from the use of artificial aids in order to practice virtue; this is shown by an example that can *mutatis mutandis* be applied to our current challenges, which involve the ways in which we may wage armed conflicts:

Aristotle tells of those in the public discourse who offered the opinion that cities should, ideally, refrain from building fortifications, for without this artificial means of keeping the opponent in check, the necessary wartime virtues could be better practiced and carried out:

As regards walls, those who aver that cities which pretend to valour should not have them hold too old-fashioned a view—and that though they see that the cities that indulge in that form of vanity are refuted by experience. It is true that against an evenly matched foe and one little superior in numbers it is not honourable to try to secure oneself by the strength of one's fortifications; but as it may possibly happen that the superior numbers of the attackers may be too much for the human valour of a small force, if the city is to survive and not to suffer disaster or insult, the securest fortification of walls must be deemed to be the most warlike, particularly in view of the inventions that have now been made in the direction of precision with missiles and artillery for sieges.¹⁸

Using this example, Aristotle shows that it is pointless to artificially refrain from taking possible security measures in order to give the formation of virtue a boost. Purposely refusing to use available technologies, in order to exhibit one's talents under the harsh conditions thus intentionally created, is hardly itself virtuous, for it neglects the importance of rational moral judgment. After all, the opponent also benefits from technological progress. Whether it is right to surround a city with walls or not is a question that must be determined by prudence, taking account of general criteria of ethical behavior. The correct answer is not found by making reality an artificial playground in which to practice virtue.

3. The relationship between virtue and technology thus occupied the philosophy of antiquity in quite similar fashion as it does us today, when we discuss, for example, the use of armed drones and other

military robotics.¹⁹ When in the following we consider urgent ethical questions involving new developments in military technology, we will see that, as with Aristotle's example of city walls, one of the problems with technological innovation is the attitudes and values accompanying its use. In developing the commonalities between the questions that plagued Aristotle and our own, but also in establishing ethically relevant distinctions (without claiming to do this with any completeness), it will hopefully become clear that one fundamental feature of our moral consciousness—consciousness as awareness of moral facts—expressed with the word “virtue,” remains relevant.

4. Advocates of armed drones are to a certain extent correct when they argue that we cannot simply abandon unmanned aerial combat vehicles (UACVs) because combat would be more chivalrous or virtuous without them. Given my definition of virtues, we cannot claim that not using armed drones would be better for virtue's sake as long as we do not know whether the use of armed drones is right. If it is right (or even necessary) to use armed drones, not using them would not be virtuous and would not promote virtue. But if it is wrong to use drones, then while it may not be virtuous to use them, the reason it is wrong to use them is not because of this fact, but rather because of the fact that it is wrong to use them. It is irrelevant which virtue we wish to focus on in particular, be it bravery or some notion of “chivalry” as a virtue.

Is it right to use military robotics, and if so, how? The answer depends to some extent on an overarching horizon of reflection. The horizon determines which arguments are even taken into account and can gain acceptance. In the following I shall argue that we must indeed, first of all, expand our horizons beyond an oversimplified consequentialist model of moral thinking, and second, a moral anthropology that takes the theory of virtue seriously can prove successful in this expanded model.

5. Frequently, advocates of armed drones argue that providing armed forces with armed drones enhances the protection of their own soldiers (force protection), which is legitimate and possibly even necessary, especially when one's own soldiers are viewed as just combatants.²⁰ Additionally, they will argue that using drones better protects civilians, lessening the danger that they will become collateral damage through

the use of precise weapons technology. However right, both contentions are not sufficient for a moral assessment of the use of drones and military robotics.

The same line of argument—namely focusing on protection—is also taken by drone opponents: They point to the elimination of spatial and temporal limits in armed conflicts through the use of armed drones, the incapacitation of International Humanitarian Law (which endangers those persons legally protected), and psychological trauma among drone pilots and residents of areas monitored by drone overflight.²¹ It is also sometimes said that drones create fertile soil for more terrorism, so that, at the end of the day, instead of using them to fight terrorism, we are setting in motion a cycle of escalation.²² Opponents also often invoke the slippery slope leading from present-day drone technology to autonomous weapons systems.²³

6. Technology can be used in different ways, and drone technology can be used differently, e.g., defensively and offensively. Aristotle's example of city fortifications does not yield an argument for armed drones since there is a crucial difference: city walls are primarily defensive. They prevent the opponent from entering one's city, but are not themselves instruments to fight the opponent.

This distinction between defensive and offensive action is crucial. Armed drones are not fundamentally defensive. For unarmed UAVs, the situation is different; they are used for reconnaissance and thus leave open the response to perceived dangers. By means of weaponized drones, however, people are attacked with deadly force.²⁴ This is the starting point for judging the use of armed drones.

7. In the following, I therefore start with the presumption that morality of war has to be based on morality of defensive force. I thereby disregard other possible justifications for the use of force (such as retribution).²⁵ Defensive force is subject to strict limits. The criterion of necessity appears to be the most relevant. If defense is not necessary, it is not permitted. Necessity in this context denotes a proportionality relation²⁶: There is a sensible one-term-usage of the predicate "is necessary," e.g., when we talk about "morally necessary" as "morally required."²⁷ But in practical situations it is rarely the case that " φ is necessary" (φ being an action) is a meaningful proposition. It should

read “ φ is necessary for y .” (y being a state of affairs or another action). In most cases, the relationship needs to be expanded to “ φ is necessary for y under the condition z .” Let us take an example: “The killing of the hostage-taker is necessary *on condition that* the hostage will not be wounded in an attack.” If one were prepared to risk the life of the hostage, one might risk a police action aimed at arresting the hostage-taker. Only the additional condition makes the justification of necessity valid.

In reality, there is always a wealth of such additional conditions. In the case of the hostage-taker, it certainly plays a role that he can be seen as morally responsible for the situation of threat, while the hostage must be considered innocent in the sense that she bears no responsibility for the situation. But responsibility itself is not an absolute quantity; it exists in degrees, and even the hostage-taker may be partly excused.

Proportionality is not merely the weighing of good and bad consequences of an action, but the weighing of various relations. A proportionality relation exists between two relationships. If Adam makes 30 dollars for 3 h of a certain kind of work, and Bernard makes 300 dollars for five hours of the same kind of work, whereas it seems to be fair that Bernard gets more, Bernard is being disproportionately highly paid, however (or Adam disproportionately low paid). The question of proportionality is always a question of how relations behave towards each other: x/y versus w/z . Necessity is a proportionality relationship in which one factor can be simply fixed. For example, you may know that Adam gets 30 dollars for 3 h of work and wonder how many hours *is it necessary* for you to get 100 dollars. It is fixed that you want to get 100 bucks.

In the same line, you may say that a threat (which may be gradual) must be completely eliminated. The extent of the threat is then no longer a variable, x , y , or z , but a constant. One problem with threats is that in reality they are no constants but highly dependent on perceptions and subjective factors. Another rather practical problem is that mostly far more than four variables are involved, which makes it even more complicated to assess proportionality and necessity. In our example, it is possible that Adam and Bernard are not actually doing exactly the same work, but that Bernard’s is somewhat more demanding

(though perhaps not demanding enough to justify the much higher wage).

When we talk about necessary actions, we usually take a lot of additional factors for granted. So, I can single out only two aspects that seem to be key:

(1) Defensive use of force is generally only necessary if the threat is *imminent*—that is, it could not be stopped at any later point in the chain of causality.²⁸ But due to their remote operation, armed drones ensure that the threat from the opponent will generally not become an imminent threat. Armed drones are a means to come closer to the adversary with respect to one's capability of attacking him or her, but they are a means of withdrawal with respect of the adversary's capacity of attacking the user of the drone.²⁹ In such cases, it is difficult to see how the use of force can be justified on the basis of legitimate self-defense, except in the case of imminent third-party defense.

(2) Killing the attacker is never necessary to repel the threat from the attacker. This point may seem sophistical, but Thomas Aquinas correctly emphasized that killing must be the unintentional collateral consequence of defensive action (S. th. IIa IIae, q. 64, art. 7³⁰). The intended result of the act is saving the threatened good, for example, one's own life. Targeted killings defined by the goal of killing must thus be ruled out as legitimate defensive uses of force.³¹

This second point could even be put in an alternative way without referring to the concept of intention: If we hold that the point of self-defense is to save one's life and not to kill the attacker, then moral praise and moral blame depend on whether one's life is saved irrespective of whether the attacker got killed or not.³² But especially when self-defense is directed towards peace, the destiny of the attacker(s) is not irrelevant. "Intention" is a challenging concept, and it is impossible to illuminate it at this place. As there is an aspect of attitude in intentions, we are allowed to stress the importance of attitude in the moral assessment of action, especially actions of killing. This may permit us to point out that taking the correct attitude towards wounding and possibly killing an opponent is itself a question of virtues of character. Only preventing an evil—e.g., saving threatened lives, health, etc—can be the incentive for defensive action, and not an intention to kill or wound.

The appetitive faculty must be oriented such that only a defensive effect—that is, repelling a threat—is aimed at, and not wounding or killing the attacker.

8. Aquinas' reflections led to the development of the problematic "doctrine of double effect," which itself cannot be discussed at this place.³³ It is morally plausible to distinguish intended purposes from unintended ones in judging actions. For unintended consequences, we must also distinguish between those that are foreseeable at the time of the action and those that occur "unexpectedly."³⁴ At times, this distinction is dismissed with the argument that it makes no difference to the victims of the defensive force whether the harm was intended, unintended or even unexpected. However, this claim seems to me to ignore most people's moral sense. It makes a difference whether somebody steps on our feet by accident or purposefully. Of course, a person killed in forceful action cannot make any claims, but in case of injury, it does make a difference to us whether we were intentionally targeted or whether the actor did not desire this outcome. Admittedly, when it comes to attitudes there is a lot of potential for error. However, generally we recognize very well the difference. Not only the actors, but also those affected by the actions or who judge the actions from the outside, possess a moral sense that allows them to understand the significance of attitudes towards good behavior. Attitudes are discernible and therefore expressive in a way,³⁵ which again makes them "communicative." Given our assumption that "negative" peace is not sufficient (it is *concordia* at best, S.Th. IIa IIae, q. 29; the "peace of a church-yard,"³⁶) and *pax* requires a minimum of mutual beneficence, we have to allow for the fact that attitudes play a major role for the goal of (positive) peace.

9. This has implications for the use of technology in forceful actions. When soldiers today fully utilize their technological options, they can protect themselves almost completely. There would be no fundamental normative problem with this protection if it did not in many cases mean that other groups bear a greater burden because of the protection soldiers provide and grant themselves.³⁷ As Michael Walzer has frequently stressed, based on their professional role, soldiers should take risks—though it is hard to determine how much risk this might mean in each case and context—to protect civilians from grave dangers, and

they should also take certain risks in order not to expose their opponents to maximum force. (“Maximum” force can never be justified. Force has to be “narrowly” proportionate, i.e., adapted to the adversary’s liability or—for those who do not accept a liability-conception of permissible harm—necessary.) Here, too, the amount is contestable for sure. From the perspective of a liability-conception, it is easiest to create ratios so that one may say that one must be willing to take more risks in fighting child soldiers than in fighting a dictator’s bodyguards. The fundamental claim for our purpose is: In normative arrays in which there is no “absolute” solution to the problem of risk distribution, virtue requires that even in situations of defense we not absolve ourselves by providing the most pleasant norm for our own selves, but that we align our normative awareness with superordinate goals, such as achieving peace. Acting in the morally required way as a soldier sometimes implies the preparedness to look a deadly risk in the eye, which is (the virtue of) bravery. The brave act itself is intrinsically valuable.

10. This virtue of bravery or fortitude gains particular importance when we take account of the aforementioned expressive and communicative aspects of virtuous behavior. Military force can only be permissible, if at all, if it can lead to conditions that no longer require the use of military force. As Aristotle explained, “War is for the sake of peace.”³⁸ Establishing as well as maintaining peace is a social practice. Peace cannot be reduced to military victory. Without entirely defining peace here,³⁹ it may again be emphasized that self-sufficient, enduring, “positive” peace needs positive communication and communicative acts. The use of weapons can also be a communicative act. However, in most cases, the use of weapons expresses pursuit of power and aggression. Therefore, the harm caused to prospects for peace by the use of weapons must generally be judged as equally or even more serious than the harm to rights such as to life and limb brought about by the immediate destruction they cause. Sometimes, opponents do not condemn their opponents, after all, for fighting against them, but for how they fight. But there is also the chance, however small, that the use of weapons can have a peace-promoting function—not only by upholding rights, but also through the ethical obligations that an arms-bearer who fights virtuously, soldier or police officer, expresses and thus communicates.

A virtuously fighting soldier gains the respect even of his opponents—at least those fighters who are themselves value-oriented and able to recognize (however imperfectly) the inner moral standing of their adversaries.⁴⁰ Moral beings are able to recognize other moral beings.⁴¹ They are able to do so, because they know about themselves.⁴² I know what it is to be honest or dishonest for me because of my (inclination to) dishonesty. In old language: My soul is in an imperfect state. “Angels”—the icons of moral excellence, but never tempted—are not virtuous.

Virtuous warfare can have a reconciliatory effect on the opponent *ex post*, in the best cases. We say “in the best cases” so as not to create a misunderstanding that use of force could be an ideal way of making peace, or might in some way be an option equivalent to other methods of peacemaking. On the contrary, the risk that use of force will further harden positions and worsen conflict is enormous. It is only to say that when war cannot be avoided (and by far most wars can be avoided), it should at least be fought in a virtuous way. Cicero was thus right to generally rank civil over military virtues,⁴³ and William James was also right to insist that human beings’ conflict-oriented efforts should be sublimated—to use an expression from psychoanalysis—into peaceful ambitions.⁴⁴ We should certainly not neglect the fact that in the end very often different concepts of positive peace are the very reason for warfare.⁴⁵ It is easier to agree on the features of negative peace: absence of physical violence, or satisfaction of some vital needs. It is much harder to agree on the features of positive peace like a common legal framework and shared values.

11. We should approach our reflections from the other end as well: Without virtue in warfare, the prospects for peace are all the more likely to be frustrated by conflict. These reflections may be linked to the significance of “*exempla*” (as emphasized by Cicero) in practical philosophy and ethics: One who acts in a certain way is not only following a fundamental norm, but also demonstrating that he accepts as “true” the rationality model supporting the norm. This acceptance-as-truth proves its worth or stands its test in the mutual support between rational considerations and implementation that remains faithful to the norm. However, this “pragmatic” consideration, which is of great significance for pacifists in particular,⁴⁶ shows itself to be generally important,

including for soldiers. Acting in conformity with norms constitutes not only a statement about one's own compliance, but also an invitation: "Look, this behavior proves its worth because the rationality model proves its coherence through it." Virtuous behavior is based on a more complex moral psychology than simply an image of human beings as norm-following automatons, taking into account their rational capacity as well their appetitive faculties, and proves its worth in regard to a more coherent overall image of human coexistence.

12. A philosophical concept of positive peace must be formed by way of philosophical anthropology and dialogue, i.e., communication. Killing civilians as a punishment for guerilla warfare is communication as well. Responding to these killings by killing prisoners of warfare is—among other things—a communicative act. Killing and counter-killing may come up to a destructive "dialogue." Fortunately, there is constructive dialogue as well. Treating prisoners well, or renouncing revenge, acting virtuously, may constitute communicative acts that promote the prospect of peace. The use of technology is at least ambivalent, but often more on the destructive side. Increased use of technological instruments naturally improves prospects for victory, in the sense of overpowering the adversary, but it does not improve the prospects for a lasting "positive" peace. The use of technology bears within it an element of withdrawal. This withdrawal is all but total in the case of remote-controlled robotic weaponry. Nevertheless, the communicative effect of this withdrawal is to convey that the goals of military action are not worth risking life and limb.

Here, too, we must guard against misunderstanding: The issue here is not exposing soldiers willfully to increased risk—not even when one is aware that ethical virtues require practice and familiarity in order to be learned. But properly understood, it is in the interests of soldiers themselves (as promoters of peace) to be allowed to be expressive in their actions. Expression is only expression if it is perceptible. Metaphorically spoken: Military robotics does not recognize the individuals they attack as human beings. We might say that robots "see" their opponents only as machines, not as morally capable actors. We might even say (applying anthropomorphism again): Military robots perceive not only the opponent as a machine, but also their own operators. Usage of military

robotics is prone to “degrade” the users as well as those who are attacked by it.⁴⁷ We see this today in the use of armed drones. They can collect such large amounts of intelligence data that no single person can process it. Data processing itself is left to machines. Then, however, human operators have no other choice but to follow the machine’s suggestions in making decisions. As a result of this incapacitation, we surmise, in the long or short run, operators will neither be “in the loop” or “on the loop,” but will withdraw completely from the intelligence-effect relationship.

13. Virtues are not something added to human behavior as a pleasant and desirable addendum. In our interpretation, they are necessary as dianoetic virtues for recognizing the morally required action, and as ethical virtues they are necessary to the willingness to follow a norm even if virtuous behavior seems to place burdens upon the addressees of a moral requirement. Virtues are not skills, but—perceived from the outside—they are the expression of a person’s moral character. One who reveals himself morally in a certain way will challenge others to respond to him or her morally. One who deceives will lose trust. One who intentionally applies force but simultaneously distances him- or herself from his or her act of force will not be able to convey that he really cares about the goals of the force. Thus even for purely utilitarian reasons, it makes sense to insist on military virtues. Utilitarians need a goal to relate actions to it. If the goal cannot be thought of without virtues—as is the case with “positive” peace among human beings—then virtues are essential in actions leading to the goal. But utilitarian considerations hardly exhaust the significance of virtues—especially not in the case of armed force, which is one of the most serious ways human beings interact with each other.

Unfortunately, however, the question of peace is often avoided in the debate on just war. Most current debates about *ius in bello* thus attempt to avoid any moral-psychological or anthropological references. Often there are concepts of the human being that inform the deeper dimensions of conflict. Based on the possible plurality of concepts of the human being, there will probably always be conflicts, especially between religious interpretations of man and those who reject that dimension. But overcoming this plurality and accessing it through mutual

explanation and listening requires a great deal of virtue. Neither war nor peace can manage without virtues.

Notes

1. Virtues are not simply attitudes, which are factual, but rather dispositions to certain actions. A strictly Cartesian dualism of “inner” mind and “outer” physical reality is rejected in this paper.
2. Nonetheless, I do not intend to offer a virtue-ethics-account in the sense that virtues and character traits are axiologically superior to good actions. In this sense, my approach is “virtue theory” rather than “virtue ethics” (cf. Hursthouse 2013), but I do not think that virtues are “nice to have.” They are indispensable for a full depiction of our moral reality.
3. Think only about Niccolò Machiavelli’s concept of “virtù,” which is a more technical skill for maintenance of power.
4. Cf. Stocker (1976, 454).
5. We can think about the digestive system, which can be in better or worse condition. But the virtue of the digestive system is ethically irrelevant. The term that is usually translated with “virtue” (Cicero’s translation is *virtus*) is not only used in the moral sense. Initially it only means that something is in a good condition.
6. Aristotle (1999), EN 1, 13, 1102b19.
7. Ricken (2015, 36f).
8. Aristotle (1999), EN II, 1, 1103a15ff.
9. Ricken (2015, 38).
10. For the concept of *phronesis* cf. Schröer (2016), esp. 51/2.
11. Cicero (1913), book II, 17.
12. This shows clearly that virtues are not simply skills. One might be able to play the violin but not be motivated to do so. But one cannot be virtuous in an action that requires virtue without actually showing virtue. Cf. Müller (2018), and Müller (2011), esp. 2250. Referring to the importance of virtue for the motivation of an action actually means referring to a modified conception of virtue than Aristotle’s, which comes closer to the Stoic conception with its primacy of the norm. Cf. again Schröer (2016), 52–56.
13. Cf. Kraut (2002), esp. 192–239.

14. Aristotle (1932), book VII, 13, 1333a31–33.
15. Aristotle (1932), book VII, 13, 1333a35–37. Cf. Plato, *Nomoi* 628c-e.
16. On Aristotle's philosophy of war and peace cf. Ricken (2017).
17. Aristotle (1932), book VII, 13, 1334a23-29.
18. Aristotle (1932), book VII, 10, 1330b33-1331a5; cf. Plato, *Nomoi* 778e.
19. I leave out other important aspects like procurement and design of weapons.
20. This is the standard argument in favour of armed drones in Germany. The acquisition of armed drones is for bridging a "protection gap." A parliamentary statement of the German minister of defence is available at Manthey (2014).
21. Cf. International Human Rights and Conflict Resolution Clinic, and Global Justice Clinic (2012).
22. Against this are the arguments by Patrick B. Johnston and Anoop K. Sarbahi (2016) that terroristic activities could at least be reduced by the use of drones on a short- and midterm level.
23. But even consequentialist opponents of autonomous weapon systems can hardly explain just why these instruments have to be excluded. Good objectives could also be reached through their use.
24. One has to think separately about the destruction of objects (especially where protected objects of cultural value are concerned), but the following arguments relate to the killing of human beings. In addition, the question of "pure" surveillance drones is relevant on an ethical level. Surveillance is usually connected to a regime of control.
25. One may rightly question whether one should not speak of "law upholding violence" since the question of what can be an object of legitimate defence first has to be solved through the law: Is there an original possession of one's own body or one's own life or does there have to be a social construction of a right to possession? This is not the place to discuss this difficulty. What has to be said here, though, is that in the debate between the "traditional account" and the "revisionist account" of just war thinking, I follow the "revisionists" in so far that I oppose a moral special area for military violence.
26. Jeff McMahan (2014, 2) argues that "the difference between necessity and proportionality is in the different comparisons they require. The determination of whether an act of defence is necessary as a means of avoiding a threatened harm requires comparisons between is expected consequences and those of *alternative means* of achieving the same

defensive aim. ... Whereas necessity requires comparisons between an act of defence and alternative means of avoiding a threatened harm, proportionality requires a comparison between an act of defence and *doing nothing* to prevent the threatened harm.” But “doing nothing” could be the “alternative means.” It may not prevent the threatened harm, but it may prevent much harm that come with “necessary” defence. Necessity takes it as given that the threatened harm has to be prevented. So it eliminates one variable in the proportionality calculus but it is still a type of proportionality.

27. In semantic or ontological contexts “*x* is necessary” might be sustainable as well.
28. The question of what is understood by “immediacy” goes back to the Middle Ages: Raymond of Penafort (died 1275) and his commentator William of Rennes discussed it under the term “in continenti”: “For by law it is permitted for anyone to repel force with force, immediately (*in continenti*) and with the moderation of blameless defense“ (Summa Raymundi, cited in Reichberg et al. 2006, 139).
29. Cf. Koch (2016).
30. Also available in Reichberg et al. (2006, 190). Cf. Finnis (1998), 285f.; Biggar (2013); Kennedy (2014), and Capizzi (2015, 169).
31. Cf. for the definition of “targeted killing”: Melzer (2008, 3–5).
32. I am grateful to Florian Demont for this point (among many other important hints).
33. A doctrine takes on the status of a quasi-legal norm, and thus even in the ex-ante considerations of the actors, a standard is applied that can at most be helpful to an ex-post judgment.
34. Consequences that are foreseeable but have not been foreseen because of negligence while investigating do not count as unexpected consequences in this sense.
35. I find this notion of “expressive-ness” in Brian Orend’s depiction of Kant’s ideas about *ius in bello*. Orend thinks that for Kant “Jus in bello rules are not just ‘external,’ but ‘internal,’ too.” This rule “is expressive of any kind of internal moral corruption” (Orend 2015, 139).
36. Friedrich Schiller: Don Carlos, Act III, Scene X. Taken from: Follen (1837, 92).
37. For example, Thomas More a mastermind of targeted killing—proposes that the Utopians encourage sedition within the enemy in order to escape fighting themselves. If sedition does not work, Utopians

- should rely on mercenaries, especially the Zapoletes (Utopia, bk. 2; cf. Reichberg et al. 2006, 262–263). But if they do have to fight, “their courage is proud and contemptuous of defeat.”
38. Politics, book VII, 14, 1333a35; own translation, BK.
 39. For a modern approach on the distinction between “positive” and “negative” peace cf. Galtung (2012).
 40. A moral character requires (among other things) “the ability, to comprehend the ‘inner life’ of others, both on the intellectual and the emotional level” (Frankena 1963).
 41. However a central assumption for my case, I am unable to explain this thesis here.
 42. Some people may object that virtues are related to specific cultures and therefore unable to be the basis of understanding in wars. Conceded, there may be cases where the interpretation of values differs in this extreme way. But in most cases it does not. Cf. Nussbaum (1993).
 43. Cicero (1913).
 44. James (1966).
 45. Cf. Spaemann (2001).
 46. Cf. Hauerwas (1985).
 47. In this lies also the calamity with robots, which are supposed to take care of persons in need of care. They only meet the other person superficially like a human caretaker. But the inner cavity is still felt by the patients. And even if the robot was that perfect that this would not be felt, this would mean just the more an abasement for the patient.

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13

Is Cyberpeace Possible?

Markus Christen and Endre Bangerter

Introduction

In the literature on cyberwar, one finds titles like “Cyber War Will Take Place!”¹ or “The Myth of Cyberwar.”² They are exemplars of a heated debate about a new battlefield enabled by information and communication technology (ICT). This debate is controversial and authors regularly note a lack of precision in key terminology.³ In addition, it involves powerful stakeholders and substantial financial interests from state actors like the military or companies active in ICT.⁴ The key observation is, however, that the debate on cyberwar is pushed by the transformational forces of the digitalization of society, creating both new opportunities and vulnerabilities.⁵ The notion

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of “cyberwar” often serves as an umbrella term for almost all wrongful acts in cyberspace including cybervandalism, cybercrime, espionage through hacking, or cyberterrorism.⁶ It even involves the narrative of mass destruction—an “Electronic Pearl Harbor” so to speak, a deadly strike against vital infrastructures of modern countries. Such a narrative framework can be used to justify extreme regulatory measures that diminish privacy and other liberties, or justify major defense contracts for the private computer security sector.⁷

Given these observations, the cyberwar discussion cannot be decoupled from the dependence of modern societies on information technology, where processing of information and even decision-making to some degree is increasingly outsourced to digital technology. Nobody denies that almost every economic sector has been deeply transformed through the use of computers, the Internet, digital sensor technology and robotic applications. Those changes will affect all social spheres of human life to some degree—meaning that ICT involves a momentum of transgression, creates new asymmetries and supports (geographic) unboundedness.

The transgressive momentum results from the fact that digitalizing information processing in all spheres of life compromises or relativizes the boundaries of social spheres (family and friendship, work, politics, education, commercial activity and production, health care, scientific research, etc.) around which human beings organize their social, institutional, legal and moral world. Due to the enhanced reproducibility and transmissibility of data, the traditional separation of those social spheres, each governed by context-relative norms, policies and rules, are threatened when social networks become banks, friends become marketers, or shopkeepers become intelligence officers. This is problematic, as the human environment is structured in social spheres that provide important reference points for human beings. They expect to be treated differently in a family context compared to, for example, in a governmental organization. They accept inequality in treatment in the economic sphere that they would not accept in the health or legal sphere. The interpretation of moral values such as justice or autonomy, and the rules related to these values, differ along these social spheres. For example, if a person discloses personal information in the health sphere for research

purposes, the moral foundation of this choice is to help other people. But if this information is used in a different sphere such as the economic sphere, to tailor offer conditions or to maximize profit of an insurance company, the original intention to disclose this information and thus its contextual integrity is violated.⁸ In addition, digitalization in particular in the economic sector often involves asymmetry in the sense that large differences in economic and technological power of the involved players exist—nevertheless, also small players are able to tackle the competition against large players (for example, the erosion of the music industry starting with file-share services like Napster). Finally, digitalization allows for actions unconstrained by geographical borders, which is exemplified by cross-border activities of hacker groups like Anonymous.

What we consider interesting in that respect is the observation that war has similar effects on affected societies with respect to its transgressive nature, asymmetry and unboundedness: First, war affects all social spheres to some degree and involves the potential to overrule the contextualized moral foundation of a social sphere (e.g., shift towards a state-directed economy to allocate resources). Second, modern wars are often asymmetric, i.e., there are significant differences with respect to technological and financial means between the combatant parties. Nevertheless, also a combatant with limited resources is able to resist a powerful force to a substantial degree. Finally, military conflicts can take place in a large and highly diverse array of places.⁹ Thus, the disruptive effects of war appear not only in the vicinity of what, conventionally, one would conceive of as likely battle lines.

The way some authors describe cyberwar is in line with these changing notions of war, as we will outline in Sect. “[Rise of the Cyberwar Discussion](#)”. We therefore suggest that cyberwar not only is enabled through increasing digitalization, but also stands—at least for some exponents in the cyberwar debate—exemplary for an understanding of war that shares some features of the effect of digitalization on the society as a whole. In what follows, we want to argue against the idea that cyberwar engenders radical changes, which concern the very way in which we understand war. Rather, we suggest that the notion of cyberwar involves a definitional vagueness that is hard to avoid and—at the same time—increases the risk of framing all malicious activity

in cyberspace as potentially war-related. To countervail this tendency, we propose increasing the level of cybersecurity in all domains of the digital society that involve certain structural features, such as decreasing complexity and counteracting (to some degree) interoperability of systems. These structural features align with some core demands of those advocating for cyberpeace.

Our chapter is structured as follows: In Sect. “[The Insecure Design of Cyberspace](#)”, we first outline the insecure design of cyberspace and digital technology as a starting point of our inquiry. In Sect. “[Rise of the Cyberwar Discussion](#)”, we provide a general description on what people consider examples of cyberwar. In Sect. “[Problems of Defining Cyberwar](#)”, we outline terminological problems associated with the current definition of cyberwar. In Sect. “[Cyberpeace as a System Property](#)”, we argue that the definitional vagueness of the notion of cyberwar is hard to avoid and that a shift of the focus on a minimal level of cybersecurity is required—a standpoint that has been emphasized by those promoting cyberpeace, which includes the principle of prioritizing comprehensive self-defense over offense.

The Insecure Design of Cyberspace

We begin our contribution with a review of the technological aspects underlying the cyberwar discussion. We first discuss the fundamental problems that are widely used for explaining why it is seemingly hard to defend IT systems. The following four points are of particular importance:

- *Asymmetry between defense and offense:* The argument is that IT administrators need to be able to defend every single device (e.g., server, end-user laptop, router, printer, etc.) in their network, whereas it is sufficient for the attacker to subvert a single system to access and subvert the network. This is an interesting reversal compared to conventional warfare, where the attacker usually was disadvantaged when striking against fortified defense lines. Additionally, to this asymmetry in the technical domain, there is an asymmetry favoring attackers in the human domain as well. The observation here is that relatively

few skilled attackers are sufficient to carry out an intrusion, whereas it requires far more skilled defenders to protect the networks of the abundant companies and organizations that are potential targets. There are simply not enough security specialists to secure the current IT infrastructures. This is especially a problem for small and middle-sized enterprises for which it is hard to attract specialists and/or who cannot afford appropriate cybersecurity.

- *Complexity of ICT systems:* Current ICT infrastructures are typically built upon numerous hardware and software components, which are in turn connected by various protocols. In fact, typically layers upon layers of software components are deployed on current infrastructures. As a result, it is impossible to deeply understand our current—possibly overly complex—ICT infrastructure. The cybersecurity community unanimously believes that one needs to deeply understand a system to effectively defend it; as a consequence, complex IT infrastructures are very hard to defend.
- *Software is inherently insecure today:* Software is known to contain programming errors (so-called bugs). Some of these bugs are security relevant. These are so-called software *vulnerabilities*. A software vulnerability, for instance in a PDF reader, allows an attacker to execute malicious code on the victim's machine by letting the victim open an accordingly fabricated PDF document containing a so-called *exploit* for the corresponding vulnerability. Software exploits play an important role in the initial compromise of a victim's machine in many attacks. One does not know how to write bug- and vulnerability free, and thus secure, software today.
- *Lack of attribution and consequences for the attacker:* The goal of attribution is to identify the attacker (group or individual) responsible for an attack. Identification can have various meanings, e.g., identification of an individual hacker for the purpose of legal prosecution, or the association of a state-level attacker with a country. If the attacker is careful, attribution is difficult and time consuming, and sometimes impossible. As a consequence, hacktivists, cybercriminals and similar actors only face a low risk to be apprehended and prosecuted, and deterrence against cyberattacks is low. Moreover, it makes it difficult to differentiate between state and non-state attackers.

Therefore, the distinction between state and non-state-level attackers is often made based on the sophistication of an attack. This can, however, be a fallacy, since if a victim's security stance is weak, state-level attackers will not have to resort to sophisticated attack techniques, but rather commonly used techniques that are equally accessible to non-state actors.

It is unlikely that any of these problems will be fundamentally and thoroughly solved in the near future. Even worse, emerging technical trends such as the Internet of Things¹⁰ will make security problems even worse, since they further increase the aspects of asymmetry and complexity mentioned previously. In a nutshell, all these observations seem thus to suggest that ICT systems are inherently insecure and that the current state of having abundant attacks and breaches is a direct consequence of this inherent insecurity.

While the core problems sketched here are rarely disputed, there is criticism concerning the somewhat fatalist conclusions being drawn from these problems as well as on the overall assessment of the gravity of the problem. Bejtlich,¹¹ for instance, points out that there are several myths surrounding the nature of cyberattacks. One is that cyberattacks are “fast,” that is, once the attacker manages to breach the network he or she will quickly carry out the core actions of the attack, such as information exfiltration, etc. The other is that “defense is dominated by the offense” and that thus defense is a hopeless endeavor (this corresponds to apparent advantages of an attacker based on the asymmetric relation between attack and defense, as discussed earlier). Bejtlich argues that neither is true. In fact, advanced attackers typically operate slowly over periods of weeks or months. This allows them to avoid triggering obvious intrusion alarms by being too noisy, on the one hand, and to carefully explore the victim's network, on the other. He also points out that defense is not hopeless. He cites the attack on the New York Times,¹² whose network was successfully infiltrated by allegedly Chinese attackers who, however, did not manage to get hold of truly critical data. This example illustrates that breaches are not just black or white and that one may experience a loss of security in parts of the network where relatively insensitive data is processed, whereas

critical data can be protected. This observation is in line with best practices, which suggest to compartmentalize networks and data corresponding to their importance. It seems to be the case, however, that many companies and organizations do not yet follow such and other best practices (e.g., security monitoring).¹³

Anderson et al. (2013) state in their study on the costs of cybercrime that the problem of cybercrime attacks is overstated, typically by agents such as vendors and governmental security organizations whose revenue or even justification of existence is based on overestimating the size of the problem—a similar observation to that made by critics of the current cyberwar discussion.

In summary, we believe that getting cybersecurity right is a difficult problem and that there are indeed substantial attacks happening. However, it seems that many victims have not yet reached the state of the art in securing their networks, which in turn facilitates attacks by non-state-level and state-level actors alike. It is clear that attacks by sufficiently skilled and funded actors are under such circumstances very likely to succeed.

Rise of the Cyberwar Discussion

The insecure design of the current ICT infrastructure outlined in the previous section provides the basis of the contemporary cyberwar debate. Although there is no agreement among experts as to which types of cyber incidents count as examples of “cyberwar,” some events triggered the debate to a substantial degree—in particular a concentration of events around the years 2007 to 2009. Those include the intrusion into government networks of England, France and Germany (allegedly by the People’s Republic of China), an Israeli airstrike against a nuclear reactor in Syria that presumably followed a hack into the air defense system of Syria, or coordinated attacks against the South Korean and US governments and business websites by unknown attackers (North Korea has been suspected).¹⁴

Of particular relevance for the rise of the cyberwar discussion, however, were the following three events. In April and May 2007,

Estonia—a country that pushed digitalization to a large extent—suffered from a series of Distributed Denial of Service (DDoS) attacks first against government agencies, and then against private sites and servers in the aftermath of the removal of a communist monument from a park in Tallinn. Those attacks succeeded in forcing the government and the largest banks offline for brief periods.¹⁵

One year later, cyberattacks occurred in Georgia directly coordinated with a physical land, sea and air attack from Russian forces that were supporting separatists in South Ossetia—an autonomous region of Georgia that strived for independence since 1990. Again, DDoS as well as other means were used against government websites, financial and educational institutions, business associations and news media websites including the BBC and CNN—a preparatory cyberattack that may have aided the success of the conventional intervention and occupation.¹⁶ It's important to note that in neither of these cases (Estonia and Georgia) did the cyber strategy address, alter or otherwise remedy or resolve the underlying political conflict.¹⁷

Finally, starting in 2009, Stuxnet, a cyber-worm, caused damage to centrifuges of Iran's nuclear reactors. The damage was done exclusively to a cascade of centrifuges, illegally obtained and operated in a highly protected site at Natanz, Iran, in explicit violation of the nuclear non-proliferation treaty. Stuxnet—later unofficially disclosed as an US and Israeli operation—was considered to be an example of an “ethical” cyberweapon¹⁸ because its creators had taken pains in designing it to target only Iranian nuclear processing facilities; yet it had spread far beyond intended targets. Although its damage was highly constrained, Stuxnet's quick broad infection was noticed and required upgrades to antivirus software worldwide, incurring a cost to everyone. The worm also provided excellent ideas for new exploits that are already being used, another cost to everyone¹⁹—all this shows that even careful design to contain the effect of a cyberweapon leads to collateral damage due to the highly interconnected nature of the ICT infrastructure.

Through these examples, cyberwar has been elevated by some authors from a barely mentioned security concern to one of the greatest military dangers in just a few short years. The cyberattacks in, for example, Estonia were certainly not the first of their kind,²⁰ and their effects on

Estonia’s critical information infrastructure were neither serious nor long lasting. Yet the 2007 events in Tallinn “fired the imagination,” culminating in opening the *NATO Cooperative Cyber Defense Centre of Excellence* in Tallinn on 14 May 2008.²¹ This Center of Excellence also was responsible for creating the “Tallinn Manual on the International Law Applicable to Cyber Warfare,” written at the invitation of the Centre by an independent international group of experts. This 3-year effort aimed to examine how extant international legal norms apply to cyberwarfare.

A quantitative look on the literature supports this observation. Generally, the number of academic papers employing cyberwar terminology steadily increased since the late 1990s (relative to all academic papers on cyber topics), whereas in the lay literature a sudden and substantial increase can be observed right after 2007 (Fig. 13.1, see figure

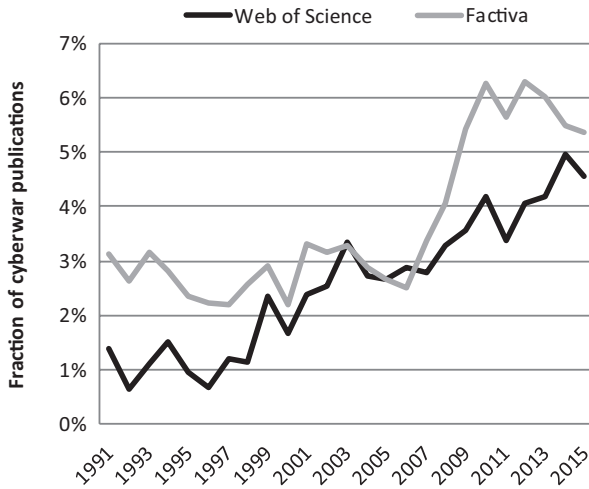


Fig. 13.1 Fraction of “cyberwar publications” compared to all publications containing the terminology of “cyber” in their title or abstract. The search was performed on April 21 2016 in the database *Web of Science* (See <https://apps.webofknowledge.com>) (scientific literature) and *Factiva* (See <https://global.factiva.com>) (various types of publications in general media including business sources). The Boolean search expression for “cyberwar papers” was “cyberwar OR (cyber* AND warfare) OR (cyber* AND conflict),” the expression for publications on cyber topics was “cyber*.” The time span was 1991 to 2015; we display the relative fraction of cyberwar publications in each database per year

legend for methodological details). This shows that particularly in the popular domain, the events of 2007 to 2009 triggered an intensified interest in cyberwar. For the scientific domain, the steady increase in interest can be traced back to a fundamental reconceptualization in various national security circles around 2000 that digital technology, particularly within the cyber domain, has serious military implications. Thus, cyberspace was conceptualized as an actual environment; an example of this in the United States is the setup of the *Cyber Command*, which unifies all of the existing military cyber activities under a single command.²²

Problems of Defining Cyberwar

The increasing interest in cyberwar in academic and popular domains does not go along with an increased clarity regarding the definition of the term or with an agreement about which malicious acts in cyberspace should be considered acts of war. Rather, the discussion can be structured along two poles that reflect how the degree of impact and disruptiveness of digitalization is understood.

The representatives of one pole²³ are deeply skeptical towards the proposal that cyberwar is a completely new and independent phenomenon and that it should be understood as war in the traditional sense. Thomas Rid (2013) holds this view. He refers to the definition of war by Carl von Clausewitz according to which aggressive or defensive action must meet three criteria in order to qualify as an act of war. First, acts of war are violent. Second, an act of war is instrumental: physical violence or the threat of force is a means to compel the enemy to accept the attacker's will. Finally, to qualify as an act of war, an attack must have some kind of political goal or intention. Referring to past cases, Rid argues that, so far, a human being has not been injured or hurt as an immediate consequence of a cyberattack and a state never did coerce another state by a cyberattack, which would require disclosing the attacker's identity. But in the contrary, state-sponsored offenders usually don't even take credit for an attack, which makes it difficult to use anonymous attacks for pursuing the political goals of an aggressor.²⁴

Gartzke (2013) criticizes that the cyberwar discussion almost exclusively focuses on the *potential* of harm a cyberattack may pose, but the motives and operational logic of perpetrators is not often explored. Specific features of cyberattacks—in particular anonymity, which has been considered to be the most important, and potentially menacing, characteristics of cyberwar²⁵—fail to be aligned with strategic goals of war. Although the advantage of anonymity will persist for peripheral forms of warfare on the internet (e.g., for espionage and sabotage), most forms of political conflict encourage disclosing an initiator's identity. On the political level, coercion usually requires attribution—otherwise the “winner” in the conflict is unable to justify the use of resources needed for coercing and he cannot claim the success for his operations.

Even in asymmetric wars that include terrorist acts against civil populations, the direct effects of cyberattacks are likely to be limited. According to Gartzke (2013), it is difficult to see how internet attacks will be able to instill the quality of fear needed to magnify the actions of insurgents. Although no one would be happy when the power goes out or when one's bank account is locked down, attacks of this type cause anger, frustration, even resignation; but not terror as in the case of attacking people with suicide bombers or assault rifles. Furthermore, using cyberweapons requires a certain amount of sophistication, but they are nevertheless deployable usually only for one-off, hard-to-repeat sabotage operations of questionable strategic value that might even prove counterproductive.²⁶ Taken together, these factors call into question the very idea that computer-assisted attacks will lead to a profoundly new era and “cyberwar” is just a metaphor—analogue to the “war on drugs.”

Empirical evidence supports such a critical view on cyberwar. Valeriano and Maness (2014) have collected information on cyber incidents (individual operations launched against a state) and cyber disputes (specific campaigns between two states using cyber tactics during a particular time period that can contain one to several incidents) between rival states in the last decade in order to delineate the patterns of cyber conflict as reflected by evidence on the international level. They found that the actual magnitude and pace of cyber disputes among rivals does not match with popular perception: only

20 of 126 active rivals engaged in activities that can be called cyber conflicts, which the authors define as the use of computational technologies in cyberspace for malevolent and destructive purposes in order to impact, change, or modify diplomatic and military interactions between entities short of war and away from the battlefield. The authors also found that the interactions that were uncovered are limited in terms of magnitude and frequency. Further, most of the cyber disputes that are uncovered are regional in tone.

Representatives of the other pole of the debate²⁷ has a radically different view on cyberwar. They consider cyberwar a phenomenon that reshapes the concept of war itself.²⁸ Those representatives consider cyberwar to be an inevitable consequence of digitalization. ICT enables new types of weapons like drones and semi-autonomous robots used to hit ground targets, defuse bombs, and conduct patrolling actions, and ICT creates a new battlefield, the cyber domain. The most striking characteristics of this pole of the debate is that its representatives claim that cyberwar leads to a blurring of the distinction between military and civil society because virtually everybody could become a target.²⁹ Given that the critical infrastructure of a country increasingly relies on computer control systems that regulate the operations of the infrastructure—e.g., by managing the flow of natural gas through a pipeline, or the production of chemicals—and taking into account that these systems are increasingly connected to other networks, including the Internet, the current mode of organizing society and its economy becomes vulnerable.³⁰ Along this line, representatives of this pole consider the definitions of war of Rid and others to be too restrictive. They claim that acts of war do not require the use of lethal force and therefore the status of cyberattacks should not be judged on this basis.

The representatives of this pole also take the fact that armed forces increasingly rely on information technology more seriously compared to the representatives of the other pole. The latter certainly admit that the increasing dependence of the military on new technology render them more vulnerable and prone to incidences of potentially crippling cyberattacks. But those who consider cyberwar to redefine how war is waged go beyond that point. They claim, that as digitalization itself is blurring many conceptual boundaries in the real world (see Introduction),

cyberwar exemplifies the blurring of the notion of war: civilians can launch cyberattacks that target both military and civilian infrastructures, cybercriminals can become cyber mercenaries, and the assessment of responsibilities when using semi-autonomous robotic weapons and malware becomes difficult.³¹ In summary, representatives of this pole stand for a definitional vagueness of cyberwar, reflecting that war itself has become more difficult to define.

However, for the military practice (and surely also of the theory of cyberwar), such a “definitional openness” of the notion of cyberwar is problematic, as practical issues like adapting the law of armed conflicts to this “fifth domain of war”^{32, 33} require a more precise definition. It is thus not surprising that the Tallinn Manual³⁴ defines a cyberattack rather conservatively, namely as a cyber-operation, whether offensive or defensive, that is reasonably expected to cause injury or death to persons or damage or destruction to objects. Excluded from this definition are psychological cyber-operations (e.g., blackmailing enemy commanders or undermining their reputation) or cyberespionage. Along these lines, Liff (2012) defines cyberwar as operations that are restricted to computer network operations whose means (not necessarily its indirect effects) are non-physical and that have direct political and/or military objectives—namely, attacks with coercive intent and/or as a means to some strategic and/or brute force end—and computer network defense.

Other authors opt for a broader definition of cyberwar. Lewis (2011), for example, defines cyberwar as the use of cyber techniques to cause damage, destruction, or casualties for political effects by states or political groups. If a cyberwar is defined in such a way, understanding the role of cyberweapons requires asking the same questions as for any other weapons system: what are the range, destructiveness, cost, effect, and political implications of its use? Given what has been witnessed, cyberattacks’ physical consequences resemble more those of sabotage acts than those of a strategic weapon or an attack by ground forces. Furthermore, cyberattacks introduce a new dimension in the ability to cause uncertainty, e.g., by manipulating data on which the decisions of the opponents are based.³⁵

The Geneva Center for the Democratic Control of Armed Forces (DCAF) adopted an even broader definition of cyberwar in its DCAF

Horizons 2015 Working Paper that includes cybervandalism, cybercrime, and cyberespionage.³⁶ It defines cyberwar as warlike conduct conducted in virtual space using information, communications technology, and networks, with the intention of disruption or destruction of the enemy's information and communications systems and in this way influencing the decision-making capacity of an opponent's political leadership and armed forces. This definition distinguishes between state-sponsored and non-state-sponsored cyberattacks—a distinction also emphasized by Dipert (2014), who distinguishes between the notion of cyberwar as conducted among nations or nation-like political entities from the notion of a cyberattack by individuals, corporate entities, or other groups of individuals, and further distinguishes both from cyberespionage and from cybertheft of intellectual property. According to Dipert, criminal cyberattacks motivated by financial gains, hacktivist cyberattacks (the subversive use of computers and computer networks to promote a political agenda) or mere vandalism do not count as cyberwar. Regarding attacks conducted as parts of a cyberwar, however, there are at least three kinds. First, commanded attacks, ordered or directed by a state's central authority; second, tolerated acts, which are attacks that benefit the host state but that are not initiated and directed by the host state; and third, patriotic acts, which are attacks on behalf of a state but that are not expressly tolerated by the benefited state, perhaps because it does not know of them.³⁷

To summarize, all these attempts to define cyberwar show the blurring boundary between acts of cyberwar and other types of malicious activities in cyberspace. This blurring even includes those who actually perform these activities. Cyberattack for hire is a lucrative business for those who have been previously overlooked as merely cybercriminals. As noted by many, including Richard Clarke, former National Coordinator for Security, Infrastructure Protection, and Counterterrorism for the United States, cybercriminals can become rental cyberwarriors.³⁸ There's even evidence that governments are deliberating cultivating an ecosystem of cybercrime and privateering.³⁹ All this increases the risk of framing all malicious activity in cyberspace as potentially war-related.

Cyberpeace as a System Property

Our review of the cybersecurity discussion in Sect. “[Problems of Defining Cyberwar](#)” reveals that the notion of cyberwar involves a definitional vagueness that is hard to avoid. The reason for that is that the insecure nature of cyberspace outlined in Sect. “[The Insecure Design of Cyberspace](#)” actually supports both poles of the cybersecurity debate: Those who support the idea that cyberwar is a new, fundamental threat for modern societies are right when pointing to the fact that the digital infrastructure indeed has vulnerabilities that are hard to overcome—and an increasing dependence on this infrastructure poses new risks. However, the cyberwar sceptics are also right in observing that the nature of these vulnerabilities makes it unlikely that many of the malicious activities in cyberspace conform to warfare as an instrument to reach political goals. They certainly are instruments to support espionage, propaganda and similar activities that are elements of war. Those are instruments where non-attribution is unproblematic or even required, and the advantage of anonymity will persist in some forms of terrestrial competition and conflict. But a cyberwar launched from unidentified sources fails to provide the target with the means to acquiesce and it is in an attacker’s interest to “brand” its actions to most effectively elicit concessions from a target.⁴⁰ Indeed, even if demands are complied with, an attacker will have difficulty obtaining sustained compliance, given the impossibility of demonstrating future capabilities. Furthermore, when attackers backed by a nation state indeed plan to build strategic war-force in cyberspace, they are confronted with the problem that their own infrastructure is, in principle, in equal danger as that of their opponent, because the digital infrastructure of their own administrations, banks, companies, hospitals, etc. is a comparably easy target.

Given this definitional vagueness of cyberwar and the difficulty to determine which malicious acts in cyberspace actually could count as cyberattacks that constitute a cyberwar, we suggest to change the perspective, namely to focus on a global culture of cybersecurity. This includes various elements such as the availability of warning systems,

built-in redundancies, but also trained behavioral modes like the exploration of areas of cooperation within the stakeholder community as part of a peaceful environment, as well as increased information sharing.⁴¹ Rid (2013) observed that loose talk of cyberwar tends to overhype the offensive potential of cyberattacks such that people who are not cybersecurity practitioners are more likely to ignore the importance (and the potential) of defense measures. The focus on cyberwar also entails the risk that those operating potential (civilian) target ICT systems (e.g., related to the critical infrastructure) believe that military institutions are in charge of dealing with the threat—but companies and individuals need to take responsibility for their own security. Finally, as long as people in organizations practice poor cybersecurity, essentially anybody can successfully carry out an attack; but if anybody can be an attacker, it is impossible to differentiate between attacks done by nation states and simple opportunistic attacks. Thus, a low level of cybersecurity actually increases the difficulty of properly defining cyberwar.

In the near term, a first step would be to consistently apply existing best practices such as reduction of complexity, compartmentalization, or improved monitoring. The first element—reduction of complexity—is indeed hard to attain given that the technology industry is driven by the demand for features, for options, for speed. And each of the products produced by this industry has its own console, its own terminology, its own policies, and its own alerts. Thus, what is needed to reduce complexity are both political (such as introducing liability for insecure software) and practical (e.g., to reduce the diversity of devices used within an organization) measures. The second element involves counteracting interconnectivity of devices at least to some degree. The Director of US National Intelligence recently said during a senate hearing on worldwide threats that interconnected devices could be useful “for identification, surveillance, monitoring, location tracking, and targeting for recruitment, or to gain access to networks or user credentials.”⁴² In other words, interconnectedness increases the potential of successful cyberattacks as well as their impact (e.g., with respect to the amount of data that can be captured). Likely targets such as critical infrastructures, defense contractors, state-level organizations, etc. should therefore ensure compartmentalization of their

ICT infrastructure, which basically means to divide assets into smaller pieces and secure them separately. For example, this could require not to rely on a single electronic identity and to use different identification markers for different parts of the system. In the mid-term, investments into research and development of defensive technologies are needed, on the one hand, and into skilled cybersecurity specialists, on the other hand.

However, technological and operational advances are unlikely to entirely solve out cybersecurity problems. There are also societal and cultural advancements that will be needed. Interestingly, this focus on the various aspects that entail such a culture of security have been promoted in a strand of the cybersecurity debate that is often neglected, those who opted for the positive side in the war-peace antinomy, namely cyberpeace.⁴³ The *International Telecommunication Union* proposed five principles for cyberpeace: First, every government should commit itself to giving its people access to communications. Second, every government will commit itself to protecting its people in cyberspace. Third, every country will commit itself not to harbor terrorists/criminals in its own territories. Fourth, every country should commit itself not to be the first to launch a cyberattack on other countries. Fifth, every country must commit itself to collaborate with each other within an international framework of cooperation to ensure that there is peace (understood as the pursuit of possible benefits and positive potential of ICT) in cyberspace.⁴⁴ While these principles are obviously rather abstract, they entail a notion of peace that does not only involve the absence of certain violent acts, but implies the prevalence of legal and general moral principles, possibilities and procedures for settlement of conflicts, durability and stability.⁴⁵ Before such a state of cyberpeace can be reached, however, a clear focus on an enhanced cybersecurity culture will be needed, which involves slowing down and simplifying the process of digitalization of all spheres of human life.

Notes

1. Stone (2013).
2. Gartzke (2013).
3. Flowers and Zeadally (2014); Lewis (2011); Lucas (2014).
4. Rid (2013).
5. Floridi (2016).
6. Orend (2014).
7. Deibert (2011).
8. Christen, Markus; Blumer, Helene; Hauser, Christian and Huppenbauer, Markus. The ethics of Big Data applications in the consumer sector. In: Braschler, M.; Stadelmann, T.; Stockinger, K. (eds.): *Applied Data Science - Lessons Learned for the Data-Driven Business*. Submitted.
9. Gregory (2011a, b).
10. The Internet of Things (IoT) is loosely speaking the emerging trend to connect appliances and objects of everyday life (e.g., cars, kitchen and household appliances, watches, smart meters, etc.) to the global Internet. IoT dramatically increases the sheer number of networked devices and increases the diversity of devices, resulting in an increase of overall system complexity.
11. Army Cyber Institute (2016).
12. See Perloth (2013).
13. This claim is based on private communications with practitioners from the IT security community. However, to our knowledge there are no systematic studies to substantiate this claim, not least of all since many incidents are non-public. Yet, as an example consider the Sony hack, which is surrounded by many speculations about potential nation state actors. Public sources (Goodin 2014) point out that the security stance of Sony was in a bad shape.
14. Flowers and Zeadally (2014).
15. Kaiser (2015).
16. Flowers and Zeadally (2014).
17. Lucas (2014).
18. Lucas (2014).
19. Lin et al. (2014).
20. Hancock (1999).
21. Kaiser (2015).
22. Deibert (2011).
23. E.g. Schmitt (2002); Rid (2013).

24. Liff (2012).
25. Deibert (2011).
26. Rid (2013).
27. E.g. Floridi and Taddeo (2014); Stone (2013).
28. Floridi and Taddeo (2014).
29. Taddeo (2012).
30. Flowers and Zeadally (2014).
31. Floridi and Taddeo (2014).
32. On June 14 2016, the NATO state defense ministers have formally recognized cyberspace as a domain of warfare (Barnes 2016).
33. Editorial (2014).
34. Schmitt (2013).
35. Lewis (2011).
36. Schreier (2013).
37. Dipert (2014).
38. In Flowers and Zeadally (2014).
39. Deibert (2011).
40. Gartzke (2013).
41. Wegener (2011).
42. See Ackerman and Thielman (2016).
43. Wegener (2011).
44. Touré (2011).
45. Wegener (2011).

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Part V

Peace in the Real World

14

Psychological Contributions to Philosophy: The Cases of Just War Theory and Nonviolence

Levi Adelman, Bernhard Leidner and Seyed Nima
Orazani

Philosophy has a long history in the study of the ethics and feasibility of violence and nonviolence. War always involves the suffering of innocents—a reality that clashes with the ideal, and perhaps the moral responsibility, not to cause harm. In response to this tension, philosophers have strived to develop an ethic of violence and non-violence for thousands of years. Various attempts at defining an ethical approach to violence are encoded in early religious texts, ancient writings such as the Melian Dialogue by Thucydides, and by medieval philosophers such as Augustine and Thomas Aquinas. Over the years, scholars from Hugo Grotius (1603/2006) to Michael Walzer

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(1977/2015) and others have developed Just War Theory as a modern approach to the ethic of war, rejecting the realist position that there are no legal or moral constraints on war.

Meanwhile, other philosophers and activists such as Mahatma Gandhi and Martin Luther King Jr. have promoted an ethic of nonviolence as the means of resolving conflict without resorting to violence. Gandhi's theory of nonviolence has its roots in Hinduism, and specifically in the cardinal virtue of Ahimsa, the responsibility to do no harm. Gandhi's emphasis on Ahimsa inspired him to use nonviolent strategies in the struggle against British colonialism. The victory of Gandhi's movement rekindled an interest in nonviolence as a feasible strategy to resolve conflict in Western societies. Some explored nonviolence mainly in its ability to achieve desired outcomes, such as its power to induce social change,¹ while others focused on theological² and philosophical³ grounds for nonviolence.

Despite, or precisely due to, this diversity in approaches to violence and nonviolence, there is still much to learn and discover about both. In this chapter, we illustrate how psychology is in a unique position to partner with philosophy in furthering our philosophical understanding of war and nonviolence, complementing the prescriptive role of philosophical theory with the descriptive role of empirical psychology. To do so, we will present recent psychological research on "folk theories" of Just War Theory as well as nonviolence, showing if and to what extent people's folk theories map onto and impact the two philosophies regarding conflict. On a meta-level, this mapping of human attitudes and behavior on philosophical theory also allows us to examine to what extent laypeople think and behave as "intuitive philosophers." Last but not least, we will discuss these two lines of research as examples of the potential of psychology as the largely empirical study of human behavior to contribute to philosophy as the largely conceptual study of human behavior.

Psychology's Seat at the Philosophical Table

In many ways, philosophy and psychology pursue similar goals in their study of human behavior. Starting as early as Socrates and Aristotle, philosophy has been studying human nature and human behavior.

In doing so, philosophers have looked both descriptively and prescriptively at the “is” and “ought” of human behavior, including the “is” and “ought” of morality in conflict between groups. Likewise, psychology in general and social psychology in particular have been studying human behavior—if from a different perspective, with different methods, and with a much younger history, the start of which is usually credited to William James (1890). Despite the many disciplinary differences between philosophy and psychology, their shared goal of understanding human behavior makes them natural allies that complement each other. Philosophical theories can draw on descriptive information derived through psychological studies of how people behave, and many of the normative philosophical theories also have empirical implications that psychology has the methodology to investigate further. In return, psychological findings can have implications for the applied value of philosophical theories. To date, despite growing awareness of the potential for philosophy and psychology to work together to answer questions of human behavior,⁴ this potential has yet to be fully realized.

In recent years, both philosophers and psychologists have drawn on theories and empirical findings the other field has to offer to come to better understand human behavior. Critically, the study of human behavior seeks to make statements both about how people *should* behave and how people *do* behave. Potential gaps and tensions between the “is” and “ought” of human behavior can often be understood in the context of how laypeople process information. Philosophers like Karl Popper have long suggested that science is simply “common sense writ large,”⁵ and psychologists like Arie Kruglanski (1990) have similarly shown that people develop “lay theories” about how the world works, which they then intuitively test throughout their lives. This research on “people as lay theorists” suggests that laypeople are able to use many of the same tools philosophers and scientists use to determine truths about the world (if in less systematic fashion, and often involving bias).⁶ Since these lay theories underlie how people react to the world around them, it is important to investigate and understand them.

The value of empirical psychological research on philosophical questions also goes beyond a descriptive understanding of how people behave. Doris and Stich (2005) argue that many philosophical theories

contain claims that can and should be tested empirically. Indeed, empirical research in moral psychology and experimental philosophy has already contributed to the philosophical study of morality, conducting empirical tests of some philosophical theories.

As one example, philosophers have long been divided on the purpose of punishment of offenses. Some, including Immanuel Kant (1797/1971), argue that punishment should be a retributive response to wrongdoing, while others, such as Jeremy Bentham (1879/2000), argue that the purpose of punishment is to prevent further wrongdoing. While an empirical investigation of how laypeople intuitively think and behave cannot make a normative argument about punishment, it can provide an important descriptive insight into people's lay theories and intuitions of justice, which may raise important questions about how philosophical theories of punishment align with people's lay theories.

In this vein, Carlsmith et al. (2002) investigated people's lay beliefs about punishment. Three studies tested whether lay concepts of justice and punishment were driven by the desire to punish people more harshly for more morally egregious crimes (retribution) or whether they were driven more by the need to prevent further crime (deterrence). Carlsmith and colleagues found that people recommend harsher punishments for more egregious crimes (suggesting that people are motivated by a desire for retribution), but do not recommend harsher punishments for crimes that are more likely to occur again in the future (suggesting that people are not motivated by deterrence). Thus, this psychological study is able to inform the philosophical discussion of justice and punishment. While laypeople's intuitions of punishment may not provide reasons for what justice *should* look like, they may nonetheless be suggestive of what theories of justice fit the human experience. Here, it appears to be closer to Kant's theory of justice than to Bentham's.

In the remainder of this chapter, we will expand on the role of psychology in informing philosophical questions, in particular as they relate to the questions of war and conflict this edited volume focuses on. Specifically, we will present two lines of research that use empirical psychological methods to test whether people approach human violence and nonviolence in ways that leading philosophical theories assume and would predict. First, we explore how people respond to the moral

dilemma posed by human warfare, as framed by Just War Theory. Second, we will explore how people respond to the dilemma of choosing or preferring violent versus nonviolent approaches to conflict.

Just War

As early as the first-century philosopher Philo and later Augustine and Thomas Aquinas, scholars have attempted to clarify rules that acknowledge that there are some exceptions to the general prohibition against killing. Religious texts too have offered rules about war, for example by forbidding the slaughter of (some) civilians,⁷ and restricting destruction of predominantly civilian resources.⁸ Later, scholars such as Hugo Grotius (1603/2006) and Alberico Gentili (1612/1933) drew on elements of this scholarship to develop what is now known as Just War Theory. Rather than categorically denying the possibility that war can ever be just, Just War Theory sets up a rule-based system intended to make war *more* just by limiting harm and suffering.

Traditionally, Just War Theory is comprised of two central sets of principles. One focuses on the circumstances under which war is morally permissible as a way to deal with an adversarial group (*jus ad bellum*). The other focuses on what warfare should look like to be considered just (*jus in bello*). Just War Theory has achieved a powerful influence in shaping policy and legal decision making, finding its way into international laws governing the legality of war. However, as both philosophers⁹ and human rights organizations¹⁰ have noted, it is not clear whether people engaged in conflict actually evaluate conflict in the ways Just War Theory recommends and international law demands. Answering this open question about people's evaluation and judgment of acts of war, and how and why these may deviate from Just War Theory's prescriptions, is critical in understanding the limitations of lay application of Just War Theory and international law. Thus, we examined people's lay or intuitive theories of morality in war, how they use these theories to interpret and judge the complex situations that arise, and how these judgments map on to Just War Theory.

Do Laypeople Think that “Just War” is Just?

To test whether or not the principles of Just War Theory align with people’s lay judgment and decision making about (justice in) war, we¹¹ examined whether people consider a military attack more just if the attack complies with three central principles of *jus in bello*¹² that provide a guide to warfare that minimizes harm to civilians. The first principle, *distinction*, requires the differentiation between combatants (as legitimate targets) and non-combatants (as illegitimate targets). The second principle, *military necessity*, requires that attacks and means are necessary to win the war, rather than merely presenting opportunities to harm the enemy. The third principle, *proportionality*, requires that the expected collateral damage to non-combatants and civilian infrastructure does not outweigh the military benefit of an attack.

We provided 613 American adults with a description of an attack on a military factory. The description featured three elements that informed them whether or not the attack had met three *jus in bello* criteria. We varied the description so that it mapped onto all possible combinations of compliance or violation of the three principles, resulting in eight different scenarios. In the scenarios, the three principles of distinction, military necessity, and proportionality were complied with or violated by describing the attackers as either attempting to prevent harm to civilian workers or not, by describing the factory as being either of vital or secondary importance to the war effort, and as describing the attackers as either attempting to avoid additional damage to surrounding farmlands and structures or not, respectively. We then asked our participants how moral, just, and acceptable the attack was, and whether they objected to the way the war was being conducted and their inclination to protest the war. We averaged each person’s responses on these five questions to create a score of perceived justness of the attack.

We found that people’s judgments of the attack as just depended on whether the attack complied with the just war principles (see Fig. 14.1). People were more likely to consider the attack just when the attack complied with rather than violated the principles of distinction, necessity, and proportionality.

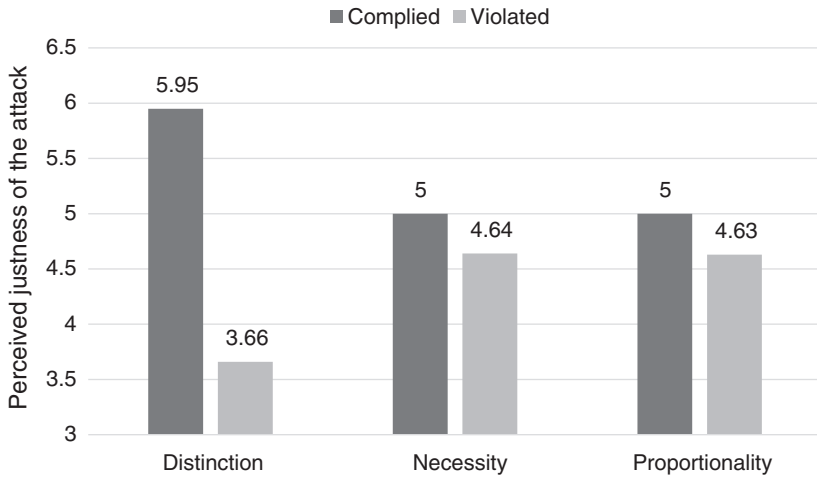


Fig. 14.1 Participants' perceptions of the justness of the attack as a function of whether the attack complied with or violated distinction, necessity, and proportionality

Interestingly, people were most concerned with whether or not the attack distinguished between civilians and combatants, which explained more than 32% of the differences in people's responses across all versions of the scenarios. Nonetheless, the results of this first study indicated that these three *in bello* principles meet people's lay theories of justice in war, suggesting that applying these principles align with people's lay theories.

However, this study left a few questions unanswered. First, while people used all three principles to determine whether an attack was just, they had the benefit of making their judgments after receiving all of the facts. In reality, however, people often make decisions with limited information that they seek out spontaneously. Second, while people took the three principles into account, they appeared more concerned with distinction than with necessity or proportionality, which may indicate that people are drawing on certain personally held moral values more than others when they evaluate acts of war. Hence, in a second study we investigated the role personally held moral values play in the lay application of Just War Theory.

Moral Values and Just War Theory

Recent research in moral psychology by Jonathan Haidt and colleagues¹³ argues that people have five intuitive foundations of morality. The first two foundations, based in concern for harm and fairness, are generally equally shared by all people and can be considered the foundations of an individualized morality, focused on the moral treatment of people as individuals. The latter three foundations, based on maintaining loyalty, respecting authority, and maintaining purity, are used primarily by people on the conservative/right side of the political spectrum, and can be considered the foundations of a group morality, focused on moral treatment of people as members of a social group.

These differences in personally held moral values may explain the emphasis on distinction over necessity and proportionality because people generally prioritize the moral importance of protecting people's rights as individuals (harm and fairness). Since distinction is driven by individualizing morality, which is shared by all people, we would expect to see everyone focus on distinction. Necessity and proportionality, however, require first thinking about the group's needs, which may draw more on the less universal group morality. If this is the case, people may use these *in bello* principles differently depending on how important individualizing morality is to them.

Do People's Moral Foundations Influence Their Just War Judgments?

To test what *in bello* information people attend to spontaneously, we designed a study using an information selection paradigm. We told 214 Americans that they would be asked to make a decision about the justness of an attack by one unnamed country on another. We told them that we had collected nine pieces of information about the attack, of which three each related to distinction, necessity, and proportionality, respectively. We added that, since resources are limited, they would only be able to select five pieces of information to use in their judgment. When selecting, they were only able to see which of the *in bello*

principles each piece of information belonged to, but not its actual content. After participants selected the pieces they wanted to see later, they responded to statements measuring their personal moral beliefs using the moral foundations of individualizing and group morality. Since we were only interested in what types of information they would seek out, we never presented the details of the attack or asked them to make any moral judgments.

We found that most people selected at least one piece of information from all three *in bello* principles, but that they were slightly more likely to select information on distinction or necessity than on proportionality. Thus, even when tasked with gathering information about an act of war, people draw on all three principles. But, consistent with our first study, they prioritize information relevant to distinction.

We next looked at whether the likelihood of choosing these principles depended on people's morality. We found that people's endorsement of individualizing morality (not causing harm and being fair) influenced the information they selected. As Table 14.1 shows, the more people endorsed individualizing morality, the more likely they were to seek out information on whether the attack complied with distinction. Further, the more people endorsed individualizing morality, the *less* they pursued information on whether the attack complied with military necessity.

Our results suggest that people's morality may be important in determining justice in war. For people more concerned with individualizing morality, just war principles that focus on individual needs are more important than those focused on group needs. Interestingly, endorsement of individualizing morality was not associated with the likelihood that people would select information on the proportionality of the attack, which may reflect the complexities of the proportionality principle.¹⁴

Table 14.1 Effect of endorsing individual morality on likelihood to select just war information

Principles of <i>jus in bello</i>	B coefficient	Standard error
Distinction	0.075*	0.031
Necessity	-0.115**	0.040
Proportionality	-0.009	0.033

Note A single asterisk (*) denotes significance below the 0.05 level; double asterisks (**) denote significance below the 0.01 level

Together, these results generally support Just War Theory, as people sought out information about all three principles. At the same time, the results raise some concerns about how people's moral beliefs may affect the information they seek. If people's personal morality can impact the principles that they see as important, it can also impact the decisions they make. Even more worryingly, the lower interest in proportionality raises questions about the viability of this principle as a means of reducing harm in warfare.

However, one limitation of the study was that the attack was described as being between unnamed countries. This raises the question of how personal relevance or involvement might change people's information-seeking behavior. This question is critical as the people best positioned to influence decisions about military conduct are often party to the conflict. Therefore, in a third study we investigated whether people who were party to the conflict would behave in the same way. Again, we wanted to understand how people's endorsement of individual morality might influence their search for information about justice in war.

Does Personal Connection to a Conflict Affect Just War Judgements?

To answer the question of whether personal connections to the conflict might affect people's judgment, we conducted a study with 286 American adults using a similar design to the previous study, with one important change. Our participants were first randomly divided into one of three groups. People in the first group were told that the conflict had been between Country X and Country Y (i.e., not mentioning any—but leaving open the possibility of—involvement of the United States in the conflict). Those in the second group were told that a conflict had taken place between the United States and Bahrain (i.e., explicit mention of the United States as a party to the conflict). Finally, those in the third group were told that the conflict had been between Australia and Bahrain (i.e., explicitly ruling out direct US involvement in the conflict). All participants then completed the same tasks as in the previous study, assessing their information-seeking behavior and their moral foundations.

Once again, we found that people were more likely to select information about distinction and necessity than they were to select information

about proportionality. We also found that people's endorsement of individualizing morality influenced which information they sought out, depending on whether or not their own country (the United States) was involved in the conflict. As can be seen in Table 14.2, when the United States was not mentioned/involved, people's information seeking was *unaffected* by their personally held morality. When the United States *was* involved, however, the more participants endorsed individualizing morality, the less likely they were to seek out information on necessity, the more likely they were to seek out information on proportionality, and the somewhat more likely they were to seek out information on distinction.

What might these different patterns of seeking out just war information mean? One explanation is that people are more likely to seek out information that suits their psychological needs and motivations. When their own country is not involved in the conflict, they are more willing to look for information on the just war principles regardless of their personal endorsement of individual morality. However, when their own country is involved, their personal morality influences what they seek out. In this case, the lower their concern with the moral principles of harm or fairness, the lower their concern with distinction and proportionality, and the greater their concern with the necessity of the attack, regardless of how it might violate distinction or proportionality. But the more concerned they

Table 14.2 Effects of people's endorsement of individual morality on likelihood to select just war information based on their own country's involvement in the conflict

Experimental group	Principle of <i>jus in bello</i>	B coefficient	Standard error
U.S. involvement not mentioned	Distinction	0.001	0.053
	Necessity	-0.072	0.068
	Proportionality	0.071	0.055
U.S. involved	Distinction	0.076 ⁺	0.048
	Necessity	-0.220**	0.062
	Proportionality	0.144**	0.050
U.S. uninvolved	Distinction	-0.078	0.059
	Necessity	-0.014	0.075
	Proportionality	0.064	0.061

Note A single asterisk (*) denotes significance below the 0.05 level; double asterisks (**) denote significance below the 0.01 level; a cross (+) denotes marginal significance, below the 0.10 level

are with individualizing morality, the more concerned they are about complying with discrimination and proportionality, and the less concerned they are about the necessity of the military action.

Identifying Limitations in Laypeople's Application of Just War Principles

Together, these three studies suggest that some *in bello* principles do map on to people's lay perceptions of morality in warfare. Across all three studies, people applied or sought out information from all three of the principles we tested. However, the results of these studies also identify some deviation of laypeople's intuitive theories from formal Just War Theory. First, despite ongoing conversations about the continued usefulness of the distinction principle in modern and asymmetric warfare,¹⁵ people employed the distinction principle as the most important evidence that an attack was just or unjust. Second, while people utilized information about proportionality and generally sought out information about it, across the studies, people appeared less concerned about proportionality relative to distinction and necessity. This may reflect the fact that proportionality is the most subjective of the three principles, and thus hardest for people to determine.¹⁶ While understandable, this raises questions about the effectiveness of proportionality in limiting harm doing in war. Third, across two of our three studies, we found that people's endorsement of moral principles emphasizing not harming others and being fair influenced their judgment of which principles they sought out. Specifically, in the third study we showed that when people's own group was involved in the conflict (but not when it was uninvolved), their choices of what just war principles to investigate depended on their individual morality. This is particularly problematic as previous psychological research shows that when someone's own group is accused of a wrongdoing, one's own morality can actually shift away from focusing on the individual moral principles of not harming others and being fair in an effort to justify the harm done by one's own group.¹⁷

These discoveries therefore generate important questions about the effectiveness of just war principles in real world conflict. If the goal of Just War Theory is to provide a set of rules that permit unavoidable war while at the same time creating an optimal set of guidelines to restrict the harm that it causes, then it is important to understand and consider how differences in personal morality can limit how laypeople and possibly soldiers apply these rules. In our studies, we drew on philosophical theories of Just War to identify some principles of how a normative just war is to be conducted. We were then able to apply empirical methods and moral psychological theories to test when and how people apply these principles, and under what conditions they may apply them in a biased way. Thus, these studies provide one example of how psychological analyses can draw on philosophical theories and in return can contribute to the body of knowledge about these theories.

Fighting Violence with Nonviolence

While Just War Theory presents war as unavoidable and tries to create rules differentiating justified and unjustified killing, some people argue that conflict is best resolved using nonviolence. This view of conflict rejects violence as the most effective means and focuses instead on nonviolence as a strategic approach, often based on philosophical and spiritual teachings. However, underlying these perspectives is the assumption that nonviolent strategies can be effective at conflict resolution. Therefore, it is important to study nonviolence not only through its philosophical or spiritual underpinnings, but also through how people perceive and react to it.

A new focus on nonviolence emerged after the horrors of two World Wars stimulated a great deal of philosophical reflection on violence and its relation to human nature, both theoretically and empirically. As Western philosophers were grappling with the concept of violence, an Eastern spiritual leader, Mahatma Gandhi, revived *nonviolence* as an approach to conflict resolution. This nonviolent strategy led to the successful creation of India as the world's biggest democracy not

through violence but through Satyagraha, an active civil disobedience founded upon Ahimsa, the Hindu virtue of not causing harm.

Gandhi's success through nonviolence attracted the attention of both laypeople and intellectuals who imported civil disobedience strategies into their societies. Some of them supported this approach by emphasizing the theological merits of nonviolence, for example through peace and love in Christianity.¹⁸ Rather than focusing on the philosophical and theological foundations of nonviolence, others took a functional approach, focusing on the efficacy of nonviolent tactics.¹⁹ These scholars have been questioning the assumption that violence is the most effective means to changing a corrupt political system²⁰ by suggesting that nonviolence might be better poised to generate social and political change.

While the success of some nonviolent movements (e.g., India and Tunisia) and the failure of some violent movements (e.g., Syria) has led scholars and activists to think more about the power of nonviolence, until recently there was no research testing the underlying assumption of the arguments in favor of nonviolence—that is, that nonviolence is a more effective way to resolve conflict than violence. In a first test of this assumption, Chenoweth and Stephan (2008, 2011) analyzed the success of social movements all around the world from 1900 to 2011. They found that nonviolent movements were successful at achieving their goals more than 50% of the time, whereas violent movements were only successful 7% of the time, bringing into question people's widely held assumption that violence is more effective than nonviolence. Further research suggests that nonviolent strategies lead to smoother transitions to more democratic political systems. In a Freedom House report, Karatnycky and Ackerman (2005) studied the transition from authoritarian to democratic political systems in 67 countries. They found that nonviolent civic resistance was a major contributor to successful transition, especially when these civic movements were cohesive and united. A few years later, Johnstad (2010) showed that nonviolent transitions from authoritarianism to democracy strengthened economies, increased political rights and civil liberties, and decreased post-transition violence. In contrast, when violent movements were involved in the transition, it was more likely that violence recurred after the transition.

Is Nonviolence a More Successful Strategy? and if so, Why?

Together, these studies provide partial support for the theological and philosophical arguments that nonviolence can be a more successful strategy than violence. However, these studies were limited in that they used archival data from many distinct political situations, leaving open the possibility that what appears to be the relative success of nonviolence is really caused by other factors. Furthermore, these archival studies did not investigate *why* nonviolence may be more effective at generating political change. Philosophers and theologians often suggest that the power of nonviolence lies in its ability to generate support relative to violence,²¹ although there is limited empirical evidence to support this. Therefore, in four studies we used psychological experimental methods to test people's lay theories and intuitions about violent and nonviolent movements, and how these affect their support for these movements.

Our primary indicators of the potential of movements to succeed in resolving conflict and bringing about social change were people's willingness to support and join social movements. Further, we were also interested in the underlying beliefs and judgments that would affect people's reactions to these movements. One of the primary potential benefits of nonviolence is that people practicing nonviolence in the face of violence may be seen as "moral patients," victims who are subjected to the immoral violent actions of their opponent. "Patient" refers to the fact that the nonviolent protesters are receiving and experiencing the violent acts of their opponent.²² Nonviolence can also lead people to perceive the nonviolent movement as the victim of the struggle, with the violent opponent as the perpetrator. When confronted with a conflict, people often determine which party to support on the basis of which party appears to be the underdog or victim,²³ which, in this case, would likely be the nonviolent movement in most people's eyes. Identifying the nonviolent movement as the victim could then lead people to see the nonviolent movement as more moral, and make them better able to distinguish between the victims and the perpetrators in the

conflict. Finally, identifying the nonviolent movement as more moral and having more clarity about who is the victim and victimizer in the conflict would make people more likely to support and want to join the movement (Fig. 14.2).

However, nonviolence could also limit people's support and willingness to join a movement. People often question how efficacious a nonviolent movement can be at creating systematic change when confronting violence. They may be less likely to believe that a nonviolent movement can accomplish its goals, and thus be less likely to support it. Therefore, it was also important to measure how capable people think nonviolent and violent movements are of achieving their goals.

To test laypeople's perceptions of violence and nonviolence and their support for social movements that used either one, we designed a first study in which we asked 516 Americans about their opinions on a hypothetical social movement that was trying to change a corrupt government either by using nonviolent or violent means. We then asked them to indicate their willingness to support and join the movement. We also asked them to what extent they thought the movement was a moral patient (i.e., the victim of immoral behavior), how much agency the movement had, how moral they thought the movement was, and how clearly they were able to distinguish between the victim and the perpetrator in the conflict.

We found that people responded more positively to the nonviolent movement than the violent one. They were both more willing to support and join the nonviolent movement (Fig. 14.3).

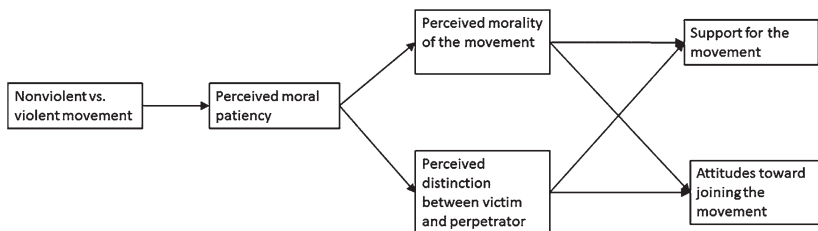


Fig. 14.2 Hypothesized model of the effect of nonviolent (vs. violent) movement strategy on support for the movement through perceived moral patientcy, perceived morality, and perceived distinction between victim and perpetrator

We then looked at why that might be the case. Using mediational analysis, which enables us to determine how different factors sequentially influence one another, we found that a movement's use of nonviolence in the face of violence led participants to perceive the movement as more of a moral patient and, in turn, as being more moral and more clearly occupying the role of the victim (rather than the perpetrator; see Fig. 14.4). These perceptions then increased greater willingness to support and join the nonviolent movement.

At the same time, and contrary to suggestions that nonviolence may be seen as insufficient to overcome violence, people considered nonviolent movements to be equally efficacious and powerful as violent movements, and thus equally capable of generating change (Fig. 14.5).

This cascade of effects, triggered by the perception of moral patiency and resulting in more support, is in line with the “underdog effect,”²⁴ in which people see the underdog, or victim, as more worthy of help. Nonetheless, one limitation of this study was that our participants were responding to hypothetical social movements. Therefore, in a second study we used the same paradigm with a real foreign social movement in Myanmar, which we presented as using nonviolence or violence. Once again, we found that our 311 participants perceived the nonviolent movement to be more morally patient and consequently thought it was more moral and more of

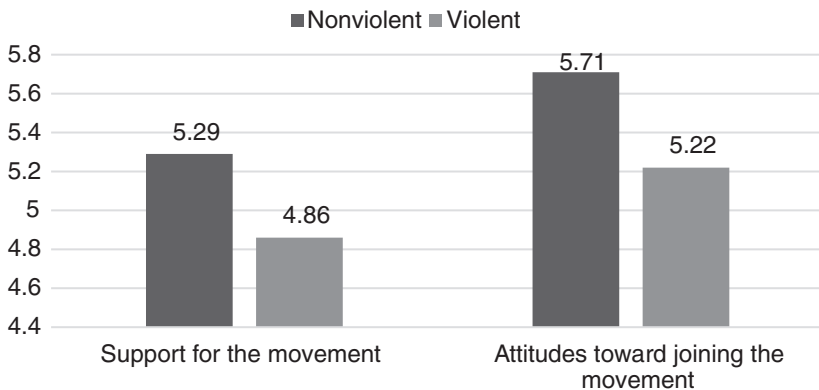


Fig. 14.3 Willingness to support and join a nonviolent vs. violent social movement

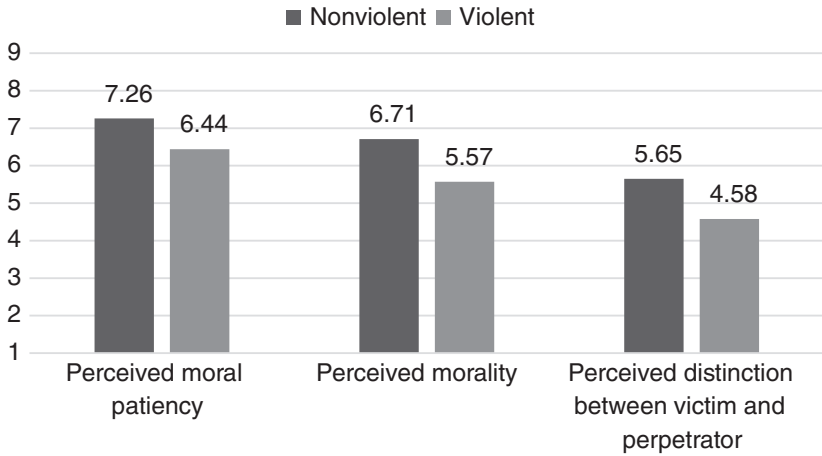


Fig. 14.4 Participants perceived nonviolent movement as more of a moral patient. Nonviolent movements have also been perceived as more moral and this in turn, made it easier for participants to distinguish between victim and perpetrator

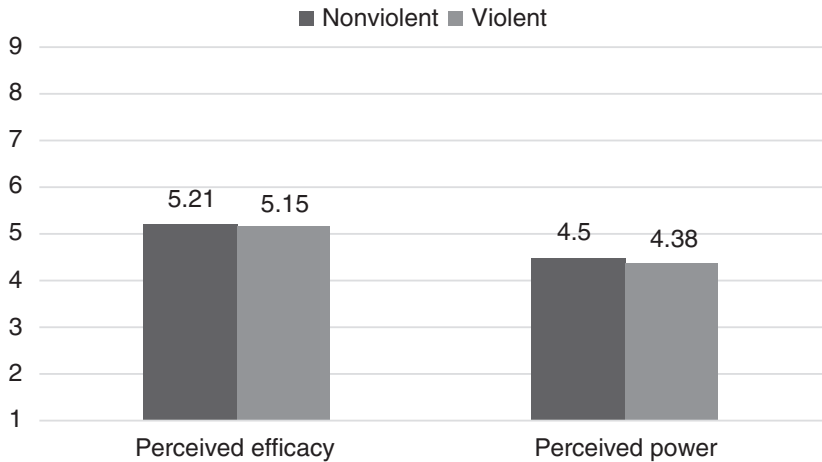


Fig. 14.5 Participants perceived nonviolent movement as efficacious and powerful as violent movement

the victim of the conflict, resulting in greater willingness to support and join it. And again, people perceived both the nonviolent and the violent movement as equally powerful and efficacious.

Do Past Failed Nonviolent Movements and Personal Connection to the Conflict Decrease Support for Nonviolence?

Yet, two important limitations remained. First, while we found that people thought that nonviolence was as powerful and efficacious as violence, the social contexts we investigated did not include any history of failed nonviolent movements—an element present in many contexts of (attempted) social change. Would people's perceptions of nonviolence change if there was a history of failed nonviolent movements such as in Iran, where the nonviolent Iranian Green Movement failed in its protests after the 2009 presidential election? Second, participants in our first two studies were asked about social movements that were not personally relevant to them. People might react very differently when asked about nonviolent and violent movements within their society and with a more direct impact on their lives. For example, when people are a part of a group committing violence, they may justify and support the use of violence.²⁵ To address these issues, we conducted a third and fourth study in the context of the Iranian Green Movement and the Black Lives Matter Movement in the United States, respectively.

In the third study, we asked Iranians to imagine a future movement, similar to the Green Movement that had emerged in response to perceptions of a corrupt election in 2009, that would use either nonviolence or violence. This allowed us to test both how people respond when there is a history of failed nonviolent movements and when their own country is involved. We then asked the same questions as in previous studies. Unfortunately, due to the difficulty of collecting participants in Iran (given the political implications of the research), the sample was very small (120 participants). Nonetheless, despite the failure of the nonviolent Green Movement in Iran to create change, we found that people were still more willing to support and join a nonviolent movement because they perceived it as somewhat more of a moral patient, as more moral, and because they had a clearer distinction between victim and perpetrator. Moreover, and similar to our previous findings, Iranians perceived nonviolent movements to be as effective as violent movements in creating change.

Addressing the sample-size limitations of the third study, we conducted a fourth study with Americans immediately after the incident in which Freddie Gray, an African American, died while in police custody. Testing Americans at such a tumultuous time allowed us to measure people's responses to nonviolent and violent social movements within their own country and in a situation directly relevant to them. We presented 186 Americans with a fictitious but allegedly real news report portraying the Black Lives Matter Movement as either nonviolent or violent. As before, we found that people were more supportive of the nonviolent movement and more inclined to join it. In this study, people perceived the nonviolent movement to be even more effective than the violent one, giving them even more reason to prefer nonviolence to violence. Once again, we also found that the nonviolent movement was considered to be more of a moral patient and the victim in the conflict, making it more deserving of support. In contrast to previous studies, while the nonviolent movement drew a clearer distinction between the victim and perpetrator, that did not increase support for the nonviolent movement.

The Success of Nonviolence Through the Moral High Ground

Altogether, across four studies, we provided empirical support for nonviolence as a potentially efficacious conflict resolution strategy. Furthermore, in line with what some philosophers and political theorists have suggested, we showed that people are more willing to support and join nonviolent movements than violent ones, and that this was due to the perception that nonviolence in the face of violence makes these movements into the victims of immoral violence, or into moral patients. This moral patiency may be exactly what movements should seek to generate support from both third-party observers on the outside and fellow group members on the inside. Importantly, in addition to the benefits of nonviolence, we also showed that nonviolence does not appear to have any detrimental effects on the perception of efficacy and power. Thus, while nonviolent movements benefited from being seen as the moral patient and more moral, they were still perceived as

efficacious agents of change. In this sense, our findings alleviate the concerns of many social activists that being perceived as the victim of the situation will reduce their perceived efficacy. As our studies show, people already perceive nonviolence as equally efficacious as violence. If people try to increase perceptions of efficacy through the message “we are not victims,” however, it might backfire by weakening the crucial advantage of nonviolent movements, being perceived as a moral patient, without increasing the perception of the movement as powerful or efficacious.

This research provides empirical support for the efficacy of nonviolent techniques, along with a window into the psychological processes that underlie people’s support for and willingness to join mass nonviolent movements for political change. The understanding of the moral perspectives of laypeople and how these inform their judgment and reactions to both violent and nonviolent movements can inform the moral philosophy of violence and nonviolence.

Summary

As demonstrated in the two lines of research we reported, psychological studies of how people perceive and respond to justice in war and nonviolent social movements show that people’s intuitive lay theories of morality in violence and nonviolence are often in line with the theories laid out by philosophers and political theorists. Across three studies on Just War Theory, we showed that people generally use and seek out information from three *in bello* principles to determine justice. At the same time, we also showed how individual differences in personal morality can impact how people choose to seek out information about justice and which just war principles they focus on. Even more importantly, we also showed that people may be less likely to apply the just war principles equally when their group is involved in the conflict. Rather, they may emphasize or de-emphasize different just war principles to meet their psychological needs. Similarly, across four studies on nonviolence, we provided empirical support for the potential of nonviolence, showing how people’s perceptions of nonviolent versus violent social movements generate increased support, which is consistent with

theorizing about nonviolence by philosophers and political theorists. We also showed how this support is derived from the moral perceptions of nonviolence in the face of violence.

These types of empirical psychological analyses can enhance philosophers' understanding of how their theories align with people's behavior. This is not to say that empirical examination is the only way to test the validity of philosophical theories. Yet, it can expand our joint understanding of how these theories play out in the world and what limitations there might be to their application. Indeed, if there is any possibility to translate a theoretical reflection into an empirical inquiry, the ethics of belief²⁶ demand that we test it to determine whether the theoretical reflection is consistent with the evidence at hand. In the case of any inconsistency, it is our duty as philosophers and scientists to rethink the theory or reexamine the ways in which we empirically test or approach the theory. In this way, we can connect theoretical assumptions and empirical evidence.

Since an important task in philosophy is to describe underlying mechanisms by which people make decisions in different areas like ethics, social psychology can examine the proximity of these analyses to the psychology of laypeople. On the one hand, philosophy is not limited to common sense and does not have to base its theories on how people currently think and behave. On the other hand, it cannot be completely agnostic about or disinterested in it. Indeed, common sense is such an important issue that some philosophers claimed it should be the foundation of any philosophical²⁷ or scientific²⁸ inquiry. Psychology in general and social psychology in particular are well positioned to draw on and influence the theories and principles derived from philosophy and investigate questions using empirical psychological techniques that can enrich both philosophy and psychology.

Conclusion

Philosophy and psychology share a common origin in that both seek to broadly answer questions of how people behave, why they behave that way, and the consequences of this behavior. In this chapter, we showed

how recent psychological studies of laypeople's beliefs and behaviors in regard to Just War Theory and nonviolence can increase psychology's and philosophy's joint understanding of how people behave and why they behave that way. A better understanding of people's behavior can then, in turn, have important implications for prescriptions of how people *should* behave. By integrating psychological methodologies and empirical investigations into philosophical questions of war and nonviolence, we can come to a better overall understanding of morality in conflict.

Notes

1. E.g. Sharp (2010).
2. Matthew 5:43–44; Luke 6:27–34.
3. Holmes (2013).
4. Dori and Stich (2005).
5. Popper (2005/1959, 22).
6. Tversky and Kahneman (1974).
7. Deuteronomy 20:14; Sahih Muslim 19:4294.
8. Deuteronomy 20:19–20.
9. Draper (2015).
10. International Committee of the Red Cross (2015).
11. Adelman and Leidner, in prep.
12. May (2007).
13. E.g. Graham et al. (2009).
14. Draper (2015); Hurka (2005).
15. E.g. May (2007); Oeter (2007).
16. Ibid.
17. Leidner and Castano (2012).
18. See Matthew 5:43–44; Luke 6:27–34; King and Washington (1986).
19. Sharp (2010).
20. Pape (1996, 2005).
21. E.g. King (2010).
22. See Gray et al. (2007).
23. Vandello et al. (2011).
24. Ibid.

25. Leidner and Castano (2012).
26. Clifford (1999).
27. Reid (1764).
28. Popper (1959/2005).

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15

Medical Care During War: A Remainder and Prospect of Peace

Daniel Messelken

Introduction

During times of war and conflict, the large-scale use of violence leads to the deliberate killing, maiming, and injuring of soldiers and civilians alike. Among the horrific consequences of war therefore is the costly impact it has on the health of individuals, on public health more generally, and the entire healthcare system.¹ Standing on the battlefield of Solferino and witnessing the suffering and agony in the direct aftermath of the battle, Henri Dunant felt the urge to care for the wounded soldiers, but observed no sufficient means had been prepared to do so. This troubling experience led him to launch, in his *A Memory from Solferino*, his momentous humanitarian appeal to better care for the wounded:

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Would it not be possible, in time of peace and quiet, to form relief societies for the purpose of having care given to the wounded in wartime by zealous, devoted and thoroughly qualified volunteers?²

This famous appeal to respect the Principle of Humanity even during war and to come to an agreement about rules and a common understanding of the limits of war was the birth of the “Red Cross idea.” It aims at diminishing the consequences of war for those who are most directly affected by it: the soldiers fighting on both sides and the civilians living close to or on the battlefield. To achieve this aim, the rules laid out in the Geneva Conventions both restrict the kind of violence and weapons that may be used and limit those who may legally be attacked.

Reality, unfortunately, often looks very different. The nature of war itself makes it difficult to uphold rules and impose restrictions in an environment where everybody fears death at any moment. Despite the legal obligations of the Geneva Conventions to ensure the protection of those *hors de combat*, civilians, and humanitarian and medical personnel, there has been a high level of violence against medical personnel and hospitals over the last several years. Ban Ki Moon made a statement during the UN Security Council debate on May 3, 2016, decrying “alarming patterns of systematic destruction of health facilities had been seen in Syria, Yemen, Iraq, South Sudan and other conflict-affected countries.”³ In the same report, the President of *Médecins Sans Frontières* (MSF) Joanne Liu stated, “given the frequency of attacks, she could no longer assume that fully functioning hospitals were out of bounds.” Other commentators have gone so far as to imply that “The Bombing of Hospitals Shows That the Rules of War Are Being Rewritten.”⁴

While one may hope that this is an exaggeration, one can observe a tendency within the so-called war on terrorism and other contemporary conflicts to question the limits and the validity of the rules laid out by the laws of war that were, at least in principle, respected before. As a result, it seems first that “Attacks on health workers and facilities have become a feature of modern war; they are not simply committed by rogue countries or forces.”⁵ Second, the humanitarian justification of providing impartial health care to everybody in need is no longer accepted when the beneficiaries could include “terrorists,” which has important direct and indirect effects on the provision of health care.⁶

In addition to a difficult situation on the battlefields of the real world, the neutrality and humanitarian justification of medical care is also under attack in philosophical theory. Within revisionist Just War Tradition, one can observe similar tendencies to those in the real world. Some authors criticize the provision of medical care under certain circumstances as a contribution to the war effort and, consequently, even see ground for a justification to directly attack healthcare providers (e.g., Frowe, Favre). Other authors do not go that far but nevertheless question the validity of fundamental humanitarian principles and undermine the principles of neutrality and impartial care for everybody (e.g., Gross).

In this chapter, I will try to show (i) that these theoretical attacks are based on rather weak arguments and doubtful assumptions and (ii) that the provision of health care should not be understood as a (direct or indirect) contribution to the conflict by reducing it “to conserve fighting strength,” but rather as a remnant of peace and peace-logic even during war and conflict by keeping a minimum of humanity alive.

The chapter is split into three parts: In its first section, we will briefly look at the fundamental principles of International Humanitarian Law and how the two spheres of peace and war can be distinguished. The second section illustrates the prevalence of attacks on health care: it will summarize the issue of violence against health care during conflict and then analyze some philosophical arguments that question the impartial and humanitarian nature of healthcare provision during armed conflict. The third and last section is dedicated to a defense of the humanitarian principles against these arguments, and it shows why and how providing medical care stands outside of the logic of conflict.

Acquis: *ius in bello* and the Care for the Wounded as a Remnant of Peace

In this section, I shall show how the current system of *ius in bello* (the “acquis”) can be interpreted as being based on the ideas that the establishment of peace must remain the aim of war and that the Principle of Humanity should be upheld as a remnant of peace during war.

Peace as the Aim of War

If we look into philosophical approaches like Just War Tradition (JWT) and legal regulations with regard to warfare like International Humanitarian Law (IHL), central assumptions in both domains are that war may only be waged (i) to react to an injustice suffered and (ii) with the aim to restore peace. In Thomas Aquinas' words, "[t]hose who wage war justly aim at peace, and so they are not opposed to peace."⁷ In philosophy and JWT, these two assumptions are conceptualized as the just cause and right intention criteria of the *ius ad bellum* and as such set limits, together with a number of other criteria, to when a war may justifiably be started.⁸

The idea that war must only be waged in order to restore peace also influences the rules of behavior during war (*ius in bello*) as the aim of peace can only be attained if respect for and trust in even the enemy is not lost completely during war. Thus, already Augustine not only sets peace as the aim of war, but also emphasizes the need to maintain a peaceful attitude even during war:

For no one aims at peace with a view to preparing for war; but we wage war to secure peace. In fighting, then, be peaceful-minded, in the hope that by conquering those whom you are fighting you may bring to them, too, that real gain which is peace.⁹

Kant (who is, however, no central figure to the Just War Tradition) has formulated this aspect as one of the preliminary articles in his *Towards Perpetual Peace*:

6: 'No state at war with another shall countenance such modes of hostility as would make mutual confidence impossible in a subsequent state of peace [...].' For some kind of confidence in the disposition of the enemy must exist even in the midst of war, as otherwise peace could not be concluded, and the hostilities would pass into a war of extermination.¹⁰

We will come back to the principles and rules of *ius in bello* briefly. Before that, I want to show how current international law equally sets

peace as the aim and normal state of affairs between states. The Charta of the United Nations states in its first article as their main purpose:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace.¹¹

Furthermore, member states “shall settle their international disputes by peaceful means” and “refrain in their international relations from the threat or use of force.”¹² Possible military measures within the regulations of the UN Charta are to be found in Chap. VII on “Action with respect to threats to the peace, breaches of the peace, and acts of aggression.” The use of military force can be allowed by the Security Council only if it is “necessary to maintain or restore international peace and security.”¹³

As we have just seen, both IHL and JWT agree that every war must have the restoration of peace as its ultimate aim. The two frameworks also agree that even wars have rules and that everything is not allowed during war. The rules of *ius in bello* are based on the JWT framework, especially on the principles of proportionality (the use of force must be proportionate to its aim) and distinction (civilians must not be targeted).

The Principle of Humanity as Leitmotiv of the *ius in bello*

The idea, famously promoted by Henri Dunant and in the Lieber Code, that the wounded *of all sides* should be taken care equally of according to what has later been called the *Principle of Humanity* is a relatively new one—at least within the legal sphere.¹⁴ The Principle of Humanity is usually defined by reference to the Red Cross movement’s understanding of it, which goes back to Pictet’s formulation in his commentary of the *Fundamental Principles of the Red Cross*. According to him, the Principle of Humanity aims

to prevent and alleviate human suffering wherever it may be found. Its purpose is to protect life and health and to ensure respect for the human being.¹⁵

Dunant's original idea and the Principle of Humanity are interpreted in this chapter as an attempt to keep a minimum of humanity (and thus a central part of what defines peace) alive during wartime: namely to respect those who are *hors de combat* as human beings and to provide them and the wounded of all sides with impartial medical care according to the same criteria and same principles of medical ethics as one would in peacetime. In his landmark commentary to the Geneva Conventions, Pictet supports a similar position with regard to IHL in stating that the "obligation to grant protected persons humane treatment is in truth the *leitmotiv* of the four Geneva Conventions."¹⁶ Treating someone humanely, in his words, consists in treating a person "solely as a human being without regard to the value which he represents as a military, political, professional or other unit."¹⁷

Principles of IHL

The codification of today's system of legal rules for the conduct of war and the treatment of the wounded in IHL dates back to the second half of the nineteenth century with the first Geneva Convention of 1864 and the Hague Conventions of 1899/1907. Currently, the four Geneva Conventions from 1949 and their Additional Protocols from 1977 are the main sources of the Law of Armed Conflict and IHL. This chapter will restrict itself, rather than giving a full introduction to IHL, to a cursory highlighting of the most relevant legal regulations with regard to the provision of medical care during armed conflict.¹⁸ The central provision in this regard can be found in the common article 3 of the Geneva Conventions, which states in its first paragraph,

Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction.¹⁹

Thus, treating humanely those who do not (or no longer) take part in the hostilities is “*not merely a recommendation* or a moral appeal” but, as the commentators point out, “it is *an obligation* of the Parties to the conflict under international law.”²⁰ The supplement “under all circumstances” emphasizes that this basic provision knows no exceptions: “No circumstances justify deviating from the obligation.”²¹ The required scope of the expected treatment of the wounded is spelled out in more detail in Chap. II of the First Geneva Convention.²² According to the International Committee of the Red Cross’s (ICRC) 2016 commentators,

[t]his chapter is one of the most important in the Convention. The Convention may even be said to rest upon it, since it embodies the essential idea [...] that the person of the soldier who is wounded or sick, and who is therefore *hors de combat*, is from that moment inviolable.²³

Obviously, “inviolable” is to be understood as a normative statement rather than an empiric description: those who are *hors de combat* should be spared and protected as persons. As “a logical corollary”²⁴ to the protection of those *hors de combat*, or as “a natural consequence of the requirements designed to assure respect and protection for the victims of armed conflicts”²⁵ protection is similarly granted to those who are tasked to provide the medical care, i.e., the medical personnel.²⁶ It is their role as healthcare provider that places them outside the conflict—*hors de la logique de combat* one could say. In the same line of argument, healthcare personnel (HCP) are asked to provide care without discrimination to friend and foe and only according to medical needs (e.g., GC1, Art. 12). Even though the scope of the positive duties may sometimes be unclear in the legal provisions (e.g., when is the right time to collect the wounded and what level of care shall be provided), the negative duty not to interfere with and to respect the work of HCP is much less debatable according to the commentary:

At a minimum, “respect” requires compliance with the *duties of abstention*, such as not to attack medical and religious personnel (be it directly, indiscriminately or in violation of the principle of proportionality).²⁷

With regard to the professional obligations of medical personnel themselves, doctors and medical personnel interestingly are *legally* bound by the Geneva Conventions to also act according to medical *ethics* without a further specification within the Conventions what the sources of medical ethics are. In 1956, the World Medical Association (WMA) tried to fill this gap by stating, in its *WMA Regulations in Times of Armed Conflict*, “Medical ethics in times of armed conflict is identical to medical ethics in times of peace.”²⁸ Thus, in times of war doctors should act according to the same ethical standards as in times of peace. Even though there has been criticism against this statement and its idea, it has recently been reaffirmed and its continuous relevance has been corroborated by the acceptance of a document on *Ethical principles of health care during armed conflict and other emergencies*, which has been jointly elaborated and adopted by a number of important organizations including the ICRC, the WMA, and the *International Committee of Military Medicine (ICMM)*. The first principle therein reiterates that

Ethical principles of health care do not change in times of armed conflict and other emergencies and are the same as the ethical principles of health care in times of peace.²⁹

Thus, the continuous application of peacetime medical ethics and namely the impartial distribution of health care according to medical needs (cf. principles 2, 3, 6, 7 of the document) is not the lofty ideal of humanitarian actors, but is supported in principle by the biggest international organization of military HCP.

Interim Conclusion: Legal Acquis and the Separate Spheres of War and Peace

To summarize the first section, there is an agreement in IHL that in order to uphold the Principle of Humanity not everything is permitted during war. Namely, those who are wounded or *hors de combat* no longer count as combatants and shall be provided with adequate medical care; in a way, they leave the sphere and logic of conflict

and return into the sphere and logic of peace. Similarly, the providers of impartial medical care never leave the peace-logic and must, because of their peaceful and humanitarian role, never be attacked. Even if in reality they stride onto the turf of the battlefield in order to treat the wounded, conceptually they remain in the sphere of peace as they pursue peaceful aims without sharing the intentions of the belligerents. One could describe this as an “explicit separation of the healing role from the wounding role”³⁰ or also distinguish between the war-related roles of combatants on the one hand and the humanity-related roles of *inter alia* medical personnel on the other hand, who defend a remainder of peace (similar to Walzer (2000, 146); see also below).

In this chapter, I draw a distinction between the spheres of peace and conflict. The different rationalities that are ascribed to both of them are used here as a (simplified) dual model to distinguish between the two spheres and their underlying basic logics. In an earlier discussion on the role of the military medical personnel, Voncken referred to two attitudes of human conscience that separate peace and war, namely universal solidarity and barbarity:

La confrontation des deux attitudes différentes de la conscience humaine, en temps de paix et en temps de guerre [...] est singulièrement troublante. Si, en temps de paix, la solidarité universelle est devenue [...] une des grandes préoccupations de la politique mondiale, la barbarie des hommes, en temps de guerre, connaît de jour en jour des cruautés inattendues [...].³¹

To put it rather simply, the sphere of war and conflict is marked by the desire to impose one's own will, dominating, winning over, and subduing the enemy. Its logic is one of confrontation and *in extremis* of surviving at the expense of others. On the other hand, the sphere of peace can be ideally characterized by mutual respect, compassion, and cooperation where disputes are settled by means of negotiation and compromise. While fighting against others (in different ways, obviously) is a central element of conflict, treating others with respect and humaneness can be regarded as an essential element of peace.³²

Attacks on the Theoretical Acquis and on Health Care in Reality

The reality during war unfortunately is often very different from what is stipulated by IHL and the moral Principle of Humanity: respect for humanity and protection of the wounded and the medical role are often lost. In the following section, the issue of violence against health care will be presented and some philosophical arguments will be analyzed that question the impartial and humanitarian nature of health care.

Non-respect for Medical Care in Reality

In a SIPRI Background Paper, Irwin states that attacks against health workers and infringements on their work amount to “a global problem that, by many accounts, is on the rise.”³³ Although Irwin admits that the problem is not a completely new one and that the statistics do not allow to speak of a clear trend,³⁴ she sees the environment created by so-called new wars as an important factor, because

“new wars” tend to be protracted and involve multiple state and non-state actors and shifting positions. This also means that there is confusion over who is a combatant and who is a civilian, as civilians and even children take up arms.³⁵

Damage to healthcare facilities in conflict areas as the result of both targeted attacks and as “collateral damage” have been documented by the ICRC’s *Health Care in Danger* and also MSF’s *Medical Care under Fire* program.³⁶ The collected data and testimonies (even though not representative in either of the projects) indicate an alarming trend toward a loss of respect for the protection of medical care.

According to the ICRC,³⁷ it is most often the national healthcare personnel who are targeted and bear the highest burden. It is also remarkable that the ICRC observations indicate that state armed forces and law enforcement are responsible for more than a third of the incidents reported. This shows that it is not only insurgents and rebel

forces, but also state actors who are responsible for attacks on HCP. In conclusion, it is noted by the ICRC report “that violence against health care is a serious humanitarian concern with devastating short and long-term consequences.”³⁸

Similar observations have been made and reported by MSF. They have documented a number of cases, for example for the conflict in Syria.³⁹ Only during 2015,

94 aerial and shelling attacks hit 63 MSF-supported facilities, causing varying degrees of damage, and in 12 cases causing the total destruction of the facility; and 81 MSF-supported medical staff were killed or wounded.⁴⁰

When interpreting the figures one has to take into account that MSF only supports a very small percentage of the overall number of medical facilities in Syria. Consequently, the total number of attacks on health-care facilities is probably much higher. According to MSF’s reports, a number of these cases included so-called double-tap attacks during which a second strike follows 20–60 min after the first hit and when rescuers have arrived on the scene. Such kind of attacks clearly show that the healthcare personnel are no coincidental targets but that they are clearly chosen on purpose. In MSF’s words:

Medical facilities in urban settings, urban centres, civilian populated areas are clearly being systematically targeted in Syria, there’s absolutely no doubt about that.⁴¹

This reality has not only been documented by nongovernmental organizations (NGOs) but has also been taken up and commented upon by the United Nations. In a report from 2013, their Human Rights Council stated:

The deliberate targeting of hospitals, medical personnel and transports, the denial of access to medical care, and ill-treatment of the sick and wounded, has been one of the most alarming features of the Syrian conflict.⁴²

The UN report lists on six pages a series of incidents during which hospitals and medical units have been directly attacked or were endangered, as well as listing other interferences with health care. The report concludes that

[b]y attacking medical facilities, using hospitals as bases for military action, targeting medical personnel and interfering with patients receiving treatment, Government forces have perpetrated a concerted policy of denying medical aid to those affiliated with or part of the armed opposition.⁴³

To summarize the problem, Rubenstein identified in an empiric study on the period 1989–2008 three worldwide trends regarding violence against health care during conflicts:

First, in certain conflicts, attacks on medical workers and facilities seem to be part of generalised violence directed towards civilians to achieve a political goal [...].

Second, certain attacks on medical facilities, personnel, or patients are specifically designed to gain a military advantage [... and,] at least partly, to prevent enemy combatants from receiving care and re-entering battle. [...]

Third, medical workers are arrested, detained, prosecuted, and sometimes tortured or executed for known or alleged provision of medical services to wounded enemy combatants.⁴⁴

All these reports and analyses show that attacks on healthcare personnel have not only become a common reality of contemporary conflicts, but also that providing medical aid is no longer accepted as standing outside conflict-logic. This interpretation is supported by the fact that even the legislations of several countries go in a similar direction. For example, Syria issued an anti-terrorism law that criminalizes medical aid to opposition forces.⁴⁵ But the problem is not restricted to Syria:

The reach of counterterrorism laws is long and they have adversely affected humanitarian health activities in many countries [...]. Material

support has been interpreted to include the provision of medical care [...], which can render the very activities that are associated with the core ethical commitments of the medical and nursing professions illegal.⁴⁶

Caring for the wounded and victims of war thus seems more and more to be interpreted as contributing to the conflict itself instead of contributing to keeping a minimum of humanity and peace-logic alive.

Philosophical Attacks on the Protection of Medical Care

The impartiality and the resulting non-combatant status of medical personnel, which makes them somehow stand outside conflict-logic, have recently also been challenged by some philosophers. In a weaker form, their argument consists in denying that military medicine actually follows the same ethical rules as civilian medicine (e.g., Gross). The most extreme argument within revisionist JWT goes so far as to deny to impartial medical care for war victims any special status and even interprets it as a contribution to a war effort that suffices to make HCP lose their right not to be attacked (e.g. Frowe). Evidently, this line of argument helps to justify direct and targeted aggression against HCP.

Arguments Against the Neutrality of Medicine

Gross summarizes his position by stating, “medicine is but another form of military operation.”⁴⁷ Accordingly, he argues that medical ethics cannot remain unchanged during war and that instead *military* medical ethics “reflects the state of medical ethics during war.”⁴⁸ This means most importantly that medical ethics with its own principles has to accept the “overriding principles of military necessity and reason of state.”⁴⁹ In the same line of argument, Gross assumes that

military forces mobilize medical resources and personnel *for a single express purpose*: to maintain combat readiness and facilitate the ends the military finds itself authorized to achieve.⁵⁰

The principles of humanity, neutrality, and impartiality that all should characterize the provision of medical care are nowhere to be found here. Quite explicitly, Gross refutes these founding principles of IHL and argues that

Medical care is no longer a function of medical need but guided instead by military necessity, a nation's war effort, and, generally speaking, by the collective good, a principle that is generally foreign, if not antithetical, to peacetime medical ethics.⁵¹

Gross' arguments and his position are problematic insofar as he puts a clear focus on the instrumental value of *medical* care for the *military* mission. The provision of health care, at least by military HCP, can on his approach not be based on medical needs only but has to be based on military necessity. Consequently, in Gross' approach health care and its allocation unavoidably become part of the (sphere of) conflict and can no longer follow medicine's own principles of humanity and impartial care.

Whereas in the works of Gross⁵² it is not always clear (i) to what extent he bases his normative position on empirical arguments or exceptional cases and (ii) whether he "only" refers to a set of techniques short of medical care that *combatants* can use to maintain their own health and that of their peers, the more extreme position defended by Frowe claims to be based on normative assumptions and judges the actions of genuine medical personnel, too.

Medicine Seen as Contribution to an Unjust Threat

Frowe positions herself within the revisionist Just War Tradition approach. Revisionists build their theory by an analogy with individual self-defense and base their argument on individual liability. This change of perspective and different theoretical foundation has far-reaching consequences. In contrast to classical JWT and IHL, the revisionist JWT approach rejects the conceptual separation of the two spheres of *ius ad bellum* and *ius in bello*. Consequently, revisionists reject the idea that

combatants of all sides have similar rights and that their actions are merely judged within the war (according to the *ius in bello*) and not with regard to the overall justice of the war (established by the independent *ius ad bellum*). Instead, revisionists claim that only the combatants on one side of a conflict are justified in their action and that, consequently, the fighters on the other side are to be seen as unjust combatants who do not have a right to attack just combatants (or even defend themselves against the attacks of just combatants). In addition, even non-combatants can lose their immunity, according to revisionist claims, by being part of the unjust war effort without fighting in it and thus become liable to be attacked or killed. The classical distinction between combatants and non-combatants is thus replaced by an assessment of individual liability to be attacked, which is independent from the former.⁵³

With regard to the topic of our chapter, Frowe argues that by providing care to all sides of the war “the medics of the Red Cross contribute to the unjust threats posed by unjust combatants.”⁵⁴ Following this (extreme) argument, anybody who provides anything of support to the combatants of the unjust side becomes an accomplice to their unjust cause and shares their moral responsibility. Consequently, according to Frowe, it therefore

looks as if Red Cross medics (and those performing similar roles in war) are morally responsible for unjust indirect lethal threats, and, [...] are therefore liable to defensive killing by just combatants.⁵⁵

Even though such an account is not (yet) a justification of direct attacks on healthcare workers in general, it surely (and seemingly without much concern) paves the way for arguments in that direction. At least this follows as long as HCP fulfil their legal and moral obligations to treat all victims of war impartially by discriminating only according to medical needs and not according to adherence to one of the parties to a conflict. Consequently, one has to wonder whether, according to Frowe, military HCP become “liable to defensive killing” also by their own comrades if they treat (unjust) enemy combatants. Maybe in order to

avoid such a conclusion, Frowe accepts one argument that allows HCP to treat unjust combatants:

[W]hen just combatants consent to the activities of the Red Cross, they consent to the threats [sic!] that the medics pose. Thus, the medics do not pose unjust threats in aiding the unjust combatants, and are not liable to defensive killing. *But it is the consent, and not their neutrality or status as medics, that gives the Red Cross immunity from intentional attack.*⁵⁶

Poignantly, this means that if (and only if!) the just combatants feel safe enough and show some mercy, then medical personnel are allowed to treat the wounded from the unjust side without risking being killed by the just combatants. Clearly, no general rule can be deduced from such an argument and Frowe herself admits that situations will exist where “it seems irrational for the just combatants to agree to the Red Cross’s intervention”⁵⁷ as they risk being disadvantaged by it. The danger and far-reaching consequences of this approach are clear, as the idea of medical neutrality cannot coexist with combatants being entitled to decide whether and when military needs are given priority over medical treatment.⁵⁸ The principles of neutrality and impartiality that should guide the work of HCP are conceptually incompatible with such an interference into the medical sphere of competence. Frowe’s argument seems to either overlook or knowingly disrespect the fact that impartial medical care does not position itself within the sphere and logic of conflict, but conceptually remains within the sphere of peace. Ascribing liability to HCP for unjust acts of former patients that are in no way intended by or related to the work of medical personnel seems to simply ignore the peace-related intention and practice of impartial medical care.

A more balanced position within revisionist JWT can be found in the work of Fabre. Making clear that her “point is not that a doctor should never help combatants who take part in an unjust war,” she formulates some reservations “that the mere fact of providing medical care to combatants provides the doctor with a moral justification for so acting”⁵⁹ independently from the context. She postulates that the consequences of the medical aid should be taken into account and may question the moral justification:

The intuitive power of the Hippocratic Oath argument is much diminished once one brings into view the fact that, in the cases that occupy us here, the doctor's decision to treat the unjust combatant proves highly costly for the latter's enemy, namely, the cost of being subject to a lethal threat to which they are not liable.⁶⁰

In reality, however, according to Fabre's view, medical personnel and humanitarian actors are usually not judged to be liable to be killed because in providing medical care they cannot anticipate how and to what extent their action will contribute to a threat by the unjust combatant, on the one hand, and because the overall contributing factor of the medical aid to the unjust cause does not reach a necessary threshold to justify liability to be attacked, on the other hand.⁶¹

Affirmation: Medical Care as a Remainder of Peace During War

As we have seen, the thesis that medical care during wartime constitutes a remainder of peace-logic during conflict is under attack both in reality and within philosophical reflections. In the remainder of this chapter, I shall argue why and how the conceptual attacks against the neutrality of health care can be refuted both from a legal and moral point of view, and defend the thesis that the impartial provision of medical care stands outside the conflict-logic. Therefore, it must neither be instrumentalized for military purposes, nor can HCP be considered legitimate targets of defensive killing because they are fulfilling medical duties.

The main argument within revisionist JWT against the exemption of medical care from the conflict-logic refers to the contribution of medical care to (possible future) threats posed by treated unjust combatants. Medical care, in this logic, contributes both to unjust intentions and is seen as an indirect contribution to an unjust threat.

The Legal View: IHL on Direct Participation in Hostilities

Legally, this argument does not hold. One would have to prove that the medical treatment constitutes a “direct participation in *hostilities*” in order to justify the (temporary or permanent) loss of their protection by the medical personnel. An extensive analysis of the notion of “direct participation in hostilities” within the legal framework of IHL has been undertaken by Melzer (2009). One of the main conclusions of his report, backed by the ICRC, is the following:

The notion of direct participation in hostilities refers to *specific acts* carried out by individuals *as part of the conduct of hostilities* between parties to an armed conflict.⁶²

One can infer, first, that given the necessarily hostile nature, such acts of direct participation can clearly not be attributed to the provision of medical aid. Second, it does not make sense to interpret medical care “as part of the conduct of hostilities.” The 2016 ICRC commentary on the first Geneva Convention equally supports the interpretation that medical care cannot be construed as contributing to the conduct of hostilities and thus grants immunity for the provision of health care—explicitly even for the context of helping members of non-state armed groups:

The act of administering health care to a member of a non-State armed group may not be interpreted as supporting the group’s cause, nor may it be construed as engaging in a hostile act. Thus, medical personnel may not be punished for the mere fact of providing treatment or care for wounded and sick persons in accordance with medical ethics.⁶³

Consequently, (and in contrast to the interpretation of revisionist JWT) medical personnel who act in accordance with medical ethics and their medical tasks do not count as combatants—irrespective of who the beneficiary of their treatment is. This interpretation is thus uncontroversial within IHL and is supported by the May 2016 Resolution 2286 of the UN Security Council.⁶⁴ A revision of these rules according to what

revisionist theories propose is thus neither timely nor desirable from a moral perspective, as the next section will show.

The Philosophical Argument: Medical Care Does not Belong to the Sphere of Conflict

The classical philosophical argument against counting the medical personnel among the combatants is found in Walzer's *Just and Unjust Wars*.⁶⁵ He distinguishes between acts and contributions that are necessary for the war effort *only* (and thus follow a conflict-logic), and those contributions needed during war and peace equally (and thus belong to the peace-logic):

The relevant distinction is not between those who work for the war effort and those who do not, but between those who make what combatants need to fight and those who make *what they need to live, like all the rest of us*. When it is militarily necessary, workers in a tank factory can be attacked and killed, but not workers in a food processing plant. [...] They are like workers manufacturing medical supplies, or clothing, or anything else that *would be needed, in one form or another, in peacetime as well as war*. [...] An army, to be sure, has an enormous belly, and it must be fed if it is to fight. But it is not its belly but its arms that make it an army. [...] Those men and women who supply its belly *are doing nothing peculiarly warlike*.⁶⁶

Walzer here acknowledges that actions and roles can and do belong to the different spheres of war and peace and that with this affiliation also comes a *prima facie* moral evaluation. People (like HCP) who act to meet the “peaceful” human needs of others do not become part of the war sphere and should thus not be judged within it, even if the beneficiaries of their actions are combatants, because the support is directed toward the combatant as a human being and does not imply taking sides. This argument can in addition be defended with reference to the classical principles of discrimination and proportionality that both set limits to warfare in order to mitigate its consequences and to protect the non-combatant and civilian population. While the principle

of proportionality makes the simple point that violence must not be excessive, the principle of distinction can be interpreted as drawing a line between what belongs to the sphere of war (and can thus be a legitimate target) and what belongs to the sphere of peace (and must thus be spared by the warring parties).

The classical argument is thus more substantial than the extreme revisionist view (presented in the preceding section) that only seems to look at the consequences (and sometimes very indirect consequences) of a selected action without taking into account the larger picture, the intentions, and roles of the individual actors.

This is not to say, however, that actions within the peace-logic can never be morally problematic and that the intuitions of revisionist theorists are completely wrong. Lepora (a MSF doctor) and Goodin in their book *On Complicity and Compromise* admit that humanitarian action is not always without moral problems. They develop a framework that allows the establishment of meaningful limits to the limits of complicity or contribution in the wrongdoings of others that can also be applied to the allegation of revisionist theorists regarding the provision of medical aid to unjust combatants. According to their approach, the moral blameworthiness of a contribution or an act of complicity depends on four things:

the moral badness of the principal wrongdoing; whether (and, insofar as it is scalar, by how much) the secondary agent crosses the *threshold of moral responsibility for having contributed* to it; *how much of a contribution* his act made (or might make) to the principal wrongdoing; and the extent to which the secondary agent *shares the purposes* of the principal wrongdoer.⁶⁷

In the case of a doctor treating an unjust combatant, the principal wrongdoing would consist in the unjust combatant's posing a threat to just combatants later. Now even if we assume that the moral badness of this act is high, one cannot assume that an impartial doctor shared the purpose of the unjust combatant, nor that his treatment meets the other criteria of moral responsibility or causal contribution in a meaningful manner.⁶⁸ Consequently, treating unjust combatants does not make the

doctor complicit in their (later) wrongdoing and cannot, in the revisionist terminology, make them liable to be attacked or killed by the just combatants.

In addition, if just combatants are not thinking purely egoistically they would probably have to accept, due to the principle of proportionality, the small and unintended contribution of doctors to threats against them when this is the only way to improve the overall situation and mitigate the consequences of war. As Lepora and Goodin put it:

A doctor working in the midst of a war will likely contribute causally to some wrong. But she is likely also to contribute to a lot of good.⁶⁹

At least during so-called humanitarian interventions and other military interventions that are justified on the basis of a defense of human rights and humanitarian values, the overall picture is more important in judging the doctors' activities than the individualized picture drawn by revisionist Just War Theory.

Summary: Impartial Medical Care is No Contribution to War Efforts

To summarize, there are both good legal and good philosophical arguments to support the argument that the impartial provision of medical care should *not* be regarded as an (in)direct contribution to war efforts. The military must also refrain from using it as such. It seems obvious, on the contrary, that the provision of medical aid cannot be denied to be what we could label a "*direct and intended* contribution to the humanitarian effort." Even if, as a result, combatants of both sides may be able to return to the battlefield, impartial medical care is no *intended (in)direct* contribution to the war effort. After all, impartial medical care does not support or subscribe to unjust causes (or care about war causes at all) because it pursues humanitarian goals that adhere to the sphere of peace.

Conclusions

We have seen, in this chapter, that both moral and legal limits to what is allowed during war are widely accepted in principle. Respecting these limits is what is needed to avoid the degeneration of a conflict into a war without limits, a total war. At these limits of war, the prospect of peace remains intact and the logic that rules during conflicts and in the sphere of war must be overcome. This is why helping the victims and wounded of war and thus the provision of health care in general does not belong to the realm of the conflict, but in fact and as a contribution to the respect for Principle of Humanity is a remnant and reminder of peace during war.

Such a position presupposes some degree of separation between the *ius ad bellum* from the *ius in bello*, because it is based on and endorses the principles of neutrality and impartiality—it does not ask on which side those who need help belong and it does not take sides in a conflict. Norms that apply during conflict do apply to everybody and grant the same obligations but also the same levels of protection to everybody no matter what side he is fighting for. In the context of conflicts like the so-called war on terrorism where we are told that “you’re either with us or you’re with the terrorists” this can be a challenge. But even though it may not always be fully convincing in philosophical theory, we should refrain from distinguishing between just and unjust combatants at least when they are *hors de combat* and with regard to them being in need of and beneficiaries of impartial medical care. If the Principle of Humanity makes any sense, it must equally apply to all human beings. This has even been recently unanimously restated by the UN Security Council in its Resolution 2283 (2016), in which it is

Reaffirming the need for all parties to armed conflict to respect the humanitarian principles of humanity, neutrality, impartiality and independence in the provision of humanitarian assistance, including medical assistance.⁷⁰

Those who act in the name of and according to the Principle of Humanity cannot be said or judged (intentionally and willingly) to

contribute to a conflict because it is exactly the logic of conflict which they refrain to accept. As Joanne Liu, president of MSF put it, “The doctor of your enemy is not your enemy”—exactly because the doctor is not thinking in the enemy-friend distinction. The intention and acts of those who follow the Principle of Humanity adhere to a different logic, namely that of peaceful relations and by that they try to reestablish this different logic at the very limits of conflict. Jean Pictet, probably the most renowned commentator of the Geneva Conventions, described it in the following way:

Let us not forget that the flag with the red cross, which has floated for more than a century over all the battlefields of the world, and everywhere else where there are suffering people, is not only the banner of those who fight with their bare hands to deprive death of its prey; it is also the emblem of peace itself.⁷¹

Notes

1. Levy and Sidel (2008).
2. Dunant and Croix-Rouge (1986, 27).
3. United Nations (2016a).
4. Hawkins (2015).
5. Rubenstein and Bittle (2010, 338).
6. Eckenwiler et al. (2015).
7. Aquinas (2014, II.II, q. 40).
8. For an overview of historical and current thinking within Just War Tradition, see e.g., Lazar 2016; Johnson and Patterson 2015; Allhoff 2013; or Messelken 2011.
9. Augustine, Ep. ad Bonif. clxxxix. Quoted according to Pope (1940, 295f).
10. Kant (1795, 114).
11. United Nations (2016b).
12. Ibid., Art. 2.
13. United Nations (2016c), Art. 42.
14. Sidel (2004, 2561).

15. Pictet (1979, 141).
16. Pictet (1994, 204, my emphasis).
17. *Ibid.*, 108.
18. A comprehensive overview on the legal regulations regarding HCP during armed conflict has been presented by Mehring (2015). Briefer overviews are also given, e.g., by Breitegger 2013; Casey-Maslen 2015; Nathanson 2013; Toebes 2013; Vollmar 2003.
19. ICRC (2013), GC1, Art.3.
20. ICRC (2016), Comment to Art 3, §202, my emphasis.
21. *Ibid.*, Comment to Art 3, §211.
22. In the International Customary Law study, the provisions regarding the scope of the treatment of the wounded can be found in the rules 109–111.
23. ICRC (2016), Comment on Ch.II.
24. Mehring (2015, 106).
25. Baccino-Astrada (1982, 31).
26. See e.g. GC 1 Art 24; AP 1, Art 16; Int. Customary Law, Rules 25/26. Similar protection is also granted to civilian wounded and civilian hospitals in GC4, Art. 13–23.
27. ICRC (2016), Comment to Art 24, §41, my emphasis.
28. World Medical Association (1956).
29. International Committee of the Red Cross (ICRC) et al. (2015).
30. Sidel (2004, 2562).
31. Voncken (1955, 245).
32. Slim distinguishes within war between a predominant ideology and practice of war that is ruthless and prone to limitless violence, on the one hand, and the “compassionate view of war” that takes into account and problematizes human suffering during war and accepts limits to war, on the other hand. Slim (2016). To some extent this distinction is similar to the one proposed here; it remains a distinction within the sphere of war, however.
33. Irwin (2014, 1).
34. *Ibid.*, 5.
35. *Ibid.*, 10.
36. Other reports on the same issue include e.g., Human Rights Watch (2015), World Health Organization (WHO) (2016).
37. Tamanini and ICRC (2015).
38. *Ibid.*, 20.
39. MSF (2015, 2016).

40. MSF (2016, 11).
41. McPhun (2016).
42. UN Human Rights Council (2013, 2).
43. *Ibid.*, 8.
44. Rubenstein and Bittle (2010, 332f).
45. UN Human Rights Council (2013, 5, §21).
46. Eckenwiler et al. (2015, 737).
47. Gross (2006, 330).
48. *Ibid.*, 323.
49. *Ibid.*, 2.
50. *Ibid.*, 326, my emphasis.
51. *Ibid.*, 329.
52. See also Gross 2008, 2011; Gross and Carrick 2013.
53. The most prominent contemporary author of revisionist Just War Theory is Jeff McMahan, see e.g., McMahan (2009).
54. Frowe (2014, 202).
55. *Ibid.*, 202.
56. *Ibid.*, 206, my emphasis.
57. Frowe (2014, 206).
58. Cf. Gilbert (2015, 21).
59. Fabre (2009, 55).
60. *Ibid.*, 55f.
61. Cf. Fabre (2009, 61f).
62. Melzer (2009, 16), ICRC Recommendations, my emphasis.
63. ICRC 2016, Art. 3, §418.
64. UN Security Council 2016.
65. Walzer (2000).
66. *Ibid.*, 146, my emphasis.
67. Lepora and Goodin (2013, 97, my emphasis).
68. Interestingly, the argument that the causal contribution does not meet a meaningful threshold condition is also shared by Fabre (2009).
69. Lepora and Goodin (2013, 172).
70. UN Security Council (2016, 2).
71. Pictet (1985, 208f).

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Index

A

- Agency 23. *See also* Moral agency
human agency 21, 23
- Agent 23. *See also* Moral agent
non-state 111, 125, 134, 136
political 117
rational 21, 23, 24
terrorist 132, 134
violent 123, 125, 136
warring 123, 134
- Aggression
act of 43, 214–215, 297
condemn 150
military 150
threats of 155
- Ahimsā 268, 280
- Allies 113, 115, 119, 160, 161, 170
- Aquinas, St. Thomas 108, 186, 231, 267, 271, 296
- Aristotle 186, 229, 224–225, 225–228, 233
- Armed forces 39, 40, 49, 50, 52, 53–54, 228, 254, 256
- Arthaśāstra, the* 172, 173
- Asaṅga 160, 169, 172
- Aśoka 161, 172–173
- Attack 43. *See also* Cyberattack
commanded 256
computer-assisted 253
direct 125, 307
"double-tap" attacks 303
on health care (personnel/workers) 294, 295, 303, 304
incidental 134
intentional 134
internet 253
suicide 124
violent 127, 135
- Attacker 247–248, 257, 272
culpable 152
non-state 247
state 247

- unjust 91
- Augustine, St. 85–87, 89, 91, 92, 95, 108–109, 267, 271, 296
- Authority
- central 155, 256
 - constituted 185, 194, 195
 - external 20
 - legitimate 45, 106, 108
 - political 127, 184, 185
- Automated defense systems 204. *See also* Star Wars
- Automaton 235
- Autonomy 21, 69, 71–73, 216, 244
- B**
- Beliefs 21, 90, 92, 129, 219, 270, 275, 281, 289. *See also* Moral beliefs
- Beneficiary principle 72–74, 75–76, 77–78, 79
- Bentham, Jeremy 270
- Bible, the 144–150, 155
- Buddha 161–162, 164–165, 166–169, 172
- Buddhism 159–160, 164, 161–163
- C**
- Candrakīrti 161, 166, 169
- Casualties 83, 163, 164, 171, 216, 217, 255
- China 110, 117, 182–183, 197, 249
- Cicero 106, 107, 225, 234
- Civilians 75, 79, 91, 107, 125, 255. *See also* Violence against civilians
- domestic 68, 77
 - enemy 65, 67–68, 77
 - foreign 75–77, 79
 - innocent 79, 80
 - kill 235, 293
 - own 68, 75, 77
 - protect 228, 232, 271, 272, 294
- Clausewitz, Carl von 252
- Cold War 107
- Collateral damage 228, 250, 272, 302
- Combatant 68, 76, 79, 109, 245, 272, 273, 300, 301, 306–309, 310–311, 313. *See also* *Rights of combatants*
- enemy 304, 307
 - just 228, 306–309, 312–313, 314
 - unjust 306–309, 312–313, 314
- Common sense 94, 269, 288
- Communitarian 183, 185, 189
- Community 184, 186–187, 187–188, 192
- internet 197
 - political 136, 152, 226
 - structure 185, 188, 192, 196
- Compartmentalization 258–259
- Compassion 159, 164–166, 168–170, 172, 173, 301. *See also* Killing, compassionate
- Complexity
- of military operations 99
 - reduction of 258
- Conquest of Canaan 148, 150, 151
- Consent 67, 69–72, 73, 74, 76, 90, 308
- principle 70, 75, 77–79
 - rational 92
- Consequentialism 19, 184, 210, 219
- Contractarian 183

Criminal justice system 65, 69, 73, 77

Critical infrastructure 254, 258

Cyber-

- cyberattack 196, 217, 247, 248–249, 249–251, 252–253, 254–256, 257, 258
- cybercommunity 195
- cyberconflict 198, 253
- cybercrime 244, 249, 256
- cyberpeace 245–246
- cybersecurity 181, 192, 198, 246, 247, 249
- cyberspace 184–185, 188–189, 192, 195, 196, 198, 244, 246, 252, 256–258, 259
- cyberterrorism 218, 244
- cyberwar 218, 243–244, 245–258
- cyberweapon 204, 250, 217–218, 253, 255
- cyberworld 181, 198

Cycles of violence 171–172, 173

D

Davidic monarchy 145

Defence system 204, 215, 217, 249

Deontology 19, 22, 210, 215, 219

Direct participation in hostilities 299, 311

Dispossession 148, 149

Divine image 147, 151, 152, 155

Domestic violence 209

Drone 227–229, 231, 236, 254

Dunant, Henri 293, 297–298

Duties of care 68, 75, 77, 79

Duṭṭhagāmaṇi 163, 164, 172

E

Empire-building 149

Estonia 182, 195, 249–251

ETA 131, 133, 136

Ethics

- Kantian 19, 20, 27
- medical 298, 300, 305–306, 310
- military 51, 54
- virtue 186, 193, 224. *See also* Virtues, moral
- of war 66, 117

Exile 145, 190, 191, 197

Exodus (from Egypt) 145

Exploitation 160–162, 170

F

Fabre, Cécile 308–309

Fairness 274, 277

France 182, 195, 249

Frowe, Helen 295, 306–308

G

Gandhi, Mahatma 268, 279–280

Geneva Conventions 294, 297–300

Gentili, Alberico 106, 271

Germany 113, 115, 188–189, 249

Gethin, Rupert 163

Goodin, Robert 312, 313

Goodness

- good as a means 118
- good as an end 119
- good governance 111, 116
- intrinsic good 119

Gross, Michael 295, 305–306

Grotius, Hugo 45, 106, 267, 271

H

- Hague Conventions 298
- Harm
- collateral 76, 112
 - functional 203–205, 218
 - intentional 203
 - intention to 161, 164
 - lethal 66
 - mental 203–205, 218
 - not to cause 267, 275, 280
 - physical 203–205, 218
 - psychological 205, 218
 - risk of 69, 71, 77, 78
 - unnecessary 164
- Harṣa 164
- Health care 65, 69, 73, 77, 216, 294, 299–300, 302–305, 306, 310, 314
- Hegel, G.W.F. 22, 26
- Hobbes, Thomas 41–42, 43, 106, 183
- Holocaust 154
- Honneth, Axel 20, 27–30, 31–32
- Hors de combat* 294, 298–300, 314
- Human fraternity 147
- Humanitarian
- intervention 75, 76, 79, 313
 - principles 295
 - role 301
- Hungary 115, 211–212
- Hurka, Thomas 68
- I
- ICT 244, 247–250, 254, 258, 259
- Impartiality 92, 305. *See also*
- Principle of impartiality
- Impartial provision of medical care 309, 313

- Independence 129, 131, 183, 250
- Injustice 43, 69, 108, 109, 112, 149, 296
- social 71, 107
- International Committee of Military Medicine (ICMM) 300
- International Committee of the Red Cross (ICRC) 299, 300, 302–303, 310–311
- International courts 156
- International Humanitarian Law (IHL) 229, 295–297, 298–300, 306, 310. *See also*
- Principle of IHL*
- Internet 184, 192, 196–197, 244, 253, 254
- access 181–183, 195–196
 - of things 248
- Intuition 94–95, 270, 281
- Iran 110, 250, 285
- Iraq 129, 294
- Isaiah (vision of world peace) 146, 154, 155
- Israel 124, 129, 154, 155, 213
- J
- Japan 115, 117
- Jātaka, the 162, 164, 170, 172
- Jewish homeland 153
- Joshua (wars of) 151
- Judaism 145, 155
- Rabbinic 144, 145, 147
- Jus ad bellum* 43, 106, 111, 112, 114, 115, 117, 123, 124, 130, 132, 271, 296, 306, 314
- Jus in bello* 107, 109, 110, 113, 132, 135, 236, 271, 272, 297, 306, 314

Jus post bellum 105, 108, 113,
123–125, 131, 136, 215, 216
Just cause 106, 111, 117, 123–126,
129, 153, 214, 296
Justice 65. *See also* Criminal justice
system
demands of 147, 152
requirements of 147, 152
retributive 148, 151
theory of 32, 270
Justification 41, 46, 50, 94, 107,
150, 152, 214, 230, 249, 295,
307, 308
Just war 41, 67, 75, 80, 85, 105,
107, 108, 111, 114, 118, 123,
128, 130, 147, 209, 210, 215,
236, 267, 268, 279, 288, 296,
297, 305
revisionist just war theory 295,
306, 308, 309, 313

K

Kant, Immanuel 27, 32, 270, 296
Killing
compassionate 163, 165, 169,
172
consequences of 163, 165
defensive 151, 163, 168, 307, 309
justified 279
unjustified 279
unnecessary 173
Kook, Abraham Isaac 154
Korean War 115, 169

L

Law
of armed conflict 83, 255, 298

international 106, 111, 183, 251,
271, 296, 299
moral 23, 45, 52
of nations 45
League of Nations 153
Legitimacy 123, 124, 134, 151
Lepora, Chiara 312, 313
Lethal autonomous robots (LARs)
204, 215
Liability 233, 258, 307–309
Liberation 129, 148, 173
Lieber Code 85, 86, 89, 92, 297
Liu, Joanne 294, 315
Locke, John 43

M

Machiavelli, Niccolò 50
Mahābhārata, the 172
Mahāyāna 160, 164, 165, 167, 170
Malware 183, 196, 255
May, Larry 131, 132, 134, 135
McMahan, Jeff 67
Médecins Sans Frontières (MSF) 294,
303, 312, 315
Medical care 160, 295, 298, 299,
300, 302, 305, 306, 310, 311,
313, 314
Melzer, Nils 310
Messianic era 153–155
Mettasutta, the 165
Milindapañha, the 162
Military
affairs 40, 44, 46, 52, 54
institution 40, 54, 258
intervention 76, 111, 123, 135,
313
res militaris 39, 51, 54
Militia 50

Moral

- action 21, 187
- agency 23
- agent 23, 24, 187
- beliefs 275, 276
- dilemma 271
- principle 66, 190, 259, 277, 278
- requirement 74, 236
- responsibility 96, 108, 267, 307, 312
- rule 209
- theory 19, 20, 209

Morality

- group 274, 275
- individual 276–278
- individualizing 274, 275, 278
- personal 276, 277, 279, 287
- of war 80, 107, 108, 229

N

- Nation state 42, 257, 258
- Necessity 231, 275, 278
 - alethic 87
 - military 87, 89–92, 94, 95, 100, 133, 272, 275, 306. *See also* *Principle of military necessity* 83
- Needs 216. *See also* *Well-being/welfare*
 - basic 216
 - vital 87, 94, 98, 99, 234
- Noncombatant 106, 109, 124, 125, 153, 169, 171, 272, 307, 311. *See also* *Violence against non-combatants*
- Nonviolence 124, 208, 215, 217–218, 267–268, 270

O

Order

- international 109, 111
 - legal 26, 30, 94
 - natural 86
 - political 26, 30, 189
- Orend, Brian 126, 215, 216

P

Pacifism

- anti-war 208, 212–213, 215
- Buddhist 161, 173
- contingent 67, 80, 135
- forms/types of 204, 208, 209
- non-violent 208, 212, 215–218
- radical 41, 53

Palestine 124, 128, 145, 153

Pax Kantiana 40

Peace 19. *See also* Isaiah (vision of world peace)

- formal 108, 109, 112, 113
- imperfect 109, 112, 116

Peaceful resolution 20, 27

Penal code 162, 170

Philosophy 83, 267, 268, 288, 296

- moral 20, 224, 287
- political 31, 41, 225
- practical 27, 234
- social 20, 27

Pictet, Jean 297–298, 315

Plato 86–87, 89, 91–92, 93, 95, 225

Policy

- military 40, 54, 116

Principle

- of discrimination 133, 311
- of distinction 272, 312
- ethical principle of health 300

- of humanity 294, 295, 297–298, 300, 302, 306, 314
 - of IHL 298, 306
 - of impartial care 295, 306
 - of impartiality 306, 308, 314
 - of independence 314
 - of military necessity 272, 305
 - of neutrality 295, 306, 308, 314
 - of proportionality 272, 297, 299, 311, 313
 - Prisoners 106, 164, 171, 235
 - Proportionality 68, 83, 84–85, 87, 131, 230, 274–278. *See also*
 - Principle of proportionality *ad bellum* 128
 - calculation 68, 70, 70–71, 72–73, 78
 - constraint 77, 78, 84
 - relation 229, 230
 - Prospect of success 125, 127–128, 129
 - Psychology 269
 - moral 190, 224, 235, 270, 274
 - social 29, 269, 288
 - Public discourse 133, 135
 - Punishment 162, 170, 270
 - capital 147, 151–152, 154, 170
 - punitive measures 45, 160
- R**
- Reciprocation principle 74–79
 - Recognition theory 20, 27–29
 - Red Cross movements 297
 - Relations
 - civil-military 40, 54
 - international 25, 39, 110, 117, 118, 161
 - political 113
 - Religion 155, 184, 196
 - Religious humanism 147, 155
 - Republican constitution 39, 48–51
 - Resistance
 - non-violent 29, 280
 - violent 29, 125
 - Responsibility 151, 160, 170, 195–196, 230, 258, 268. *See also* *Moral responsibility*
 - Revisionism 66
 - Right intention 108–111, 115, 117, 123, 296
 - Right/s
 - civil 25, 181, 182, 184–185, 189, 192
 - of combatants 109
 - framework 183–185, 192
 - human 48, 51, 182, 185, 189, 313
 - human rights violations 123, 124, 183–184
 - individual 183, 185, 189
 - to make war 44–45
 - political 280
 - to privacy 183, 184, 191, 193, 194
 - Risk-imposition 66, 67, 74, 79–80
 - Robotics 228, 229, 235
 - Rubenstein, Leonard 304
 - Russia 110, 114, 182
- S**
- Satyakaparivarta Sūtra* 160, 170, 173
 - Self-defense 111, 126, 144, 147, 150, 152, 154, 209, 231, 246, 306
 - Self-determination 129, 131, 132
 - Sidgwick, Henry 83–84

Solferino 293

Stability

counterfactual 88–92

political 124

social 94

Star Wars 212–215

State of affairs 43, 107, 117

State of nature/*status naturalis*

40–44, 48, 51, 52

Syria 249, 280, 294, 303, 304

T

Tallinn Manual 251, 255

Targets

direct 127, 132

indirect 127, 129

legitimate 215, 216, 272

Territorial integrity 152

Terrorism 229, 294. *See also*

Cyberterrorism; War on terrorism

definition of terrorism 132

terrorist actor 124–125, 130–133, 135

terrorist campaign 124, 125–129, 131, 134–136, 135

terrorist method 125, 127–129

terrorist situation 169

Threat

unjust 307–309

Torah, the 144

Torture 159, 170

Tunneling (burglar) 152

U

Uniacke, Suzanne 127

United Nations (UN)

charter of the United Nations 297

declaration of human rights 184

security council 294, 297, 310, 314

United States 182, 191, 198, 211, 252

Unjust cause 307, 309, 313

USSR 113, 118, 211–212

V

Value Sensitive Design (VSD)

206–207, 209–210, 218–219

Violence

against civilians 132

against health care 295, 302–304

against innocents 125, 132

against noncombatants 132

military 53, 126–128, 134

political 126, 134

Virtues

civic 185, 188–189, 194, 199

framework 185, 186, 189–192, 196–198

moral 186–189. *See also Ethics, Virtue*

Voncken, Jules 301

W

Walzer, Michael 83–84, 151,

188–189, 195, 199, 232, 267, 311–312

War

act of 209, 252, 275

asymmetric 253, 278

defensive 126, 152–153, 155

to end all wars 153

guerilla warfare 76, 235

new wars 302

nuclear 39, 211

- state of non-war 107, 212
 - on terrorism 294, 314
 - total 114, 314
- Weapon 204. *See also* Cyberweapon
- nuclear 204, 210–213, 215
 - pacifist 203–205, 207, 210–212, 214–216, 218–219
- Weapons technologies 206, 208, 229
- Well-being/welfare 66, 69, 70–74, 86, 196, 218
- World Medical Association (WMA) 300
- World War I 153
- World War II 113, 115, 116, 154
- Wrongdoing 270, 278, 312–313