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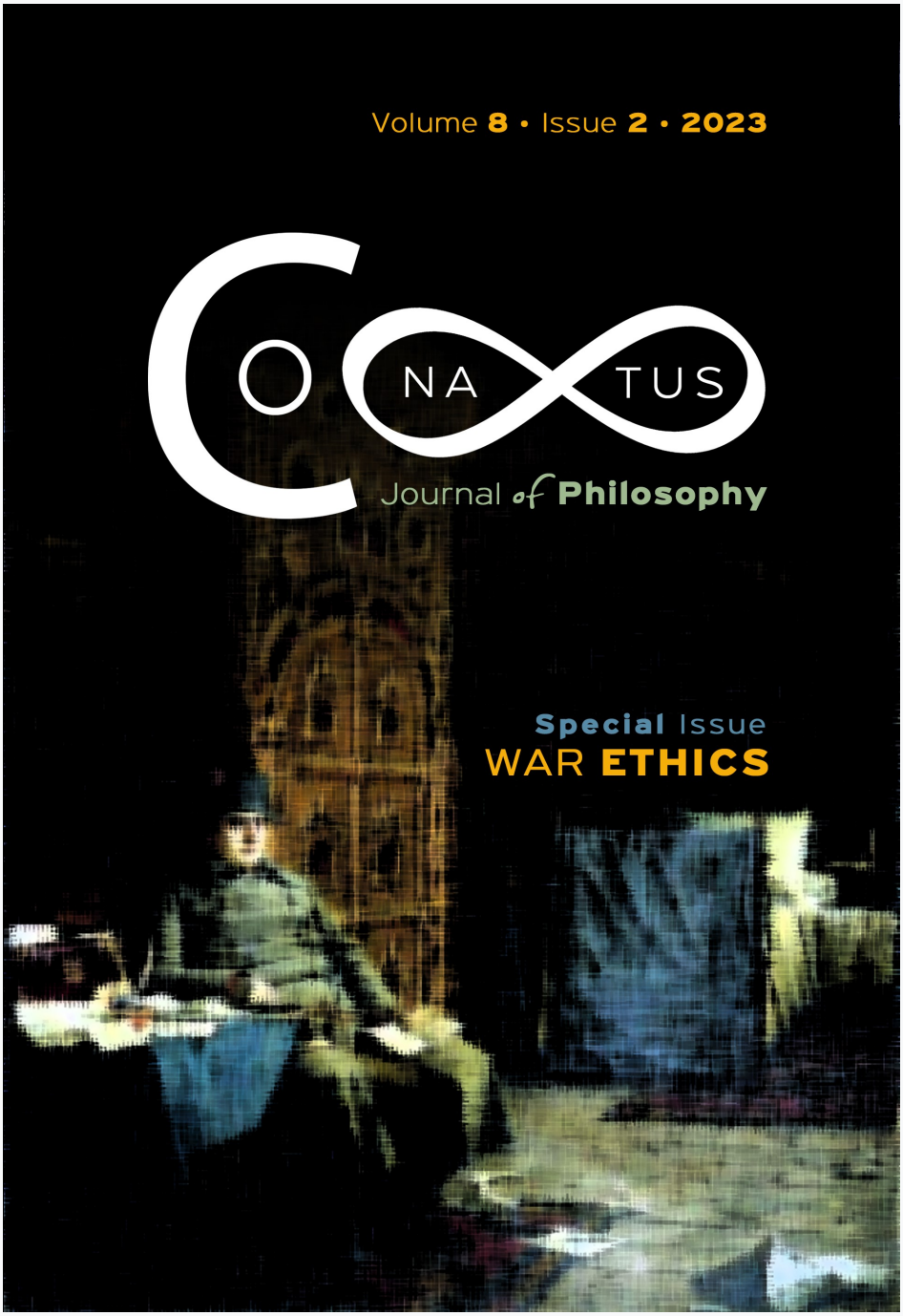


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# CONATUS

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## Special Issue
## WAR ETHICS

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Guest Editor
**Jovan Babić**

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# introduction

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# War Ethics and War Morality: An Introduction

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**Abstract**

*War ethics might sound as impossible combination of words – how justify what seems to be unjustifiable? War is* prima facie *unjustifiable. However, wars are a fact of human reality, and those among us who are unfortunate to live in times of war – in a way it is all of us – would know that the reality is not just a possibility, that* prima facie *designation does not help in answering what must be done, that unjustifiability does not imply impossibility. We must understand to be able to explain, and to explain to have a valid evaluation, especially when what is happening is important and with far-reaching consequences. Wars are such phenomena. We live amid such phenomena, and we need to understand not only their tragic and often cataclysmic nature, but also their meaning, their structure and logic of their functioning. We should understand that war is not something that happens only to others, nor that it is the matter of the past. In the present volume we have thirty-three essays examining war from many angles, sometimes from the opposite standpoints, exploring some of the most intriguing issues of warfare in times characterized by radical changes in the world in turmoil. The contributions in present volume give an overview of the world's thinking about war. The volume is certainly incomplete and unfinished, but it gives a lot of thought-provoking incentives to think about the most important aspects of warfare and its broad phenomenology.*

**Keywords:** *war; peace; ethics of war; just war theory (JWT); violence; justice; military ethics*

## I.

Talking about war has always been a sensitive thing. It is understandable. For those among us who were unfortunate, or just unlucky, to experience it, it is often perceived as cataclysmic, as something coming in a sudden and unexpected way by *erupting* from the

darkness of possibilities waiting patiently to show the irresistible power of shortcuts. But wars, being a matter of, in principle free, decision-making, are not unexpected surprises (in the sense in which other cataclysms, like earthquakes, arguably are). Those who decide to enter shortcuts believe that they are good paths ("just," "profitable," etc.), or, otherwise, that there are no other paths ahead. Both sides – as the war must have two sides – would prefer to avoid it: attackers would like the prospect of the attacked surrendering, and attacked certainly would prefer not to be attacked. But after starting a war (one side by attacking, the other by resisting) both sides see very vividly that they cannot just stop, which is one of the most basic features of war: *irreversibility*. Irreversibility is one of those essential features of war that are sometimes overlooked or neglected.

There are other such features. The one intimately connected with irreversibility is perhaps even more definitional: it is *temporariness*. Wars should end, they are not conceived as permanent states of human affairs. It is different with *peace*. Peace exists and functions under just opposite terms: as if it will be the same for ever, *sub specie aeternitatis*. So, as Clausewitz, and Cheyney Ryan in this volume following Clausewitz, say, "the most important question" to be answered when we talk about war is "what is meant by war."[1] What is war?, and What is peace?

The third among the very basic essential features of war is its *unpredictability*. This is particularly important, as it implies some of the very basic tenets of war: cardinal lack of control of the future time, constitutive character of victory which has a logical property of consent, necessary acceptance of the possibility of defeat, the normative necessity of *honourable defeat* (and valid capitulation), the possibility of ending of war not merely as a truce (containing the germ of future war) but as a real peace, the obligation to respect enemies (not treat them as criminals), etc. The importance of unpredictability, as an essential parameter of war is huge. It implies normative necessity to distinguish soldiers from police persons, and asymmetry between armies and police force. The very presence of this parameter as a reality implies a conclusion, present in some of the papers in this volume (Psarros, Ryan) that war *cannot* be outlawed (at least not until a world government has been established, which might prove to be impossible).

Another among the essential features of war is *suspension* of the way laws function, implying real suspension of many of them, along sus-

[1] Carl von Clausewitz, *On War*, eds. and trans. Michael Howard and Peter Paret (Princeton, NJ: Princeton University Press, 1989), 75. Cf. Cheyney Ryan, "Killing and Dying for Public Relations," *Conatus – Journal of Philosophy* 8, no. 2 (2023): 524ff.

pension of the obviousness that established expectations and other social rules have in the way how they function before (and after) the war.

However, relying on lists in a process of defining some social events or processes is, as some of the authors in this volume indicate, risky and epistemologically dangerous (we may say the same for analogies, however they might be compellingly plausible and attractive). So, it would be better to offer some "real" definition in answering the questions "What is meant by war?" or, simplified and substantivized, "What is war?" (In elaboration of the answer, we will encounter the question "What is peace?" as completing the picture.) The one I think might work is what I call *ultraminimal definition of war: War is a kind of conflict which cannot be resolved by any other (i. e., peaceful) means, but at the same time there is a mutual understanding that the conflict must not remain unresolved.*

Put this way, it seems, and it is, a surrender of the *intersubjectivity* based in reason and its universality, which should give a way to resolve all conflicts in a reasonable, i. e. peaceful, way (as all decisions, including those which produce conflicts, are reason-based, and should be solvable on that basis). However, reason has a very interesting ingredient which might be the answer to why it is not so. That ingredient is *cunningness*. Thomas Hobbes says[2] that even the weakest and most stupid may kill the strongest and smartest, by using the instrument of cunningness, which is an essential and inalienable, constitutive, part of the capacity of reason. If my intuition here is right this shows that reason is not securing, at least not necessarily, a possibility of peaceful resolution of conflicts, opening room for going around the, *per hypothesis*, universal requirements of intersubjectivity as the base for impartiality, reciprocity, and general recognition of all by all, i. e. that there are conflicts that *cannot* be solved by reasonable, i. e. peaceful means. This implies a need to determine and define "peaceful" and "peace."

*Peace,* which is supposed to be permanent, is offering maximal possible control of the future time by giving guaranties for good prospects in our setting goals, planning and deciding by firm validity of established and accepted social rules (laws, customs, established expectations, recognized virtues and vices). Total predictability still will not attain, but the most important and most difficult part of unpredictability, one based on impossibility to know in advance what *others* (and what ourselves) *will decide* in future should be constrained and put under adequate control. The ultraminimal definition of peace then would be: *Peace is accepted specific articulation of the distribution of social power in a particular society.*

---

[2] Thomas Hobbes, *Leviathan*, ed. Richard Tuck. (Cambridge and New York: Cambridge University Press, 1996), xiii, 1-2.

The minimality of these definitions are clearly at odds with nowadays prevailing and accepted way of theorizing about war, which is characterized by certain maximalism. Peace is not taken to be what the wars are about; the final justification of war is justice. Peace is allowed as valid notion but only as "just peace," which should not be just what is *accepted* by the actual persons and does not allow real and substantial compromises. Both now widely accepted theories, Doctrine of Double Effect, and Just War Theory, seemingly corroborate our striving for *perfection* and *justice* in principle independently of existing interests of real people whose lives are at stake. This is far from any minimalism and makes ending wars (and sometimes starting them) much more difficult, costly and tragic than it is necessary. Moreover, it seems to me that such approach prevents us from understanding the deeper logic of human agency and the need for coordination and cooperation in human world, sometimes as if the future is strongly determined by what in the past had been determined as proper and right. A big intellectual effort has been put in elaboration of these issues in many of the contributions in this volume. I think that some of the findings are very illuminating and illustrative, showing that the discussion of Just War Theory came in a new and critical phase. We may hope that the outcome will be theoretically solid and practically relevant.

Another matter in which a big effort has been invested is the examination of the role and prospects of new technologies, which indicate a shift in paradigm and a turning point in way of our established beliefs and attitudes. Some of the problems there are independent from technology, for example the issue of naming new evils with old names (and a price the world is paying for that), but many others are showing a real *newness* working productively in construing a new world. Many of the contributions in this volume go deep into this matter. The problem is cardinal, but we are not certain what it consists in. Should we devise new storytellers, who would tell us what they are, as Henrik Syse and Martin Cook suggest? Should we just condemn what we do not know, or not recognize? Does it really change the paradigm of warfare, opening room for its being more like *pest control,* or *hunting,* does it *dehumanize* war and destroy *the intimacy of battles,* or the opposite, opens bright perspectives for "saving lives"? Or we should just wait and see what will come, with our only in part defined insights in what is coming? Whatever the case may be it is not only interesting but also highly important matter to think about.

## II.

Each paper contained in this volume is, I assume, a kind of work in progress and might become a bigger study or a book, and each refers

to some important aspect of the phenomenon of warfare. The phenomenon is vast and complex, so the papers are diverse and very different from each other. Still, I believe that they might be perceived as an overview of the world's thinking about war. Certainly, there are missing parts, and also parts not covered properly. However, the "journal production" is, in its nature, a work-in-progress, an incomplete and unfinished endeavour. The final production in this business are books. I believe that some of these texts will find their place in some books or become books. Some will evolve into or lead to new articles. All of them are good seed for further thinking. Certainly, war will not stop to be the inspiration for thinking and writing by those puzzled by its ever-new forms, but above all by the fact that it comes again and again, always producing new horrors and perplexities, and also new, sometimes hard to grasp, misunderstandings.

The papers are diverse. When Evangelos Protopapadakis asked me to order them in alphabetical order I was at the same time thankful and puzzled. Puzzled because the alphabetical order is messy and dishevelled, jumping from one topic to the order without logical, or expected, flow of content. Thankful because it wouldn't be easy to group them in suitable (and in principle "equal") sections. The papers are too diverse. A project intended to produce a coherent whole would be much more demanding, in time and other resources, and certainly would have much stricter requirements regarding the content, But the intellectual freedom and option to write just about what is for the author most important and urgent would be to some extent lost. The price is an apparent disorder, quite in line with other defects, the absence of systematicity and the incompleteness. Some problems here are absent, or only mentioned in passing. On the other side there are not many that overlap. So, alphabetical order has its benefits. The titles of the articles are clear enough to steer readers through the content. The content is highly relevant, timely, plausible, enticing, challenging, provocative, exciting even. We may hope that it will be productive too, in good discussions which should follow.

***

In his short but succinct and concise article, Nigel Biggar examines our encounter with new technologies and the question of how this might fit into the value system accepted in today's warfare. Despite being short, his text is complex and rich. Biggar succeeds in what seems impossible – to show how new reality is a continuation of the same old one, keeping all the virtues present in the past, sometimes in new, more precise, shape. New

technologies come in two kinds and bring two[3] important outcomes. First, enhancement in techniques of searching (and hiding) on an unprecedented scale. Second, and this is bringing a real issue of concern, delegation of decision-making power to machines, by making them able to choose not only a specific target (according to a specific description) but also to decide to act without any further authorization (something that not only commanders but also regular soldiers are supposed to do in real battle situations, in a moment when the decision has to be made). In his description he doesn't skip other properties that autonomous machines (i. e. autonomous, not automatic weaponry) have to have to be able to perform their tasks: capacity to learn from mistakes (i. e., detecting mistakes *as* mistakes!) and improve initial choices.[4] Is this replacement possible and feasible?

Both these kinds of artificial intelligence raise problems, not only the second one. The first one (enhanced ability to identify and pursue targets), less in the focus of attention, is also very important as it produces (possibly important and far-reaching) changes in the very paradigm of warfare. It is interesting that this change is perceived in two cardinally different ways. Some take it as a progress (not only because of the ratio of costs but also in ratio of death and damage), while others take it as a dehumanizing process that implies a mechanical and impersonal, indifferent, engagement destroying the base for attributability of responsibility for what we do. According to the second approach something has been lost there, some virtues that Biggar briefly but convincingly analyses in his article one by one – courage, honour, loyalty, mercy. Biggar adds another one, which might refer to something that might, among other things, go unnoticed: "a certain kind of callousness"[5] (the lack of which might make humans spoiled and disposed to corruption?). Biggar explores some implications of the new technology in this respect, questions if it changes the nature of war, and concludes that it does not. But he, as some others in this volume, allows the appearance of new virtues: "While the traditional virtues will still be required of military personnel performing traditional roles, there may be novel roles that require a different set of virtues."[6]

Autonomy is more problematic. According to Biggar "[a]utonomy comes in degrees, and is never absolute."[7] Also, as some others in this

[3] Nigel Biggar, "An Ethic of Military Uses of Artificial Intelligence: Sustaining Virtue, Granting Autonomy, and Calibrating Risk," *Conatus – Journal of Philosophy* 8, no. 2 (2023): 68.

[4] Ibid.

[5] Ibid.

[6] Ibid., 71.

[7] Ibid., 72.

volume (Henrik Syse, for example), Biggar does not believe in total autonomy and full moral equality of machines:

> morally speaking, one should never permit a weapons system to be fully autonomous in the sense that it can make the decision to strike on its own and without suffering interference from a human supervisor.[8]

***

In his rich and insightful article,[9] George Boutlas examines one of the most intriguing and important matters in modern moral and legal history, the question of obeying illegal and immoral orders. Boutlas' analysis is superb. He starts from historical exegesis (not so old, less than a century).

> In June of 1945, the International Military Tribunal (ITM) formed in London, faced the problem of a non-yet existing legal armor for the Nazi crimes. Two new rules were widely accepted there. First, a new category of war crimes, the "crimes against humanity" was legally defined. Second, the ex-ante rejection of the defense line "I was following orders" or *Führerprinzip* (the principle of the duty to obey every order given by the military leader).[10]

After a short but very precisely articulated analysis of historical context Boutlas proceeds with a wider philosophical exploring of conscientious objection in war ethics and the International Law on Human Rights that supports it.[11] All the time Boutlas combines philosophical (ethical) and legal approaches, relying on Kant and Rawls.

An important part of Boutlas' article is devoted to the issue of the "tension between justice and peace in the context of war ethics."[12] Justice, which is past-oriented may come in conflict with the prospect of peace, which requires acceptance of (from the viewpoint of justice) "imperfect" solutions, negotiations, reconciliation, forgiveness, tolerance. Indeed, there are many hard to accept tenets for vindictive justice orient-

[8] Ibid., 74.

[9] George Boutlas, "Führerprinzip or 'I Was Following Orders' in Jus in Bello Era," *Conatus – Journal of Philosophy* 8, no. 2 (2023): 77-93.

[10] Ibid., abstract.

[11] Ibid.

[12] Ibid., 88.

ed more to revenge (and enjoying in blaming) than to negotiations and reconciliation.

In a fine historical exposition Boutlas gives a sketch of an argument on why *ius in bello* should be distinguished from *ius ad bellum,* and why it requires acceptance independently of the strength of urge to fight for what is felt as important enough and right to fight for. There is a need to alleviate not only the vindictive anger but also the risks of disproportional destruction and danger of unnecessary irreversible developments which might fight back in unpredictable way (in near or far future). Total annihilation of the enemy is not the best result, and in the long run it might prove not be a victory at all. Boutlas relies on Vitoria and Hugo Grotius: "Natural law *somehow* [italics J. B.] tells us what is right according to justice while *at the same time* [italics J. B.] prescribes the pursue of peace by agreements."[13] "The equality of combatants is a step in this direction of agreement even if only the one side is right,"[14] so "we must consider both sides (right or wrong) equally morally responsible for atrocities and so equally obliged to object in criminal orders."[15] There are two levels or strata of responsibility there, one for the justness or wrongness of making decisions leading to war (instead of continuing to try to avoid it, and abjure from attack or capitulate), the other, utterly different, for how the participants, combatants and others, act and where their responsibility lies in. What they do cannot be evaluated only on the basis of the contribution to the success of war efforts (victory or avoidance of defeat) but also from many other angles (as *heroic, tragic, absurd, wrong, impermissible,* etc.), among which the moral angle is the most important. Responsibility for "atrocities," or crimes, was established independently of responsibility to accept futile and hopeless defense, for example, or for "aggression" for that matter. Therefore "all the soldiers [are] morally responsible for objecting criminal orders even if they are fighting on the right side of the war."[16] Boutlas concludes:

> In seeking peace instead of justice which seems unattainable in the extremely complex and usually irrational environment of a war blast, jus in bello principles attempt to regulate the chaos, eliminate the slaughter, and keep the hope of peace alive. Peace is also justice's demand.[17]

[13] Ibid., 89.

[14] Ibid.

[15] Ibid.

[16] Ibid.

[17] Ibid., 91.

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Are military medical practitioners soldiers or not? It is the issue provocatively dealt by Lu-Vada Dunford in her contribution.[18] The starting dilemma is if the ultimate objective of military physicians is to win battles against the enemies of their state, so military surgeons should follow their superior's orders.[19] She describes a case from Iraq where two wounded combatants arrive to the hospital, the enemy first, the compatriot later, but the military surgeon was ordered not to operate the enemy and take the compatriot first. This is obviously a case where two, presumably opposite duties, are in clear conflict. Taking aside the issue of how a Canadian is "defending his state" in Iraq and how an Iraqi soldier, being in his own country, is performing aggression on Canada at that distance, the problem at stake is real: what a *military surgeon* – a "physician-combatant" – should do: to obey the order of their superior or follow medical norm (even if it was not "required under Geneva Convention to give medical attention impartially"[20]) and refuse to *put down one patient to be able to put on the operation table another one*[21] (in the case described the time is precious and it is not possible for both to survive without the necessary operation on time)? The dilemma is real, it is ethical and not political, and a cardinal one. Dunford develops the argumentation in minute details (possible commensurability of two rivaling and conflicting duties, "physician first, soldier second," "soldier first, physician second," "medicine as a weapon," and other strategies), and covers a significant literature of the topic. The analysis is very interesting. For example, if military requirement is stronger and final, as the author's conclusion suggests (the dual-loyalty dilemma is deemed a non-issue[22]), that would be contradictory to revisionist interpretations of Just War Theory that *ius in bello* determines the status of *ius ad bellum*. Another interesting aspect is (expected?) reciprocity: does it mean that it is expected that *all* (i. e. the adversaries) would accept such a norm? Another one is special and territorial: does it matter *where* (or "when where") this is happening? Finally,

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[18] Lu-Vada Dunford, "Doctors with Borders," *Conatus – Journal of Philosophy* 8, no. 2 (2023): 95-128.

[19] Ibid., abstract.

[20] Ibid.

[21] It seems that this surpasses the issue of partiality, as the example describes more than mere discrimination. It would be different if it was a matter of mere choice between two patients coming to operational room at the same time (and applying then some rule of selection that is not impartial).

[22] Ibid., 97ff, 109f.

if the duty of military physicians is helping in military efforts, would that imply that only heavily wounded enemies should be treated and those who may recover and return into the battle, should be simply killed (or healed less than is needed for recovery)? Some of these questions sound rude, but not as rude as wars usually are.

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In their strange but impressive, thought-provoking, and well-written contribution[23] Purissima Emelda Egbekpalu, Paschal Onyi Oguno, and Princewill Iheanyi Alozie, discuss what they take to be the primordial *conditio humane*: "maintenance of self in existence guided by a natural instinct for survival"[24] as "a struggle for survival [...] that entails overcoming conflicts and adversities of life."[25] "Human beings are by nature violent and are ever combat-ready. This is based on what may be considered as 'the will to live' (*conatus*)."[26] "[W]ar can be considered as having a genetic foundation."[27] Everything is in the process of permanent change, and "the universe is naturally considered an arena of conflicts."[28]

Peace is mentioned in the following way: "humans engage themselves in conflicts [...] not necessarily to bring peace, but to survive and maintain themselves in existence."[29] Although it is true that defence cannot be effective unless becoming *counterattack,* it seems that here there is no room for distinguishing (self)defence from attack. (The other two possible strategies of defence, running away and hiding, might be taken as subsidiary to the prospect of facing a necessity to attack at some point). The possibility to formulate "peace" as a compromise of a kind, a *modus vivendi,* does not fit well here, as the latent possibility to attack is patiently waiting the opportunity. So, it seems that any peace must be a kind of *truce,* although it is not clear if it is valid also *within* a state and not only on international level[30] (if the concept of universal law, secured

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[23] Purissima Emelda Egbekpalu, Paschal Onyi Oguno, and Princewill Iheanyi Alozie, "Dialectics of War as a Natural Phenomenon: Existential Perspective," *Conatus – Journal of Philosophy* 8, no. 2 (2023): 129-145.

[24] Ibid., abstract.

[25] Ibid.

[26] Ibid., 141.

[27] Ibid., abstract.

[28] Ibid.

[29] Ibid.

[30] Cf. Jovan Babić, "The Structure of Peace," in *World Governance: Do We Need It, Is It Possible, What Could It (All) Mean?*, eds. Jovan Babić and Petar Bojanić, 202-216 (Newcastle upon Tyne: Cambridge Scholars Publishing, 2013).

by world government, is even conceivable). The attack has not only "ontological," but also normative primacy.

In the course of their text the authors offer an array of arguments corroborating this position, from the Heraclitean πάντα ῥεῖ, and from Darwin to Malthus, Nietzsche, Hegel, and Marx. In a way it is an excellent intellectual exercise on the issue of conflict and the place of life in its context, and the authors go through nuanced and challenging philosophical decomposition of many basic notions we use in everyday common speech, it seems at the cost of cardinal reductions, but with such a provocative strength worth of placing discussion.

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Criticism of the just war theory takes many forms, sometimes very much different from each other. The one we find in a strong wording of Andrea Ellner's piece of work,[31] is especially interesting. It is not a search for weaknesses neither of the notion of justice nor it's role and function in justifying wars (i. e., as designating them as "just" or "unjust"), but contrasting another notion with "justice." It might not be obvious, or even visible at first, but the notion of "care" (in the most basic sense of being interested in the reality of what is important and what we care about) is stronger regarding what we can designate as the final justifiable purpose of our encounters with catastrophes, war being one of them: it is *the life*. If we look carefully enough, we might see that at the bottom life is always the final designator in any *justification* of war, even in revenge or hate. It's always life what it's about. Andea Ellner very skilfully moves with this thesis through the meanders between pacifism (seemingly caring for life, but actually only for a particular specific way of proper such care)[32] and what she names "nonviolent conflict."[33] Her conclusion is that all the affirmative attitudes contained in pacifism and nonviolent conflict are "complementary [...] to living with the possibilities and tragedies of human condition," adding that this approach "is grounded in feminist theory and methodology and their connections with Galtung's models of violence and peace."[34] Her reasoning is more than convincing:

> Care must be oriented towards the future and growth. Just War Theory is *reactive* to the existence of an aggressor and

[31] Andrea Ellner, "Ethics of Conflict, Violence and Peace – Just War and a Feminist Ethic of Care," *Conatus – Journal of Philosophy* 8, no. 2 (2023): 147-173.

[32] Cf. my article, "Pacifism and Moral Integrity," *Philosophia* 41 (2013): 1007-1016.

[33] Ellner, 148.

[34] Ibid., abstract.

> their act of aggression, and the peace it enables in principle is defined by the return to an absence of war, *negative peace* [italics J. B.]. An ethic of care confronts the ethic of justice of war with a radically different perspective with its starting point of life. With its *proactive* perspective, it holds up the mirror to Just War Theory and forces the view upon breaking thought the cycles of violence by building social orders at local, regional, and global levels that enable human endeavour thus creating positive peace.[35]

This is strong without entering in deep darkness of JWT (as Stanar and, in a way, Kashnikov and Glaser, do in their contributions): it is not to be expected that *negative peace* would permanently remove the causes of a war. On the contrary, being vindictive and punitive towards (by assumption weaker) states and other collective entities, JWT would more probably just contain those causes for some future chance to erupt. Here we can go even further and say that the JWT very often makes impossible or prevents the ending of war, while the ethics of care, allowing or even demanding reconciliation, fares much better in this respect.

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Paul Ertl, with a view on Ukrainian war and Russia's engagement in it, exposes what he finds to be the most distinct features of social change and progress, dissecting the pulsing of the dialectics between negative and positive impulses in society and history.[36] He discusses the role of violence in the dynamics of social processes, analysing some implications of how functions what he designates as "Gewalt,"[37] which is different from the English term "violence," and its relation to notions like "force," "power," "strength," "energy," and "control," leaning on the work of Benjamin,[38] Baudrillard, and others. The role of power, either as force or violence, is subtle and dynamic (we may recall the Kantian claim that wars promote progress in human history by dispersing populace in less hospitable but otherwise rich and vast areas of the globe, enabling access to resources there). Ertl's conclusion might be:

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[35] Ibid., 170.

[36] Paul Ertl, "Progressus as an Explanatory Model: An Anthropological Principle Illustrated by the Russia-Ukraine War," *Conatus – Journal of Philosophy* 8, no. 2 (2023): 175-194.

[37] Ibid., 188ff.

[38] Ibid., 181-184.

> The threat, manifestation and utilization of violence is thus inherent in all individuals and societies. It is not only fundamentally present but must also be applicable and evolvable if society is to be developed and made permanent.[39]

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The contribution of Anthony Udoka Ezebuiro, Emeka Simon Ejim, and Innocent Anthony Uke provides a different perspective in talking of war.[40] It is precious in its own way. The perspective from which all other papers in this volume have been written is western in a rather narrow sense; it is not "occidental" as there is no Islamic perspective (we may say that Islam, as monotheistic religion belongs more to the "Occident" than to "Orient") and other "eastern" or "southern" perspectives, so it would perhaps be more precise to say that the volume has a "European" perspective. To that extent it is a kind of privilege to have a text written from an African perspective. This perspective certainly deserves to be a part of the ethical discussions of war, especially as it can contain fundamentally different perceptions of what it is and how it should be articulated and regulated. The African approach is communitarian and holistic, as it is visible in *ubuntu* and other norms determining the way of life including warfare. "Determining force or reason to go into war"[41] is the community. Community is prior to other factors in evaluation. This has many interesting, important, far-reaching implications which might produce all kinds of misunderstanding. In the European rationalistic approach responsibility is located in the individuals, but in a worldview in which without family there are no persons and without society no families, many of our default terms and assumed notions may change their plausibility (for example child soldiering, if they defend their families, or the environment of their particular life, or just follow their cultural pattern). The whole realm of *ius in bello,* in its varied possible articulation, belongs to this area. There is obviously a proper, morally urgent even, need for a deeper discussion of many of those tenets that in the West are taken for granted, while they are not so convincing elsewhere and for others.

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[39] Ibid., 188.

[40] Anthony Udoka Ezebuiro, Emeka Simon Ejim, and Innocent Anthony Uke, "Just War Determination thoughout Human Acts Valuation: An Igbo-African Experience," *Conatus – Journal of Philosophy* 8, no. 2 (2023): 195-215.

[41] Ibid.

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Joshua Hall in his scholarly contribution offers an elaborated critique of using drones in warfare.[42] He has two main argumentation lines (based in analyses of what he calls "premises," "Premise 1," and "Premise 2"), trying to show that drones are not justified, neither from utilitarian nor deontological viewpoints. His conclusions are opposite to those present in some other contributions in the volume, for example Nigel Biggar's; this iss interesting, as they use similar descriptions of pretty much same phenomena. Along his exposition he occasionally refers to proposals to ban the usage of drones in war echoing "Harry Van der Linden's call for an international treaty banning all weaponized UAV [uninhabited aerial vehicles]."[43]

It should be said that Hall gives his argumentation within the framework of JWT. The two premises refer to two tenets of JWT, proportionality and moral equivalency of combatants. The first premise offers a utilitarian argumentation against drones, while the second premise is based on deontological type of argumentation. His argumentation is deep and invites for further examination, even if that is not visible at first; for example, the racial and cultural arguments he more touches than elaborates are worth to be explored in more details. But the main direction of his thought is "ontological" – can drones have the status and stature to be acceptable rivals and adversaries? That would imply giving drones something they perhaps do not, or even cannot,[44] have, the moral and social equality needed for taking them as liable to responsibility. "If warfare between the drone and human combatants were just, then the drones would have to be equivalent in moral status to the humans."[45] Hall is determined: "but this is not the case."[46] So, it is just a rhetorical question when Hall asks: "can drones be meaningfully understood as fighting for 'their' state's future [if a state does not 'belong' to them in the first place]? The answer is obviously 'no.'"[47]

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[42] Joshua M. Hall, "Just War contra Drone Warfare," *Conatus – Journal of Philosophy* 8, no. 2 (2023): 217-239.

[43] Ibid., abstract.

[44] Compare Henrik Syse and Martin L. Cook, "Robotic Virtue, Military Ethics Education, and the Need for Proper Storytellers," *Conatus – Journal of Philosophy* 8, no. 2 (2023): 667-680.

[45] Hall, 219.

[46] Ibid.

[47] This is complex. When Syse and Cook say that "The machines themselves will never possess those virtues in any real, conscious sense" [in this volume, 678] the status of "never" is dubious, and obviously depend on the (semantically) arbitrary description of what are "the virtues." For example, is it impossible *to expect* that captured drones *refuse* to be used by "enemies" – beyond being *programmed* so, i. e. with an uncertainty regarding what they will "do" (assuming

Another interesting and important point. Hall says that "[w]ar has lost all features of the classical dual situation here and has approached, to put it cynically, certain forms of pest control." This is interesting in more than one way. First, explanation of wars as (collective) duels may imply losing their political side (which might be the most important one).[48] But, on the other side losing *all* such characteristic (as *essential feature* of wars, not their *raison d'être)* might really lead to a kind of perverse shift in their structure – by changing them into tools for such practices as the one Hall mentions here, *pest control,* or a kind of *hunting*.[49]

There are many fine thoughts in Hall's paper. For example, the "encounter between the autonomous agents of both sides" – the status, moral and "ontological" of such encounters is enticing and worth for further analysis based in deeper philosophical insights. It would be interesting to explore if Hall's argument holds also for other kinds of usage of drones, and if that would require different arguments – or the same argumentative scheme would suffice there too.

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I his intriguing and very interesting paper,[50] Asa Kasher raises some questions that, from one side, might look as peripheral to military ethics and, from the other side, may lead to further and deeper issues regarding some more basic and deeper matters of how far disagreement, political, religious, and other, may go in situations of cardinal collective decisions. In other words what is the nature of the loyalty owed to the state, and does it depend on what kind of state it is?

Or, from a different angle, there is an issue in the question: is the nature of the state and the fabric of its cohesion more or less contributive and instrumental to the status of obligations towards it and does it imply better or worse condition of the defence. Simply said, does the nature and structure of the state make the state and its armed forces stronger or weaker? Are democracies stronger because of being democ-

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that they may decide "by themselves" what to do)? Would such an act of theirs be, or could it be, designated as "heroic?"

[48] Compare Cheyney Ryan's contribution in this volume.

[49] Cf. Jovan Babić, "Military Ethics and War: What Is Changing and What Remains the Same?" in *Military Ethics and the Changing Nature of Warfare*, eds. Jean-Francois Caron and Marina Miron, 4-18 (Leiden and Boston: Brill/Nijhoff, 2023), 9.

[50] Asa Kasher, "Suspending Voluntary Reserve Service: New Questions in Israeli Military Ethics," *Conatus – Journal of Philosophy* 8, no. 2 (2023): 241-256.

racies? According to Thucydides,[51] Pericles said that Athenian army is strong because of what Athen was, i. e. democratic: "we, by ourselves, attacking on foreign soil, usually gain easy victories over men defending their own homes." Could democracies, like loyalty, be more or less such, i. e. "democratic" in degrees? There are many highly relevant and topical points in Kasher's paper, regarding important issues of living together. What does it mean? Who is supposed to be entitled to participate in this "together"? Israel is defined, and so it's armed forces ("Spirit of the IDF")[52] as both "a democratic state and the nation-state of the Jewish people."[53] Kasher is explicit here:

> Any change in Israel's regime, from a democratic state to a dictatorial one, or from the nation-state of the Jewish people to a state that is not a nation-state but only a state of all its citizens, like the USA, would fundamentally change the ethics of the IDF (as well as the ethics of any other state body, like the Shin Bet, Mossad, Police, and Ministry of Defense).[54]

This raises some questions, including the one regarding the quote of a piece of Pericles' *Funeral Speech* above. What is "democracy?" Does it presuppose a strong national identity, or can it be articulated just as an aggregate of persons residing on certain territory governed by generally accepted laws and established rules securing predictability and planning – the normalcy of everyday life, regardless of who they are? If it does not, what is the status of dissent, especially when those who *belong* to the designated identity disagree, oppose or resist to what can be perceived as ingredients of that cohesion that makes identity feasible – *or endanger it* (what is Kasher's main point in his discussion of refusing or ceasing to volunteer for reserve duty in Israeli armed forces)?

What does the identity of the state, or the people, consist in? What is the real function of the concept of majority there? What are "minorities?" Are minorities, like political parties, parts of the same whole of what the majority is a part of (something in principle temporary)? Or they are permanent? In Stefanovski's and Čavoški's article we may see the dangers of "partocrathy," where every part was pulling recklessly in

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[51] Thucydides, *The History of the Peloponnesian War*, trans. Rex Warner, ed. M. I. Finley (New York: Penguin Classics, 1972), 2:39.

[52] Kasher, 243.

[53] Ibid., 244.

[54] Ibid.

their different directions. In such situations there might be an issue of specificity of some vital services not feasible for "democratic rights," like firefighters, police, army, or medical services – but at the same time having *a duty* to prevent or diminish risks of wrong political decisions. That might become a tragic, or absurd (which is not the same!) dilemma. Kasher is firm here: "Ceasing to volunteer for reserve service is not done within the military but is the act of a civilian,"[55] and is not breaking the "principle of *mamlakhtiyut* [respect for the role of the IDF within the framework of the state], which requires all those serving in the army to refrain from actively taking sides in any political dispute."[56]

Another interesting and not less important matter is the issue of the so-called "Hawara orders," the danger of which "is not negligible."[57] To put it short it reduces to the difficulties to demarcate what Kasher calls, respectively "an illegal order and a 'manifestly illegal' order."[58] This certainly is not a peripheral issue, but the question is how to make such a demarcation line, after demarcating "legal" and "illegal" first? Besides, there is a possibility of *morally wrong* but still *legal* orders, even if they are tragically and grossly morally wrong. Which might be a real crux of Kasher's point – how to preserve the essence?

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In their very interesting and provocative, possibly extremely relevant, inviting for further exploration, article,[59] Boris Kashnikov and Marina Glaser put on the table a case of a far-reaching usage of Just War Theory (JWT) for long-term strategic outreach of Germany and its presumed or possible strategic interests. The plausibility of their hypothesis is the issue for political analysts, and historians if it proved to be correct, but for us, doing applied ethics, it is a challenge as it would show the "other side" of our theories, in this case JWT. We know that JWT was used for justifying the passage[60] from original Christian pacifism, with its rejecting of all violence (by original Christians who preferred to be thrown to the lions rather than use violence) to accepting violence as a means for defence of

[55] Ibid., 254.

[56] Ibid., 244.

[57] Ibid., 247.

[58] Cf. David Whetham, "Military Ethics Education – What Is It, how Should It Be Done, and why Is It Important?" *Conatus – Journal of Philosophy* 8, no. 2 (2023): 768. Cf. also Kasher, n. 4.

[59] Boris Kashnikov and Marina Glaser, "Just Wars Theory as a Key Element of Germany's New Sonderweg," *Conatus – Journal of Philosophy* 8, no. 2 (2023): 257-278.

[60] Cf. my article "Orthodox Christianity and War," *Russian Journal of Philosophical Sciences* 63, no. 11. (2020): 39-57.

imperial peace,[61] making so policemen out of soldiers and implying the universal state in which God is the "supreme commander" of the world; universalism of "human rights" might have its root here. The hypothesis of Kashnikov and Glaser is that we have another, different, such useful employment of that same theory, now for the sake of German imperialism. It is understandable that German imperialism, after two world wars that Germany lost, is not something that could go open, so the scheme is based in a change of focus: from what was "German Europe" in the 19th and first half of 20th century, to "European Germany" in 21st century.[62] But, according to the authors, there is another difference: now the main tool is an infinitely enticing, irresistibly attractive, and supposedly irrefutable theory like JWT (supported by world-wide, or at least western, strong normative acceptance). That's Germany's new *Sonderweg,* proclaimed, as the authors say, in many occasions, as *Zeitenwende*.[63] It was a turning point "[f]rom the language of pacifism and non-usage of military force, it has moved to the language of just war, the specificity of which still needs to be determined."[64]

In the past decades after WWII, we already, many times, experienced the "threat of the returning militarism in the sheep's skin of humanitarianism."[65] It is also true that the warrior's cry is always, at least latently, present, not rarely in the form that justice is more important than peace, that

> [t]he world no longer seriously purports to accept the view that peace is unconditionally a higher value than justice [...] that it is permissible and perhaps desirable and, [...] even mandatory – to fight to promote justice, broadly conceived. Evil ought to be overturned, and the good ought to be achieved by force if necessary.[66]

The combination of human rights paradigm with just war doctrine, not surprisingly, may lead to the feeling of entitlement and even duty to

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[61] Cf. Michael Walzer, "The Triumph of Just War Theory (and the Dangers of Success)," in *Arguing about War*, ed. Michael Walzer (New Haven, CT: Yale University Press, 2004), 3. Cf. also mine "Ethics of War and Ethics in War," *Conatus – Journal of Philosophy* 4, no. 1 (2019): 10.

[62] Kashnikov and Glaser, abstract; 274.

[63] Ibid., 259, 260, and 272.

[64] Ibid., 270.

[65] Ibid., 262.

[66] Ibid., 263.

intervene anywhere – but if it sticks to[67] national cultural tradition instead of moral universalism[68] it may retain its motivational and mobilizing strength but shift the direction of action. That's the theme the authors of this article have in mind:

> The combination of the two tendencies may trigger an array of very special and unpredictable normative developments of the military policy in Germany. The further movement alongside the idea of *jus ad bellum* may provoke specific national perceptions of the justice of the war, which may merge the idea of just war with traditional German realism if not militarism. This tendency may lure Germany into a trap of, what we term, 'human rights militarism.' To what extent the trap is viable depends on the normative constitution of the key elements of *Sonderweg*.[69]

The authors describe, explore, analyze these key elements in much more details in the rest of this rich and highly challenging text.

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Bernhard Koch, in his interesting and intriguing paper, raises some fundamental questions indicated already in the enticing title of his work: "Anger and Reconciliation."[70] We are living now in the age of anger, and reconciliation is only but a very rare exception. Anger is intimately connected to revenge and reconciliation with forgiveness, and this scheme is demanding, politically and morally:

> anger is ambivalent emotion which on the one hand evokes conflict, but on the other hand is also an expression of a sense of justice. Anger can be soothed by forgiveness; forgiveness can lead to reconciliation.[71]

The issue relevant for ethics of war is that justice itself is vindictive and in conflict with forgiveness and reconciliation. "Reconciliation [...] repre-

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[67] It is a question, of course, if this scheme can work differently but "to stick" to some real set of interests (in the absence of the "supreme commander of the world" it may seem that such "sticking" is unavoidable).

[68] Ibid., abstract.

[69] Ibid.

[70] Bernhard Koch, "Anger and Reconciliation," *Conatus – Journal of Philosophy* 8, no. 2 (2023): 279-298.

[71] Ibid., abstract.

sents an overcoming of anger."[72]At some point justice must be revoked to open room to reconciliation. Sometimes even negotiations are not possible if justice is too aggressive. The demarcation line between permissibility and impermissibility defines the space of tolerance, which is the essence of peace. If the whole space is occupied by intolerance, peace would not be possible. Tolerance requires forgiveness, "which is not the same as excusing,"[73] to abstain from perfection and accept that peace is the final place. "Despite the diversity of approaches to just war, it is always a question of overcoming war and transforming it into peace."

It might be obvious on the level of individual relations. Certainly, it is "easier to explain [it] in individual ethics than in political contexts, where collectives have to be considered as actors."[74] But for any peace to be valid and sustainable, collectives must be taken seriously and responsibly, which is not always easy. Koch shows this in his critique of Marta Nussbaum's analysis of shortcomings of both anger and forgiveness, concluding that her "'perfect' reaction to injustice suffered is unconditional love, which demands nothing and does not exalt itself. But Nussbaum seems to demand this unconditional love primarily for inter-individual relationships,"[75] but peace of which we talk discussing the war is more collective tenet and endeavour (as it should provide long-term constitutional and institutional predictability, which the structure of the reality of inter-individual relations, in all their vast and rich settings, cannot provide).

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Sergey Kucherenko starts his provocative and intriguing paper by referring to what's one of the most obtuse issues in contemporary international relations, which is "criminalization" of war [his quotation marks], which entails that "every war should be presented as a self-defence to avoid immediate international backlash."[76] Yet, Kucherenko finds this "right to self-defence" to be "too narrow for real politics."[77] Then he proceeds:

> Waiting for real aggression to enable this right is often an unaffordable luxury, therefore, one often needs a reason to

[72] Ibid., 290.

[73] Ibid., 289.

[74] Ibid., abstract.

[75] Ibid., 293.

[76] Sergey Kucherenko, "Existential Threat as a Casus Belli," *Conatus – Journal of Philosophy* 8, no. 2 (2023): 299.

[77] Ibid.

> strike pre-emptively. Here the concept of "existential threat" comes a useful tool.[78]

A "threat to someone's very existence easily allows the use of the last resort."[79] It is rather obvious that the (real or proclaimed) existential threat "may also serve as a nice *just cause* for those who employ Just War Theory."[80]

Kucherenko then analyses, in a series of interesting and well-articulated arguments, the concepts of "just cause" and "justice," finding that they are rather vague and uncertain for an efficient practical usage,[81] focusing in the last and most demanding part of his essay to the issue the analysis of the phrase "existential threat" and its meaning. What is the existence that is threatened? Does it exist at all? Kucherenko thinks that states are not

> *per se* [...] a thing that can be truly destroyed. For state is not a thing, but a myriad of social interactions, interpreted via a political project. The discourse of "existential threat" as a cause for war is almost meaningless if we look closer to a state.[82]

So "existential threat to a state is not a valid just cause for war. The state cannot cease to exist because it does not really exist in a first place,"[83] because it is meaningless to say that a state "exists" in the sense in which it implies the possibility of destruction. What is state then? It is "a set of norms and values, a project pursued by someone?"[84] Unlike Stefanovski and Čavoški, also Thucydides, who think that "partocrathy" is one of the most sinister causes for a civil war, Kucherenko believes that the state is a matter of agreement of different groups who, at least in principle can, through political negotiations always reach an agreement which renders war as unnecessary. Kucherenko concludes:

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[78] Ibid., 300.

[79] Ibid., 304.

[80] Ibid., 300.

[81] He quotes President Obama who saw that Syria is a threat to US security saying at the same time "the USA will be 100% secure while fighting for their security," which renders to practical contradiction as it implies the absence of real threat. Ibid., 300.

[82] Ibid., 310.

[83] Ibid.

[84] Ibid.

> It will help to keep in mind that the state is not a single unit, but a complex system, where different groups compete to realize their political projects. Thorough evaluation of potential gains and losses of different groups will make military decisions less hasty, while more proportional and prudent.[85]

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In their instructive article,[86] devoted in full to *ius in bello,* Ioanna K. Lekea, George K. Lekeas, and Pavlos Topalnakos, depict and explore an elaborated experiment

> conducted at the War Games Lab of the Hellenic Air Force Academy, which seeks to probe the potential of moral enhancement [...] in fostering effective decision-making during extreme conditions.[87]

In their description of the simulation of decision-making process they focus on two "key principles [under the rules of the JWT and the framework of IHL] guide ethical and legitimate conduct: the principle of discrimination/distinction and the principle of proportionality."[88]

To apply these two principles of guide of ethical and legitimate conduct, however, does not come by itself; it demands education and training. In the hard situations of a battle, burdened by many difficult constraints, decision-making may be very difficult. Decisions must be made fast, with a shortage of information, in the context of uncertainty. "Making decisions within the context of a military operation poses exceptional challenges."[89] In this demanding process it is important to be able to rely on stable and valid resources. Education and training are necessary and important preparatory phases: decisions should be well prepared. What to rely on?

> [W]ere does trust lie: in the insights of a comrade, a commanding officer, or the guidance provided by sophisticated algorithms and Artificial Intelligence (AI) systems? Could AI

[85] Ibid., 311.

[86] Ioanna Lekea, George K. Lekeas, and P. Topalnakos, "Exploring Enhanced Military Ethics and Legal Compliance through Automated Insights: An Experiment on Military Decision-making in Extremis," *Conatus – Journal of Philosophy* 8, no. 2 (2023): 345-372.

[87] Ibid., 346.

[88] Ibid., 352.

[89] Ibid., abstract.

> potentially outperform human guidance when it comes to elevating the ethical and legal discernment of military personnel amid the intensity of combat situations?[90]

Lekea et al. offer a thorough analysis of the options. After analysing three methods of learning (they say two, the two first in the following list, but then they add a third one): War literature, Moral philosophy, and Situational Training Exercise (STX – in experiments simulating the battlefield). There is a clear difference between the first two (belonging to the sphere of *education*),[91] and the third, which is *training,* they are still parts of the same process. This also applies to the argumentation of the authors of this article: it is the effort to prepare decision makers to make good decisions. The authors raise then the following question: Can artificial intelligence (AI) help here? It seems that their experiment shows clearly that it can. Their findings confirm that the vast majority of cadets, future officers (pilots) are open to both legal advisory and the help of AI, which might be a sign of their maturity in the relation to the issue of obedience: their loyalty should be corroborated by relying on firm data on both of two levels, normative (legal) and factual (reliability of the facts upon which they make their decisions). That does not imply blind following "AI recommendations without thorough consideration,"[92] but certainly there are concerns regarding such possibility.

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In his contribution Florian Ladurner deals with a very important topic, mainly neglected in the ethical literature on war – international economic sanctions.[93] He is pursuing this topic elaborately and in many details on many paths. His main focus is to see if sanctions can be morally justified, after being proclaimed to be "legal."[94] Legality of sanctions is an interesting issue, but what we can safely say is that they certainly can have far-reaching implications and consequences (we may recollect US sanctions against Japan 1941, perhaps producing, but certainly contributing to, the war between two countries which changed, permanently, the political geography of Far East). There are several important points of significance to be mentioned

[90] Ibid.

[91] David Whetham distinguishes *education* from *training*. Cf. Whetham, bellow.

[92] Ibid., 364.

[93] Florian Ladurner, "An Ethics of Sanctions? Attempt and Critique of the Moral Justification of Economic Sanctions," *Conatus – Journal of Philosophy* 8, no. 2 (2023): 313-343.

[94] Ibid., 317: "sanctions are viewed from a legal perspective as measures designed to ensure compliance with specific legal norms."

regarding their alleged legality. It is a kind of normative contradiction: they are not, and normatively cannot, imply *consent,* something that all legitimate laws must have (to be based in freedom, and not be mere violence). So, their legality does not include their possible legitimacy. Sanctions are imposed by the stronger to those who are, or supposedly are, weaker, without their consent. In their form sanctions look more like a siege, i. e. a form of warfare. They are perceived so by both victims and imposers, so their "legality" is more a mode of speech than anyone's real understanding of some juridical reality. As far as content is concerned sanctions might be described as justified in different ways (from the moral point of view boycotts fare better in that sense). Ladurner does that *in extenso* on two tracks: through the Doctrine of Double Effect (good intentions, bad consequences)[95] and the just war principles (vindictive justice).[96] On both tracks the result is mixed, partly because both doctrines lack clear moral relevance – first doctrine (DDE) by conveniently justifying too much, second one (JWT) because of being biased through its black and white Manichean approach. One of the essential features of war is the (temporary) suspension of normal civil laws and of many established expectations, present in times of peace. In times of war, or latent war, the rules are different. Sanctions are the example – their legality is akin to the laws of occupiers, laws that, independently of their other possible feasibility, are imposed norms without consent. Of course, they can be called "law," but in the same sense in which racial or slavery laws were/are laws – norms not freely consented to. Ladurner is right that sanctions, as well as war, have the whole specter of other, unintended consequences, political, social, mental, etc., directly on targeted populace but also on the populace of the side that imposes sanctions. These consequences are not easy to predict or assess. They may change the calculation of war in an unexpected way (for example the feeling of being sieged, produced by sanctions, might boost the cohesion and defensive capacity of sanctioned sides). In the absence of world government, the plausibility of talking of the legality of "international sanctions" is dubious, leaving two other parameters to be perceived as working in their functioning, interests (economic and other) and fear. The humiliation of the sanctioned side may produce a kind of servile feelings among sanctioned and a feeling of arrogance and entitlement on the other side. Anyway, the output might be unpredictable and disproportional, and the final impact is not calculable in advance. That might be the main, or one of the main, conclusion(s) of Ladurner's complex and rich analysis.

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[95] Ibid., 322.

[96] Ibid., 315.

Marsili's paper is the only one dealing with in our time still fashionable phenomenon of terrorism.[97] His topic is counterterrorism. As he says,[98] definitions vary, and vary very much (from the original revolutionary terror in French revolution to suicide bombers of today). It seems that it is not easy to give a content-wise definition. The more promising path might be to offer some characteristics, although there are two risks there: contesting those characteristics as specific and relevant, and openness of the list, as, taking that the reality is in(de)finitely complex and non-exhaustible, we may always add new such characteristics. One of the possibilities would be to say that terrorism is absurd and futile attack without any prospect to succeed, which seems to be intuitively correct. Does it mean that at the moment of acquiring a prospect to succeed terrorism would lose its defining feature (and become what: a warring party?). But Marsili is more concerned with the response to terrorism and analysing the structure and ways of functioning of a viable such response.

Marsili lists and analyses the entire spectrum of definitions of terrorism up to the one that defines terrorism as overly subjective concept that can best be described by the claim "one man's terrorist is another man's freedom fighter," and that, under such circumstances, "the search for a universal definition of terrorism becomes impossible,"[99] implying that one "who supports a just cause will call oneself a freedom fighter, the other who is on the other side will see terrorism."[100] Even "[t]he UN, also, does not have a universal position on the definition of terrorism."[101] Marsili concludes that "a strictly legal approach proves inadequate, due to the status of unlawful/unprivileged combatants under IHL. An action may be unjust, but not unlawful; it may be just, although unlawful."[102]

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In her timely and abundant in content contribution, Tamar Meisels gives an array of arguments regarding the significance of environmental aspect

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[97] Marco Marsili, "Morals and Ethics in Counterterrorism," *Conatus – Journal of Philosophy* 8, no. 2 (2023): 373-398.

[98] Ibid., 375ff.

[99] Ibid., 378.

[100] Ibid.: "The most cited example of this dichotomy is the American Revolutionary War, where the U.S. used tactics that some call terrorist activities, while the UK used the regular military to suppress rebellion."

[101] Ibid., 378.

[102] Ibid., 392.

of war.[103] War is very bad for the environment,[104] and it is strange how little attention this receives in public eyes, especially in context of hot debates of other environmental discussions. The magnitude of contemporary wars is huge, and their disastrous effects are more than comparable to floods, fires, and other natural disasters. The adverse "effects wildlife through use of mines, bombs, and chemicals"[105] is, or was, a part experience of many of us (birds, for example, stop singing during bombing, not only for an hour or two but for years).

The question Meisels, in context of our topic, raises in her paper is "whether environmental harm can form a new justification for war, presumably in the context of war's *prima facie* unjustifiability."[106] Is the use of force, even military force, a justifiable and suitable means to prevent environmental risks, e. g., as a "response to military aggression against the natural environment, as with any other armed attack?"[107] How define the notion of "aggression against environment"? One of the roles of armies everywhere in the world is to *help* in natural catastrophes and alleviate their bad consequences.

> [C]an environmental harm provide a *casus-belli*, at what point, under what conditions and on whose authorization? Are there any analogues with humanitarian intervention? How does the environment figure into the proportionality of the war itself as distinct from the *jus in bello* requirement to minimize collateral damage. Could preventive or pre-emptive environmental war be justified [in this context]?[108]

These are serious questions. Not only when "[e]nvironmental destruction is often part-and-parcel of an ongoing aggressive attack on state sovereignty and its members' basic rights."[109] Can such a defence of environment, depending on the scale of (possible?) risk and danger, be justified even if "a state's territory has not been invaded and where no basic rights

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[103] Tamar Meisels, "Environmental Ethics of War: Jus ad Bellum, Jus in Bello, and the Natural Environment," *Conatus – Journal of Philosophy* 8, no. 2 (2023): 399-429.

[104] Ibid., 422.

[105] Ibid., 400.

[106] Ibid., 401.

[107] Ibid.

[108] Ibid., 410.

[109] Ibid., 411.

have been directly infringed?"[110] Meisels mentions even "pinpointed air strikes with drones as well as non-kinetic tactics,"[111] without a recourse to full scale war,[112] as a conceivable option in some cases. It is interesting, as it would be devised as a heightened level of responsibility for environmental protection (and it is not inconceivable to encounter such scenarios in the future).

Meisels covers a lot of literature in dealing with this important issue. One interesting point in her discussion was that the environmental problems are bigger now than ever. That's something that many of us think (having in mind widely scattered mines, poisonous chemicals, radiation, etc.). This might be true, but not in the sense that previous environmental damages were *much smaller.* What might come to our mind is *deforestation,* a process that occurred also without wars – but peaceful deforestation might have been done much more carefully and environmentally responsibly than in war. We may recollect huge deforestations described in Josephus Flavius' book *The Jewish War,* describing deforestation during sieges of Jerusalem or Masada, and many others. Or we can see in Thucydides' *The Peloponnesian War* how admiral Laches, on his later suspended naval expedition to Mytilene, "destroyed anything that was growing back in the part of Attica they had previously *deforested* [italics J. B.] and anything that had overlooked in the their invasions."[113] Those deforestations made a permanent change on the surface of the planet.

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The focus of Davit Mosinyan's paper is *peace*.[114] With some interesting insights from Heidegger, Mosinyan describes what he finds the novel situation in this area, not so much regarding the definition of peace, as what are the means for its attainment. He starts by claiming that "[t]he dynamics of warfare have undergone significant transformations, necessitating a comprehensive reevaluation of the study of wars,"[115] because of which "a broader perspective is required."[116] Mosinyan thinks that "Postcolonial research has shed light on the changing forms of warfare that emerged

[110] Ibid., 413.

[111] Ibid., 419.

[112] "Full scale conflict always involves grave risks and hazards, unpredictable and all-to-often catastrophic consequences," ibid.

[113] Thucydides, 3:26.

[114] Davit Mosinyan, "In Quest of Peace and its Subject," *Conatus – Journal of Philosophy* 8, no. 2 (2023): 431-444.

[115] Ibid., abstract.

[116] Ibid.

after the era of military colonialism" demanding new research methods to grasp the new, complicated reality defined by "emergence of informational and hybrid warfare, which blurs the traditional boundaries between states of war and peace."[117] That's the starting point. Most of his effort is devoted to demarcating the states of war and peace, and Mosinyan's focus is the concept of *violence*. He accepts John Galtung's definition of peace as *the absence of violence*. He also explores the concepts of "enemy," "divine violence," "peace treaties," "international law," and such. Mosinyan concludes

> Achieving lasting peace requires a comprehensive approach that not only addresses visible conflicts but also acknowledges and mitigates the invisible and multidimensional challenges posed by hybrid warfare. Furthermore, a thorough evaluation of the roles and responsibilities of the involved subjects is vital in effectively navigating the complexities of peace processes.[118]

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Narveson paper[119] is a strange combination of strong analytical style of writing and personal statements. At the same time, it is a clear example of main-stream ideologically and politically correct western thinking, advocating an interesting virtue of "partiality"[120] (as distinct and opposed from the vice of impartiality). The methodology, simplistic as it can be,[121] doesn't require digging into causes for explanations and understanding of complex and unclear but often tragic events; on the contrary it seems that taking a side, in addition to accepting prevailing public views, resolves all

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[117] Ibid.

[118] Ibid., 442.

[119] Jan Narveson, "War: Its Morality and Significance," *Conatus – Journal of Philosophy* 8, no. 2 (2023): 445-456.

[120] "We humans, though, are just not very impartial." Ibid., 450.

[121] As Michael Walzer said, "we can't change reality by changing the way we talk about it" [Michael Walzer, *Arguing about War* (New Haven and London: Yale University Press, 2005), XI-II-XIV], we can only participate in a battle of narratives that way. One might ask what explanatory capacity and justificatory function may have, for example, usage, in a pejorative way, of proper names like "Mr Putin" or "Mr Xi" in a responsible analytical text of a serious theme? If, for example, someone, being a witness of barbaric and brutal bombing aggression of NATO against Yugoslavia 1999, was talking of "Mr Clinton's" alleged war crimes, what explanatory function such talk would have? Not much. Using sentences containing phrases like "Mr Clinton" or "Mr Putin" would be only an expression of someone's private feelings and expression of her contempt and disgust. But the damage to the plausibility and epistemological worth of such talk might be significant.

issues (causes come from the past, and the past should be taken as irrelevant). Taking sides has a very precious and attractive, perhaps also irresistible role in opening up room for enjoying in blaming, which sometimes looks as a replacement for all other efforts requiring distancing, objectivity, and plausibility. It shows another interesting and very important but unexplored feature of ruling attitudes: that sincerity and anger easily go together. Overall, the text is very illustrative and, in a way, "topical." It doesn't sound as an exercise in political correctness but rather as giving up to the (irresistible?) impulse to enjoy in anger and blaming.

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Nikolaos Psarros has written an elegant and insightful article on the issue of defining war and peace. He starts from the classical definition of war as "a violent conflict between sovereigns,"[122] which implies that war cannot be outlawed as there is no higher authority to authorize that (except in the case of an world state with just one single sovereign). Claiming that violence is "not constitutive characteristic of war, but conceptual,"[123] Psarros offers an alternative definition by listing a set of features which should be taken as essential characteristics of what is referred by "war." However, it seems that the listing he offers is not only not complete, but also that it *cannot* be completed "in any meaningful way,"[124] concluding that perhaps the best way to define war is to say that it is "the absence of peace." This seem to be a good definition of war, despite being incomplete. The specificity of war is intimately connected with the specificity of peace, so the description and definition of peace seems to be highly relevant here. At first there is an offer to define peace as a specific "state of mind," but that is too vague. "State of resolved conflicts and mutual respect" is more promising, but, I think, requires to much: war is a kind of conflict on which both sides consented (with an aim, or hope, to resolve the conflict at stake), but what is meant by "resolved?"

There are two possibilities there: that it is resolved in a definitive and final way (as if war is a kind of litigation in court, but war is something *prior* to any court), *or,* on the other side, that some resolution was *accepted* (from those who ought to accept it), i. e. some *compromise* which has its own conditions and limits. For example, annihilation of one side is not the kind of "resolution" we are seeking for. There are various conditions of intersubjectivity making conflicts possible as kind of the process of resolving conflicts,

[122] Nikolaos Psarros, "The Nature of War," *Conatus – Journal of Philosophy* 8, no. 2 (2023): 457-475.

[123] Ibid., 458.

[124] Ibid., 460.

peace being a solution defined as a specific articulation of the distribution of power, social and other: that's my own definition of peace implying the necessity of the possibility of *honourable defeat* (which has been accepted in advance as a condition for any "resolution" to be consensually acceptable by all).[125]

"Mutual respect" Psarros introduces here as a kind of solution, is then understood as an essential condition for intersubjectivity in functioning whatever is accepted articulation of the distribution of social power (fairness and decency are implied by the fact of acceptance) implying that the laws of peace are, unlike the laws during the time of war, consensual and formally based in freedom. Psarros says "Persons living in social and political peace live under the *rule of law*."[126] Laws of war, or during the war, are different: in war laws do not fulfill those conditions of free acceptance. Peace is based in acceptance of some rules, taken then to be "law," and *acceptance* and *consent* seem to be prior and imply mutual respect as a consequence.

This might be one of the essential differences between war and peace: the state of affairs in which the consent and acceptance of the "rules of law" is taken for granted (in peace) or not (in war) – two different articulations of the (same) freedom. However, having in mind an essential feature of freedom, the capacity to change one's mind in what is acceptable, the issue if peace must retain a dimension of being just a truce – or "mere truce," as Psarros puts it in the most difficult context of international relations[127]: "international peace is not just a situation of mere truce" seems to be of the utmost relevance – peace is logically prior to war – from which perhaps follows it's essential feature to function *sub specie aeternitatis, as if it will be for ever, with a clear pretension to overcome temporariness which is a definitional dimension of "war": wars should/must end while peace should last in(de)finitely, i. e. as long as the consent to accept it lasts. Peace, as well as war, is based in freedom as the capacity to make a change in what's real (or a lack of such capacity).*

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In his short, intriguing paper,[128] Ashley Roden-Bow gives an interesting philosophical stance based on the views of the German philosopher Mar-

[125] Cf. my articles "Structure of Peace" and "Freedom and Responsibility – the Ethics of Surrender."

[126] Psarros, 464.

[127] Ibid.

[128] Ashley Roden-Bow, "Killer Robots and Inauthenticity: A Heideggerian Response to the Ethical Challenge Posed by Lethal Autonomous Weapons Systems," *Conatus – Journal of Philosophy* 8, no. 2 (2023): 477-486.

tin Heidegger. The use of lethal autonomous weapons system "create ethical problems because of the lack of moral agency in an autonomous system, and the inauthentic nature of the deaths caused by such a system."[129] Indeed, there is not much sense in saying that machines at any point "die" (except in metaphorical sense), which is just one of the signs uncovering the essence of the reality we face here. Roden-Bow gives some fine arguments in this line. Two positions may be discerned

> from the Heideggerian standpoint: firstly, because artificial intelligence – despite appearances – is incapable of reaching the status of moral agency, and secondly, because the kind of warfare conducted with lethal autonomous weapons systems would be inauthentic and thus unethical.[130]

The human position in the world is exceptional.

> [E]ven in the context of a "self-learning" system, the initial algorithms or instructions programmed into the weapon act as a technological "first cause." This first cause is not biological or theological – at least not directly. It is the action of human agents.[131]

Roden-Bow concludes his exposition by proposing, or joining to the proposition, to ban, internationally, the usage of robots in war:

> The response to these conclusions, must be to act to prohibit the use of lethal autonomous weapons systems and to treat their use in much the same way as we do chemical weapons and other inhuman acts of war.[132]

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The paper of Rupčić-Kelam raises important and timely issues. Child labor is a chronic problem in many parts of the world, and this paper discusses another case of child abuse, child soldiering. "Vulnerable, innocent, passive victims of war,"[133] as Rupčić-Kelam describes them, they are abused

[129] Ibid., abstract.

[130] Ibid., 479.

[131] Ibid., 481.

[132] Ibid., 485.

[133] Darija Rupčić Kelam, "Militarization of Everyday Life: Girls in Armed Conflicts," *Conatus – Journal of Philosophy* 8, no. 2 (2023): 487-519.

regardless of the question if they are having riffles in their hands or being exploited, used for whichever inhuman purpose, raped, killed, etc.

Within this broader topic Rupčić-Kelam is paying a special attention to the position of girls, young women, or female children in the context of war.[134] While young men are very visible in contemporary migrations, girls are mostly invisible. The obvious asymmetry is very much relevant and certainly worth to be explored in more details. This endeavour has been done in this article, with a keen insight and with a due sensitivity. The issue is complex, but the author captures it in depth. The abuse of children in a radically changing world might not be perceived as the most important issue, but it is a part of the deepest problem nowadays, deserving more than just a mapping of the problem. Child soldiers, the phenomenon of our time (perhaps more than other times) is one of the clearest cases of this abuse, not entirely explainable, or justified by cultural differences, or by life necessities. As children often are the cheapest workforce, they easily become the most expendable and easy to manipulate instruments in wars.

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In his brilliant article Cheyney Ryan deals with the most fundamental issues regarding *ius ad bellum:* the nature of war as such.[135] Said in one sentence it would be: War is not just a battle. It is (much) more than that. This determines then everything: what the war is, who are warrying parties, even what should be and is taken to be the right way of engagement in war, *ius in bello*. It gives a proper path to describe soldiers (who are not private persons that are accidentally at the battle field – if they were, the wisest move would be to run away), and put in their right place all the fashionable tenets like JWT or "domestic analogy": war is in essence a political issue, more than a military one.

Ryan opens this story by describing the so called "Operation Torch," a massive Anglo-American offensive in North Africa in November 1942. By military commanders the operation was meaningless and wrong because it had no military purpose and value at all. President Roosvelt "did not dis-

[134] Ibid., 503: "During armed conflicts, girls are particularly susceptible and subjected to various systematic forms of violence and violations of their rights that have mental, psychological, physical, spiritual, emotional and material consequences. These forms of violence are forced kidnapping, forced imprisonment, human trafficking, various tortures, violence, and other forms of inhumane treatment, amputation and mutilation, forced recruitment, conversion into sex slaves, rape, sexual exploitation, increased exposure to sexually transmitted diseases and HIV infection/AIDS, forced prostitution, forced marriage and forced pregnancy or forced abortion. Armed conflicts impose unimaginable suffering and consequences on the lives of girls."

[135] Ryan, supra n. 1.

agree,"[136] but his concerns were something else: the state of mind of the American domestic public, which should be persuaded that the military is not staying idle but "doing something – anything."[137] That was *more important* than *the (ius in bello) principle of necessity,* that should justify any military move (from the military perspective). It was more important even than the *(ius ad bellum)* basic war requirement, "to weaken the military capacity of the enemy."[138] President's concern was "to bolster political support back home."[139] Rephrased, his concern was not to facilitate *military effort,* but to enhance *war effort*. He was not so much interested in winning a battle, his concern was winning the war.

Everything follows from this. It corroborates Carl von Clausewitz's claim that war is the "continuation of politics by other means." Battles, although most visible and impressive, are not always the most decisive part of war, nor have necessarily the strongest causal power (despite their high symbolic value). It is possible to win all the battles and still lose the war, as many experienced (e. g., Napoleon from our cover painting, or Americans in Vietnam). It's not my task here to go deeper into important logic of how wars are constitutively *collective* in their nature, how they function by bending the *collective will* of the adversary (for which is, sometimes urgently, needed to bolster the spirits on domestic side),[140] or how soldiers are, according Ryan, "as embodiers of threats"[141] as the main instrument of war. Ryan offers much of the highest quality argumentation of the essence of war, accepting Clausewitz's thesis that, in answering the most important question "what is meant by war," the "single greatest error in thinking about war was confusing *war* with *battle*."[142]

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The paper[143] of Armen Sargsyan has three layers. There is an exposition of some Russian religious thinkers[144] (Tolstoy, Illyn, Berdjaev) of war

[136] Ibid., 522.

[137] Ibid.

[138] Ibid., 523.

[139] Ibid.

[140] Cf. Charlie Dunbar Broad, "Ought We to Fight for Our Country in the Next War?" *The Hibbert Journal* 34 (1936): 357-367.

[141] Ryan, 535.

[142] Ibid., 525; Clausewitz, 75.

[143] Armen Sargsyan, "The Problem of the Legitimacy of War in the Context of Ethical Concepts: The Example of the 44-day War," *Conatus – Journal of Philosophy* 8, no. 2 (2023): 545-563.

[144] Ibid., 547.

and its possible justifiability. Then there is a partial and incomplete analysis of so called "44-days war" of 2020, which might be perceived as a kind of introduction to Azerbajani's total victory of 2023 and subsequent ethnic cleansing of Nagorno Karabah. The third layer, which is the most interesting because it is vividly ilustrative of a frequent way to write or speak of war and other crises and catastrophes – lamentation because the reality is diferrent from what it should be. The frequency of this approach, often even in serious literature, along taking sides and preaching, is interesting and not enough explored terrain (despite being widespread). Very often there are unjustified, and also uncorroborated, expectations that "ethics" would do what it allegedly should: to prevent wrongs to occur. What that might mean? That "ethics" should have prevented the defeat in Vietnalm? The "fall of Kabul?" Or to prevent American intervention(s) in someone's else's country and someone's else's lives? How? Is that *the task* of ethics, to prevent "wrong?"

It goes without saying that the second and the third layer in Sargsyan' paper are overlapping and mixed. Sargsyan says "It is obvious from the above that the unleashing of the 44-day war by Azerbaijan did not at all follow the principles of *jus ad bellum*."[145] Would it be "better" if such developments of event was a result of some purely natural causes, for example earthquake, or flood? We face here a tragic borderline point at which instead of freedom, which, containing human fallibility and vulnerability, both implying some kind of initial equality,[146] we face something very different: the necessity, in the crudest form of established past. Past is necessary (if it was not, it would not happen), which means that freedom is located in the future driven points of the present. If we want to change the past we would see that it is literary impossible, except to create a *new* future articulated on the insight into past injustice. But to do that we must first discern what was/is necessary and what is (still) possible. It may be that one of the sources of attractive power of JWT is that it offers to be capable to "overcome" this distinction. The hope of help in the face of injustice then seems to be tragic, as it were with the Melians.[147] False beliefs, in the same vein as false hopes,[148] are of no help there, on the contrary. As Cheyney Ryan says in his contribution to this volume, "the deepest problem of war is not its injustice but is inhumanity."

[145] Ibid., 558.

[146] Cf. Thucydides, 5:89.

[147] Ibid., 5:84ff.

[148] Ibid., 5:103.

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In her enticing, enjoyable, and seductive article Nancy Sherman asks, "whether Stoicism leaves any room for grief and distress?"[149] Her answer is seemingly simple: "I argue that it does and that consolation comes not from a retreat to some inner citadel, but from the support and sustenance of social connections."[150] She quotes Marcus Aurelius who, in his *Meditations* wrote:

> We are parts of a larger whole, a shared humanity in an ordered cosmos that unites humans and the gods. Our fulfilment, as individual selves, depends on that collaboration. We have to work together.[151]

Of course, this is what is at our disposal, if it is. Certainly, this wouldn't make our impulses, nor decisions "fail-proof,"[152] and the stoic "powerful set of lessons"[153] cannot spare us from the fragility in life, which might become tragic and absurd. Our *fallibility*, epistemological and other, which is the basic characteristic of human condition in the universe and implies *vulnerability*, as the guarantor of basic equality in the course of life in the flow of time, cannot be escaped or overcome, not even in that cardinal and desperate jump to renounce all desires, hoping so to avoid pain of fear (at the price of renouncing joy too). Future is *unpredictable,* especially in times defined as such, like wars, of which unpredictability is one of their *essential features*.

Sherman is skilfully dissecting Stoic exercises to avoid the perils of uncertainty contained in the cardinal nature of unpredictability, in what looks like agonizing attempt to accommodate to what is at the same time necessary and unknown, by showing the complex web of possibilities devised by the Stoics. Zeno of Citium, Cleanthes, and Chrysippus, and the later Stoics, both Greek and Roman, such as Epictetus, Seneca, and Marcus Aurelius, all of them are there, even Diogenes,[154] the cosmopolite, who perhaps was more emancipated from "indifferents" of all of them, but, as Herodotus would say, none could know if they are/

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[149] Nancy Sherman, "Stoic Consolations," *Conatus – Journal of Philosophy* 8, no. 2 (2023): 565-587.

[150] Ibid., abstract.

[151] Ibid., 583.

[152] Ibid., 577.

[153] Ibid.

[154] Ibid., 583.

were happy before they die. Of course, to know that my child is mortal[155] is a deeper insight than to know one's own mortality, in the same sense in which in war pain of enduring some sacrifices which might look big might become pale while encountering something seemingly much smaller but intimately dear and of special importance. How any management to "build resilience through a robust re-education of ordinary emotions and routine practice in psychological risk management techniques," pre-rehearsal or other, can accomplish the task "of Stoicism as a practical philosophy [...] to teach us to endure the loss and manage risk"[156] can avoid finding all that as unsuccessful and redundant? It seems that the characterization of Stoicism as "practical philosophy" hides the problem: the risk *must* be taken *in any decision* to start action based on that decision, and if the decision is cardinal and hard, *the knowledge* about the world and how it functions *might* help. *Might,* with some luck. But not necessarily. There is no room for such a hope. However – how to avoid that hope? Is it possible, at all?

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In his comprehensive, systematic, and precise contribution,[157] Michael Skerker explores and "articulates a framework for normatively assessing influence operations undertaken by national security institutions."[158] The "vast field of possible types of influence operations," or "operations in the information environment"[159] are intriguing and attractive for an inquisitive mind. Its subject, "the vast field of possible types of influence operations according to the communication's content, its attribution, the rights of the target audience, the communication's purpose, and its secondary effects,"[160] is obviously a relevant and legitimate subject for ethical inquiry. Skerker offers a number of enticing historical examples, and evaluates them from the moral point of view. He explores the range of targeted audiences, and examines when it is legitimate and when not to aim "influence operations" toward them, the issues of proportionality, and the vocabulary used to designate them (information operations, information warfare, cognitive warfare, political warfare, psychological operations, propaganda). The

[155] Ibid., 573.

[156] Ibid., 566f.

[157] Michael Skerker, "The Ethics of Military Influence Operations," *Conatus – Journal of Philosophy* 8, no. 2 (2023): 589-612.

[158] Ibid., 590.

[159] Ibid., 590, n. 1.

[160] Ibid.

main conclusions of his presenting "an instrument for assessing the morality of influence operations for national security purposes" might be that

> [d]eceptive communications and communications triggering anti-social emotions are fraught and deserve special scrutiny. Such operations usually should not be targeted at non-liable groups. Rare exceptions are where the reasons for engaging in deception can be justified to the target audience. No communication, deceptive or accurate, should be undertaken for unjust purposes.[161]

There is not much to discuss here but to recommend it to the readers. It is highly relevant, with very interesting and timely illustrations. Certainly, an honest stand from the American point of view.

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In a very fine and elegant but cruelly sharp and precise way performs Dragan Stanar his forceful "attack" on Just War Theory (JWT) in his paper.[162] JWT is stirring for some time, going from the (Manichean) extreme further to a kind of totalitarian standpoint (like in time of Crusades), justifying too much but prohibiting and condemning even more. Pretension to monopolize the matter of "just cause" and the entitlement to reduce it to a narrow from before (or from "above," as it was so, logically correctly, in times when the God was the supreme commander) terrain of *licencing* war (neglecting entirely that wars usually come from despair and defect in established order) as if wars are court trials (and judges always the same, even in their own matters).

JWT is the "dominant perspective of modern-day ethics of war,"[163] offering a list of conditions for a war to be "just," implying to be "legal" and *allowed* (as, supposedly, to be *justified,* as if being justified entails being just). As justice is the single and sole justifier of wars, the basic and first tenet in the justificatory list, the one upon which all others rest, is *just cause.* It is always a property of one side (the one which fights for justice, so other reasons do not have a real justificatory force in evaluating a war), and it always belongs to one from prior known side. That position is obviously very comfortable and gives a unified, ready to be used, tool to designate and distinguish *just* from *unjust* wars. Jus-

[161] Ibid., 608-609.

[162] Dragan Stanar, "A 'Just Cause' or 'Just A Cause': Perils of the Zero-sum Model of Moral Responsibility for War," *Conatus – Journal of Philosophy* 8, no. 2 (2023): 613-628.

[163] Ibid., abstract.

tice suffices as both explanation and justification. Stanar indicates a very strange implication following, or being assumed as following, from this position – that "every attempt to further analyze and investigate deeper causes of war is automatically perceived through the zero-sum lens, as an attempt to justify or excuse the unjust side in war."[164]

Once claimed that a war is "unjust," evaluation is established as a social fact and further examination would look like searching for excuses for the "unjust" side. The responsibility must reside exclusively on one, unjust, side, while just side is completely innocent and entitled (and obliged) to require justice. "[E]very effort to allocate at least some responsibility to that particular side would result in reducing and diminishing moral responsibility for war to the unjust side,"[165] "as if [...] simple identification of causes and/or reasons for decisions suggest[s] justifying or excusing them."[166] Beside disrespecting a basic methodological axiom that requires understanding *before* evaluation, this leads to zero-sum game logic,

> in which there is a total and finite quantity (sum) of something, meaning that this "something," whatever it is, can only be distributed to parties ("players" in the game) in such a way that 'one's gain is always the other's loss.' Adding a certain quantity of "something" to one party necessarily means subtracting the same amount from the other; what one gains is quantitatively identical to what the other one loses.[167]

This means that

> [f]ollowing the logic of the zero-sum model, every attempt to attribute any type or any quantity of responsibility to one side would necessarily imply that the other side immediately becomes equally "less responsible" for war.[168]

Any distribution of responsibility or, for that matter, any other attribution of responsibility to "just" (i. e. stronger, the one which believes to be stronger) implies abandonment and renouncement of justice. This

[164] Ibid., abstract.

[165] Ibid., 618.

[166] Ibid., 620.

[167] Ibid., 618.

[168] Ibid.

"Manichean, dogmatic, and solipsistic approach"[169] contained "in Just War Theory prevents us from fully understanding war,"[170] says Stanar quoting McMahan that "even the acknowledged experts – the theorists of the just war – disagree among themselves about the justice of virtually every war."[171] On the other side, it is undeniable that all sides in war deeply believe that it is precisely them who have a just cause for war, that all belligerent sides, regardless of the nature of war, "will always believe, often sincerely, that their own cause is just."[172]

Stanar's conclusion is elegant and well-reasoned: Why cannot "a just *cause*" be "just *a* cause," one out of many causes of war, when evaluating it morally? Indeed, while justice certainly is an important parameter both to produce motivation to war and to give reasons to qualify it after it has started, why we take it to be the *single and sole* explanation for its moral status? It is even humiliating to presume that all but one side in (every?) war are stupid (ignorant of the fact that good must prevail) and evil (motivated by no rational reason but the wrong ones)?

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In their article Stefanovski and Čavoški give a very interesting and thought provoking insight in Thucydides' description and analysis of two horrible event described in his *History of the Peloponnesian War*.[173] Those are the plague in Athens (430-426 BC) and the civil war in Kerkyra (427).

The similarities are striking, the logic of how they function, the description of their horrors, the articulation of course of their occurrence and development, the consequence and their nature and appearance, everything there is indicating important analogies worth to be shown and analysed. Thucydides' description of plague is strong. It was

> worse than it can be verbally expressed, and it pervaded and tormented the ill totally, that it almost exceeded human powers; even birds and quadruped animals, which bit the dead bodies, would die. Getting over the malign disease and watching the others suffering, [Thucydides] describes the unbearable heat and

[169] Ibid.

[170] Ibid., abstract.

[171] Ibid., 624; Jeff McMahan, *Killing in War* (Oxford: Clarendon Press, 2009), 120.

[172] Stanar, 617, n. 17. Cf. also Jovan Babić, "Non-culpable Ignorance and Just War Theory," *Filozofija i drustvo* 18, no. 3 (2007): 59-68.

[173] Mirjana Stefanovski and Kosta Čavoški, "Polis, Loimos, Stasis: Thucydides about Disintegration of the Political System," *Conatus – Journal of Philosophy* 8, no. 2 (2023): 629-656.

> insatiable thirst which made the ill tear apart their clothing, and many, who were not taken care of, jumped into wells.[174]

Desperation and hopelessness[175] were overwhelming. Thucydides "precisely writes down other symptoms as well, from the redness and swelling of the eyes, throat and tongue and chest pain to visceral abscessation and visible furuncles over the body."[176] It was a total catastrophe and nothing could be done to ameliorate it, no medicines nor prayers, and nobody was spared. The result was total breakdown of established values and normalcy of life.

The other such description of a breakdown of the normalcy of life in Thucydides refers to civil war in Kerkyra. It was a war between aristocrats who, following their origin from Corinth and Sparta, were opting against Athens with whom they had an alliance that, like in Mytilene, was felt as oppressive, and democrats relying on Athens. Democrats won, and made a slaughter of their adversaries, but at a point of time the lines between them became very blurred and often absent, as usually happens in civil wars. The description of that war was very similar to the description of the plague in Athens. The conflict was so deep that it destroyed all the morality in public and even in private life.

> In fanatical party conflicts ruthless insolence is more appreciated than common sense, aggressive behaviour is met with trust and skill in making plots and intrigues with respect, whereas plotting of misdeeds and instigation to evil are being praised. The close cousin is more alien than the follower from the same party and people do not join the parties to promote the common good but out of love for power. Mutual trust is not inspired by divine law, but it is based on common violation of laws. Solemn oaths are worthless, and revenge is as sweeter as trust is more betrayed. This moral breakdown destroyed the very bases of every society: family ties, mutual trust of the citizens and sense of belonging to the same social community, to the same *polis*.[177]

[174] Ibid., 636.

[175] Ibid.

[176] Ibid.

[177] Ibid., 649.

Such "entrenchment of a zealous partisanships"[178] manifests in "fanatical partisan disorganization which breaks the family and social ties, rejects all conventions and moral scruples, and does not stop at crime."[179]

*Stasis,* as is Thucydides' term for this aspect of civil war in Kerkyra, showed similar features as the plague. And, although plague leads to complete apolitical attitude and apathy, which causes the abandoning of the public life and all care is dedicated exclusively to oneself... for both cases the egoism is characteristic, either it is the personal egotism which in enormous fear from plague makes persons abandon their beloved who are left alone to die, or bare egoism of the exclusive party interest which is greedy for revenge and power.[180] In the case of plague the "enemy" was invisible, in civil war the enemies are our neighbours, "[t] he only question is who will be the first to attack and who will suffer the defeat and revenge." In a situation of such "party egotism and radical politization" nobody was spared, as it was not in plague: "those [...] who shunned political parties were destroyed by both [parties] either because they did not join them or from sheer malice."[181]

A sad claim we can say here is that Thucydides' description of the plague might not be applicable today – but, it seems, we cannot say the same for civil wars. Perhaps not only for civil wars, but also for latent disagreements and often fanatical dogmatism characterized for many of our divisions, political and other, waiting to be triggered in wars that are latently waiting to be triggered. Anyone who is reading Thucydides' *History of the Peloponnesian War*, and that is what Stefanovski and Čavoški raised in their rich article, cannot avoid the feeling of vivid contemporaneity of his book.

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In her short paper Justina Šumilova is dissecting the myth of Narcissus in the vast virtual sphere of the internet following her reading texts of Maurice Blanchot.[182]

> We usually understand war as an active and brutal conflict that happens in physical life. Our eyes are now on the world-wide conflicts and wars happening in many parts of the world, focusing on advanced technologies used to destroy

[178] Ibid.

[179] Ibid., 652.

[180] Ibid.

[181] Ibid.

[182] Justina Šumilova, "Discussion on Social Media Aesthetic War: Maurice Blanchot and the Establishment of Ethics," *Conatus – Journal of Philosophy* 8, no. 2 (2023): 657-665.

> the enemy. However, one silent and aesthetic mode of war has been going on for a long period of time, but there is not much attention given to it.[183]

It is silent in a context of noise and obsessive desperate attempting to penetrate through and beyond "the glass" mirroring images without recognition and reality. The gaze directed to the glass, desperate or only eager for recognition, is the gaze of Narcissus.

"The gaze of Narcissus is the gaze of war, obsession, and destruction,"[184] "the dark and obscure gaze of the Narcissus which required vulnerability."[185] This might be the crux of the matter: there is no recognition (and respect of others) without vulnerability (which is a guarantor of moral equality, as well as of universal ground for everything). Vulnerability is intimately intertwined with the need and necessity of recognition of others as a condition of self-respect and selfhood, in mirroring realities offering plenty room for hiding. "Vulnerability is the ability to show oneself instead of hiding under the icons and images."[186] The "way to be respectful of the enemy is to talk with them,"[187] stop to hide and start to listen, to be able to accept openness of the universal vulnerability and reject and overcome arrogant and narcissistic obsession with the illusion of "the glass."

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While Ryan's article is dealing directly with issues of *ius ad bellum,* the contribution of Syse and Cook is more devoted to *ius in bello* – but with clear implications to *ius ad bellum* as well.[188] It is a complex, subtle and deep text with far-reaching insights, relevant both for the regulation of warfare (within the general issue of regulating the whole area of new life changed and determined by new technologies) and for the very meanings of new realities and their actual values and prospects. The world is in a process of fundamental change, due mostly (but perhaps not only) to big and fast progress in technology. So big and so fast that there is an obvious deficit of understanding, even no vocabulary to describe what is happening. We witness "a battle between those

[183] Ibid., 658.

[184] Ibid., 662.

[185] Ibid., 663.

[186] Ibid.

[187] Ibid., 664.

[188] Syse and Cook.

who are certain this new technology will save the world and those who believe it will destroy it."[189] We are living in a changing world, and change is cardinal, more than merely radical. The context of reality, if I may say so, has changed, and our access to reality and our grasping and comprehension of what's important has often lost its ground. Our main tool of access to reality is the language, the words that we know how to use. But "[w]e employ the terms, but we have lost the knowledge and the context that once gave them meaning. Hence, morality and its language become increasingly meaningless."[190] This might be dangerous, and gravely so. In the "fierce reality of fear and competition"[191] we face "loss or denigration of the core value[s]" of such basic and constitutive social norms such as "honour and the accompanying virtue of courage."[192] What *honourable* or *courageous* mean now? Do we have to teach "old dogs new trumpets?" It means that we cannot employ old words for new practices, but to construe a new grammar to talk *and think*. War, characterized anyway by unpredictability of cardinal kind, "belongs within the realm of the constantly changing and the constantly uncertain."[193] But the basic distinction, between machines and humans, remains:

> [M]achines have nothing to fear, but they also have nothing to be proud or ashamed of. Honour, conscience, the willingness to take risks, the courage required to put one's life on the line: all of these may be lost at the altar of technology, or so it is claimed. Arguably, however, that is not true for the humans who develop, deploy, and operate such machines. *They* will still have fear, feel shame, or experience honor.[194]

Taking extreme uncertainties combined with extreme options available war seems to be more important than ever before.

That's why they think that we need a new approach to how we *talk* and *teach* about things, by creating a new (but perhaps not so old?) pedagogy distinguishing clearly what should be taken as important from what shouldn't – or shouldn't urgently – and may be left for

[189] Ibid., 675.

[190] Ibid., 668.

[191] Ibid., 669.

[192] Ibid., 670.

[193] Ibid., 673.

[194] Ibid., 670.

future refining. We need to venture beyond the nomenclature of the virtues that are traditionally understood as important for the military sphere – and for military ethics – and propose an added virtue, built on what we just said about prudence: that of the skilled narrator, of the good and well-informed storyteller, who constantly, alongside the developers and the entrepreneurs – and in the military setting: the soldiers, commanders, and specialists – helps us translate the technology into understandable concepts and narratives_and thereby assists us in understanding what we are doing, and where we may be going.[195] To be able

> to tell us what the new technology implies, where we are heading, what we are actually doing, what will *now* [italic J. B.] be possible, and not least what the alternatives are. Maybe every high-technology weapons manufacturer should be obliged to have a CSTO: a chief storytelling officer.[196]

We need

> to study, rethink, and maybe even understand anew several of our traditional moral and intellectual virtues as we face an ever more digitalized world – and ever more digitalized conflict. What role can and do those virtues play as we increasingly work with and delegate tasks to intelligent, self-learning machines? And secondly, we may have to device *new* virtues – or at least variants of the old ones – to fit with the challenges we face, not least in a military setting, from brain-computer interfaces employed by soldiers to virtual cyberwar and AI-enabled weapons. Are there virtues that we urgently need to formulate and emphasize?[197]

To face the fear of losing any meaningful human control over what we only vaguely know we need a CSTO: a chief storytelling officer. "[P]rudent pedagogy and truthful and accurate storytelling"[198] seems to be the only, and certainly is the most promising, way to face "fear of losing

[195] Ibid., 674.

[196] Ibid., 675.

[197] Ibid., 669.

[198] Ibid., 675.

meaningful human control"[199] and to avoid facing "points of no return" (but firstly we should, and must, *define* what and where such points are).

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In his excellent paper[200] Spyridon Tegos, relying on the work of Machiavelli and Tocqueville, gives a fine and subtle analysis of internal logic of conquering and importance of what he calls "intermediary power," a social stratum between the highest layers of social and political power and the populace for a quality of social cohesion and defensive capacity. He corroborates his analysis by historical examples,[201] but directs it to issues of modern democracies.[202] In this rich text with deep analysis, we find the articulation of the internal structure, both of societies[203] and armies.[204] The focus is, as Tegos says regarding Tocqueville, on "the connection between war and politics regarding unprecedented latent civil conflicts in democracies,"[205] or the importance of nobility [i. e. elite of some kind, J. B.] to boost resistance toward a conqueror and the impact of its lack thereof, or rather on the connection between the specific articulation of social and political cohesion and the structure and war as not only a means in their function, but also as expression of their nature. This rich text is not only of high academic merit, but also of timely practical relevance.

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[199] Ibid., 670.

[200] Spyridon Tegos, "Machiavelli and Tocqueville on War and Armies," *Conatus – Journal of Philosophy* 8, no. 2 (2023): 681-701.

[201] Ibid., 682: "[T]he ease with which Alexander held on to the region of Asia, or by the problems others encountered in preserving the territory they acquired, such as Pyrrhus and many others. This is not caused by the greater or lesser virtue of the conqueror, but rather by the different characteristics of the conquered territories."

[202] Ibid., 698: "In democratic social state, ambition liberated from aristocratic social immobility turns toward wealth-getting and private glory; yet war presents an excellent occasion for the transfiguration of private ambition into monstrous military ambition of rapid conquest of power and rapid social ascent."

[203] Ibid., 683: "[T]he question whether liberty is better preserved if confided to the nobles or the people but also who jeopardize liberty more those who wish to acquire more power, that is the nobles or those who desire to acquire more authority to conserve their liberty from oppression, that is the people?"

[204] Ibid., 694: "[...] a more egalitarian army often demonstrates a more efficient and well interiorized military discipline, far from rituals and empty formalities that sometimes plague aristocratic army. Greek and Roman republican armies have conquered the world with the soldiers addressing officers and generals on an equal footing. In modern democracies officers are totally disconnected from the body politic and their interests are distinct from the rest of his country."

[205] Compare: "a democratic people have a great deal of difficulty to begin and to end a war" and [t] he risk loving nature of modern democracies takes advantages of war." Ibid., 695.

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In his scholarly well-articulated and very interesting article[206] Elias Vavouras is dissecting what at first is Machiavelli's standpoint regarding empires as the best political structures, but deeper down it is a corroboration what in an open and direct way expose Egbekpalu, Oguno, and Alozie in their paper[207] – a specific view on human nature and human condition determined by nature. "Expansion of state to empire is inevitable,"[208] a claim from the very first sentence in the paper, is the necessary result of the fact that "[h]uman affairs are characterized by constant movement and change, and expansion is the necessary stage of a state moving towards its prosperity."[209] The other factor in this scheme is "natural tendency [of humans] towards greed, towards increasing the material goods they own at the expense of others."[210] There is no optimum that humans, according their nature, might be satisfied with (and produce, for example, cultures and civilizations capable to last long without cardinal change in their shape and way of life). What impels humans to action is "greedful individualism with a materialistic orientation as a structural characteristic of human nature."[211] Taking into account the sarcity of natural resources – "while human greed and expansion are inexhaustible, the state's reserves are not"[212] – the expansion seems to be vitally important. Therefore "only prospect of satisfying human nature within the political community is empire."[213] To corroborate this Vavouras thoroughly analyses the differences between Sparta and Rome, how a simple city can transform into an empire, and how "glory" relates to power. Particularly interesting and important in this context is Vavouras' subtle analysis of the relation between the meanings of terms of "hegemony" and "empire." I find his analysis both academically valuable and timely in terms of contemporary world situation.

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[206] Elias Vavouras, "Machiavelli's Ethics on Expansion and Empire," *Conatus – Journal of Philosophy* 8, no. 2 (2023): 703-723.

[207] See Egbekpalu, Oguno, and Alozie.

[208] Vavouras, 712.

[209] Ibid. There are "historical examples of states that tried to stand stable for centuries [sometimes in very difficult environment, e. g. Armenia, Dubrovnik, and many others. Vavouras, in context of his exposition, analyses the case of Sparta] and resist movement and expansion, but ultimately failed, because they were not prepared to grow by themselves or to deal with the growth of their enemies."

[210] Ibid., 705.

[211] Ibid., 704.

[212] Ibid., 708.

[213] Ibid.

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In his somewhat exotic but philosophically refreshing article Keneth Westphall engages in a quite different venture to show some of the basic issues of what he calls *precarities of reasoning publically*.[214] His main effort is directed to show that "the enlightenment project," first, is not the cause and source of the impasse that humankind might have been in for a while, and second, that that project has not failed, despite the appearance of such possibility observed by some. Both of these efforts deserve a keen attention.

Reasoning publically remains precarious, not because – as often alleged – the 'Enlightenment project' has failed. It has not failed, it has been thwarted, and in our public responsibilities we have too often failed "the public education required for enlightened, responsible citizenship."[215]

His opening is strong, and the rest resides in deep philosophical dissecting relying on great philosophical figures, Kant[216] and Hegel, in decomposition of modern European history and its betrayed promises.

> The First World War was supposed to end all wars, though soon followed WWII. Since 1945 wars continued to abound; now we confront a real prospect of a third world war. [...] It is historically and culturally naïve to suppose that peace is normal, and war an aberration; war, preparations for war and threats of war belong to 'normal' human life.[217]

Optimistic beliefs in progress and prosperity contained in the enlightenment project didn't succeed to overcome difficulties going so far in the past as far as, as Westphall shows in his deep, intricate and engaging decomposition of the intellectual position of modern age, ancient problems of the very foundations of rational judgement. Rational judgement, which is inwardly self-critical and inherently social and communicable, cannot evade problems of rational justification like the ones classically formulated already by Sextus Empiricus.[218] In addition, "[r]ational judg-

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[214] Keneth Westphall, "Autonomy, Enlightenment, Justice, Peace – and the Precarities of Reasoning Publically," *Conatus – Journal of Philosophy* 8, no. 2 (2023): 725-758.

[215] Ibid., 740.

[216] Ibid., 737: In his article "What is Enlightenment?" Kant "notes that his own 'age of enlightenment' is not itself an enlightened age.

[217] Westphall, 726.

[218] Ibid., 728: Petitio principii and problems of rational justification and the dilemma of the criterion and regress ad infinitum contained in it: "since demonstration requires a demonstrated criterion, while the criterion requires an approved demonstration, they are forced into circular reasoning."

ment is inherently *normative*,"[219] all descriptions contain ascriptions, which, among other things, implies a need to recognize our own *fallibility*. In an age where swearing in justice was an object of hope, we face Westphall's concluding remark: "How if at all can we identify and distinguish whatever *is* just from mere appearances of or pretenses to justice?"[220]

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In his fine paper[221] on educational importance of military ethics David Whetham makes some important distinctions. First, there is a distinction between *education* and *training*. Military ethics, which is a part of regular curricula in many military academies in the world, is not the same as "ethics of war." Military ethics, which is a part of applied ethics is much broader, it is dealing with the regulation of military life, virtues (and vices) contained in that life,

> concerning not with conceptual or even existential questions about what ethics is, what the terms "right" or "wrong" mean or what grounds our understanding of morality (if anything), but rather with what the right thing to do is in a particular context.[222]

The "core idea of military ethics is professionalism,"[223] says Whetham. Professionalism is the unifying factor tying the subject of military ethics together "in one single subject" – "common core of *professional* military values that do not change from place to place, demonstrating that even when some values conflict, many more will still be shared."[224] This is important, as it refers to some *universal* values grounding military virtues in a unique way in the whole world:

> Any professional military force, anywhere in the world, sees itself as distinct from a 'mere' group of mercenaries or long-term contractors, and that self-identity is based on more

[219] Ibid., 731.

[220] Ibid., 732.

[221] David Whetham, "Military Ethics Education – What Is It, How Should It Be Done, and Why Is It Important," *Conatus – Journal of Philosophy* 8, no. 2 (2023): 759-774.

[222] Ibid., 759.

[223] Ibid., abstract.

[224] Ibid., 761.

> than simply being a recognised servant of the state, authorised to employ violence as and when required.[225]

The integrity Whetham is referring to here implies intensive sentiment of loyalty to what Michael Walzer designates as a "set of articulated norms, customs, professional codes, legal precepts, religious and philosophical principles, and reciprocal arrangements that shape our judgments of military conduct."[226] The ethical point here is that this loyalty surpasses legal obligations, on the one side, but also implies that at some points the proper attitude will be *disobedience*. This is important:

> That means that there are also some orders that must never obeyed regardless of how important the person issuing the order is. "I was only following orders" is not a defence against being found guilty[227] of committing a war crime, and there is a positive duty in law as well as a professional obligation to refuse such an order,[228]

concludes Whetham.

## III. Concluding remarks

When Evangelos Protopapadakis asked me to compose a "special issue" on war for *Conatus – Journal of Philosophy* we were thinking of a volume of seven to ten, maybe twelve papers. We ended with a thematic issue of *Conatus* containing thirty-three papers. Of course, war is an important part of our reality, it has always been, but certainly this number is an indicator of increased interest in this theme. As I said above, the content of this volume is vast and diverse. It might look untidy, and its ordering unsystematic. Certainly, there are many parts of the field that are not covered. But it might be seen as a work in progress, which actually it is. It cannot, and should not, be finished. It might be understood as a provocation and a call for further discussion, in more detail and at many places in more depth, and if that comes as a consequence, we might be proud and claim to have accomplished our

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[225] Ibid., 763.

[226] Ibid., 764. Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic Books, 2000), 44. Cf. also my article "Obedience and Disobedience in the Context of Whistleblowing: An Attempt at Conceptual Clarification," *Russian Journal of Philosophical Sciences* 64, no. 6 (2021): 9-32.

[227] Cf. Boutlas.

[228] Whetham, 763.

task. But the main task is to contribute to the understanding of some of the most important issues regarding war, a theme which is, again, so intensely present among us.

Finally, I wish to thank Evangelos Protopapadakis for inviting me to be the Guest Editor of this special issue "War Ethics" of *Conatus* and for his much-appreciated help during the whole process. Thanks are also due to layout editor Achilleas Kleisouras. Special thanks go to the managing editor, Despina Vertzagia, who was present to help at all times, and without whom I probably would be lost at many points during these last months.

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# articles

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# An Ethic of Military Uses of Artificial Intelligence: Sustaining Virtue, Granting Autonomy, and Calibrating Risk

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**Abstract**

*Artificial intelligence in military operations comes in two kinds. First, there is narrow or specific intelligence – the autonomous ability to identify an instance of a species of target, and to track its changes of position. Second, there is broad or general intelligence – the autonomous ability to choose a species of target, identify instances, track their movements, decide when to strike them, learn from errors, and improve initial choices. These two kinds of artificial intelligence raise ethical questions mainly because of two features: the physical distance they put between the human agents deploying them and their targets, and their ability to act independently of those agents. The main ethical questions these features raise are three. First, how to maintain the traditional martial virtues of fortitude and chivalry while operating lethal weapons at a safe distance? Second, how much autonomy to grant a machine? And third, what risks to take with the possibility of technical error? This paper considers each of these questions in turn.*

**Keywords:** *artificial intelligence; war; weaponry; ethics; virtues; autonomy; risk; theological ethics*

## I.

Artificial intelligence in military operations comes in two kinds. First, there is narrow or specific intelligence – the autonomous ability to identify an instance of a species of target, and to track its changes of position. Second, there is broad or general intelligence – the autonomous ability to choose a species of target, identify in-

stances, track their movements, decide when to strike them, learn from errors, and improve initial choices.

These two kinds of artificial intelligence raise ethical questions mainly because of two features: the physical distance they put between the human agents deploying them and their targets, and their ability to act independently of those agents. The main ethical questions these features raise are three. First, how to maintain the traditional martial virtues of fortitude and chivalry while operating lethal weapons at a safe distance? Second, how much autonomy to grant a machine? And third, what risks to take with the possibility of technical error?

## II.

The feature of physical distance between military agent and military effect has given rise to worries about the future of traditional military virtues. Different cultures engender different kinds of military *ethos*, of course, and different *ethē* promote different sets of virtues. The military cultures of Jinghis Khan's Mongols or the SS were not exactly the same as those of medieval Christendom or the British Army in the Second World War. Some virtues are bound by the nature of warfare to feature in all military cultures, most notably, physical courage, honour, and loyalty (I myself would add a certain kind of callousness.[1]) To these generic military virtues, the specific military *ethos* of a Christianised culture will add charitable self-restraint and mercy. These Christian virtues are generated partly by a theological anthropology, according to which all humans share the status of sinners in need of divine forgiveness; and partly by a theological soteriology, according to which the punishment of wrongdoing should be in the service, never of the lust for vengeance, but only ever of a desire for "reconciliation" in the form of a just peace. These two theological doctrines issue in the following moral implications: that those who are morally justified in fighting should allow the ultimate end of a just peace to temper their military means; that those who wage unjustified war may not be regarded as simply morally alien; that the intention of just belligerency should not be to rid the world of evil by annihilating the unjust enemy, but rather to stop a particular outbreak of grave wrongdoing by rendering unjust warriors incapable of further fighting; and that there is no good reason to seek to harm non-combatants. These theologically generated moral implications entail that just warriors should cultivate the virtues of self-restraint and mercy in the manner of their use of lethal force.

[1] See Nigel Biggar, *In Defence of War* (Oxford: Oxford University Press, 2013), 117-119, 127, and 148.

Some ethicists believe that, by putting a human military operator of, say, a semi-autonomous, armed unmanned aerial vehicle (UAV) or "drone" at a safe arm's length from the battlefield, artificial intelligence tends to corrode military virtues.[2] I am not persuaded. It is true that a uniformed agent in Arizona or East Anglia, who is operating a drone in Afghanistan, is completely safe from physical harm, and therefore does not have to exercise the courage necessary to overcome the natural fear of such harm. However, that is only because of the happenstance that the enemy in Afghanistan lacks the ability to strike back with long-range missiles. Operating a military drone over Russia would not be quite so safe. Besides, the virtue of physical courage is a typical requisite of front-line combat troops – and of support troops who might find themselves pushed into the front line. It is not typically requisite of those who, though civilian, are nevertheless contributing to the waging of war safely remote from the front line. That is to say, the waging of war involves a spectrum of exposure to physical harm – as it has probably always done – whereby some war-wagers are safer than others. That is to say, the virtue of physical courage has not been expected of *all* war-wagers – let us call them "warriors" – for a long time, perhaps ever.

Robert Sparrow observes that, while the pilots of UAVs lack the opportunity to exercise and cultivate physical courage, they can still exercise and develop moral courage, whether in deciding to take human life or in refusing to obey what appears to be an illegal or immoral order. And the serious cost of bearing the responsibility for exercising such courage is evident in reports among Predator and Reaper pilots of PTSD. But he worries that this does not distinguish them from ambulance drivers, surgeons, and rescue workers, except insofar as their role involves a deliberate decision to kill. And in that respect, it does not distinguish them at all from armed policemen.[3] To which my response is: but why should it?

As for the virtue of honour in the general sense of upholding the standards of conduct expected of members of the military profession or unit, Sparrow rightly observes that UAV operators are less likely to be thrown off the moral course by fear of death or injury than combatants.[4] Sometimes, however, military honour is perceived specifically in terms

[2] For example, Robert Sparrow, "War without Virtue?" in *Killing by Remote Control: The Ethics of an Unmanned Military*, ed. Bradlay Jay Strawser, 84-105 (Oxford: Oxford University Press, 2013), 88.

[3] Ibid., 89, and 94.

[4] Ibid., 97.

of chivalry, and chivalry in terms of fairness. Accordingly, it seems dishonourable that a UAV operator should be able to strike the enemy with devastating force, while remaining absolutely immune from retaliation. The gross asymmetry of power seems grotesquely unfair. This is a common perception.[5] But it is a mistaken one. The aim of any belligerency is so to overwhelm the enemy as to disable him from continuing to fight. This is done by applying the greatest possible force against him at his weakest point. Whatever the place of fairness in war, it does not consist of making sure that the enemy is equally well resourced before one engages him. Sparrow is largely correct, therefore, when he writes, "we need to be careful to avoid relying on an argument about chivalry here. War is not a game, and there is no reason that it should be fair."[6]

Regarding loyalty, there are different kinds and not all kinds should be expected of all warriors. For a Christian, of course, there can be no such thing as absolute loyalty to any human institution, since the Christian's primary loyalty must be to God and his moral law, and since human institutions sometimes transgress that law. As Sir Thomas More said on the scaffold moments before he was beheaded, "I die the King's good servant, but God's first."[7] Members of a combat unit need to be able to depend on their comrades to protect them and aid them in the most threatening and terrifying of circumstances, if they are to be militarily effective. That will require group loyalty of a peculiar intensity. Other warriors will need to show themselves loyal – under God – to a just cause, loyal to the state that fights in a just cause, and loyal to the state institutions and military units that serve that just cause. But they need not cultivate the same kind of loyalty as a combat unit. Again, Sparrow worries that this blurs the line between civilian and military.[8] But I fail to see why that is a problem.

Concerning the virtue of charitable self-restraint, it seems obvious that military agents who are distanced from the confusing, threatening

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[5] In my book, *Colonialism: A Moral Reckoning* (London: HarperCollins, 2023), I report two cases where historians (Dan Hicks, and William Beinart) think that the use of Maxim guns and naval artillery by the British against native Africans in what is now Rhodesia and Benin was morally objectionable, because the balance of military power was so unequal.

[6] Sparrow, 99.

[7] According to a contemporary report carried in the *Paris Newsletter*. See Nicholas Harpsfield, *The Life and Death of Sir Thomas Moore, Knight, Sometymes Lord High Chancellor of England*, ed. Elsie Vaughan Hitchcock and Raymond Wilson Chambers (London: Oxford University Press, 1932), Appendix III, 266: "Apres les exhorta, et supplia tres instamment qu'ils priassent Dieu pour le Roy, affin qu'il luy voulsist donner bon conseil, protestant qu'il mouroit son bon serviteur et de Dieu premierement."

[8] Sparrow, 97.

maelstrom of the battlefield, and whose security against risk permits maximal caution, are more likely to be capable of exercising restraint than combat troops. What is more, according to Dave Grossman's 1995 book, *On Killing: The Psychological Cost of Learning to Kill in War and Society*, the closer troops are to the enemy, the greater their reluctance to kill.[9] To this Paul Scharre adds the observation that the cameras of a UAV can bring its pilot face-to-face with the target.[10] Therefore, while that may be responsible for causing the unhappy effect of PTSD, when he decides to kill, it is also likely to cause the happy effect of increasing his reluctance to make such a decision. For this reason, I doubt Sparrow's argument that, because UAV pilots never *meet* their enemies, such compassion as they have "must necessarily be abstract, which will also rule out genuine acts of mercy."[11] Meeting the enemy may not be necessary to induce merciful restraint in killing; seeing them may suffice.

In general, I am sceptical that the military uses of artificial intelligence will lead to a decline in military virtues.[12] As the means of war evolves, so do the relevant virtues and their distribution. While the traditional virtues will still be required of military personnel performing traditional roles, there may be novel roles that require a different set of virtues. What will be important, however, is not to require a person who has been made to cultivate one set of virtues to perform a role that requires a different set.

I do not agree, therefore, with Shannon Vallor, when she argues that the military use of artificial intelligence will generally deskill military personnel, depriving them of the opportunity to cultivate through experience the virtue of practical wisdom (or prudence), which is needed for making the right choices in rapidly changing circumstances about "who or what gets targeted, or when, in which circumstances, or with what degree of force."[13] For sure, the pilots of UAVs will not develop the vir-

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[9] Dave Grossman, *On Killing: The Psychological Cost of Learning to Kill in War and Society* (Boston: Little, Brown, and Co., 1996), Section III, "Killing and Distance: From a Distance, You Don't Look Anything Like a Friend."

[10] Paul Scharre, *Army of None: Autonomous Weapons and the Future of War* (New York: W. W. Norton & Co., 2018), 275-276.

[11] Sparrow, 102.

[12] I observe that Sparrow agrees: "it is doubtful that wars will ever be fought entirely by weaponry that eliminates the need for the traditional martial virtues." Ibid., 105.

[13] Shannon Vallor, "The Future of Military Virtue: Autonomous Systems and the Moral Deskilling of the Military," in *2013 5th International Conference on Cyber Conflict: Proceedings*, eds. Karlis Podens, Jan Stinissen, and Markus Maybaum, 471-486 (Tallinn: NATO Cooperative Cyber Defence Centre of Excellence Publications, 2013), 478, and 480.

tue of physical courage as must those of manned aircraft, together with combat soldiers and sailors. However, being safely removed from the theatre of operations, UAV pilots are less likely to have their practical judgement thrown off course by pain or fear or anger, and over time they will accumulate experience in decision-making and thereby cultivate prudence. In other words, they will be stronger in one military virtue, while being weaker in another – differently skilled, not de-skilled.

## III.

The second ethical question raised by the military uses of artificial intelligence is how much autonomy to grant weapons, and this in turn raises a further issue about virtue. The pressure to increase autonomy arises partly because of the danger that the communication-link with a weapon might be broken and partly because of the need for speed in responding to enemy action. Speed, and therefore autonomy, is especially important for effective cyber-defence.[14]

Autonomy comes in degrees, and is never absolute. According to Sparrow, almost all of the "robotic" weapon systems currently being developed are either remotely operated or unmanned, rather than fully autonomous.[15] Their autonomy consists of using sensors to read the environment and identify a target, and then processors to decide how to respond, say, by adapting to the target's movements.[16] Beyond that, however, a human operator is usually required to make key decisions or at least has the power to intervene in the machine's decision-making process. That is to say, humans remain either "*in* the loop" or "*on* the loop." The key decision that carries the greatest moral weight is, of course, the decision to strike, and according to Paul Scharre, "[f]or most weapons systems in use today, a human makes the decision whether or not to engage the target."[17] But not all systems. Israel's Harpy drone, for example, is largely autonomous: it not only loiters overhead and searches for potential targets but can decide to strike without asking for human permission.[18] Yet even here, the drone's autonomy is not absolute: the human operator still determines which *species* of target the drone should home in on – say, enemy radars – while the drone itself decides only which *specimens* to attack.[19]

[14] Scharre, 216.

[15] Sparrow, 86.

[16] Scharre, 41-42.

[17] Ibid., 44.

[18] Ibid., 5, 46, 48, and 64.

[19] Ibid., 48.

It is autonomy over the decision to strike a target that raises moral issues. For that decision, which may cause the grave non-moral evil of the destruction of human life, ought to issue from deliberation about the "just war" principles of discrimination and proportionality. Applying these principles on the battlefield is not a straightforward, logical, mechanical operation. It requires the interpretation of circumstances, the estimation of military necessity and the urgency of action, and perhaps the discrimination of combatants in civilian clothes from non-combatants. However, whereas computers are often more intelligent and faster in performing narrowly specified tasks, according to Scharre, they "still fall far short of humans in understanding context and interpreting meaning," that is, in "general intelligence."[20] And artificial general intelligence is currently only "a hypothetical future."[21] "Unlike humans, autonomous weapons systems lack the ability to step outside their instructions and employ 'common sense' to adapt to the situation at hand."[22] Whereas human agents are "capable of using their common sense and better judgment to comply with the intent behind a rule, rather than the rule itself,"[23] autonomous systems are not. What this implies is that we cannot expect a weapons system to exercise the virtue of prudence, and that we should expect a fully autonomous system, which cannot be recalled or supervised and which can make a decision to strike on its own, to act imprudently.

Scharre suggests that an autonomous weapon could observe the principle of proportionality, if humans programmed it to avoid risking the lives of a certain number of non-combatants.[24] But that would be to employ a very crude utilitarian understanding of the principle. According to classic "just war" thinking, provided that one does not intend to harm non-combatants, and provided that one actualises that intention by earnestly seeking to avoid causing such harm, how much

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[20] Ibid., 6, and 95.

[21] Ibid., 231.

[22] Ibid., 146.

[23] Ibid., 308. A famous example of this is when Commodore Horatio Nelson disobeyed the orders of Admiral Sir John Jervis at the Battle of Cape St. Vincent in 1797. Nelson's biographer, John Sugden, comments that Nelson "prided himself on what he called 'political courage,' and repeatedly acted on it, even in contravention of the orders of superiors." Yet, "if Nelson acted against the strict letter of Jervis' orders he most assuredly remained within their spirit." See John Sugden, *Nelson: A Dream of Glory* (London: Pimlico, 2012), 695. It seems that the admiral agreed. For, when his flag captain complained to him about Nelson's disobedience, Jervis is said to have responded, "It was certainly so, and if you ever commit such a breach of orders, I will forgive you also." (Ibid., 706).

[24] Scharre, 257.

risk one may take with non-combatant lives will depend on a range of circumstances. These will include the importance of the military objective, the military possibility and affordability of adopting less risky ways of achieving it, and the political consequences of non-combatant deaths. The principle of proportionality requires that risks to life be calibrated to a set of circumstances, and since circumstances are constantly changing and not all sets of them can be predicted, there does not exist an absolute number that can be programmed into a weapons system that would make its action proportionate.

Scharre also suggests that it would be morally safe to use autonomous weapons systems in an environment devoid of civilians.[25] That would certainly avoid imprudence causing a disproportionate number of non-combatant deaths. But the principle of proportionality also applies to the killing of enemy combatants: one should not kill more of them than military necessity requires. And Scharre himself makes the point that autonomous weapons would find it difficult to recognise genuine attempts at surrender, since that requires discerning intent amidst circumstances that might be highly ambiguous.[26]

## IV.

One might conclude that, morally speaking, one should never permit a weapons system to be fully autonomous in the sense that it can make the decision to strike on its own and without suffering interference from a human supervisor. The risk of disproportionate deaths, both combatant and non-combatant, would be too high. Yet, risks of some kind or another are often unavoidable, and their proportionality varies according to circumstances. The graver the threat, the higher the risks worth taking. So, there may be grave circumstances, where launching fully autonomous weapons is proportionate.

However, for such risky action to be prudent, those deciding upon it would have to have their eyes fully open. The temptation, especially with novel, sophisticated technology, is to indulge in wishful thinking and to downplay the risks.[27] In addition, there is the phenomenon of "automation

[25] Ibid., 257.

[26] Ibid., 259-260.

[27] The roboticist, Ron Arkin, expresses such over-confidence in technology. See Sharon Vallor, "The Future of Military Virtue," 480; Scharre, 280, and 282-283; Brian Stiltner agrees: "Hyperbolic rhetoric surrounds new weapons. Political and military leaders often excitedly claimed that a new weapon is going to make a decisive difference or end a war. Almost always they overpromise." See Brian Stiltner "A Taste of Armageddon: When Warring is Done by Drones and Robots," in *Can War Be Just in the 21st Century? Ethicists Engage the Tradition*, eds. Tobias Winwright and Laurie Johnston, 14-28 (Maryknoll, NY: Orbis, 2015), 20.

bias," that is, human deference to machines.[28] Yet, as Scharre rightly says, "100 percent error-free operation is impossible" and "[f]ailures are inevitable in complex, tightly coupled systems, and the sheer complexity of the system inhibits predicting when and how failures are likely to occur."[29] Therefore, before launching fully autonomous weapons, the morally responsible human agents need to stare the worst-case scenarios squarely in the face and satisfy themselves that they are worth risking, and that, should they come about, they could be afforded.

In some cases, the cost will not be affordable and so the risk not worth taking. If the price is military defeat, then that should be borne. The tradition of "just war" thinking sanctions belligerency only under certain conditions. Absent those conditions, war is not just. At that point, the "just warrior" clambers off his war-horse and joins the pacifist on his knees, praying God to secure the justice that he cannot. Then, together, they rise and look around for non-military means of resistance.

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[28] Scharre, 144-145, 170, 278-279, and 324-325.

[29] Ibid., 151, and 154.

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# Führerprinzip or 'I Was Following Orders' in Jus in Bello Era

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**Abstract**

*In June of 1945, the International Military Tribunal (ITM) formed in London, faced the problem of a non-yet existing legal armor for the Nazi crimes. Two new rules were widely accepted there. First, a new category of war crimes, the "crimes against humanity" was legally defined. Second, the ex-ante rejection of the defense line "I was following orders" or Führerprinzip (the principle of the duty to obey every order given by the military leader). In the first part of this paper, I will present in brief, the historical and legal context of the rejection of Führerprinzip as a defense line of the Nazi defendants in Nuremberg trials as also in Eichmann's trial in Jerusalem, where the same legal context was enacted. Next, I will expose a short history of conscientious objection in war ethics and the International Law on Human Rights that supports it. This exposition reveals that objection to criminal orders has the status not only of a right, but also of a duty for the soldiers on either side of the war. In the third part, the Rawlsian view on conscientious objector will be exposed as the meeting point of a broadly Kantian conception of war ethics and the existing International Law frame. In the final part I will present some philosophical aspects of jus in bello theory, as also the critique of its importance, and its contribution to the reification of the moral importance of conscientious objection in wartime and the rejection of Führerprinzip.*

**Keywords:** *Führerprinzip; conscientious objection; jus in bello; Nuremberg trials; Eichmann; Rawls; Kant; Grotius; Vitoria*

## I. The Nazi case, the Nuremberg trials and Eichmann's lay Kantianism

In late June 1945, when the delegates of the victorious powers formed the International Military Tribunal (ITM) in London to adjudicate Nazi atrocities, the problem of a non-yet existing legal armor for such prosecutions emerged. The effort was to present a legislation based on preexisting laws and ethical codes of the countries where the crimes were committed. Although the crimes were obvious and widely accepted as horrible and unacceptable acts during the war, the danger of an accusation for an ex post facto legislation by the Tribunal, i.e., after the crimes were committed and so infringing the natural law, was obvious. Two new rules were widely accepted as prominent in the charter of the Tribunal. First, a new category of war crimes, the "crimes against humanity" was legally defined to serve the special criminal content of Nuremberg Trial. Second, the ex-ante rejection of the defense line "I was following orders" or Führerprinzip was accepted as a solid legal stance in International Law from then on.[1]

The outcome of this legislative work done in London, is obvious in Nuremberg code whose 10 articles were enumerated at the final judgement of the Medical Case Trial. The code was grounded on Hippocrates medical ethics, the earlier European code of Tomas Percival, an English physician in 1803, the earliest American code of William Beaumont a physician in 1833, and the text of *An Introduction to the Study of Experimental Medicine*, written by the French physiologist Claude Bernard in 1865. Except from these European codes, the earlier German legislation was also appealed to, mainly the directive by the Prussian Ministry of Medical affairs issued on December 1900 related especially with human experimentation.[2] According to this directive many medical war crimes committed by Nazi doctors in concentration camps were clearly illegal acts for the German law, so the defense line in Nuremberg trials grounded on the ignorance of the doctors of any relative to human experimentation German legislation, and so their obligation to follow orders, proved pretentious. The most significant preexisting legal document though, was a Circular of the Reich Minister of Interior, namely "Guidelines on Innovative Therapy and Scientific Experimentation" existing from 1931. It is a kind of paradox to think that at that time there

[1] Anthony C. Grayling, *Among the Dead Cities*: *Was the Allied Bombing of Civilians in WWII a Necessity or a Crime?* (London, Berlin, and New York: Bloomsbury Academic, 2014), 229-231.

[2] Michael A. Grodin, "Historical Origins of the Nuremberg Code," in *The Nazi Doctors and the Nuremberg Code: Human Rights in Human Experimentation*, eds. George J. Annas and Michael Grodin, 121-144 (New York: Oxford University Press, 1992).

did not exist other such progressive instrument in any other country, whose articles are still considered to be much stricter and more precise in guiding medical practice in human experimentation than the Nuremberg Code itself, or even the much later in the 20th century introduced, Declaration of Helsinki.[3]

The same concern for preexistent laws that would empower the Tribunal's decisions on Medical Case Trial would be present in the empowerment of the *ex-ante* rejection on the defense line "I was following orders" or *Führerprinzip* in battlefield or genocide operations of killing army squads. Conformity and obedience were supposed to be the great virtues of German nation but in the case of war crimes is seems that Charles Percy Snow's well-known quote that in "the long and gloomy history of man, you find that more hideous crimes have been committed in the name of obedience than have ever been committed in the name of rebellion," proved right. In the Nazi regime *Führerprinzip* was widely accepted. But there was a legal precedent in Germany including laws which were allowing a kind of conscientious objection against war crimes. As Anthony Clifford Grayling in *Among the Dead Cities* as also Hannah Arendt in *Eichmann in Jerusalem*[4] note, in every German soldier's military pay book there was explicitly stated that no soldier was obliged to obey illegal orders. And there were several cases where German soldiers at the Eastern Front refused to participate in mass executions of civilians, without any penalty. Those facts proved the legal precedence of the right not to obey criminal orders and so the avoidance of the post ex facto legislation accusation. Therefore, during the Nuremberg Trials, *Führerprinzip* was totally devaluated as a defense line and the defendants were personally responsible for any crime against the innocent civilians and the prisoners.[5] This trial established the obligation of the combatants *not* to obey criminal orders even with the risk of punishment, being the responsible agents of criminal acts and not just the executing organs of state's war activity.

It is interesting that in Eichmann's trial in Jerusalem, years later in 1961, the same legal context was enacted, so the defendant had to

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[3] Sharon Perley, Sev S. Fluss, Zbigniew Bankowski, and Françoise Simon, "The Nuremberg Code: An International Overview," in *The Nazi Doctors and the Nuremberg Code: Human Rights in Human Experimentation*, eds. George J. Annas and Michael Grodin, 149-173 (New York: Oxford University Press, 1992), 151.

[4] Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil* (New York: Penguin Books, 1992); Grayling, 229-231.

[5] On this cf. David Whetham, "Military Ethics Education – What Is It, How Should It Be Done, and Why Is It Important?" *Conatus – Journal of Philosophy* 8, no. 2 (2023): 759-774, especially 763f.

prove that he did not commit any crimes and not that he just executed orders. As Arendt reported, the defendant repeatedly referred that "he did not only obeyed orders, he also obeyed the law."[6] He probably believed that this distinction could be important for his defense but the court did not pay any attention to it. The funniest statement in this trial was that Eichmann believed that he had lived all his life according to Kant's moral duties and especially according to Kant's definition of duty. He even spelled rightly the formula of categorical imperative, although later on he admitted that "from the moment he was charged with carrying out the Final Solution he had ceased to live according to Kantian principles" changing, according to Arendt the Kantian formulation in "Act as if the principle of your actions were the same as that of the legislator or of the law" or as Hans Frank's well known in the Nazi regime formulation of the categorical imperative in the Third Reich: "Act in such a way that the Fuhrer, if he knew your action, would approve it."[7] We will keep this lay Kantianism understanding of Kantian duty in mind, which is still present even in contemporary philosophical interpretations of Kantianism based on its alleged extreme formalism, while we will discuss later on the philosophical aspects of "I followed orders" in the third part of this paper, where the Kantian and Rawlsian legal and moral roots of conscientious objection will be investigated.

## II. Conscientious objection and the International Law on Human Rights

The history of conscientious objection to military orders is long and it is considered in bibliography to start with the supposedly first objector, Maximilianus, the son of a Roman army veteran who in the year 295 was called up to the Roman army at the age of 21, and openly denied this calling in terms of his religious beliefs. He was executed and canonized then by the catholic church as Saint Maximilian.[8] Usually conscientious objection emerged in states where compulsory military service existed and not where it was voluntary. In most cases it was recognized where there was no need to oblige pacifist religious minorities to serve in the army. An early recognition in 1575, leaded to Mennonites' exemption from their army obligations during the Dutch wars of independence.[9] The conscientious objection context though,

[6] Ibid., 135.

[7] Ibid., 136.

[8] Peter Brock, *Pacifism in Europe to 1914* (Princeton, NJ: Princeton University Press, 1972), 13.

[9] United Nations, *Human Rights and Conscientious Objection to Military Service* (New York:

as it is shaped today, was constructed mainly during the great wars based on the universal conscription into national armies, starting from the Napoleon wars which followed the French Revolution and much more during the World Wars of the 20th century. 16,000 persons in UK and 4000 in USA refused to serve during the First World War.[10] From this period already there were different approaches from different states on that matter, ranging from imprisonment of objectors to the acceptance of an alternative service or even accepting the absolute refusal of any kind of service. The problem raised even greater during the second big war with the much wider conscription all over the world and one can say concluded in its present state after the wide adoption of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, that rendered conscientious objection a human rights issue.

According to the *Universal Declaration of Human Rights*, article 18: "Everyone has the right to freedom of thought, conscience and religion."[11] That means that one can claim his freedom not to obey orders that come in direct opposition to his religious beliefs or personal values. A soldier has the right to object in genocide or even the humiliation and torture of a single person of the opposite side if he considers it to be against his personal or common morality's values. The above rights (Freedom of thought, conscience and religion) according to *European Convention on Human Rights*, article 9, 2 may be subjected to certain limitations:

> Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.[12]

According to the *Charter of Fundamental Rights of the European Union*, article 10, 2: "The right to conscientious objection is recognized, in accordance with the national laws governing the exercise of this right."[13]

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UN Publications, 2012), 2.

[10] Ibid., 4.

[11] Ibid., 7.

[12] Ibid., 8.

[13] Ibid.

According to the *Ibero-American Convention on Young People's Rights*, article 12 (Right to conscientious objection)

> 1. Youth have the right to make conscientious objection towards obligatory military service. 2. The States Parties undertake to promote the pertinent legal measures to guarantee the exercise of this right and advance in the progressive elimination of the obligatory military service.[14]

However all the above Conventions and charters remain *soft instruments* in the international context of a not yet existent compulsory International Law. They are *proposing* and not *ordering* to the law makers of the different countries whose legislating bodies can selectively respect the spirit of the internationally molded new stance on old matters, as that of the obligation or not of a soldier to obey any order of his superiors. Nevertheless, the moral status of the International Law is high and if one state disrespects its principles, this state is considered to be a pariah of the international community and so possibly subjected to several restrictions and penalties by other countries. It is obvious that the modern International Law resolutely recognizes the right to conscientious objection.

In concluding, after the above discussed Nuremberg trial and Eichmann's trial later, and the wide acceptance of the international legislation on Human Rights, the objection to criminal orders became not only a *right* but also a *duty* of the soldiers on either side of the war, considered right or wrong according to the *jus ad bello's* principles. But isn't that supererogatory and somehow superfluous? If the International Law remains still deprived of proportionate executive power and possession of institutions that could protect the objecting soldier from his state's even lethal punishment, how possible is it for a single person to become a saint, and sacrifice his life to obey his conscience and his belief in the International Law? How strong is the historical moment's pressure when there is a mass support in unpunished murder like that in Nazi regime? As Arendt comments

> the law of Hitler's land demanded that the voice of conscience tells everybody: 'Thou shalt kill,' (instead of the common conscience's order 'Thou shalt not kill') although the organizers of the massacres knew full well that murder is against the normal desires and inclinations of most people.[15]

[14] Ibid., 9.

[15] Arendt, 150.

One must stand up no matter the cost, to condemn evil regimes' orders sometimes in danger even of the capital punishment. There existed such persons throughout the west civilization history, defending their moral values without considering the personal cost as Saint Maximilian in Roman Empire or Franz Jägerstätter in Nazi Austria who was executed as a conscientious objector[16] or the pacifist novelist Vera Brittain[17] who openly condemned during the second big war the mass bombing by the Allies of big German cities as a moral and strategic failure.[18]

## III. Conscientious objection in Kant and Rawls

It is interesting to examine the views of Immanuel Kant and John Rawls on conscientious objection in trying to ground philosophically its contemporary status in human rights context. Rawls, who has openly accepted the Kantian roots of his philosophy, has expressed his view literally on conscientious objection, contrasting it to civil disobedience, in his major work *A Theory of Justice*, while Kant's view on conscientious objection, can be extracted from his stance on civil disobedience and his famous distinction between *the private and public uses of reason*.

In 1793, Kant although well known for his admiration for the French revolution, in his essay "On the common saying: 'That may be correct in theory, but it is of no use in practice,'[19] he essentially denies the right of revolution."[20] There are diverse interpretations of this essay, but Lewis Beck insists that here Kant's denial of the right of revolution is as firm and clear as his express sympathy for the French Revolution. One explanation for that could be Kant's alleged extreme formalism: There is a contradiction in the conception of a constitution having within it a positive law permitting the abrogation of the constitution.[21] The revolutionist does not appeal to the terms of the consti-

[16] Franz Jägerstätter, an Austrian conscientious objector during the second Big War who was imprisoned and finally executed, refusing to wear the Nazi army uniform. His history inspired the scenario of Terrence Malick's film *The Hidden Life*, 2019.

[17] Vera Brittain, *Seed of Chaos: What Mass Bombing Really Means* (London: New Vision Press, 1944).

[18] Ibid., 11.

[19] Immanuel Kant, "On the Common Saying: That May be Correct in Theory, but It Is of no Use in Practice," in *Immanuel Kant Practical Philosophy,* ed. and trans. Mary J. Gregor, 273-310 (Cambridge: Cambridge University Press, 1999).

[20] Lewis W. Beck, "Kant and the Right of Revolution," *Journal of the History of Ideas* 32, no. 3 (1971): 411-422.

[21] Ibid., 413.

tution for justification of his efforts to overturn the constitution; he may appeal to the constitution for reform, he appeals to the natural, not positive, law to criticize the constitution which he rejects. Another explanation may be traced in Kant's theory of government, in which the most basic principle is the doctrine of separation of powers. The head of the government can do no wrong in the sense that nothing he does is punishable. Even if he is considered to act contrary to the law, the citizens must not disobey but they can only exercise the right to publicly ask for reform. Another, historical explanation, may be that his older enthusiasm for the revolution, may be compatible with his denial of the right of revolution, if for him then "Revolution" meant "Restoration." Another yet explanation offered by Beck requires that we abandon the moralistic or legalistic standpoint and move towards the standpoint of Kant's teleological conception of history.[22] Kant cannot argue on a utilitarian justification of the revolution. The republican constitution is with respect to the law the one which is the original basis of every form of civil constitution. Revolution creates an interval that is a return to the state of nature and maybe a worst constitution will come out of it than by gradual reform. Finally, the last explanation can appeal to perfect and imperfect duties distinction. The right to revolt looks forward the aim of a better world and the progress of mankind. This is an imperfect obligation, which is not strict and leaves room for its fulfillment. On the other hand, the duty to obey the established law is strict or perfect and cannot be omitted. We have here the same conflict of duties as in the case of lying to a murderer where Kant famously denies the right to lie to save the life of an innocent man. Beck concludes that "some inconsistency remains here because Kantian ethics is not adequate to resolve the painful problems of conflicting duties." [23]

A better understanding of Kant's possible stance can be found in his famous distinction between public and private use of reason found in his essay *An Answer to the Question: What is Enlightenment?* (1784).[24] His contra use of the terms "public" and "private" against their current meanings is widely discussed. On one side, he considers private use the use of reason of a public servant while exercising his duties which in no case can be against the law. On the other side, he considers as public use, the use of reason in expressing individual opinion by writing news-

[22] Ibid., 417.

[23] Ibid., 422.

[24] Immanuel Kant, "An Answer to the Question: What is Enlightenment?" in *Practical Philosophy (The Cambridge Edition of the Works of Immanuel Kant),* ed. and trans. Mary J. Gregor, 11-22 (Cambridge: Cambridge University Press, 1999).

papers articles or books or by participating in public conversations and in this case, he can have an opinion against a law he considers flawed. The first use, if it turns against the positive law, equates to revolutionary attitude while the second contributes to the gradual reform of society to a perfectly constituted state. It seems that Kantian framework, leaves no room for civil disobedience. The inconsistencies that the conflict between moral and positive law produces seem unresolvable. We can only look towards a future reconciliation of them by gradual reform. And this reform demands our public involvement. Finally, to respect the laws of society does not mean to obey uncritically. You can always talk by your public use of reason to demand for changes.

We cannot of course foresee what Kant's opinion would be like today. As Howard Caygill underlines, we cannot face Kant's work as

> an intellectual project independent of circumstances – a work without a world [...] if we step behind the monument and reconsider its constituent parts, the sheer heterogeneity of Kant's writings is striking. And if we look beyond the philosophical letter to the publication details of the individual texts – who they were published by, and for whom – we begin to gain a complex appreciation of the internal diversity of Kant's work, one moreover which allows us to situate his authorship within the changing structures of the intellectual life.[25]

Kant faces civil obedience in the context of his Theory of Justice not in that of his Theory of Virtue. In his *Metaphysics of Morals,* he claims that

> the sovereign has only rights against his subjects and no duties (that he can be coerced to fulfill) – Moreover, even if the organ of the sovereign, the ruler, proceeds contrary to law, for example, if he goes against the law of equality in assigning the burdens of the state in matters of taxation, recruiting and so forth, subjects may indeed oppose this injustice by *complaints* (gravamina) but not by *resistance*.[26]

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[25] Howard Caygill, *A Kant Dictionary* (Cambridge, MA: Blackwell Publishing 1995), 7-8.

[26] Immanuel Kant, "The Metaphysics of Morals," in *Practical Philosophy (The Cambridge Edition of the Works of Immanuel Kant)*, ed. and trans. Mary J. Gregor, 353-604 (Cambridge: Cambridge University Press, 1999), 6:319. Italics by me.

It is probable that in the historical context of the years after the French revolution and his fear of Restoration, what he meant by *resistance* was an armed violent resistance which he loathed and in the present context we can suppose that he would probably list conscientious objection by just refusing to obey with no use of violence under *complaints*. Maybe we can have a glimpse of his possible contemporary view on conscientious objection in the work of John Rawls.

Rawlsian liberalism seems not to adopt the fear that revolution and civil disobedience could reverse mankind's labor towards the kingdom of ends, a fear that made the "old Jacobine" refute revolution. The opposite has proved to be true in 20th century as the multiple disobedience movements against racism and discriminating laws as also anti-war conscientious objection, had a great influence in law making and finally have proved to be tools of improvement of society and not obstacles to political and ethical progress. Rawls' stance on conscientious objection seems to consider those new historical facts.

In *A Theory of Justice,* he first exposes the definition of civil disobedience as a public, nonviolent, conscientious yet political act contrary to law usually done with the aim of bringing about a change in the law or policies of the government. It seems here that the publicity condition coincides with the Kantian demand of gradual progress using public reason. Civil disobedience

> is an act guided and justified by political principles, that is, by the principles of justice which regulate the constitution and social institutions generally [...] cannot be grounded solely on group or self-interest. Instead, one invokes the commonly shared conception of justice that underlies the political order [...] Not only is it addressed to public principles, it is done in public. Civil disobedience is nonviolent [...] It expresses disobedience to law within the limits of fidelity to law.[27] [On the other hand,] conscientious refusal is noncompliant with a more or less direct legal injunction or administrative order [...] is not a form of address appealing to the sense of justice of the majority.[28]

Such acts have been the early Christians denial to perform certain pagan acts, the refusal of the Jehovah's Witnesses to salute the flag, the

[27] John Rawls, *A Theory of Justice* (Cambridge, MA: The Belknap Press of Harvard University Press, 1999), 321-322.

[28] Ibid., 323.

pacifist denial to serve in war, or even Thoreau's refusal to pay a tax on the grounds that it would make him an agent of grave injustice to another. Conscientious refusal may have other grounds than political principles; religious beliefs or personal moral reasons or even a certain community's ethos can supervene. It needs not appeal to commonly shared conception of justice but to deep personal beliefs. But how an act like that can be justified in a well-ordered republican state? Here Rawls uses the Kantian teleological conception of history towards an anti-Kantian conclusion on conscientious objection. He believes that the case of a pacifist's conscientious objection against military service for example, pacifism must be treated with respect and not merely tolerated because it accords reasonably well with the principles of justice. Conscientious objector believes that "both the law of nations and the principles of justice for his own society uphold him in this claim." [29] Because "there is a common abhorrence of war and the use of force, and a belief in the equal status of men as moral persons."[30]

The post legal positivism era with the adoption of the Dworkinian interpretivism in the modern legal system, demands the laws to be interpreted under the scope of the best political and moral principles. Kant's extreme formalism (according to Beck) against civil disobedience because of the fear of restoration do not serve society's interests and the dream of peace which remains utopic in a world with criminal wars around, especially those haunting the public interest today in Ukraine and Middle East, with war crimes occurring live on TV by almost all parts. Conscientious objection is a tool of society's self-evaluation and sometimes is the only way to keep the citizens alert to the wrongs that governments are prone to commit and have repeatedly committed in the recent past and so it's a right and a duty in the contemporary blood-stained international environment.

## IV. Führerprinzip and conscientious objection in jus in bello era

The *jus in bello* theory is described as the thesis of total or partial independency of the means of war against the reasons of war. There are two central elements that are developed mainly after the Middle Ages by Francisco de Vitoria (1483-1546) of the school of Salamanca, and the Dutch humanist Hugo Grotius (1583-1645). First is the principle of *discrimination* (between combatants and innocents or civilians) and second the principle of *proportionality* of means (instead of the war

[29] Ibid., 334.

[30] Ibid., 325.

itself being a proportionate means to a certain cause according to *jus ad bellum*). The right and duty to disobey criminal orders to certain actions as means of war or to refuse to participate in certain wars (selective consciousness objection), is examined in the more recent context of *jus in bello* while general pacifism or absolute denial to serve in the army, in their total disapproval of any war activity, may be considered as part of the *jus ad bellum* problematics on right or wrong reasons of war. We are going in this part to examine how the *jus in bello* philosophical theory affected the right to disobedience in wartime.

Francisco de Vitoria is known for his debate with the Spanish Crown on the treatment of the native Americans in the colonies of the New World. Although he agrees at first with Aquinas in considering just war a response to some fault, he reaches far more, suggesting an *ethical dilemma* if we think the possibility of *justice on both sides*, creating so the starting point of *jus in bello*.[31] There can be a just cause and a believed just cause based on what he calls in his major work *De Indis,* the *invincible ignorance*:

> There is no inconsistency [...] in holding the war to be a just war on both sides, seeing that on one side there is right and on the other side there is invincible ignorance [...] The rights of war which may be invoked against men who are really guilty and lawless differ from those which may be invoked against the innocent and the ignorant.[32]

The core novelty in war theory introduced by Vitoria is of a war being just on both sides because the primarily wrong side is subjected to *invincible ignorance* and so we must accept the *noncombatant immunity* as also the *moral equality of combatants*.[33] So, noncombatants as innocents are not supposed to the wrongness of the war in which they are involved and killing them is morally wrong, a war crime as it will be called later.

The moral equality of combatants will be again addressed later, by Hugo Grotius. Grotius seems to both support and reject this notion.[34]

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[31] Nicholas Rengger, "The *jus in bello* in Historical and Philosophical Perspective," in *War: Essays in Political Philosophy,* eds. Larry May and Emily Crookston, 30-46 (Cambridge: Cambridge University Press, 2008), 38.

[32] Francisco de Vitoria, *De Indis*, in Vitoria Political Writings, edis. Anthony Pagden and Jeremy Lawrance, 231-292 (Cambridge: Cambridge University Press, 1992), section III, 7.

[33] Ibid., 39.

[34] Hugo Grotius, *De jure belli ac pacis libri tres*, Volume 2: *On The Law of War and* Peace, ed.

To understand that we must focus on the tension between justice and peace in the context of war ethics. It seems that from the aspect of justice the combatants who clearly know that their cause is unjust are not even allowed to fight according to the natural law. But he thinks that a moral obligation not to punish arises from what he calls a "law of nations" meaning the law that states agree on. This tension between justice and peace parallel to the one between natural law and "law of nations" finally, for Grotius, promotes the latter. And why is this?

> Grotius does not allow the law of nations to command what the natural law forbids but only allows unjust acts to go unpunished. This permission accords with the natural law [...] He says that even those who are responsible, in accordance with the natural law and mercy, may be pardoned. For Grotius, pardons and mercy are a part of the natural law, for they lead to peace and less bitterness during war.[35]

So, we must consider both sides (right or wrong) equally morally responsible for atrocities and so equally obliged to object in criminal orders. Natural law somehow tells us what is right according to justice while at the same time prescribes the pursue of peace by agreements.[36] The equality of combatants is a step in this direction of agreement even if only the one side is right.[37]

In the same line of the moral equality of both sides Michael Walzer considers combatants on both sides to be *victims*.[38] Common people have entered the war because of patriotism or persuasion by the government and they are not considered responsible for the war. They have been driven to the war as a flock of coerced innocents or *ignorant* ala Vitoria. So, as victims, all combatants are equal in their right to protect themselves. That is for Walzer, exactly what most people believe. This

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James Brown Scott, trans. Francis W. Kelsey (Oxford: Clarendon Press; London: Humphrey Milford, 1925).

[35] Steve Viner, "The Moral Foundations of the *jus ad bellum* / *jus in bello* Distinction," in *Routledge Handbook of Ethics and War: Just War Theory in the Twenty-First Century,* eds. Fritz Allhoff, Nicholas G. Evans and Adam Henschke, 49-62 (New York and London: Routledge, 2013), 53.

[36] This tension between seeking justice or peace by the war as a tension between *jus ad bellum* and *jus in bello* is thoroughly discussed in Jovan Babic, "Ethics of War and Ethics in War," *Conatus – Journal of Philosophy* 4, no. 1 (2019): 9-30.

[37] Ibid.

[38] Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic Books, 2000), 30.

conception comes out of respect for individual rights and the rejection of the carnage. The *immunity thesis* and the *moral equality of combatants* introduced by Vitoria we have already seen, keep war slaughter in certain limits, where the rights don't exist, and peace seems impossible.[39] This equality renders all the soldiers moral responsible for objecting criminal orders even if they are fighting on the right side of the war.

Nevertheless, the separateness of *jus in bello* from the *jus ad bellum* and the moral equality of the combatants have received a strong criticism grounded on individual rights. In his paper "The Ethics of Killing in War"[40] Jeff McMahan creates a strong link between individual right to defense and criticism. His position has a strong individualistic and interpersonal element according to which every case of killing is subjected to interpersonal evaluation of the opponent's liability to be killed. The state is out of the calculation, there are only those liable to kill and those not liable to kill and each combatant is personally responsible for his acts from his participation in a right or wrong war to his special acts in certain circumstances. According to McMahan the *jus ad bellum* determinations penetrate *jus in bello* judgments concluding in the rejection of moral equality of combatants. Viner claims that in concluding so criticism fails to see war as a special human activity e.g., a violent game like American football with its own violence-accepting rules and tries to impose the rules and laws of everyday disputes in the community to the battlefield. But even if we insist in an analogy of international laws of war with national legal systems that regulate peacetime citizens' activities, as Viner denotes:

> Legal systems are morally required in part because they are necessary for peace, and a legal system is only maintained if it has enough fidelity to its laws. Its existence relies on such fidelity. Similarly, a concept of war that promotes peace is only maintained if there is enough fidelity to it, and as a result, it needs rules that people are willing to support [...]. People support these rules, which creates the required fidelity to this concept of war, because of the reasons related to peace stated above and because, following Walzer, they are rules that are deeply rooted in the experience of war.[41]

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[39] Viner, 54.

[40] Jeff McMahan and David Rodin, "The Ethics of Killing in War," *Ethics: An International Journal of Social, Political, and Legal Philosophy* 114, no. 4 (2004): 693-733.

[41] Viner, 56.

However demanding may this individualistic position of criticism be, as if any soldier had his own war against the opponents, this position performs the transition of the injustice from the general to specific and turns the responsibility from the state's level to that of the global one. Like the utopia of the Kantian "world of ends" the utopia of the personal responsibility in war "renders the citizens of a state in agents of a noumenal universe."[42] We can conclude here that the criticism's view, even more than the separateness (of *jus in bello* from the *jus ad bellum*) and the moral equality (of combatants) view, stands for the personal responsibility and the right of conscientious objection in war activities, as the autonomous agent-combatant decides for himself and chooses his acts in every case.

## V. Conclusion

The delegitimization of Führerprinzip or "I was following orders" is a fact in modern International Law. The right to conscientious objection is reified through the Nuremberg trial and the several Conventions on Human Rights. Much more than a right it has become a duty, as the international courts recognize the personal responsibility of the soldier even if he has been ordered by superiors to commit criminal acts. John Rawls supports in his theory the conscientious refusal considering it as a tool of society's self-evaluation keeping the citizens alert to the wrongs that governments are prone to commit. War is a special activity and may be faced in its peculiarity: "war cannot be morally justified, [...] just war theory cannot give the justification for it."[43] The jus in bello theory seems to support the need to resist criminal war carnage as it focuses on the means instead of the reasons of war. In seeking peace instead of justice which seems unattainable in the extremely complex and usually irrational environment of a war blast, jus in bello principles attempt to regulate the chaos, eliminate the slaughter, and keep the hope of peace alive. Peace is also justice's demand. And the refusal to obey criminal orders or the conscientious objection of the combatants, together with their moral equality and the separateness of means from reasons of war are tools which are building this future peace.

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[42] Konstantinos Papageorgiou, *War and Justice* (Athens: Polis, 2019).

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# Doctors with Borders

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**Abstract**

*This paper presents the real case of a military surgeon who is the only one working at a small hospital in Iraq. The military surgeon can only operate on one wounded soldier due to limited medical resources. The first wounded soldier to arrive is the enemy. The second wounded soldier to arrive shortly after the enemy is a compatriot. Both soldiers will die without lifesaving surgery. The military surgeon is ordered by his superior not to operate on the enemy. Under the Geneva Conventions, physician-soldiers are legally required to give medical attention impartially. The only exception is urgent medical need. Both soldiers, friend and foe, have an urgent medical need. Dual-loyalty dilemmas such as this one can arise for military medical practitioners when loyalty to patients comes into conflict with loyalty to third parties such as the state. In this paper, several solutions to the dual-loyalty dilemma are considered and rejected. Solutions to the dual-loyalty dilemma ultimate fail because they rest on the physician-as-healer model which grounds contemporary medical ethics. The view that the ultimate objective of physicians and medicine is winning battles is defended. Physicians are non-neutral and partial fighters who sometimes must do harm. Medicine is a weapon that physicians use to fight an enemy. The only relevant differences between a soldier and physician are the kind of enemy, location of the enemy, and the type of weapons used against the enemy. The paper concludes that physician-soldiers are doctors with borders. There is no dual-loyalty dilemma on the physician-as-fighter model. The military surgeon should obey his orders and not operate on the enemy. Implications of the physician-as-fighter model for mass casualty triage and physician-soldier participation in non-lethal weapons development are considered.*

**Keywords:** *dual-loyalty dilemma; medical ethics; military ethics; non-lethal weapons development; neutrality; impartiality; physician-as-fighter; mass casualty triage*

## I. Introduction

There is a painting called "Hippocrates refusing the gifts of Artaxerxes" (1792). It tells the story of the emissaries of Artaxerxes II (405-358 BC), King of Persia, who were sent to Greece to persuade Hippocrates to save Persian soldiers suffering from the plague. The emissaries are depicted offering Hippocrates great gifts and placing a large heap of gold coins at his feet. Hippocrates' head is turned away from the emissaries with his left hand stretched out toward them in a sign of rejection. His left leg is also stretched out with his foot bearing down on the heap of coins. Hippocrates is reported to have said, "Tell your master I am rich enough; honor will not permit me to succor the enemies of Greece."

Hippocrates' rejection to help the Persians may seem surprising given that his Oath can be interpreted as forbidding physicians from discriminating between patients on the basis of political affiliation: "I will apply dietetic measures for the benefit of the sick according to my ability and judgment; I will keep them from harm and injustice."[1]

The sick could include friend and foe. What is even more surprising is that this painting of Hippocrates served as the model for a commemorative stone commissioned by the American Medical Association (AMA) and placed in the staircase at Washington Monument in 1855 as a tribute to President George Washington. The stone bears the inscription "Vincit Amor Patriae" (Love of Country Prevails). Did the AMA at one time prioritize *patria* over patient in times of conflict? When the AMA published its first code of ethics in 1847, it discussed many things including a physician's responsibilities to his patient and a patient's responsibility to her physician. But the code never explicitly mentions where a physician's loyalty should lie in times of conflict. Yet in the *Introduction* to the 1847 code of ethics, the AMA states that a physician should not withhold his services from an individual or his community except under rare circumstances in which doing so would be unjust to himself or his fellow physicians.[2] At least until 1855, giving medical attention to the enemy was for the AMA one of those rare circumstances.

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[1] Edmund D. Pellegrino, "The Moral Foundations of the Patient-Physician Relationship: The Essence of Medical Ethics," in *Military Medical Ethics*, Volume 1, eds. Thomas E. Beam and Linette R. Spracino, 3-21 (Washington, D.C.: Office of the Surgeon General, Department of the Army, and Borden Institute, 2003), 6.

[2] American Medical Association, *Proceedings of the National Medical Conventions* (Philadelphia, PA: AMA, 1847), 85, http://ama.nmtvault.com/jsp/PsImageViewer.jsp?doc_id=6863b9b4-a8b5-4ea0-9e63-ca2ed554e876%2Fama_arch%2FAD000001%2F0039PROC&pg_seq=85.

Today, the AMA marches to a quite different tune. According to Principle IX of the AMA Code of Ethics, "A physician shall support access to medical care for all people."[3]

The AMA notes in a discussion of Principle IX that "the medical profession has no commitment to political advocacy because civic virtues are outside the professional realm."[4] In the case of an American physician-soldier, upholding Principle IX of the AMA Code of Medical ethics may call for supporting the enemy's access to medical care. After all, "for all people" includes the enemy. Yet upholding Principle IX can, under certain circumstances, generate a serious conflict between a physician-soldier's loyalty to his patient according to his medical ethical code and his loyalty to the state according to his military ethical code. This conflict of loyalties is called the dual-loyalty dilemma. The International Dual Loyalty Working Group defines the dual-loyalty dilemma as follows:

> Clinical role conflict between professional duties to a patient and obligations, express or implied, real or perceived, to the interests of a third party such as an employer, an insurer or the state.[5]

Edmund Howe recounts the following true story of a dual-loyalty dilemma faced by a military surgeon in Iraq:

> Military Surgeon
>
> A military physician was the only surgeon working in a small clinic in Iraq when a wounded enemy soldier was brought in. He was so badly injured that he needed immediate abdominal surgery to survive.
>
> At the same time, a U.S. soldier also was wounded and was reported inbound by helicopter evacuation from the battlefield. He, too, needed immediate lifesaving surgery that only this sole surgeon at this same clinic could provide.
>
> The highest-ranking officer in the clinic was not a physician.

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[3] American Medical Association, *AMA Code of Medical Ethics* (2015-2016), Principle IX, Preamble, XV, www.ama-assn.org/delivering-care/ethics/code-medical-ethics-overview.

[4] American Medical Association, *Code of Medical Ethics of the American Medical Association*, Principle IX, Preamble, XXX, 2014-2015.

[5] Dual Loyalty Working Group, *Dual Loyalty and Human Rights in Health Professional Practice: Proposed Guidelines and Institutional Mechanisms* (Washington, D.C.: Physicians for Human Rights, 2002).

> He ordered the surgeon not to begin surgery on the enemy, but to wait until the U.S. soldier arrived and then to operate on him first. The military surgeon saw an ethical dilemma: should he ignore this order and follow what he saw as his medical, professional obligation to operate immediately on the patient before him, though he was a member of an enemy force, or should he wait as he was ordered knowing that if he waited, the patient before him would die?[6]

What should the military physician do? Like Howe, I will reveal what this military physician chose to do later. What I will reveal now is what I think the military physician should do. I think he should not operate on the enemy. To support this view, I will argue that physicians are fighters, just like soldiers, who wield weapons – the weapons of medicine – to win battles against obstacles to health. That is, I claim that physician-soldiers are *doctors with borders*. The only important differences between a soldier and a physician are the kind of enemy they fight, the location of the enemy, and the types of weapons used to fight the enemy. There are several implications of this view. First, if physicians are fighters, then there is no dual-loyalty dilemma because, as fighters, a physician's loyalty is always on the side of those who fight against the enemy. Second, if physicians are fighters, then we should shift our view away from medical ethics grounded in healing towards medical ethics grounded in fighting. This is not as difficult as it may seem. Third, the physician-as-fighter model creates a new model for mass casualty triage. Finally, if medicine is a weapon, then physician-soldiers may be morally required to participate in military weapons development.

The paper proceeds as follows. In Section II, I discuss and reject two prominent types of solutions to the dual-loyalty dilemma. In Section III, I argue that neutrality, impartiality, and the "do no harm" principle are not desirable medical values and should be rejected. This is important because these principles are at the foundation of a medical ethics grounded on the physician as healer. In Section IV, I argue that medicine is a weapon just as guns and bombs are weapons. Section V concludes with a discussion of Howe's case of the military surgeon and implications of the physician-as-fighter model for mass casualty triage.

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[6] Edmund G. Howe, "When, If ever, Should Military Physicians Violate a Military Order to Give Medical Obligations Higher Priority?" *Military Medicine* 180, no. 11 (2015): 1118.

## II. Solutions to the dual-loyalty dilemma

Solutions to the dual-loyalty dilemma fall roughly into two categories: commensurable and incommensurable.[7] On one side is the view that military and medical loyalties are *commensurable* but pull in different directions. The challenge for those who adopt this type of solution is figuring out how to determine when the pull of one loyalty should trump the other loyalty. On the other side is the view that military and medical loyalties are *incommensurable*. As long as military and medical loyalty is in play, only one loyalty has pull. The incommensurability view breaks down into two further positions. One position is that extra-medical considerations are never relevant to medical decision-making. If one adopts this position, the challenge is to explain why military necessity always plays second fiddle to medical need. The second position is that only extra-medical considerations are relevant. Proponents of this position must explain why military necessity always outweighs medical need.[8]

### a. Commensurability

Solutions in this category reflect a positive view of the physician-soldier role. As Michael E. Frisina points out,

> Military medical personal (sic) are highly decorated for their courage and bravery in assisting their fallen comrades and list among the highest number of recipients of the Congressional Medal of Honor for their actions above and beyond the call of duty.[9]

On this view, physicians can become soldiers, but a commitment to both medical and military loyalties will sometimes come into conflict.

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[7] Fritz Allhoff, ed., *Physicians at War: The Dual-Loyalties Challenge* (Dordrecht: Springer, 2008), 7.

[8] Allhoff, *Physicians at War*, 7. Allhoff mentions another option but admits that he is not sure how it is a *solution*. This option entails that military and medical values are intractable, but both apply in the same context. But see Howe for a discussion on how the military physician might meet the mutually exclusive needs of the military and a soldier patient in the case of reporting homosexual behaviour in the US military. Edmund G. Howe, "Mixed Agency in Military Medicine: Ethical Roles in Conflict," in *Military Medical Ethics*, Volume 1, eds. Thomas E. Beam et al., 331-365 (Washington, D.C.: Office of the Surgeon General, Department of the Army, and Borden Institute, 2003), 335.

[9] Michael E. Frisina, "Guidelines to Prevent the Malevolent Use of Physicians in War," in *Physicians at War: The Dual-Loyalties Challenge*, ed. Fritz Allhoff, 39-52. (Dordrecht: Springer, 2008), 40.

When they do, military physicians, nurses, and other health care practitioners sometimes make questionable choices. For example, human rights violations perpetrated at Abu Ghraib and Guantanamo Bay that included the participation of medical practitioners have cast a long shadow over the role of the medical profession and its participation in conflict situations. But instead of leaving medical practitioners in a moral black hole to fend for themselves, Greg Bloche and Johnathan Marks believe we should acknowledge "the tensions between their Hippocratic and national service commitments" and assist doctors and nurses "by working with them to map a course between the two."[10] Consider the following attempts to map a course through the dual-loyalty dilemma.

### i. Moral problem-framing

Rather than think of dilemmas as threats to be avoided, Rebecca Johnson argues that they are challenges to be embraced.[11] This view is based on two beliefs. First, ethical dilemmas are opportunities for personal growth; second, life is complex enough that if we take the time to look closely, we will see that there are "multiple roads to faithful and loyal service."[12] For Johnson, moral dilemmas contain the seeds of their own resolution. For instance, Johnson discusses the case of a devout Christian and pro-life platoon leader who is approached for advice by an enlisted pregnant female in her unit. The platoon leader is required to counsel the pregnant Marine on all her options, including termination. The platoon leader cannot ignore her religious convictions, but she also cannot ignore her duty to the Marine. What should the platoon leader do? To assist physician-soldiers in finding a third path through polarized options, Johnson recommends a four-step approach to "moral problem-framing that seeks to open, rather than close, courses of action" so that soldiers can honour both their personal and professional commitments.[13] Johnson admits that while moral problem-framing

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[10] Gregg M. Bloche and Jonathan H. Marks, "When Doctors Go to War," *The New England Journal of Medicine* 352, no. 1 (2005): 5.

[11] Rebecca J. Johnson, "Serving Two Masters: When Professional Ethics Collide with Personal Morality," in *Routledge Handbook of Military Ethics*, ed. George R. Lucas, 266-277 (Abingdon: Routledge, 2015), 271.

[12] Ibid.

[13] Ibid., 266. According to Johnson's four-steps to moral problem-framing, the platoon leader should (1) clarify the various moral and ethical actors and issues involved in the situation, (2) identify different options that meet her various moral and ethical responsibilities, (3) weigh the real, not perceived, implications of potential options, and (4) valuate which of the options identified open new ground for moral and ethical service. See Johnson, "Serving Two Masters," 272-273.

may not help military personnel in every case, such an approach opens a space for new pathways to a resolution, which in turn create new opportunities for moral growth and improved leadership.[14]

### ii. Discretion

Johnson's moral problem-framing approach sees ethical dilemmas as opportunities for military personnel to find a course through what often just appear to be diametrically opposed options. But what about cases in which there really are only two options? For example, Howe recounts that during World War II, military commanders in Burma decided that combatants who contracted malaria and suffered from high fevers should return to battle. The long-term consequences of malaria include liver abscesses and tuberculosis. Military physicians complied with their commander's orders. Later, that judgement was called into question. Some claim that the medical officers were "robbed of sacred duties and rights to which their professional knowledge and service entitles them."[15] What was the right decision?

Howe argues that physicians should follow a discretion guideline when a conflict exists between the needs of the military and those of the patient. According to Howe, the physician-soldier must choose either to exercise discretion when the needs of the military are not absolute, or to exercise no discretion when the needs of the military are absolute.[16] After all, when a physician enlists in the military, she "at least implicitly, promises to support the mission or greater good when and if this is necessary, even if this requires subordinating the medical well-being of the individual soldier."[17] According to Howe, the military physicians in Burma were right not to exercise discretion. Military necessity was absolute in this case because the military physicians lacked the information necessary to clearly understand the battlefield situation, lacked battlefield expertise to win the war, and were not in a position to determine the level of battlefield effectiveness of soldiers suffering the flu from malaria.[18] However, when the gain to the military is negligible and the harm to the soldier is significant, Howe claims medical physicians should exercise discretion. Such cases include evaluating pilots and commanders for impairment, treating soldiers with

[14] Ibid., 266.

[15] Howe, "Mixed Agency in Military Medicine," 339.

[16] Ibid., 355.

[17] Ibid., 333.

[18] Ibid., 339.

minor issues such as substance abuse, and meeting the clinical needs of soldiers with psychological disorders.[19]

### iii. Coleman supreme emergency in military medical settings framework flowchart

Some views are even more specific than Howe's physician-discretion guideline or Johnson's moral problem-framing approach. For example, Nikki Coleman creates a framework flowchart to assist physician-soldiers and ethics committees to make informed decisions in challenging operational situations such as administering an experimental anthrax vaccine to coalition forces during the Gulf War.[20] The issue in this case was not just the administering of unproven pharmaceuticals but the suspension of the bioethical principle of informed consent by mandating the vaccine. Coleman argues there are situations in which bioethical principles must be suspended. These include cases when a patient is unconscious, a danger to himself and others due to a mental health condition, or public health concerns.[21] By drawing on bioethical principles, the Siracusa Principles, and the concept of supreme emergency, Coleman develops a supreme emergency in military medical settings framework flowchart to support informed and consistent decision-making and balance the operational needs and risks to military personnel.[22] The Siracusa principles are an essential part of the framework because they were created to balance the suspension of individual rights and a need to protect the wider community from health threats such as a pandemic.[23] They are intended to prevent the risk of all bioethical principles being suspended when the operational situation may only require the suspension of one, such as the principle of autonomy in the case of a mandatory anthrax vaccine for soldiers before deployment to a conflict setting.

Commensurability solutions to the dual-loyalty dilemma are attractive for several reasons. First, they support physician participation

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[19] Ibid., 344-355. For similar views, see Michael L. Gross, "Military Medical Ethics in War and Peace," in *Routledge Handbook of Military Ethics*, ed. George R. Lucas, 248-264 (Abingdon: Routledge, 2015), 260; William Madden and Brian Carter, "Physician Soldier: A Moral Profession," in *Military Medical Ethics*, Volume 1, eds. Thomas E. Beam and Linette R. Spracino, 269-291 (Washington, D.C.: Office of the Surgeon General, Department of the Army, and Borden Institute, 2003).

[20] Nikki Coleman, "When to Suspend Bioethical Principles in Military Medicine for Operational Purposes: A Framework Approach," in *Health Care in Contexts of Risk, Uncertainty, and Hybridity*, eds. Daniel Messelken and David T. Winkler, 221-234 (Cham: Springer, 2022), 233.

[21] Ibid.

[22] Ibid., 221.

[23] Ibid., 224.

in the military. Advances in medicine have made physician participation a crucial component of winning contemporary wars. Commensurability means the physician-soldier is not a morally impossible role. Second, a commensurability approach might alleviate the additional problem that different people deal with the same ethical tensions in different ways. Two military physicians may come to opposite conclusions on how to resolve the same ethical dilemma. Commensurability solutions to the dual-loyalty dilemma generate guidelines, frameworks, and flowcharts that can not only save time in the field hospital and on the battlefield but also foster consistency in ethical decision-making across people, countries, and services.[24] Finally, a more consistent approach to resolving ethical dilemmas may go some way to relieving military medical practitioners of the pain they may feel when they must follow military necessity knowing it will cause harm to individual soldiers.[25]

Adopting a commensurability approach to solving the dual-loyalty dilemma faces an obstacle. Commensurability views make a crucial assumption, namely that using medicine, medical knowledge, and medical skills for non-medical ends is morally unproblematic. However, several of the world's medical ethical codes unequivocally reject this assumption. Consider the following examples:

> World Medical Association (WMA) Declaration of Tokyo: The physician's fundamental role is to alleviate the distress of his or her fellow human beings, and no motive, whether personal, collective, or political, shall prevail against this higher purpose.[26]

> The International Dual Loyalty Working Group of Physicians for Human Rights: Using medical skills or expertise on behalf of the state or other third party to inflict pain or physical or psychological harm on an individual that is not a legitimate part of medical treatment [is a human rights violation].[27]

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[24] Ibid., 228.

[25] Howe, "Mixed Agency in Military Medicine," 356.

[26] World Medical Association, *WMA Declaration of Tokyo – Guidelines for Physicians concerning Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in Relation to Detention and Imprisonment* (WMA, 2022), https://www.wma.net/policies-post/wma-declaration-of-tokyo-guidelines-for-physicians-concerning-torture-and-other-cruel-inhuman-or-degrading-treatment-or-punishment-in-relation-to-detention-and-imprisonment/.

[27] Dual Loyalty Working Group. *Dual Loyalty and Human Rights in Health Professional Practice. Proposed Guidelines and Institutional Mechanisms* (Washington, D.C.: Physicians for Human Rights, 2002).

> American Medical Association: Physicians must oppose and must not participate in torture for any reason. Participation in torture includes, but is not limited to, providing or withholding any services, substances, or knowledge to facilitate the practice of torture. Physicians must not be present when torture is used or threatened. Physicians may treat prisoners or detainees if doing so is in their best interest, but physicians should not treat *individuals to verify their health* so that torture can begin or continue.[28]

The only way for the commensurability view to respond to these ethical injunctions to put medicine and patient before *patria* is to assert that military necessity and safeguarding the community may need to take priority over these medical ethical codes in times of conflict. But what justifies a medical professional prioritizing the security concerns of the group over the autonomy and medical needs of the individual? For some theorists, the answer is "nothing" because the role of physician and soldier are incommensurable.

### b. Incommensurability

One way to solve the dual-loyalty dilemma is to grab one horn and spurn the other. Either non-medical considerations in medical decision-making are irrelevant (physician-first) or non-medical considerations are the only ones that are relevant (soldier-first). The most common horn to grab is the physician-first horn. This can be done in two ways. The first option is to segregate the role of the physician and soldier. Physicians should not become soldiers and soldiers should not become physicians. This will prevent the two loyalties from coming into conflict. The second option is to agree that physicians can become soldiers, but they should always prioritize medical need over military need.

#### i. Segregation

Victor Sidel and Barry Levy believe the tension between a physician's loyalty to her medical code of ethics and a soldier's loyalty to her military code of ethics is all too frequent and creates an "inherent moral impossibility" to carry out both roles.[29] Due to the conflict in loyalties,

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[28] American Medical Association, "Opinion 2.067: Torture," in *AMA Code of Medical Ethics* (2015). Emphasis added.

[29] Victor W. Sidel and Barry S. Levy, "Physician-Soldier: A Moral Dilemma," in *Military Medical Ethics*, Volume 1, eds. Thomas E. Beam and Linette R. Spracino, 293-231 (Washington, D.C.: Office of the Surgeon General, Department of the Army, and Borden Institute, 2003), 296.

physician-soldiers frequently violate bioethical principles while also failing to fulfill the expectations and responsibilities of the Geneva Conventions.[30] When the practice of medicine comes under military control, it becomes "fundamentally dysfunctional and unethical."[31] Sidel and Levy's view is that "combining combat capabilities with medical skills [perverts] medical care into a 'weapon.'"[32] Thus, it is wrong for physicians to serve as physician-soldiers because the overriding ethical principles of each profession are incompatible. A physician is a physician, a soldier is a soldier, and never the twain shall meet.

### ii. Physician first, soldier second

Most theorists that grab the physician-first horn of the dilemma would disagree with Levy and Sidel that combining the role of a physician and a soldier creates an "inherent moral impossibility."[33] Physicians may become soldiers, but medical ethics nevertheless takes priority over military ethics. Edmund Pellegrino considers different models of the patient-physician relationship and concludes that the model of *physician as healer* lies at the heart of the Hippocratic Oath and serves as the foundation for medical ethics.[34] Many agree with Pellegrino that "medical ethics begins and ends in the patient-physician relationship."[35]

Medicine is defined by its "end" and that end is helping and healing; the end of medicine as medicine is what distinguishes it as "a special kind of human activity with its own internal morality."[36] As such, the internal morality of medicine demands its own loyalty which can come into conflict with competing commitments. When loyalties conflict or a case is morally ambiguous, physician as healers should put their medical ethics code first.[37]

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[30] Ibid., 303. Usually, physicians in a civilian practice have ways around such ethical conflicts by referring the patient to a different physician or resigning from their position. This option is not usually available to physician-soldiers.

[31] Ibid.

[32] Ibid., 304.

[33] See Howe's rebuttle in "Point/Counterpoint – A Response to Drs Sidel and Levy," in *Military Medical Ethics*, Volume 1, eds. Thomas E. Beam and Linette R. Spracino, 312-320 (Washington, D.C.: Office of the Surgeon General, Department of the Army, and Borden Institute, 2003).

[34] The other models include physician as clinical scientist, businessman, body mechanic, and social servant. Pellegrino, 9-10.

[35] Ibid., 5.

[36] Ibid., 10.

[37] See Daniel Zupan, Gary Solis, Richard Schoonhoven, and George Annas, "Case Study: Dialysis for a Prisoner of War," *The Hastings Center Report* 34, no. 6 (2004): 12; Tom Koch,

Grabbing the physician-first horn is the most common approach to solving the dual-loyalty dilemma and has much to recommend it. In most cases, it is easier navigating the edicts of one ethical code than navigating two. The various guidelines, frameworks, and flowcharts offered by proponents of the commensurability approach are proof of how difficult it is to find a path through the moral maze in which military medical practitioners may find themselves. Giving primacy of position to one ethical code or loyalty allows one to act with a clear conscience. Moreover, the moral dictates of the many contemporary medical ethics codes are reflections of the principles found in the Hippocratic Oath, parts of which are recited by most U.S. medical students on the occasion of "white coat" ceremonies. Furthermore, a physician-first approach to resolving the dual-loyalty dilemma aligns with contemporary secular and religious sentiments regarding the inherent dignity or sanctity of all human life and the medical practitioner's unique role in preserving it in times of medical need.

Yet, there are at least three reasons that speak against grabbing the physician-first horn of the dual-loyalty dilemma. First, it is very important to note that medical ethical codes are not laws but standards of honourable conduct. As Fritz Allhoff correctly points out, the AMA does not offer arguments but "merely statements."[38] This is also true for the WMA and other medical ethical codes. What we need, however, are arguments to give us "reasons (as might be offered by premises and a purported inferential structure) to accept them aside from the fact that medical associations endorse them."[39]

Second, the segregation solution proposed by Sidel and Levy is problematic because it would require calling on civilian physicians who would not have the necessary military training to provide medical services on the battlefield.[40]

Third, the physician-first view suffers from what I call the *McCoy Complex*. In the original Star Trek television series, the character Dr. Leonard McCoy, also known as "Bones," is the chief medical officer on the Federation Constitution-class starship USS Enterprise. One of the

"Editorial: Weaponising Medicine: 'Tutti Fratelli,' No More," *Journal of Medical Ethics* 32, no. 5 (2006): 249-252.

[38] Fritz Allhoff, "Physician Involvement in Hostile Interrogations," in *Physicians at War: The Dual-Loyalties Challenge*, ed. Fritz Allhoff, 91-104 (Dordrecht: Springer, 2008), 98.

[39] Allhoff, "Physician Involvement in Hostile Interrogations," 98.

[40] Michael L. Gross "The Limits of Impartial Medical Treatment During Armed Conflict," in *Military Medical Ethics for the 21st Century*, ed. Michael L. Gross and Don Carrick, 71-84 (Abingdon: Routledge, 2016), 82.

most iconic catchphrases from the original Star Trek series is the line "I'm a doctor, not an X," which McCoy usually uttered to express his frustration when anyone questioned his authority in medical matters or when he was asked to perform tasks in which he did not specialize. Examples include "I'm a doctor, not an engineer,"[41] "I'm a doctor, not a bricklayer,"[42] "I'm a doctor, not an escalator,"[43] and sometimes in reverse order as in "I'm not a magician, Spock, just an old country doctor."[44]

McCoy's often cranky but humane character made him one of the most enduring examples of the honourable medical doctor on television and in film. Yet, we can question his resistance to combining his medical skill and knowledge with any other profession. Is medicine a special kind of human activity with its own internal morality that precludes its practitioner from using it for non-medical ends? Is the profession of healing a higher calling that requires a doctor to refrain from engaging in activities that she knows may harm others? If one could show that the military and medical professions shared fundamental values, aims, and duties, then the role of physician-soldier would not be an "inherent moral impossibility" as Sidel and Levy claim. Moreover, it could go some way to showing that the physician-soldier does not have a higher calling. Finally, it may follow that it is morally permissible for a physician-soldier to use her medical skills and knowledge for non-medical ends.

### iii. Soldier first, physician second

Another way to solve the dual-loyalty dilemma is to argue that extra-military considerations are irrelevant to military decision-making. One way to support this claim is to denude medicine of its sanctified role by reducing it to a certification of skill. The most succinct statement of this approach comes from Dr. David Tornberg, former Deputy Assistant Secretary of Defense for Health Affairs. Gregg Bloche and

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[41] *Star Trek: The Original Series,* Season 2, Episode 4, "Mirror, Mirror," directed by Marc Daniels, aired on October 6, 1967, on NBC, https://www.primevideo.com/detail/0I3S517SCXAFEUZ0M8P0NY3PFA/ref=atv_dp_season_select_s2.

[42] *Star Trek: The Original Series*, Season 1, Episode 26, "The Devil in the Dark," directed by Joseph Pevney, aired on March 9, 1967, on NBC, https://www.primevideo.com/detail/0RLGFOASUIWE2L5OM3DG8CJO83/ref=atv_dp_season_select_s1.

[43] *Star Trek: The Original Series*, Season 2, Episode 11, "Friday's Child," directed by Joseph Pevney, aired on December 1, 1967, on NBC, https://www.primevideo.com/detail/0I3S517SCXAFEUZ0M8P0NY3PFA/ref=atv_dp_season_select_s2.

[44] *Star Trek: The Original Series*, Season 2, Episode 12, "The Deadly Years," directed by Joseph Pevney, aired on December 8, 1967, on NBC, https://www.primevideo.com/detail/0I3S517SCXAFEUZ0M8P0NY3PFA/ref=atv_dp_season_select_s2.

Jonathan Marks provide a good summary of Tornberg's view of the military physician:

> A medical degree, Tornberg said, is not a "sacramental vow" – it is a certification of skill. When a doctor participates in interrogation, "he's not functioning as a physician," and the Hippocratic ethic of commitment to patient welfare does not apply.[45]

Stripping medicine of its ethic by reducing the medical practitioner to the role of technician may have unacceptable consequences. Marks laments the following:

> health professionals – whether physicians, psychologists, nurses, medics, or others – who have served or now serve at Guantanamo Bay, have become pawns in the mistreatment of detainees and in the debate over their treatment.[46]

Psychiatrists and psychologists at Guantanamo Bay and Abu Ghraib were considered behavioral scientists who advised military intelligence on interrogational torture.[47] Military officers had access to detainee medical records, and medics and doctors cleared detainees for interrogation. Reducing the medical practitioner to a technician also creates a space where "physicians are free to apply their skill to maximise the goals of military necessity irrespective of the effect on patients."[48]

Despite these serious concerns, Allhoff argues that the physician-first solution to the dual-loyalty dilemma fails because it requires that one hold dubious metaphysical commitments. According to Allhoff, the physician-first solution holds the unjustified assumption that having medical knowledge and skills confers moral duties. But this, Allhoff argues, is a false assumption. Assuming that hostile interrogation is morally permissible, is there any reason to bar medically-trained soldiers from using their medical skills to facilitate the interrogation process? Allhoff helpfully translates the physician-first solution into argument form as follows:[49]

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[45] Bloche and Marks, 4.

[46] Ibid.

[47] Ibid.

[48] Koch, 251.

[49] Allhoff, "Physician Involvement in Hostile Interrogations," 99.

P1. The medically-trained interrogator has medical knowledge.
P2. If the medically-trained interrogator has medical knowledge, then she has certain moral duties.
C. The medically-trained interrogator has certain moral duties.

Allhoff argues that the argument is unsound because P2 is false. It is not the case that "knowledge of P is *sufficient* to obligate an agent to ϕ."[50] Normative principles can obligate an agent to ϕ, i.e., maximize happiness, but knowledge of non-moral propositions cannot. Knowledge and technical skill are value-neutral. Therefore, "[m]edical knowledge alone is not sufficient to create moral obligations absent some moral principle that would yield those obligations."[51] If Allhoff is right that P2 is false, this lends support to Tornberg's claim that a physician-soldier is not functioning as a physician when he participates in interrogation. Accordingly, the various medical ethical codes and bioethical principles would not apply. Allhoff concludes that medically-trained interrogators act as soldiers, not physicians, and are therefore not bound by medical ethical codes or bioethical principles.

Some will see this as a positive development. There will be times when the welfare of a physician-soldier's community should be prioritized over her patient. Physician-soldiers may rightly be called on to use their medical expertise in the service of their community, and this service may include participation in hostile interrogations or weapons development.[52]

The greatest weakness of Allhoff's soldier-first solution to the dual-loyalty dilemma is that it dodges the issue. Allhoff asks whether medical knowledge or skill is not sufficient for conferring the moral duties of a physician onto a medical technician. But that is not the right question. We are not interested in figuring out how to circumvent using a Hippocratic Oath card-carrying physician with a McCoy Complex in hostile interrogations, assuming such interrogations are permissible. What we want to know is whether participation in interrogations or weapons development is morally permissible for someone with *a medical degree*. If it is, then *a fortiori* it is also morally permissible for medical technicians and Allhoff's solution is unnecessary.

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[50] Ibid., 100.

[51] Ibid.

[52] Michael L. Gross, "Is Medicine a Pacifist Vocation or Should Doctors Help Build Bombs?" in *Physicians at War: The Dual-Loyalties Challenge*, ed. Fritz Allhoff, 151-166 (Dordrecht: Springer, 2008).

Commensurability and incommensurability approaches to solving the dual-loyalty dilemma share a major assumption. They all assume the model of the physician as helper. This model generates the conflicts and tensions that these solutions attempt to resolve. I do not deny that physicians heal. But this is not all they do, and the physician-as-healer model is not only model available to us.

## III. Neutrality, impartiality, do no harm

Madden and Carter argue that "[Physician and soldier] are two very different professions, yet societies, if they are to survive, need both of them, just as they need laws and moral direction. The physician-soldier bridges these two professions."[53] Some theorists attempt to bridge the gap between the military and medical professions by showing that there is a great deal of overlap between their respective ethical codes, values, and ideals.[54] Hence, the military and medical professions are not fundamentally opposed.[55] This is good news for commensurability but bad news for segregation. However, "not fundamentally opposed" does not mean "fundamentally supportive." Shared principles, values, and aims only take us so far because there are three crucial differences between the physician and soldier that cast them apart. These differences are neutrality (not taking sides), impartiality (medical attention without discrimination), and the "do no harm" principle. Recently, there has been pressure on the idea that neutrality, impartiality, and "do no harm" principle are realistic values for the medical profession to uphold. The next three sections intend to place even greater pressure on these values.

### a. Neutrality

Neutrality is one of the seven fundamental principles of the International Committee of the Red Cross (ICRC). The ICRC declares that "In order to continue to enjoy the confidence of all, the Movement may not take sides in hostilities or engage at any time in controversies of a political, racial, religious or ideological nature."[56] However, we have good reasons to doubt

[53] Madden and Carter, 279.

[54] Frisina, 51; Madden and Carter, 281.

[55] Cristiane Rochon and Bryn Williams-Jones, "Are Military and Medical Ethics Necessarily Incompatible? A Canadian Case Study," *Journal of Law, Medicine and Ethics* 44, no. 4 (2016): 649.

[56] International Committee of the Red Cross, *The Fundamental Principles of The International Red Cross and Red Crescent Movement* (Switzerland: ICRC, 2015), https://www.icrc.org/sites/default/files/topic/file_plus_list/4046-the_fundamental_principles_of_the_international_red_

the positive association of the physician as healer with neutrality. Consider that it would be *perverse* to be neutral in the face of genocide or other grave human rights violations. The ICRC was aware of the concentration camps in WWII but remained silent to avoid compromising its neutrality. The result was disastrous. This is why some members of Médecins Sans Frontières (MSF)/Doctors Without Borders question the status of neutrality in its own charter.[57]

This criticism of neutrality is compelling. It gives us a reason for believing that, at least sometimes, physicians should not be neutral. More than that, we also have a reason for thinking that neutrality is fundamentally opposed to what it means to be a physician.

Notice that neutrality is only discussed when viewing the physician-soldier in relation to the enemy, i.e., states, guerilla groups, or terrorist organizations. These are large or small groups that consist of members who fight against another group. But this is the wrong level of analysis with respect to physician neutrality. If we want to determine whether neutrality is essential to medicine, we must consider the physician in peacetime as a civilian in relation to her patient and whatever is causing her patient's suffering.[58] This is the correct level of analysis because the civilian physician in peacetime is the starting point for medical ethics. Medical ethics was not born from the context of warring groups of people. Hippocrates did not create the Oath because his nation frequently went war. So, we should consider physician neutrality at the level of the civilian physician in peacetime.

Imagine a patient has ocular melanoma that can be defeated if his ophthalmologist uses high-energy x-rays to kill the cancer. When considering physician neutrality, we should be clear about who or what a civilian doctor in peacetime is neutral. The first thing to do is specify the relevant "sides." In the ocular melanoma case, there is the patient on one side and the ocular melanoma on the other. The patient has sought out her ophthalmologist to help her kill the cancer that has besieged her eye. This is a case of patient versus cancer. Now imagine what our reaction would be if we overheard the ophthalmologist saying to his colleague that he was neutral between the patient defeating the melanoma or the melanoma defeating the patient. I suggest that we would be deeply disturbed by the ophthalmologist's disinterestedness. Just as it would be perverse to

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cross_and_red_crescent_movement.pdf.

[57] Fiona Terry, "The Principle of Neutrality: Is It Relevant to MSF?" *Les Cahiers de Messages* 113 (2000): 1-6.

[58] When I say "peacetime," I am referring to a state or condition of no conflict or war at the level of groups of people.

remain neutral in the face of gross human rights violations, such as genocide, it would be perverse if the ophthalmologist were neutral between his patient and the melanoma. Disinterested medical care seems wrong. The ophthalmologist should choose a side, and we would expect him to choose his patient's side! If patients did not know whether they would be seen by a doctor who was on their side when they go to the hospital, the whole medical profession would collapse. There is an implicit agreement between doctors and patients that doctors are on the side of the patient, not whatever is beleaguering the patient. So, neutrality is neither intrinsic to the medical profession nor is it advisable or desirable. Physicians are not neutral actors. The essence of medicine is non-neutrality and that means choosing to side against whatever is afflicting a patient.

An objection would be to argue that the ocular melanoma is not the sort of thing that one can be neutral about in the way Switzerland was neutral in WWII. Cancer is a disease not a person, a group of people, or a state. Discussions of neutrality must take place in the domain of human relations, not relations between humans and non-human entities. Therefore, my argument for the inherent non-neutrality of physicians is misguided. I would respond that, whether cancer is a person or not is irrelevant. The key point is that a doctor can *choose a side*. This was the case in WWII with the Nazi doctors and Japanese experiments performed by Unit 731. If doctors can choose between reducing their patients' suffering or helping a disease to manifest or progress in a certain way in an experimental subject, then whether ocular melanoma is a person or not is irrelevant. All that matters morally is which side a physician chooses to help. Novels and film are replete with evil doctors who choose the object of their scientific interest over their patients. These famously include Doctor Moreau who created human-animal hybrid beings using vivisection (*The Island of Dr. Moreau*, 1896) and the synthetic science officer Ash who secretly allowed crew members of the commercial space craft Nostromo to become impregnated with an alien as a means for transporting it undetected back to earth (*Alien*, 1979). These characters are evil because civilian physicians in peacetime should not only be non-neutral between their patients and the enemy, they should always choose the side of their patients.

b. Impartiality

Impartiality is also one of the seven fundamental principles of the ICRC. The ICRC declares the following:

> The Movement makes no discrimination as to nationality, race, religious beliefs, class or political opinions. It endeav-

> ours to relieve the suffering of individuals, being guided solely by their needs, and to give priority to the most urgent cases of distress.[59]

Regarding impartiality, Article 12 of Geneva Convention I (1949) states the following:

> Members of the armed forces who are wounded or sick shall be treated humanely and cared for without any adverse distinction founded on sex, race, nationality, religion or any other similar criteria [...]. Only urgent medical reasons will authorize priority in the order of treatment to be administered.[60]

The ICRC and Article 12 both state that urgent medical need is the only legitimate criterion for discriminating between patients. No other criteria will enter into the determination of who receives medical attention. For example, although the conditions for mass casualty triage (a shortage of medical supplies, overwhelming casualties in a short time and the immediate threat of troop degradation) rarely come together in the theatre of war today, such urgent medical emergencies do occur. On these occasions, Michael Gross argues that military necessity takes priority over Article 12.[61] Asking physician-soldiers to be truly impartial or give medical attention only on the basis of urgent medical need may result in helping the enemy return to battle. This could lengthen the conflict and increase the risk of more harm to soldiers and civilians on both sides.[62] Furthermore, diverting scarce medical resources to enemy wounded turns impartial medical care into an unreasonable burden on a state's ability to wage war effectively.[63]

Gross nevertheless maintains that rare cases *do not invalidate* the Geneva Conventions rule on impartiality. He takes it that military ne-

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[59] International Committee of the Red Cross, *The Fundamental Principles of The International Red Cross and Red Crescent Movement* (Switzerland: ICRC, 2015).

[60] API, *Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts* (Protocol I), 8 June 1977, Geneva: ICRC.

[61] Gross, "The Limits of Impartial Medical Treatment," 74.

[62] Justin List, "Medical Neutrality and Political Activism: Physicians' Roles in Conflict Situations," in *Physicians at War: The Dual-Loyalties Challenge*, ed. Fritz Allhoff, 237-253 (Dordrecht: Springer, 2008), 242.

[63] Gross, "The Limits of Impartial Medical Treatment," 74.

cessity is only a defensible *exception* to Article 12.[64] Thus, he claims that rare exceptions only *set aside* the underlying principle of medical impartiality.[65] Instead of considering that we may need to update to Article 12 (after all, the Geneva Conventions are not set in stone like the Ten Commandments), Gross chooses to reaffirm the image of the physician as an *impartial* healer.

In peacetime, the patients that doctors see generally are not opposing forces as they sometimes are in a wartime field hospital. But even if a patient and physician are not enemies, there is an important sense in which a physician should not be impartial. Imagine two patients who go to the same medical clinic. The doctor can only add one more patient to her family practice before she is overburdened. Patient X has a medical condition and Patient Y does not. In this situation, the doctor should not be impartial between X and Y. If she can only see one more patient, she should be partial to Patient X who has a medical need. So, the medical profession is not intrinsically impartial nor is it advisable or desirable for individual physicians to be impartial between patients.

Doctors do more than just give medical attention at the very moment a patient has been gripped by illness. They also try to *prevent* illness just as political representatives use preventative diplomacy as a tool to prevent war. Preventative medicine is just one facet of medicine in which physicians work to prevent obstacles to health such, as illness and disease, before they occur. Medical partiality means giving preventive medicine only to those who have a medical need such as children who should be vaccinated against chickenpox or vaccinating soldiers against infectious diseases specific to their assigned geographic locale.

Now consider how medical non-neutrality and partiality function together when a physician becomes a physician-soldier. A civilian physician is not an impartial agent with respect to her patients. When a civilian physician becomes a physician-soldier, she remains partial to those patient-soldiers or non-combatants who require medical attention. This is just a physician exercising her skills on people who need it now or for the future rather than those who do not. All the patients she sees have a medical need. Medical partiality actually says nothing about who among those that need medical attention should gain access to it, when, and in what order. We need a different principle to decide how to triage. As for neutrality, a civilian physician is non-neutral

[64] Ibid.

[65] Ibid.

because she chooses her patient over whatever is causing her patient's suffering. A doctor should not choose to side with the enemy within, whether it is syphilis, the plague, or the coronavirus. When a civilian physician becomes a physician-soldier, she becomes doubly non-neutral because she also enlists on the side that is against the enemy without, whichever state, guerilla group, or terrorist organization that may be.

c. *Primum non nocere* (above all, do no harm)

The "do no harm" principle as a medical value is also questionable. If the physician is primarily a healer, then it appears that the "do no harm" principle may be an unbridgeable difference between the military and medical professions. Soldiers are licensed to kill while doctors are licensed to heal. However, Rochon and Williams-Jones note that issues such as euthanasia, assisted suicide, and abortion are increasingly being recognized in medicine as deeply connected to the bioethical principles of beneficence and autonomy.[66] This view raises the question of whether the "do no harm" principle in medicine is as absolute or fundamental as it once was. The same is true of soldiering. The principle of beneficence is intimately connected to the legitimate use of force. For example, soldiers on international peace-keeping missions are restricted from intervening with force to stop human rights violations like genocide (e.g., Rwanda) if they are not operating under Chapter VII of the UN Charter.[67] This view of "peace-keeping" as synonymous with "do no harm" deserves as much criticism as the ICRC's absolute neutral stance in WWII with respect to their knowledge of the concentration camps. Harming to prevent harm is not by definition wrong.[68]

During the COVID-19 pandemic, the number of patients who needed ventilators far exceeded availability. Imagine this hypothetical case. Two patients who both need a ventilator due to COVID-19 have the same clinical condition and expected outcomes. Patient A is a nurse and patient B is a non-medical worker. There is only one ventilator. Who should receive this scarce resource? If A is given the ventilator, then B loses out. If B is given the ventilator, then A loses out. Either way, someone loses. But if we have enough ventilators for everyone, then no one will lose out. Patient A and Patient B will both have access to a ventilator, not based solely on medical need, but also on availability. If all hospitals had enough doctors, nurses, and resources, triage would not be necessary.

[66] Rochon and Williams-Jones, 648.

[67] Ibid.

[68] Ibid.

Anyone who entered an emergency room, whether for a heart attack or a hang nail, would be attended to in good time.

This example is intended to illustrate that harming is not intrinsic to medicine. Below, I will also show that harming is not intrinsic to the military. For the moment, assume this is true about the military. Nevertheless, it is a fact that physicians and soldiers must sometimes do harm to achieve good ends. The reason is because we have not figured out how to achieve our medical or military goals without causing harm. So, harm is not intrinsic to medicine or the military but is currently unavoidable. If one doubts this claim about medicine, then consider why we bother improving surgical techniques. Doctors participate in the design and development of new medical procedures, better equipment, and safer pharmaceuticals with fewer side effects. Why do they bother? They bother in order to reduce harm and suffering *caused by medical treatment*. Sharper scalpels, better anesthetics, and robot-assisted surgery all lead to better outcomes. Better medical outcomes mean more effective and *less harmful* medicine. Imagine we could remove an appendix without disturbing any of the surrounding tissue to extract at it. No one would ever countenance a scar! But anyone who has had an appendectomy has a scar because physicians have not yet figured out how to perform this surgery without leaving a mark, although scars are becoming smaller and less visible thanks to improved surgical practices. Of course, this would not be possible if physicians refrained from participating in the development of better medicine.

When harm is necessarily unavoidable, as it is in medicine today, the "do no harm" principle cannot be interpreted as an absolute prohibition on causing harm. Instead, the "do no harm" principle should be understood as "do as little harm as possible" to get the job done, and this begins to sound strikingly similar to the *jus in bello* principles of proportionality and necessity that constrain the use of force in war.

Harming is not intrinsic to the military either. Someone might argue that this is false because the military uses weapons and weapons are inherently harming. According to Vivienne Nathanson, "Weapons always do harm; it is the essential element of their nature."[69] So, how could harm not be intrinsic to the military which uses weapons? Consider the prospects for reducing harm in war with "non-lethal weapons" (NLWs). The US Supreme Court defines NLWs as follows:

[69] Vivienne Nathanson, "The Case Against Doctor Involvement in Weapons Design and Development," in *Physicians at War: The Dual-Loyalties Challenge*, ed. Fritz Allhoff, 167-177 (Dordrecht: Springer, 2008), 174.

> Weapons, devices and munitions that are explicitly designed and primarily employed to incapacitate targeted personnel or materiel immediately, while minimizing fatalities, permanent injury to personnel, and undesired damage to property in the targeted area or environment. NLW are intended to have reversible effects on personnel or materiel.[70]

NLWs are not intended to kill, maim, or permanently disfigure. Unlike ordinary weapons used in war that can do a great deal of harm, "non-lethal weapons offer the prospect of reducing casualties and protecting civilians during asymmetric war."[71] I would add that the benefits of NLWs also apply to soldiers in asymmetric and conventional warfare. The whole point behind the development of NLWs is to reduce harm in war just as physicians seek to reduce harm caused by medical treatment by participating in the design and development of more effective and less harmful medicine. If the military can achieve its ends with NLWs, then they should be considered.

NLWs give us a good reason to believe "that the use of lethal or deadly force per se is not the *raison d'être* of the military or of military operations."[72] Yet, one could argue that even if NLWs reduce harm, they still cause harm. So, harming is intrinsic to the military.

To see why this is false, consider that a weapon is an instrument or object of offensive or defensive combat; it is an instrument used in fighting. Next, consider the essential purpose of weapons in the context of war: "Weapons are developed to be more efficient at their essential purpose – removing obstacles from the way of an advancing military force."[73] The objects to be removed in battle could include buildings, people, or tanks. However, "removing obstacles" does not entail that harming is *necessary* to achieve that goal. The reason soldiers still cause harm is for the same reason physicians still cause harm. They have yet to discover how to develop and design harmless weapons (although sticky foam is a good example of a less-than-lethal weapon). But harming is not an *essential element* of weapons. So, although it is

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[70] United States Department of Defense, *Non-Lethal Weapons (NLW) Reference Book* (Joint Non-Lethal Weapons Directorate, 2012), https://www.supremecourt.gov/opinions/URLs_Cited/OT2015/14-10078/14-10078-3.pdf.

[71] Michael L. Gross, "Medicalized Weapons Modern War," *The Hastings Center Report* 40, no. 1 (2010): 35.

[72] Pauline Shanks Kaurin, "Non-Lethal Weapons and Rules of Engagement," in *Routledge Handbook of Military Ethics*, ed. George R. Lucas, 395-405 (Abingdon: Routledge, 2015), 396.

[73] Gross, "Pacifist Vocation," 169.

true that militaries currently use weapons that do harm, that does not mean the military is by necessity a harming profession.

In the previous sections, I tried to show that neutrality, impartiality, and the "do no harm" principle are not medical values that physicians should hold. The physician is a non-neutral and partial agent who sometimes unavoidably does harm to remove obstacles to health. The physician is beginning to sound like a soldier, another non-neutral and partial agent, who must sometimes do harm to remove obstacles to peace. But even if many were to agree with this much, I suspect there would still be resistance to the idea that a physician really is a fighter, a warrior in a white coat, and the further inference that the foundation of medical ethics should be a fighting ethics. The reason for this resistance, I think, is a reluctance to take the final step and acknowledge that if a physician is a fighter, then medicine must be a weapon. And if medicine is a weapon for fighting, then we have good reasons for reconsidering or, as I shall suggest, abandoning the physician as healer model.

## IV. Medicine as a weapon

There is no question that medicine is used as a weapon. Military medical professionals have been called on to lend their medical expertise for the development of chemical and biological weapons. But even if it is true that medicine is a weapon, should it ever be used for non-medical ends? Currently, the Chemical Weapons Convention (2020) prohibits the use of chemical weapons in armed conflict but excludes "law enforcement, including domestic riot control purposes" [article II.9 (d)].[74]

I argued above that weapons are not inherently harming. This means that, if medicine is a weapon, it is not inherently an instrument of harm, even if its current use cannot avoid causing patients harm to remove obstacles to health. To reduce medicalized harm, physicians participate in the design and development of more effective and less harmful medicine.

Madden and Carter seem to implicitly assume that medicine is a weapon:

> It is not an accident that many words of clinical medicine are the words of war. For instance, a *war* is being waged against cancer, diseases *attack* the body, and the physician

[74] Organization for the Prohibition of Chemical Weapons, *Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction* (OPCW, 2020), https://www.opcw.org/chemical-weapons-convention/articles/article-ii-definitions-and-criteria.

> *aggressively* uses everything in his *armamentarium* to claim *victory* for his patient over the disease. "We will defeat cancer in our lifetime," was a long standing pledge of the American Cancer Society. Tumors invade tissue. They are destroyed by radiation or chemotherapy. Antibiotics kill bacteria. These are not the words of passive exercises. They are the words of battle, a battle that can result in the death or debilitation of the patient if not successfully fought. This vocabulary is appropriate because for many patients and medical professionals who help them, the perceived *ultimate responsibility* of the practitioner is to defeat death.[75]

I suggest that the words of war are appropriate because cancer, malaria, and coronaviruses pose serious threats to the bodies they invade. Just because the enemy during the COVID-19 pandemic was a virus (SARS-CoV-2) this no less diminishes the fact that a global war was taking place against an invisible enemy that only doctors and nurses could fight. As resources quickly became scarce in the early days of the pandemic, mass casualty triage was the new normal in emergency rooms all over the world. The principle of salvage was the operational determinant of who gained access to ventilators in very short supply. Medicine was used as a *weapon* to fight the enemy.

An objection would be to accept that the vocabulary of war is appropriate because it can have positive effects on efforts to deal with the pandemic but reject my claim that the coronavirus or any other disease, such as Ebola, HIV/AIDS, or Zika, is an enemy properly speaking. People are enemies, not viruses. To be a fighter properly speaking, one needs to be fighting another human being. Doctors and nurses do not fight people in their clinics and hospitals. They treat people. Therefore, doctors and nurses are not fighters like soldiers fighting in Iraq or Afghanistan. If doctors and nurses are fighters, they are so only metaphorically. Referring to doctors and nurses as we did during the pandemic as warriors on the frontlines putting their lives at risk in the battle against COVID-19 may boost morale and courage among medical practitioners, but it does not make them fighters. Once again, my argument is misguided.

I would respond that whether an enemy is human or not is irrelevant. An enemy is anything that is hostile to some person or some thing. The hostile entity need not be a person. For example, it is common to refer to an environment as being "hostile" to human life such

[75] Madden and Carter, 279-280.

as the hostile planetary surface of Mars or Venus. Back on Earth, Death Valley in California is a hostile environment for human life with average temperatures in July of 48°C (116.6°F). The East Antarctica Plateau is an extremely hostile environment where temperatures can drop to -98°C (144°F). Environments are not human but can be hostile to humans because they can pose a serious threat to human and non-human survival.

Disease and sickness are the enemies of health and physicians are fighters who combat them. It may sound like metaphor, but this is only because we continue to be gripped by the physician-as-healer model. Pandemics, whether past or present, greatly strain the notion that doctors and nurses are simply helpers and healers. They do help. They do heal. And thank goodness they do. But they do so by fighting. Physicians are fighters.

I suggest the real issue goes even deeper than just using medicine as a weapon for non-medical ends. No one has an issue with using medicine to exterminate or completely eradicate cancer, COVID-19, or chickenpox from the face of the planet. Of course, these are cases of using medicine as a weapon for medical ends (removing obstacles to health) against non-human enemies. The deeper concern, I think, is using medicine as a weapon against human enemies for non-medical ends. The concern is completely justified. Frisina explains:

> Since the victims of the Nazi medical horrors were defined out of a class of human beings protected by codes of conduct, rule of law, and rudimentary elements of conventional decency, the behavior and conduct of these nefarious medical professionals was not construed in their minds as a violation of ethical duty and obligation.[76]

How do we prevent the malevolent use of medical knowledge and skill if medicine is stripped of its healing ethic and reduced to a mere means for military ends? The concern is real. The actions of Unit 731 and the Nazi doctors, Dr. Moreau, and science officer Ash are not about healing or improving the health and well-being of patients. These are actions to improve medical science for the sake of science and a misguided interest in an alien entity. NLWs development is not about improving health; it is about improving security. So, when we think about using medicine as a weapon to make a human enemy unconscious (calmatives) or hallucinate (psychotropic drugs), it feels like we are treating

[76] Frisina, 41.

humans like a disease or bacteria, something nonhuman we lose no sleep over destroying, just as most doctors in Nazi Germany and Unit 731 lost no sleep over experimenting on or exterminating their human subjects.

The deep-seated worry is that we will not be able to control medicine once we accept its use as a weapon. But that is a legitimate concern for all weapons use. This is why we have crafted conventions and laws of war to constrain kinetic weapons use in times of conflict. The use of kinetic force in war is highly circumscribed. The use of medicine in peacetime is also highly circumscribed. A physician cannot use radiotherapy to no end to kill the ocular melanoma that has besieged his patient's eye. It will probably kill his patient. A physician may not prescribe a pharmaceutical at a dosage that exceeds safe levels. It could kill or seriously harm his patient. The use of medical knowledge, skill, and technology is already highly circumscribed to prevent harm. This is neither unique to the military nor foreign to the medical profession.

I have been defending a view of the physician as a fighter. An advantage of the physician-as-fighter model is that it can embrace the physician as someone who has the power to help and heal but understands that she does so by *fighting*. But engaging in battle comes with its own ethical code. Medical ethics and military ethics are both a fighting ethics. I suggest the only relevant differences between the civilian physician as a fighter and the soldier as a fighter are the kind of enemy they fight, the location of the enemy, and the type of weapons they use to fight the enemy. The military uses guns and bombs. The medical profession uses medicine. And as we already know, the location and kind of enemy and the type of weapons used to fight greatly constrain a physician and soldier's actions and choices. Neither the military nor the medical profession can use the weapons of medicine and arms without discretion. If the arguments above are sound, combing the role of physician and soldier is just as Frisina says: "this melding of professions does not make for such strange bedfellows as one might naively assume."[77]

## V. Conclusion

At the beginning of this paper, I introduced the case of the military surgeon who had to choose between saving his compatriot or the enemy. I claimed that the military surgeon should save his compatriot. It should be clear why. The physician is not a neutral fighter. The phy-

[77] Ibid., 51.

sician should always side with his patient against the "enemy within" to fight whatever is causing him to suffer. But in the military surgeon case, the physician is also a soldier. While medical partiality, as I have argued, means a physician should only give medical attention to those who need it, and both his compatriot and the enemy combatant need medical attention, the military surgeon is also a soldier who has sworn to fight for his country against the "enemy without" to remove the obstacles to peace. The military surgeon picked his side. Only one of the two patients that needs lifesaving surgery is the "enemy without." The military surgeon only has time and resources to fight the "enemy within" for one patient. Given that he has sworn to defend his country from the enemy without, he should fight for his compatriot against the enemy within. The physician-soldier fights alongside his compatriots against the "enemy without" by fighting alongside them against the "enemy within." In this case, the military surgeon saved the wrong soldier.

It does not follow from medical ethics grounded in a fighting ethics that physician-soldiers should abandon wounded enemy combatants or enemy civilians who have a medical need. We are not Hippocrates. We no longer believe that giving the enemy wounded medical attention *necessarily* means we are increasing his chances of winning his war against us. But this crucially depends on which enemy wounded our physician-soldiers help. Although there is much more that needs to be said, I would like to offer a preliminary suggestion regarding mass casualty triage in war.

The usual rationale for mass casualty triage in war is that military necessity takes priority over medical impartiality. This is justified by arguing that diverting scarce medical resources to enemy wounded can impede a state's ability to wage war effectively. Gross argues that we should salvage our own combatants first to conserve the fighting strength of our military. The remaining wounded should receive impartial medical attention. Whether friend or foe, only urgent medical need can justify discriminating between the remaining wounded. But I have already argued against medical impartiality the way it is being used here. There is no conflict between military necessity and the medical partiality of the physician-soldier. The question is what precisely does "military necessity" mean for the *physician-soldier*?

The ultimate objective and responsibility of the physician-soldier is to win battles even if it is true that she save lives and eases the suffering of her patients in the process of fighting. Mass casualty triage grounded on the principle of winning battle means a physician-soldier will prioritize

her patients based on fighting the battles "within" that will best help her side win the battles "without." In most cases, this will mean giving medical attention first to her compatriots.[78] The direction of medical attention runs first from giving the least medical attention to those on her own side who can be salvaged (return to battle) and then, in increasing degrees of medical attention, to those on her side who need it most. Contra Gross, a physician-soldier does not fight for those on her side she can salvage and then treat the remaining wounded, friend or foe, impartially or based on medical need alone. The reason for prioritizing our all of our wounded first even if some or all are *less wounded* than the enemy is further justified on *jus post bellum* grounds. It is not just the fact that a soldier is wounded that determines whether she receives medical attention. The nature of the wound or illness is also important. Repatriating soldiers who otherwise would be able to return to the workforce, raise a family, or volunteer but cannot because they did not receive the necessary medical attention on the grounds of impartiality has serious implications for the survival of society. Not only does disease, disfigurement, and disability affect a soldier's self-confidence, pride, and dignity, but returning more soldiers as pensioners because they are not capable of participating in the workforce places an enormous economic and social burden on the state.[79] Military necessity includes considerations for the survival of society *post-bellum*.

Regarding the enemy, the direction of medical attention is reversed. The physician-soldier gives medical attention first to enemy wounded who need lifesaving medical attention and then in decreasing degrees to those who need it the least. The reason for this reversal is not based on medical need, as is usually argued. It is justified by the physician's legitimate and overriding objective of winning battles. Enemy wounded who need urgent medical attention are generally soldiers who cannot be salvaged. Prioritizing the battle within assists the physician-soldier's side with winning the war because these enemy soldiers are not likely to return to battle. One could make the argument that

[78] I say "in most cases" because there may be situations when saving the enemy first will best assist in winning the war. The enemy may have information that we could use to end the war more quickly or simply save more lives. But in such a case, we should only save the enemy over our own if the *chance* of getting the information is worth the risk of losing our compatriot. If the chance is very good then whether we fail or succeed, our soldier will not have died in vain. I think this is right. Imagine a father who has a good chance of saving his adult daughter's life but only if he donates his heart. Even if the operation failed and both died, it is easy to imagine the father thinking he did not die in vain so long there was a good chance that he could save his daughter. Of course, what counts as a "good" chance for the one willing to sacrifice his or her life will be highly subjective.

[79] Leo van Bergen, "For Soldier and State: Dual Loyalty and World War One," *Medicine, Conflict, and Survival* 28, no. 4 (2012): 321.

triage in war should also be sensitive to the *jus post bellum* principle of "compensation." While post-war restitution by an unjust aggressor may be warranted, a defeated country needs to have the resources for its own reconstruction and this would include healthy manpower.[80] A defeated state may be overburdened by the repatriation of diseased, disfigured, and disabled enemy soldiers whose condition makes them a burden on their state because they may be unable to care for their families or participate in the reconstruction of their society.

This is just one example of how medical ethics grounded in a fighting ethics may change how physician-soldiers should triage in war. There may be other changes to the patient-physician relationship as well. The contemporary physician-patient relationship is currently grounded in the physician-as-healer model. A physician and patient have reciprocal duties and responsibilities. I do not have the space to discuss those duties and responsibilities here but will just note that what they entail will change if the physician-patient relationship is grounded in a physician-as-fighter model. Patients are already expected to participate in their own healing but how the physician and patient fight together may require deemphasizing the significance of certain bioethical principles and emphasizing new ones.

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[80] Brian Orend, "*Jus post bellum*: The Perspective of a Just-War Theorist," *Leiden Journal of International Law* 20, no. 3 (2007): 580.

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# Dialectics of War as a Natural Phenomenon: Existential Perspective

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## Abstract

*Due to natural processes of movements of opposites that interact with one another in equal forces, the universe is naturally considered an arena of conflicts. As the law of the universe continues to maintain everything in motion, each matter in the ecosystem strives to protect itself in given existential struggles within necessary conflicts. Therefore, the fundamental law of nature is the protection of life (self-preservation) which is often realized through self-defence. It then explains why humans engage themselves in conflicts; not necessarily to bring peace but to survive and maintain themselves in existence. Hence, war is motivated by the innate drive for self-defence and maintenance of self in existence guided by a natural instinct for survival. From conception to death, humans continue to struggle for survival and that entails overcoming conflicts and adversities of life. Thus, war can be considered as having a genetic foundation. This is evidenced in the works of evolutionary theorists. The Darwinian ethological theory tenaciously holds that humans, just like other organisms, struggle to survive, but this is influenced by natural selection which favours the stronger species against the weaker ones. While the stronger ones pass on their inheritable genes to the next generation for maintenance of their species in existence, the weaker ones die off. Hence, the survival of the fittest. This position was very much supported by the Malthusian theory of over-population alert against the limited human resources which demonstrates the constant fight for food in order to survive. The Nietzschean Superman, Marxian class struggle, Heraclitan notion of change, and so on, all cling to the idea that the universe is a violent arena. Consequently, the protection of life has an important moral value. By implication, self-defence is right and justified even if it involves war. Therefore, it is ethical to push through; to defeat the adversary.*

**Keywords:** *war; dialectics; violence; natural phenomenon; human existence; conflict; peace*

## I. Introduction

Throughout human history, conflicts vis-à-vis war have been a perennial issue between individuals, groups, clans, towns, societies, nations, and so on. This is attributed to the nature of the universe as an arena of conflict through natural processes of movements of opposites in an existential struggle to be. The ethics of war is the desire and striving to succeed; to win which presumably is inscribed in human genes. It is also guided by the law of the universe which continues to maintain everything in motion with consequent conflicts and struggle for survival.

The International Humanitarian Law (IHL) defines war as "a phenomenon of organized collective violence that affects either the relations between two or more societies or the power relations within a society."[1] Dialectics here refer to the existence of contradictory processes of movement of opposites of given relations in the world which gives rationale to the opposing conflicts of life events that characterize human existence. It expresses the idea that change is constant and can be brought about by either creative or destructive forces in the process of motion. Therefore, dialectics of war tend to explain that war and peace are alternate phenomena in life. The idea of war calls to consciousness the concept of peace and vice-versa. In other words, one implies the other.

This paper then focuses on the processes that bring about war and its justification from natural causes both at individual and collective levels. Hence, it investigates the dialectics of war as a natural phenomenon from an existential perspective. It aims to illustrate that human existence is characterized by conflicts and strife due to the conflictual nature of the opposing elements that constitute the universe in which human beings live. In effect, the world is considered as a product of violence. This is explained by some scientific findings exemplified in the Big Bang theory, which supports the violent process of the origin of the world through a cosmic explosion from a once compact, dense, and hot universe.

> The Big Bang theory is a cosmological theory holding that the observable universe approximately originated 13.8 billion years ago from the violent explosion of a very small agglomeration of materials of extremely high density and

1 Françoise Bouchet-Saulnier, *The Practical Guide to Humanitarian Law*, ed. Laura Brav (Lanham, MD: Rowman & Littlefield, 2002).

> temperature [...]. Early in the history of the universe, matter began to condense and with time, gravitation attraction pulled materials together to form galaxies.[2]

Consequently, violence which can also be referred to as conflict or war in this work, is regarded as an essential and natural aspect of the universe vis-à-vis human existence. Heraclitus, who teaches that change is the essence of life, recognizes that human beings come into the world and pass out of it necessarily through strife.

Every combatant naturally gears towards success and aims to win. This motivation to win is actually the ethics of war – to succeed by defeating the adversary. One of the major principles of daring to engage in war, including the so-conceived just war, is that the greater chance of success is achievable.

> The strategies that succeed in war, whether conventional or unconventional are based on timeless psychology and great military failures have much to teach us about human stupidity, and the limits of force in any arena. The strategic ideal in war – being supremely rational and emotionally balanced, striving to win with minimum bloodshed and loss of resources – has infinite application and relevance to our daily battles.[3]

Following defeat, the conqueror legislates, enforces, and interprets the law.

## II. The universe as an arena of dialectics of conflicts

Everything in the universe is in constant motion both at micro and at macro levels of existence. Lawhead acknowledges that "nature is a busy drama of restless, changing entities."[4] Heraclitus, the known philosopher of change, also explains that everything is in flux and changes constantly. So do cosmological studies which also establish that nothing is static but in constant motion. Again, it is observed that this cosmic motion is not always necessarily

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[2] Eliza Richardson, "Essentials of Oceanography," *Libretexts*, https://geo.libretexts.org/Bookshelves/Oceanography/Essentials_of_Oceanography_(Richardson).

[3] Robert Greene, *The 33 Strategies of War* (New York: Viking Penguin, 2006), xvii.

[4] William Lawhead, *The Voyage of Discovery: A Historical Introduction to Philosophy* (Belmont, CA: Wadsworth/Thomson Learning, 2002), 79.

smooth and peaceful. It often involves conflictual movements of opposites as the world is made of opposite entities; namely, male and female, hot and cold, positive and negative, big and small, old and young, black and white, and so on. In his *Fragments*, Heraclitus further asserts that all things come into existence through opposing conflicts. So he states, "we must know that war is common to all and strife is justice, and that all things come into being through strife necessarily."[5]

On grounds of complementarity, it is believed that opposites often attract themselves but, in most cases, they repel and even conflict themselves. Therefore, conflict is considered natural to entities in the universe because they share a common space and tend, as they move around it, to interact. Part of the interaction has been noted to include necessary conflicts with one another. The cosmological Big Bang theory, which presupposes the existence of matter and anti-matter, reveals at the micro-level that the universe is a violent sphere. Consequently, conflicts persist. Therefore, the universe is an arena of conflicts.

War connotes conflicts between groups, states, nations, and so on, expressed in the use of armed forces and various weapons. However, there are different types of wars in addition to the use of legal weapons. For example, economic, chemical, ideological, biological and even psychological warfare. In effect, war is constant and endless. The supposed peace accord, agreement, settlement, and so on, when critically analyzed are often seen as giving space for further wars. War and peace are dynamics of life (partners).

From history accounts, it is obvious that the First World War (also known as the Great War), an international conflict between most European countries that occurred from 1914 to 1918[6] which led to the fall of some great imperial dynasties and seriously affected Europe in general, was indeed a fertile ground for a more devastating war – the second World War (between 1939 to 1945) which involved more countries than in the former and even lasted about two years more than the former.

> The war was in many respects a continuation of the disputes left unsettled in World War I. The 40,000,000 to 50,000,000 deaths incurred in World War II make it the bloodiest conflict, as well as the largest war, in history.[7]

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[5] Heraclitus, *Fragments: A Text and Translation with a Commentary*, trans. Thomas More (Toronto: University of Toronto Press, 2003), DK B80.

[6] Dennis E. Showalter and John Graham Royde-Smith, "World War I," *Encyclopedia Britannica*, October 30, 2023, https://www.britannica.com/event/World-War-I.

[7] Thomas A. Hughes and John Graham Royde-Smith, "World War II," *Encyclopedia Britannica*, October 31, 2023, https://www.britannica.com/event/World-War-II.

Besides, there are, so to speak, other mini wars occurring in between, in addition to those in Africa and other parts of the world. Each of the wars laid foundation for further onslaught. The Russian Empire emerged as a result of wars, including the emergence of the Soviet Union. Even Britain was the result of Roman conquest. The United States of America was the fruit of wars. The development of many nations like Japan, China, Germany, and so on, was as a result of a succession of wars. All these buttress the thesis that war is endless and it intermingles with peace. If care is not taken, all the mini wars going on in various parts of the world today may be preparatory grounds for a Third World War and it may be more ravaging.

Simple logic teaches that 'force begets force in order to strike a balance.' This is firmly corroborated by Newton's third law of motion and universal gravitation (action-reaction law) which states that "action and reaction are equal and opposite if the equilibrium must be maintained."[8] It goes to explain that during the interaction between two bodies, they apply to each other forces that are equal both in magnitude and in opposite direction.

## III. From universal to particular. The genetic basis of conflicts

Scientific discoveries have extensively revealed that there is an innate biological urge in living beings to redress what they perceive to go against them in self-defence and in possessing their possessions. Many psychological studies associate aggressive behaviours with the beings' inner urge to survive and naturally preserve their species in existence.[9]

> For an understanding of conflict, hostility and violence, many have looked to the inner person [...] by nature, by instinct, by heredity, we aggress on our fellows [...] our conflict is phylogenetic in origin and violence is part of our nature.[10]

As Emerson asserts, "nature has made up her mind that what cannot defend itself shall not be defended."[11]

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[8] Isaac Newton, *The Mathematical Principles of Natural Philosophy*, trans. Andrew Morte and Neil W. Chittenden (New York: Daniel Adee, 1848), Book 1, Law III, 120.

[9] Harvey Starr, "Understanding Conflict and War: Vol. 4, *War, Power, Peace*. By R. J. Rummel," *American Political Science Review* 74, no. 4 (1980): 1144-1145.

[10] Rudolph J. Rummel, *Understanding Conflict and War: The Conflict Helix* (Thousand Oaks, CA: Sage Publications, 1976), Part VII.

[11] Ralph W. Emerson, *The Complete Works of Ralph Waldo Emerson, vol. 7. Society and Solitude*, University of Michigan Library, https://quod.lib.umich.edu/e/emerson/4957107.0007.001/1:14?rgn=-div1;view=fulltext.

In particular, man is a struggling being. His intra-uterine and extra-uterine lives demonstrate significantly that human life is naturally a struggle. Struggle which implies conflict and by extension war characterizes human life and development from conception till death. The intricacies of human development, as divulged by the science of human life and the genetics of human development, expose that the competitive struggle (sperm race or sperm struggle), which begins at the early processes of development towards fertilization, continues to actualize conception through the entire uterine formation (zygotic, embryonic and fetal stages) in elevated complex form and even after parturition and throughout the lifespan. It is a 'Genetic Race of Survival of the Fittest (GRSF)' within the dialectics of life and death.

> What is most interesting is that, about three hundred million sperms can be deposited in the vagina and only one (or two or more in the case of non-identical twins – dizygotic or trizygotic twins, and so on) wins the long difficult race through mucus and acidic fluid down to the fallopian tube.[12]

These elucidate the assertion that human life is one through conflicts and strife. The population theory of Malthus that unveils the competitive conflictual state of organisms due to limited natural resources also gives credence to the genetic origin of conflict and the innate drive of the organisms to survive.[13]

> In human society, populations bred beyond their mean, leaving survivors and losers in the efforts to exist. Immediately, Darwin saw that the variation he observed in wild population would produce some individuals that were slightly better equipped to thrive and reproduce under the particular conditions at a time. Those individuals would tend to leave more offspring than their fellows, and over many generations their traits would come to dominate the population.[14]

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[12] Purissima Egbekpalu, *The Reality of Human Existence: Coping with Existential Conditions, Sufferings and Pains of Life* (Awka: Vicgraceat Printing and Publishing, 2021), 3.

[13] Cf. James Mallet, *The Struggle for Existence: Why the Mismatch of Basic Theory in Ecology and Evolution*? (Cambridge, MA: Harvard University Press, 2010), 2-3.

[14] *Evolution Library, Darwin and Malthus*, WGBH Educational Foundation and Clear Blue Sky Productions, Inc., 2001, https://www.pbs.org/wgbh/evolution/library/02/5/l_025_01.html.

Again, a critical analysis of Darwinian ethological theory justifies conflicts vis-à-vis war as an innate drive towards survival. Following Malthusian prediction of possible overpopulation against the meagre natural resources, the Darwinian natural selection purports that there exists a fated competitive condition among living organisms over the limited natural resources towards the preservation of favoured races in the struggle for life[15] that characterize their existence as Survival of the Fittest (SF). "There must be a 'struggle for existence,' for many of those born fail to reach maturity."[16] In this way,

> man like every other animal advanced to his present high condition through a struggle for existence consequent on his rapid multiplication; and if he is to advance still higher, it is to be feared that he must remain subject to a severe struggle.[17]

Apart from the evolutionary force and the underlying struggle for maintenance of species in existence, Marx presented us with the dialectics of materialism as the consequence of ceaseless conflicts and wars in human history and development. His dialectics of materialism, which endorses a materialistic understanding of history based on materialistic view of reality and economic laws of motion, structures human society and its evolutionary progressions in reactions to chains of conflicts between the classes.

A good insight into and analysis of Marxian dialectic materialism gives a suitable and clear picture of the natural tendency to conflictual existential approach to life. Marx insistently unveils that conflicts lead to different stages of human life in the society and accounts for the development of human history. His *Communist Manifesto* begins by acknowledging and justifying that human history is fundamentally marked with struggles. According to him,

> The history of all hitherto existing society is the history of class struggles. Freemen and slave, patrician and plebeian, lord and serf, guild and master [...] in a word, oppressor and oppressed stood in constant opposition to one another,

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[15] Herbert Spencer, *Principles of Biology*, Volume 1 (Cambridge, MA: Harvard University Press, 2017), 531.

[16] Robert J. Berry, "Maker of Heaven and Earth," in *Creation and Evolution*, ed. Derek Burke, 76-115 (Oxford: InterVarsity Press, 1985), 88.

[17] Charles Darwin, *The Descent of Man, and Selection in Relation to Sex* (New York: Appleton & Co., 1871), 403.

> carried on an uninterrupted, now hidden, now open fight, a fight that each time ended, either in a revolutionary re-constitution of society at large, or in the common ruin of the contending class [...] we find almost everywhere a complicated arrangement of society into various orders, a manifold gradation of social rank [...]. The modern bourgeois that has sprouted from the ruins of feudal society has not done away with class antagonisms. It has but established new classes, new conditions of oppression, new forms of struggle in place of the old one. Our epoch possesses this distinctive feature.[18]

The *Manifesto* also ends with a revolutionary assertion as he declares,

> A spectre is haunting Europe - the spectre of communism. All the Powers of old Europe have entered into a holy alliance to exorcise this sceptre: Pope and Czar, Metternich and Guizof, French radicals and German police-spies [...] let the ruling classes tremble at a communistic revolution. The proletarians have nothing to lose but their chains. they have a whole world to win. working men of all countries, unite![19]

The Marxian theory of class struggle and historical evolution suggests that war is the game of life as it seems to corroborate the Darwinian notion of natural selection and biological evolution in supporting the idea that life is characterized by constant struggle for survival of the fittest based on the material needs. So does the Nietzschean theory of 'will-to-power' which purports that an ideal man is one who ruthlessly seeks power, creates his own values, and legislates for himself. In the understanding of the German existentialist, such a man is a superman; an authentic individual. In his *Genealogy of Morals*, he assumes that human beings have the innate drive to conquer (will-to-power). He therefore advances the transvaluation of moral values whereby the slave morality (SM) is replaced with Master Morality (MM) arguing that the latter belongs to the attributes of superman who has liberated himself from divine commands and legislates his moral laws for himself. So he avows,

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[18] Karl Marx and Friederick Engels, *Selected Works: The Communist Manifesto*, Volume 1 (New York: International Publishers, 1968), 35-36.

[19] Ibid., 35, 63.

> against war, it can be said: it makes the victor stupid, the defeated malicious. In favour of war: through producing these two effects it barbarizes and therefore makes more natural; it is the winter of hibernation time of culture, mankind emerges from stronger for good and evil.[20]

Again, this position portrays struggles and wars inherent in human existence. Validating Darwinian, Marxian, and Nietzschean positions, the biological and evolutionary theorist Krishnananda states,

> the will to power achieves its purpose only by striving and suffering and an inevitable loss on the part of the weak [...]. The law that directs all activities is the law of power, the urge to excel all others in strength. This urge is universally present.[21]

Along this line of thought he adds,

> Life is meaningful only on account of struggle. War is good; peace is stagnation which is not worth desiring. War strengthens the race, peace weakens it. There is no universal truth, no unity, no oneness. All is difference, inequality, strife. Courage and strength are the greatest virtues, pity and compassion are bad for they contradict the will to power. Self-denial and asceticism, peace and happiness, non-resistance and equality are all oppositions to the primary instinct in life, the will to power. Life is struggle for existence. The test of a man is energy and ability. The desire of the superman is to face danger, to encounter strife in order to be supreme being himself.[22]

Hobbes refers to this as "war of all against all (*bellum omnium contra omnes*)."[23] According to him,

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[20] William H. F. Altman, *Friedrich Wilhelm Nietzsche: The Philosopher of the Second Reich* (Lanham, MD: Lexington Books, 2013), 9.

[21] Swami Krishnananda, *The Philosophy of Life* (Bangalore: Divine Life Society, 1992), 439-440.

[22] Ibid., 439.

[23] Thomas Hobbes, "De cive," in *Man and Citizen: De homine and De cive*, ed. Bernard Gert (Indianapolis, IN: Hackett Publishing Company, 1998), 101.

> the state of men without civil society (which state we may properly call the state of nature) is nothing else but a mere war of all against all; and in that war all men have equal right unto all things.[24]

The above-mentioned "equal right unto all things" may be well understood as equal access to all resources of human life which implies competitive approach and struggles to life that characterize man as a selfish and an egoistic being. This situation propels man in all his activities and keeps him in constant struggle with others. Hobbes, then submits that the competitive spirit, which underlies the struggle for survival of the fittest, puts the human society in utter chaos and to overcome it the presence of a supreme power is needed. These positions further justify the genetic origin of conflicts and its endless nature.

## IV. Human existence as dialectics of war and peace

We earlier hinted that war and peace are natural dynamics of life. Aristotle argues that "all things are ruled according to nature."[25] With his systematic study of the development of human history, Hegel observes the conflictual nature of human existence when he notes that "man exists only in so far as he is opposed."[26] Following this assertion, Greene declares that "life is endless battle and conflict."[27] Heraclitus purports that everything in the universe is in flux which implies violence. He also affirms that everything comes into being and passes away through strife. In his words, "we must know that war is common to all and strife is justice, and that all things come into being through strife necessarily."[28] Elucidating the Heraclitan position, Etim and Akpabio delineate that,

> what constitutes the world is conflict, which should not be necessarily viewed and taken as negative but as the very condition that engender change and progress, even when it momentarily seems to be quite the opposite.[29]

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[24] Thomas Hobbes, *Leviathan*, ed. Richard Tuck (Cambridge: Cambridge University Press, 1991), 186.

[25] Aristotle, *Politics*, 1252b 30-1253a 1.

[26] Frances Berenson, "Hegel on Others and the Self," *Philosophy* 57, no. 219 (1982): 77-90.

[27] Robert Greene, *The 33 Strategies of War* (New York: Penguin Books, 2006), 3.

[28] DK B80.

[29] Francis Etim and Maurice Kufre-Abasi Akpabio, "Hegelian Dialectics: Implications for Violence and Peace in Nigeria," *Open Journal of Philosophy* 8, no. 5 (2018): 530-548.

Explicating Heraclitan view further, Stumpf too posits,

> The conflict of opposites is not a calamity but the permanent condition of all things. If we could visualize the whole process of change, we should know, says Heraclitus that "war is common and justice is strife and all things happen by strife and necessity." From this perspective, he (Heraclitus) says, "what is in opposition is in concert and from what differs comes the most beautiful harmony." Even death is no longer a calamity, for, "after death things await men which they do not expect or imagine."[30]

Advancing this position, Greene affirms that "there is something in war that drives so deeply into you that death ceases to be the enemy, merely another participant in a game you don't wish to end."[31] He further remarks that what confronts us in the real world is war. According to him,

> This war exists on several levels [...]. On the surface everything seems peaceful enough, but just below it, it is every man and woman for him – or herself, this dynamic infecting even families and relationships. The culture may deny this reality and promote a gentler picture, but we know it and feel it, in our battle scars. It is not that we and our colleagues are ignoble creatures who fail to live up to ideals of peace and selflessness, but that we cannot help the way we are. We have aggressive impulses that are impossible to ignore or repress [...]. Many psychologists and sociologists have argued that it is through conflicts that problems are often solved and real differences reconciled. Our successes can be traced to how well or how badly we deal with the inevitable conflicts that confront us in society [...]. War is not some separate realm divorced from the rest of the society. It is an eminently human arena full of the best and the worst of our nature.[32]

Following the understanding that the universe is in constant motion through which matters move and conflict with one another in equal

[30] Samuel Enoch Stumpf, *Philosophy, History and Problems* (New York: McGraw Hill, 1971).

[31] Greene, 95.

[32] Ibid., xv-xvii.

forces, Dostoyevsky asserts that "without war human beings stagnate in comfort and affluence and lose the capacity for great thoughts and feelings, they become cynical and subside into barbarism."[33] Along the same line of thought, Schopenhauer counsels,

> In this world, where the game is played with loaded dice, a man must have a temper of iron, with armour proof to the blows of fate, and weapons to make his way against men. Life is one long battle; we have to fight at every step; and Voltaire very lightly says that if we succeed, it is at the point of the sword, and that we die with weapon in our hand. It is a cowardly soul that shrinks or grows faint and despondent as soon as the storm begins to gather or even when the first cloud appears on the horizon. Our motto should be No Surrender; and far from yielding to the ills of life, let us take fresh courage from misfortune. Our whole life would not be worth such a cowardly trembling and shrinking of the heart. Therefore, let us face life courageously and show a firm front to every ill.[34]

At this juncture, it becomes obvious that struggle and strife characterize human life. The innate urge to survive in the materialistic world of development always ignites interests that are in diametrical oppositions with one another that no policy can claim to resolve. In most cases, the interest of one group constrains that of another. The group that already possesses the power strives to maintain it and keep the other in a constant powerless state. The resultant effect is continuous conflicts at various grades.

## V. The dialectics of war from religious perspective

It is natural to cogitate that religions should champion peace and not be identified with any form of violence. Is it not, in fact, surprising that Christ himself, who is attributed as the Prince of Peace and who in the Beatitudes encourages the peacemakers, says,

> Do not think that I have come to bring peace to the earth. I have not come to bring peace but war [...] to set a man at var-

[33] Ibid., xxi.

[34] Arthur Schopenhauer, *Counsels and Maxims from the Essays of Arthur Schopenhauer*, trans. Thomas Bailey Saunders (Harrisburg: George Allen and Unwin, 2020), 53.

> iance against his father, and the daughter against her mother, and the daughter in-law against her mother-in-law; your worst enemies will be the members of your own family.[35]

Earlier in the same holy book, he tells the disciples, "I am sending you out like sheep among wolves."[36] This acknowledges the fact that the world is full of existential challenges. Admonishing them further, he declares, "woe to you when everyone speaks well of you, for that is how their ancestors treated the false prophets."[37] Again he energized them saying, "blessed are you when people hate you, when they exclude you and insult you and reject your name as evil, because of the son of man."[38]

However, our experiences teach us that there are so many and constant religious wars around the world that even clog the wheels of development in the societies at both individual and general levels. In fact, all religions engage in one form of violence or the other. The question remains – why are there religious wars despite all? The book of Job clearly states that "the life of man upon earth is a warfare."[39] We have already established the thesis that war is a natural phenomenon to a man's life with the major feature of self-preservation. This explains why virtually all religions engage in various wars in order to defend their religious positions. Throughout history, religions engage in fights based on their beliefs. African traditional religion has the major focus of maintaining the African culture in relation to their ancestors through rituals. Anything that stands in the way of this is confronted in a radical way. So is the case with so many other religions of the world. All these emphasize the point that justice is brought about through war. In other words, life is an existential struggle between opposite forces. "Opposites are necessary for life, but they are unified in a system of balanced exchanges. The world itself consists of a law-like interchange of elements, symbolized by fire."[40]

## VI. Summary of finding

Human beings are by nature violent and are ever combat-ready. This is based on what may be considered as 'the will to live' (*conatus*). It is a very strong emotional instinct for survival and persistence in life,

[35] Mathew, 10, 34-36.

[36] Ibid., and 10:16.

[37] Luke, 6:26.

[38] Ibid., 6:22.

[39] Job, 7:1.

[40] Daniel W. Graham, "Heraclitus," *Internet Encyclopedia of Philosophy*, https://iep.utm.edu/heraclit/.

> Capable of arousing distinctive bodily changes, movements and behaviors, emotions are generally considered as survival mechanisms that motivate responsive behaviors to maintain existence. This responsive behaviours connote goal-oriented movements.[41]

According to Aristotle, life has a force which is the *capacity* of a living thing to engage in the activities that are characteristic of its natural kind.[42] Force and resilience which are involved in war can be seen as conative features of man's persistence in existence. With regard to self-preservation in existence, he endorses that man has the natural inclination to actualize his potentialities through strong efforts of the will towards the right, and at the same time to create new potentialities to sustain his life. Through the activities of the soul (virtuous acts), man propels himself in a distinctive way towards objects of his desire for survival and flourishing.[43]

Dispositions to war are found to be existential. First, the scientific theories of the origin of the world, especially the Big Bang position, bear laudable evidence of the violent origin of the universe as well as subsequent and consequent conflictual motions of matters therein, including human beings. Second, struggle vis-à-vis conflict is genetically embedded in human nature and the continuous transfer of genes to generations.

Two major motivations, among others, that guide all human actions are self-defence (individually and collectively as species) and maintenance of self in existence. These inform why human beings struggle to succeed in life, in other words, to win the battle. These natural events justify the engagements of human beings in war. On this note, ethics raises the issue of 'just war.' Being violent in nature, man's attitude to war is shaped by ethics and laws regarding war, that is, moral and legal regulations on how war should be fought. This is classified into *jus ad bellum* (right conduct on going to war), *jus in bello* (right conduct while in war), and *jus post bellum* (right conduct after war). These too are based on human nature and the fundamental right to self-defence. They stipulate the norms governing the use of armed forces regarding war for the greater justice for all involved. Hence, the concept of 'just war.' In Aristotelian understanding,

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[41] Purissima Emelda Egbekpalu, "Aristotelian Concept of Happiness (Eudaimonia) and Its Conative Role: A Critical Evaluation," *Conatus – Journal of Philosophy* 6, no. 2 (2021): 75-86.

[42] Aristotle, *De anima*, 412b 5-6.

[43] Egbekpalu, "Aristotelian Concept," 75-86.

> For man, when perfected, is the best of animals, but, when separated from law and justice, he is the worst of all; since armed injustice is the more dangerous, and he is equipped at birth with the arms of intelligence and with moral qualities which he may use for the worst ends [...]. But justice is the bond of men in states, and the administration of justice, which is the determination of what is just, is the principle of order in political society.[44]

In law, there has been a debate over the possibility of sustaining certain ethics in war. The international laws, rules and conventions regulating war exist, though in some cases, some superior forces violate them. Laws are made by the ruling class who often does not keep them. Instead, they are enforced on the weaker counterparts. This perceived injustice advances war too.

## VII. Conclusion

War is a natural phenomenon with genetic basis. Again, the natural processes of opposite movements of matter in the universe bring about natural conflicts among them, hence, beings including man will continue to experience war until an equilibrium is attained. But this equilibrium has a conceptual problem due to the assertions of the astronomers and astrophysicists that the universe continues to expand. Thus, attaining the equilibrium becomes a bit difficult. In addition, studies also reveal that there are other universes (multiverse) for which getting to the equilibrium proves somewhat difficult. Along this line of thought, any form of peace experienced is temporal. Hence, war continues. Given that war is with humanity from birth, those who want to survive must be intellectually, economically, technologically and militarily strong.

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[44] Anselm H. Amadio and Anthony J. P. Kenny, "Aristotle," *Encyclopedia Britannica*, July 2, 2023, https://www.britannica.com/biography/Aristotle.

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# Ethics of Conflict, Violence and Peace – Just War and a Feminist Ethic of Care

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**Abstract**

*This paper critically examines Just War Theory and its philosophical foundations, which are conventionally positioned in opposition to pacifism and nonviolent conflict. This paper, however, takes the view that both, Just War Theory as well as pacifism and nonviolent conflict, are equally necessary and complementary approaches to living with the possibilities and tragedies of the human condition. Its approach is grounded in feminist theory and methodology and their connections with Galtung's models of violence and peace. The paper argues that the weaknesses of Just War Theory are intrinsic to the concept and its intent. The inherent contradiction of Just War Theory being that it intended to translate universal moral principles into reality, which makes them context dependent. Fundamentally, Just War Theory is derived from an ethic of justice ultimately centred on the right to use violence and kill. The right is conditional but means that a path to peace inevitably starts from death. An ethic of care is a philosophy where feminist thought meets pacifism and nonviolent conflict. It starts from the creation of life and charts paths to positive peace through the nurture of the conditions for lives in dignity. If we seek to contain the destructive and give space to the creative aspects of the human condition and understand its two extremes, life and death, in their relation to human agency, better we need to complement the traditional ethic of justice (of war and violence) with an ethic of care.*

**Keywords:** *just war; feminism; ethic of care; pacifism; non-violence; positive peace; human condition*

## I. Introduction

Pacifism and nonviolent conflict on the one hand and moral philosophies of war which inform Just War Theory (JWT) on the other hand are generally cast as mutually exclusive perspectives on the ethics of conflict and violence. They are not usually treated as

equally necessary approaches to meeting the possibilities and tragedies of the human condition,[1] the beginnings and endings of life's stages, the fundamental needs and desires, the fears and searches for meaning, that characterise the potential and limitations of human existence, creativity, action, and agency as individuals as well as social and political beings. This is the perspective of this paper.

With an approach rooted in feminist thought and methodology, it critically examines the inherent shortcomings of Just War Theory and moral philosophers' rebuttals of pacifism, which usually do not distinguish between total pacifists and adherents of nonviolent conflict who do not define themselves as pacifists. Its aim is to show that the two extremes of the human condition, life and death, in their relation to human agency are better understood by complementing the traditional ethic of justice (of war and violence) with an ethic of care. The latter is a philosophy where at least two schools of feminist thought, difference and standpoint feminism,[2] meet with fundamental principles of pacifism and nonviolent conflict. It is a confluence of thought, which is still insufficiently explored outside the feminist tradition, but holds up a mirror to the tensions and weaknesses inherent in Just War Theory and moral philosophers' refutations of pacifism and nonviolence.

Why explore these questions and why now? It is curious that moral philosophers, such as Jan Narveson, have variously reduced philosophical standpoints of pacifism and nonviolent conflict with such vigour and some vitriol to mere personal choices which at best fail to acknowledge the harsh realities of life, at worst are morally corrupt and certainly cannot claim to constitute a coherent moral philosophy. Although Narveson, whose 1965 article[3] made waves for decades and

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[1] The approach is not intrinsically tied to Hannah Arendt's concept, but it is partly inspired by it.

[2] Grounded in Marxism and today more aware of the importance of intersectionality (influences of multiple identity characteristics such as gender, race or class on lived experience), standpoint feminism started from critical awareness of gendered life experiences within the oppressive reality of gender power hierarchies. It emphasises struggle against the many manifestations of oppression and against dominant narratives that reproduce power differentials, and for equal recognition of the experience and knowledge women contribute to discourses and public life. Difference feminism also foregrounds women's position in society and their specific life experiences, for example as child bearers, mothers and carers, but aims for women and their work to be valued in their difference.

[3] Jan Narveson, "Pacifism: A Philosophical Analysis," *Ethics* 75, no. 4 (1965): 259-271. It is worth noting that he wrote against the background of the US involvement in the Vietnam War. An interesting, if within today's professional ethics of scholarly publishing rather disconcerting, aspect of the article is that the arguments are forwarded without any reference to the writings of any pacifists. The representation of the pacifist position is thus at times curious and frequently refutes 'strawmen' whose scholarly provenance is never established.

whose aim appears to have been to discredit pacifism through a reductio ad absurdum, declared that he did not share others' categorisation of pacifists as cowards and traitors, he accused them of acting as if they were cowards and traitors because they were confused; he did not even grant them the agency that would be inherent in making a conscious choice of being a traitor.

Coming from an ethic of justice, much opposition to pacifism from moral philosophers of just war like Narveson or Jovan Babic, who shares much of Narveson's perspective,[4] is framed around questions of rights of all individuals. From this perspective it is a fundamental principle that humans have a right to self-protection and that inherent in this is the right to defend this very right, under certain circumstances even by violent means. They accuse pacifists of refusing to acknowledge, let alone defend, such a right and its derivative justification for using violence for themselves or on behalf of another. Narveson describes in detail and considerable sarcasm the inappropriateness of logical reasoning as the only alternative action to violence by which his hypothetical pacifist might try to dissuade an attacker from killing them.

Two problems arise from here. One, it is disingenuous to equate the refusal of pacifists to use violence, especially physical violence, with doing nothing meaningful or appropriate at all to defend the right to life. Two, there is a tacit, though unconvincing, extrapolation from the individual hypothetical scenario to justifying state behaviour, which is the focus of Just War Theory. Just War Theory offers a catalogue of criteria for deciding whether to go to war, under what circumstances, to what end, and how to conduct it in accordance with principles of justice and ethics derived from western secular and Christianity-based discourses.[5] Its purpose is to translate moral philosophy of war and violence into the practice of political and military decision-making and action.

The influence of Just War Theory on actual political and military decision-making has waxed and waned over the centuries. After the end of the Cold War, it regained considerable currency in the debates about the use of force, especially in Anglo-American countries, in the African and European violent conflicts of the 1990s and the wars in Afghanistan and Iraq after September 11, 2001. Countries of the global

[4] Jovan Babic, "Pacifism: Is its Moral Foundation Possible or Needed?" in *Contemporary Yugoslav Philosophy: The Analytic Approach*, ed. Aleksandar Pavković, 57-70 (Dordrecht, Boston, MA, and London: Kluwer, 1988).

[5] For the evolution of Just War Theory and its principles see for example Brian Orend, *The Morality of War* (Toronto: Broadview Press, 2006).

North applied their perceived right to use armed force under Just War Theory extensively. Some political actors and military ethicists even argued that they had an obligation to defend the human rights of others by armed force. This became a declared international commitment in 2005 when the UN General Assembly adopted the *Responsibility to Protect* human rights in one's own and potentially other countries, if by external military intervention.[6]

Yet, some of the post-Cold War military interventions failed to meet critical conditions for the ethical justification to use force, several fell repeatedly short of the criteria for ethical conduct of wars, and most failed to improve the chances of a better peace at a global level and certainly for the people of the target countries, such as Somalia, Afghanistan, Iraq, and their neighbours. This is a problem *of* politics and the implementation of Just War Theory. It is also a problem *for* Just War Theory, considering that its purported raison d'être is to offer practically applicable criteria for ascertaining that using force is justified and done ethically in particular circumstances. It is not least a problem for humanity, if not even officially declared efforts to comply with Just War Theory criteria result in an approximation of a better, let alone just peace than the status-quo ante.

It is not suggested here that a pacifist approach would have fared better. The paper is not concerned with such a hypothetical. It seeks to shine a critical light on problematic aspects of Just War thinking which require greater scrutiny. We find this for example in Brian Orend's effective case against all forms of pacifism and in defence of Just War Theory.[7] His arguments depend on staying within the parameters and philosophical reasoning of Just War Theory and assuming that they are implemented faithfully in practice. He engages neither with the long shadow even an aspiration of compliance with Just War Theory casts on public policy and society, which continuously need to prepare for the possibility of war, nor with pacifist, let alone, feminist theoretical and practical approaches to facilitating the change necessary to bring peaceful approaches to conflict closer to reality than, as he put it, the "level of pure ideals."[8]

This paper steps into these omissions. It argues that the weaknesses of Just War Theory are intrinsic to the concept and its intent. Philos-

[6] United Nations Office on Genocide Prevention and the Responsibility to Protect, "Responsibility to Protect," undated, https://www.un.org/en/genocideprevention/about-responsibility-to-protect.shtml.

[7] Orend, 244-266.

[8] Ibid., 263.

ophers and practitioners of Just War Theory aim to preserve innocent life, if it is threatened by the aggression of an unjust war, minimise the use of armed force and the resulting destruction of life and its conditions, and thus enable a better peace than the status-quo ante. With its focus on war, violence and killing, however, Just War Theory's path to peace starts from death as arguably it must. It is rooted in an ethic of justice, which it marries to violence, and which privileges a binary focus on rights, as one does or does not have a right. This works logically as long as, especially, the ad bellum conditions are fully respected.

Kimberly Hutchings, however, observed that "[c]ontemporary just war theory, regardless of its theoretical differences, dwells largely in the same historical imaginary as Hollywood, in which a certain reading of the history of warfare and of civilisation enables moral judgments about war."[9] And yet, its criteria are malleable enough to be shaped around political and strategic objectives of the day, which leaves scope for false claims of compliance. There is thus an underlying tension between moral philosophy's aspiration to seek universal truths and principles that are dissociated from context, and the specific intention for Just War Theory to translate these truths into practical guidance for decisions and action.

This analysis does not follow Sterba's proposal of a "Just Peace Theory" situated where he identified overlaps between pacifism and Just War Theory.[10] To the contrary, the argument here is that Just War Theory only accounts for the deadly and destructive aspects of the human condition, one of its extreme features whose existence cannot be wished away. It is therefore desirable, even essential, to impose ethical constraints on our efforts to survive the resulting challenges and tragedies of war, survive them well and with dignity, and indeed seek to create real prospects of a better peace. And yet, while the presumed right to use violence and potentially kill other humans in the service of justice brings with it grave responsibilities, the ethical parameters of Just War Theory only insufficiently demand that they are honoured by the implementing actors. Furthermore, the obligations are to comply with the criteria for the just use of force in the exercise of rights. Ultimately that is intended to protect innocent people, but the obligations are to the rights, an abstract category, and not primarily to the people, the embodied and conscious humans, who are affected by the violence used in the exercise

[9] Kimberly Hutchings' contribution to O'Driscoll et al., "Critical Exchange: How and Why to Do Just War Theory," *Contemporary Political Theory* 20, no. 4 (2020): 866ff.

[10] James P. Sterba, "Reconciling Pacifists and Just War Theorists," *Social Theory and Practice* 18, no. 1 (1992): 21-38.

of the rights. This from people also makes the codex of Just War Theory vulnerable to false claims of compliance.

An ethic of care offers a counterbalance by foregrounding people and a path to peace departing from life. It looks at the other side of the human condition and starts with life, creation, and nurture. An ethic of care has much in common with key aspects of pacifism though this is hardly recognised outside feminist circles. It assumes obligation and responsibility as inextricable aspects of care. They arise from the connectedness with other humans. The obligation here is to the subjects of that care, that is, people, and the material, physical, intellectual, and emotional conditions that sustain them for lives in dignity.

The analysis does connect to Laura Sjoberg's proposal for adaptation of Just War Theory through incorporating elements of an ethic of care.[11] Sjoberg develops concrete adaptations of Just War Theory principles. This paper might be seen as something of a prequel to hers. It shares the fundamental elements of feminist critiques of traditional Just War Theory which Sjoberg discusses in detail but, rather than adding to her proposals of revised principles, it seeks to tease out the difference and complementarity in the perspectives of the ethics of justice and care. Its core argument is that only by combining an ethic of justice with an ethic of care will we be able to guard against the destructive aspects of the human condition and make room for the unfolding of its creative potential.

The analysis opens up with reflections on the nature and meaning of conflict, violence and peace from the perspectives of peace research and feminist theory. It then explores feminist moral reasoning and approaches to a critique of the traditional moral philosophy of war. This leads to a critical examination of the problematic consequences of just war thinking for state, society and the prospects of Just War Theory as it is applied of achieving the purported aims of creating better peace. The concluding section then brings together the two ethics of justice and care in order to demonstrate where and how the latter might point the way to approaching conflict with less violence and a greater prospect of working towards positive peace.

## II. Reflections on conflict, violence, and peace

It is useful to start by reflecting briefly on core concepts which need to be treated with greater nuance than we generally do when we explore the tensions between traditional moral philosophers of war and pacifists: conflict, violence, and peace.

[11] Laura Sjoberg, "Why Just War Needs Feminism Now More Than Ever," *International Politics* 45, no. 1 (2008): 1-18.

Conflict and war are often treated as synonymous. The Cambridge English dictionary for example lists two definitions for conflict: "an active disagreement between people with opposing opinions or principles" and "fighting between two or more groups of people or countries."[12] Equating conflict with fighting is not only misleading, but also brings violence into a discourse without necessity. Conflict, which can also arise over opposing or competing interests, is an inevitable aspect of human life and interaction. The question is how we deal with it.[13] Contentions between pacifists, especially absolute pacifists, adherents of non-violent conflict resolution who do not necessarily consider themselves pacifists, and moral philosophers of war or Just War Theory arise over how conflict is navigated, and by which means its resolution is sought. They may range from negotiation, civil protest or direct action to conventional or nuclear war and a whole host of methods and tools in between. Violence is only one potential option.

Violence remains an extremely challenging concept, phenomenon, and instrument as Nancy Scheper-Hughes and Philippe Bourgois illustrate.

> Violence is a slippery concept – nonlinear, productive, destructive, and reproductive. It is mimetic, like imitative magic [...]. Violence gives birth to itself. So we can rightly speak of [...] a continuum of violence. [...] Violence can never be understood solely in terms of its physicality – force, assault, or the infliction of pain – alone. Violence also includes assaults on the personhood, dignity, sense of worth or value of the victim. The social and cultural dimensions of violence are what gives violence its power and meaning. Focusing exclusively on the physical aspects of torture/terror/violence misses the point and transforms the project into a clinical, literary or artistic exercise, which runs the risk of degenerating into a theatre or pornography of violence in which the voyeuristic impulse subverts the larger project of witnessing, critiquing, and writing against violence, injustice, and suffering.[14]

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[12] *Cambridge English Dictionary*, "Conflict," https://dictionary.cambridge.org/dictionary/english/conflict.

[13] Lester R. Kurtz and Lee A. Smithey, eds., *The Paradox of Repression and Nonviolent Movements* (New York: Syracuse University Press, 2018), 4.

[14] Nancy Scheper-Hughes and Philippe Bourgois, eds., *Violence in War and Peace – An Anthology* (Oxford: Blackwell, 2004), 1.

The concept of the continuum of violence comes from feminist theory and activism. Conceived by Liz Kelly in the 1980s in conjunction with her research on sexual violence,[15] it has cast a much more nuanced light on our understanding of violence in war and peace than traditional approaches have been able to shed. Cynthia Cockburn, for example, identified a continuum of violence when she observed in her analysis of women's and men's experiences of war and peace that for women both, war and peace, were characterised by often life endangering violence. For women, violences before, during and after war flowed into each other. As they are rooted in the phenomenon of gender power hierarchies and their manifestations in practice, she called this a "gendered continuum of violence."[16] From this perspective it is not possible to use the experience of violence as a measure of distinction between war and peace.

Three further aspects of Scheper-Hughes and Bourgois's reflections lead us from the continuum of violence to the larger subject matter of this analysis, Just War Theory, pacifism, and non-violent conflict. One, that "violence can never be understood solely in terms of its physicality;" two, that it "includes assaults on the personhood, dignity, sense of worth or value of the victim;" three, that "social and cultural dimensions of violence are what gives violence its power and meaning." Johan Galtung combined all three into his concepts of violence and peace specifically the distinction between personal, structural, and cultural violence and between negative and positive peace.[17] These elements are to a degree mutually constitutive. For the purpose of this analysis it is sufficient to sketch the key aspects of his thinking with the aim of teasing out their interconnectedness, because that is a fundamental basis for the later critique of both, Just War Theory's and moral philosophers' objections to pacifism and nonviolent conflict.

Galtung defines the absence of direct violence as negative peace. Although personal or direct violence may be committed by any individual, the politically and morally most relevant agents are organisations acting on behalf of the state, such as the armed forces or police. A key enabler of personal violence is structural violence. Broadly, this is not

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[15] Liz Kelly, *Surviving Sexual Violence: Feminist Perspectives* (London: Polity, 1988).

[16] Cynthia Cockburn, "The Continuum of Violence," in *Sites of Violence: Gender in Conflict Zones*, eds. Wenona Giles and Jennifer Hyndman (Oakland, CA: University of California Press, 2004): 43ff.

[17] Johan Galtung, "Violence, Peace, and Peace Research," *Journal of Peace Research* 6, no. 3 (1969): 167-191.

only the overtly legitimised, but also the implicit discrimination against and exclusion of some groups of the population with common social identity characteristics, such as gender, class or race, who should, in a just society, have access to the same resources as everyone else in order to exercise their agency in private and public spaces, and maximise their opportunities to live a fulfilled life in dignity, security, and peace.

The mechanisms for these forms of discrimination and marginalisation are found in often tacitly functioning structures, processes, norms, and culturally approved roles and rituals, which inscribe in society and state power hierarchies that are based on constructed privilege and what Bourdain would call social and cultural capital. Galtung only engaged with gender as an important determinant of one's position in power hierarchies and access to resources enabling independent agency in the context of his exploration of cultural violence, which adds nuance to his thoughts on structural violence.[18] Only in absence of personal as well as structural and cultural violence is positive peace possible.

The connection to pacifism and nonviolence becomes clear quite quickly. Galtung's approach to peace and conflict allows for a much more constructive and meaningful understanding of what peace is or could be. In discourses on pacifism, we find such negative definitions as "anti-warism" which are often accompanied by negative definitions of peace as "nonviolence, nonwar, nonkilling, or nonconflict;"[19] the present author cannot escape this framing entirely either. That said, the perspective this language betrays still centres on violence, indicating just how normalised the phenomenon is. It fails to replace the denial of violence with terms that embody the constructive outlook of those seeing the world and humanity as capable of building peace in the vein of Galtung or women's rights activists since the 19th century.

Through campaigning and critical reflection on the gendered causes of war and with the aim of countervailing them, early women's rights activists, whose opportunities to exercise agency in public spaces were severely curtailed, consciously derived their political philosophies from their social position and predominantly privately lived experience *as women*. Preceding Galtung's concepts of violence and peace by some decades, they had already identified conditions for the kind of peace that he would call *positive* more than half a century later.[20] Not only

[18] Johan Galtung, "Cultural Violence," *Journal of Peace Research* 27, no. 3 (1990): 291-305.

[19] Andrew Fiala, "Pacifism," *The Stanford Encyclopedia of Philosophy* (Summer 2023 Edition), eds. Edward N. Zalta and Uri Nodelman, https://plato.stanford.edu/archives/sum2023/entries/pacifism/.

[20] Jan Stöckmann, "Women, Wars, and World Affairs: Recovering Feminist International Rela-

did they develop theories and philosophies on peace and security which one might see as rooted in an ethic of care, they also laid the groundwork for a methodology that still enriches feminist approaches.[21]

These are a certain, if not complete, awareness of firstly, one's situatedness in political and socio-economic contexts and its influence or even power in shaping political discourses; critical discourses among subsequent generations of feminists have broadened and deepened the need for such (self-)awareness considerably. The second insight comes from their practice, that is, building theory from everyday experiences and political activism. It is no coincidence that two of the first female Nobel Peace Prize recipients, the US women's rights activists Jane Addams, founder in 1919 of the oldest pacifist women's organisation, the Women's International League for Peace and Freedom, and Emily Greene Balch both worked in social work and sociology respectively with a focus on those who required support and care, such as poor children and immigrants.

The following section will explain that this linkage between everyday experience and theory or philosophy is also central to the approach this analysis takes to its critical engagement with Just War Theory and the rebuttals of pacifism by moral philosophers.

## III. Feminist moral reasoning and approaches to critical analysis of Just War Theory

In contrast to traditional moral philosophy feminists have long argued that questions of morality and ethics need to be understood within the contexts, such as everyday life, of specific cultures or socio-political dynamics, in which they arise and are navigated. This is especially relevant for matters of war and peace or, in a slightly modified conceptualisation, questions of violent and non-violent conflict. For Kimberly Hutchings, who builds her approach on an ethic of care,

> the key feature of feminist international ethics is that it necessarily brings politics back into the heart of moral judgment and prescription. This has [...] important implications for considering substantive fields of ethical concern within international ethics, such as just war and human rights. [...] the logic of feminist ethics is to move international eth-

tions, 1915-39," *Review of International Studies* 44, no. 2 (2018): 215-235.

[21] For contemporary examples see Cynthia Cockburn and Cynthia Enloe, "Militarism, Patriarchy and Peace Movements," *International Feminist Journal of Politics* 14, no. 4 (2012): 550-557.

> ics away from the idealizations inherent in the dominant ethical traditions towards a position best characterized as ethical realism.[22]

Although the perspective and rationale can be traced back to the early women's rights activists of the late 19th century, today's concept of an ethic of care is generally associated with Carol Gilligan's research on the psychological and moral development of women in the 1970s and 1980s.[23] Gilligan's field research proved to be highly influential in shaping the understanding of gender differences in the moral development of boys and girls which shape their experiences and perspectives on ethical matters throughout their lives as adult men and women.[24] She overturned the claim that the moral development of girls was not as complex as that of boys who learnt early on to create abstract rules. That ability set the standard for measuring moral maturity at the time. The height of moral maturity was deemed to be "the capacity to utilize impartial universalist principles in making ethical judgments."[25]

Gilligan found that women's moral judgment on the other hand arose from context, narratives, emotional understanding, connectedness, and empathy with fellow human beings. Men tended to find their identity through separation, dissociation from their social context and personal achievements or self-perceived attributes, such as intelligence or rationality.[26] Women found their identity by navigating complex and often contradictory demands and normative expectations with which their social context confronted them. For many women "identity [was] defined in a context of relationship and judged by a standard of responsibility and care."[27] Interestingly, Gilligan observed that

> in the transition from adolescence to adulthood, the dilemma itself is the same for both sexes, a conflict between integrity ['personhood'; *add*] and care. But approached

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[22] Kimberly Hutchings, "Towards a Feminist International Ethics," *Review of International Studies* 26, no. 5 (2001): 113.

[23] Carol Gilligan, *In a Different Voice – Psychological Theory and Women's Development* (Cambridge, MA: Harvard University Press, 1993).

[24] She had been accused of essentialising women as naturally predisposed for motherhood and associated role stereotypes, but has revised the judgment that gender differences in moral development were rooted in biological or physiological gender differences.

[25] Hutchings, 113.

[26] Gilligan, 158.

[27] Ibid., 160.

> from different perspectives, this dilemma generates the recognition of opposite truths. These different perspectives are reflected in two different moral ideologies, since separation is justified by an ethic of rights while attachment is supported by an ethic of care.[28]

One cannot extrapolate from one study with US participants that the same is true for men and women across the world, but there is at least reason to suggest a complementarity of an ethic of rights or justice associated with separation and an ethic of care associated with attachment or connection.

This is largely the framework within which Sara Ruddick[29] situated her exploration of an ethic of care. She rejected the notion that men are 'war-like' and women necessarily peaceful.[30] She opposed pacifism, distinguished it from non-violent action, and juxtaposed pacifists, who rejected all violence, with peacemakers who, rather than running away from violence, "ferret it out" in order to expose it wherever it occurs and work towards change;[31] she clearly perceived the continuum of violence as such. She acknowledged that there are just causes for the use of force, including even the kind of emancipatory or revolutionary violence of which Franz Fanon wrote;[32] though she did not reference his work.[33]

Starting from the conviction that "peace requires a sturdy suspicion of violence even in the best of causes," her principal aim was to show that a positive approach to peace-building could be developed from the concept and practice of 'mothering' in the widest possible sense. By this she meant not necessarily giving birth, caring and nurturing a child, but "the *maternal practices* that are governed by ideals of nonviolence."[34] Women may through practice or, if they are not themselves mothers, observation or socialisation have privileged access to an understanding of the everyday workings of an ethic of care, but their

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[28] Gilligan, 164.

[29] Sara Ruddick, *Maternal Thinking – Towards a Politics of Peace* (London: The Women's Press, 1990).

[30] Ruddick, 151ff.

[31] Ibid., 137ff.

[32] Franz Fanon, *The Wretched of the Earth* (London: Pluto Press, 1986).

[33] Ruddick, 138.

[34] Ibid., 162.

application is independent of gender.[35] Like Gilligan, Ruddick has been criticised for essentialising women as mothers in the vein of traditional conservative ideology, although this fails to recognise the nuance of her argument.

Ruddick critically connects to standpoint feminism and rejects what she sees as the absolutism of their dualist perspective. Yet, she defines her philosophy of maternal thinking as "part of a feminist standpoint" and "an engaged critical and visionary perspective that illuminates both the destructiveness of war and the requirements of peace" whose advancement requires struggle and resistance.[36] Cynthia Cockburn recorded a very similar perspective on war and peace from her engagement with the peaceful anti-war protests of the Women in Black against War movement of the 1980s and 1990s.

> Women in Black groups everywhere were pressing their governments for creative diplomacy and genuine international peacekeeping. They argued for a voice for democratic non-governmental and women's organizations in negotiating a cessation of hostilities in the Balkan region. Women who engage in this strand of the antiwar movement do not see women as "natural peacemakers." Rather, they believe it is because they have escaped masculine socialization that women are freer to formulate a transformative, nonviolent vision.[37]

Feminists share the awareness of a richer, more nuanced and creative perspective as well as the need for and possibility of change with pacifists like Robert C. Holmes. In his introduction to a volume of Holmes' essays its editor, Predrag Cicovacki, sums up Holmes' challenge to communalities of "all mainstream ethical approaches." "They (1) neglect the nonrational aspects of ethical evaluations and choices; (2) ignore the social, political, and cultural factors influencing our choices and behaviour; and (3) leave unchallenged the basic structures of society."[38] These key points of criticism also point towards communalities with the feminist understanding that lived experiences shape perceptions, ideas, and theoretical constructs, and they can also be shaped by the latter.

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[35] On women's peace work see Ruddick, 219-251.

[36] Ibid., 136.

[37] Cockburn, "The Continuum of Violence," 38.

[38] Robert L. Holmes, *The Ethics of Nonviolence – Essays by Robert L. Holmes*, ed. Predrag Cicovacki (New York and London: Bloomsbury, 2013), 1.

This understanding of the cyclical nature of the way in which humans relate to and interact with life events and other humans, be this through direct and personal engagement or observation from afar, has made its way into wider critical discourses on public political philosophy, such as the 'critical exchange' on why and how one should 'do' Just War Theory, which Cian O'Driscoll convened in 2020.

He and others explored the merits and limitations of looking at public philosophy and specifically Just War Theory and its key principles not in the disconnected, abstract manner of purely theoretical philosophical inquiry of which they are critical, but as connected to the real lives of those whom its application affects, in particular those going to war and the everyday experiences of "ordinary citizens" of war.[39] With reference to Tully and Thaler, the contributors frame their exchange around four key "commitments" with the aim of situating Just War Theory in an active exchange with "the on-the-ground realities it purports to address."[40]

> First, that "the activity of theorising starts from the everyday practices of ordinary citizens [...] second [...] that the task of the theorist is to elucidate and problematise these everyday practices [...] third [...] to treat these activities as a platform for critically interrogating and re-imagining those same practices [...] [fourth] the aim of all of this must be to ensure that theorising is both informed by and invested in, rather than divorced from, the lived realities that it seeks to account for. To approach the task of just war theorising in light of these commitments is to embrace the mutuality of theory and practice.[41]

The following sections engage with these commitments in their approach to a critique of Just War Theory which looks not at the specific criteria, but the wider context of its reasoning and consequent reach into the life of a polity and its people, and two salient aspects of its underpinning moral philosophy: violence and action in relation to rights.

## IV. The conservative impulse and long reach of Just War Theory

Critiques and defences of Just War Theory and its moral philosophy tend to focus on its application in decisions on the use of force, or the lack of compliance, in wars and their conduct. Feminist critiques, some

[39] O'Driscoll et al., 859.

[40] Ibid.

[41] Ibid.

of which we have already discussed, have examined Just War Theory and its application with a view to identifying and overcoming the lack of consideration of women's specific experiences and everyday perspectives on the impact of war and its aftermath.[42] Reflections in line with the methodological approach of feminists and O'Driscoll and his discussants on the interdependence between the "lived realities" not of war-affected people, but rather of major figures who drove the development of Just War Theory in or close to religious and political elites on the one hand and their theorising on just war on the other hand are, however, not prevalent.

A very cursory look at some of the major early contributors to the shape of Just War Theory suggests that there is good analytical reason to bring this perspective into the discussion and in future explore correlations in individual cases. Their perspective is anything but that of the 'ordinary citizen,' but the context of their socialisation, their aspirations and where they found opportunities to advance in public life is very likely to have mattered. Their lived reality was one where closeness to influence and power became or was a possibility and often actuality, even if they and their reasoning had occasionally fallen out of favour with an individual ruler.

Aristotle (384-322) educated Alexander the Great. St Augustine (354-430) is described as coming "from a middle-class [sic!] background," but was educated with a view to a future in "imperial administration" and he did hold influential positions first in scholarly circles and at court and later as a bishop.[43] The family of Thomas Aquinas (13th century) was wealthy. He rose to fame and influence as a Dominican scholar.[44] Building on Aquinas' thought, Francisco di Vittoria (1486-1564), regarded today as the founder of international law, and fellow scholars of his School of Salamanca at the time had direct, personal, though not necessarily uncritical, influence on powerful rulers, such as Emperor Charles V.[45] The family background of Hugo Grotius (1583-1645) is described as "moderately prosperous, well-educated

[42] For example, Laura Sjoberg, *Gender, Justice and the Wars in Iraq: A Feminist Reformulation of Just War Theory* (Oxford: Lexington Books, 2006).

[43] Christian Tornau, "Saint Augustine," *The Stanford Encyclopedia of Philosophy* (Winter 2019 Edition), ed. Edward N. Zalta, https://plato.stanford.edu/archives/win2019/entries/augustine/.

[44] Robert Pasnau, "Thomas Aquinas," *The Stanford Encyclopedia of Philosophy* (Winter 2022 Edition), eds. Edward N. Zalta and Uri Nodelman, https://plato.stanford.edu/archives/win2022/entries/aquinas/.

[45] Thomas Izbicki and Matthias Kaufmann, "School of Salamanca," *The Stanford Encyclopedia of Philosophy* (Summer 2019 Edition), ed. Edward N. Zalta, https://plato.stanford.edu/archives/sum2019/entries/school-salamanca/.

and ambitious" and he as "exceptional," which enabled him to quickly make his way into the Dutch elite and influential positions in law and politics; his life may not have been without jeopardy, but he did maintain his intellectual reach into the European ruling class.[46]

To suggest that through both, their disposition and life experiences, the reasoning of these men was shaped by the positions in political society they aspired to and sought to maintain is not to say that they were uncritical propagandists, nor that they were not motivated by profound concerns for humanity. Yet, they were aiming to and, from an elevated position within the social hierarchy, succeeded in significantly shaping spiritual and moral foundations of political and legal thought. This raises at the very least questions of the universality of principles that have been shaping dominant assumptions of what is good statecraft and have originated from the masculine understanding of members of or close to the ruling class of what states must do, the importance of power and the utility of violence.

It is uncontroversial to point out that Just War Theory is state-centric and seeks to preserve sovereignty. Less frequently discussed are the consequences of this underlying conservative, status-quo oriented rationale of its principles for both the polity itself and international relations; preserving the status-quo does not preclude change, as adaptations can be conceived as necessary in order to maintain a particular position, such as political power. We can see this when we look beyond the ostensible rootedness of Just War Theory in a decision *moment*, that is, whether or not to go to war. The availability of the option or choice to comply with the criteria of both *jus ad bellum* and *jus in bello* in such a decision moment is dependent on another enabler, that is the *permanent* preparedness for this decision in anticipation of the act of an aggressor who will also have been enhancing their ability to go to war, and continuous preparations to be able to meet the criteria for both *jus ad bellum* and in bello. We will discuss these issues in turn.

Just War Theory reaffirms existing power hierarchies within societies as well as internationally. When Just War theorists argue that humankind shares a universal impetus to impose constraints on the conditions for going to, and the mode of conducting, war, they usually reference the Mahabharata, specifically the Bhagavad Gita,[47] the rulers

[46] Jon Miller, "Hugo Grotius," *The Stanford Encyclopedia of Philosophy* (Spring 2021 Edition), ed. Edward N. Zalta, https://plato.stanford.edu/archives/spr2021/entries/grotius/.

[47] The Bhagavad Gita is principally concerned with *jus ad bellum*. Sreejith Sugunan for ICRC Global Affairs Team, "The Bhagavad Gita and the Ethics of War," *Religion and Humanitarian Principles*, October 5, 2022. https://blogs.icrc.org/religion-humanitarianprinciples/bhagavad-gita-ethics-war/. *Jus in bello* is discussed in other parts of the Mahabharata. Greg Bailey

of Roman antiquity or the Koran.[48] They all share with Just War Theory the aspiration to serve and protect principles of humanity, but they do not necessarily share moral principles that some might deem universal. They also bow to fundamental ideas of political realism and strategic thinking which they seek to tame but simultaneously accommodate. What is then universal is the fundamental desire of rulers across regions, cultures and time to protect their power, that of their dynasty, or after 1648 the Westphalian state and its successors, and to demonstrate that they do so in as ethical a manner as they see fit or wish to claim. That is also a matter of strategic and political prudence.

In translation from moral philosophy to political decision-making and military conduct, Just War Theory and its principles become instruments of statecraft casting its influence into the political order, processes and drivers of both the state and the international system. There is a profoundly strategic rationale in the efforts of rulers and their secular and spiritual advisors across history and the globe to seek to justify the application of organised violence on other humans, some of whom must be of their own population. Since a reasonable chance of success is one of the criteria, rulers must be able to expect that the war will result in at least the protection of the power they held before the war and the outcomes would need to be a governable state of affairs which might be called peace.

As Bonnie Mann, however, very pointedly argued in her feminist critique of the *Shock and Awe* approach to the Iraq War in 2003, this comes with a risk of overstretching the scope for justified use of force so far that it effectively untethers even a tenuous link between moral justifications and reasoning in line with offensive political realism. In her reading, *Shock and Awe* represented the replacement of a "too-loose relationship between good reasons and devastating political acts like Bush's declaration of war on Iraq" with the creation "of an aesthetic of war that feels like our own skin, that is intertwined with the roots of our identities, that works some place where critical scrutiny fails."[49] Governments choose whether or not to apply Just War Theory. This makes its effectiveness as contingent on the political,

for ICRC Global Affairs Team, Ethics of Fighting in Ancient Indian Literature, *Religion and Humanitarian Principles*, October 3, 2022, https://blogs.icrc.org/religion-humanitarianprinciples/ethics-fighting-ancient-indian-literature/.

[48] For a brief synopsis on positions in Islam see OCHA, "Islamic Law and the Rules of War," *Reliefweb*, April 24, 2014, https://reliefweb.int/report/world/islamic-law-and-rules-war (originally published by *The New Humanitarian*).

[49] Bonnie Mann, "How America Justifies Its War: A Modern/Postmodern Aesthetics of Masculinity and Sovereignty," *Hypatia* 21, no. 4 (2006): 150.

strategic and reputational reasoning of a government as Brian Orend suggests in conjunction with nonviolent protest, when he argued that "it has worked only in cases where the target was morally sensitive."[50]

Within the state the meaning and justice of 'legitimate authority' is as much constructed on the basis of the existing governance and power hierarchical structures as the fundamental assumption that war can be morally good, in principle and for society, and the constructed legitimate authority's prerogative of interpreting (*Deutungshoheit*) whether the conditions for a just war are met and its conduct can be or is just. Whether or not the rationale is acceptable as just cause for the members of a polity and whether acceptability is a relevant factor depends on the nature of government, for example whether the ruled trust their rulers enough to abrogate some of their own free will to the decision-making of the rulers and are prepared to carry the consequences of decisions and judgments in which they had no part.

In other words, whether the ethical principles of Just War Theory are truly fulfilled for those affected by war, if not by combat, depends on criteria that are not part of Just War Theory. They depend on the context in which the theory is applied. Traditional moral philosophy may demand of itself that it be dissociated from such contingency, but it cannot be when Just War Theory is specifically aimed to impose moral constraints on how to deal with such contingencies. We can see that the universality principle is further undermined by political realities, when we consider that even if in the past rulers or senior military leaders put their lives and physical and mental health at risk in war, those who were subject to their decisions and orders especially the very low ranking subordinates, have always been granted the least free will to exercise. They may be able to exercise their right to defend themselves once they find themselves in combat, but the ability to choose whether to be in the situation or not is at best exceedingly limited.

Just War Theory does not just affect the moment of decisions on whether to use force and how to conduct a war. Its reach across time and into society goes much further. Enabling the legitimate authority to decide whether to wage a war that (ideally) fulfils the *jus ad bellum* criteria, has far reaching consequences for the political, socio-cultural and economic life of that polity. Preparing for war then becomes a moral obligation on all in a position to contribute to such preparations, from those joining and commanding the armed forces to armaments producers and their worker, scientists and every contributor to defence budgets, which are not universally funded through taxes. Being

[50] Orend, 263.

able in principle to wage a just war, that is, having the choice to fulfil the criterion of a reasonable chance of success, requires consistent attention, effort and vigilance from the strategic down to the tactical level in government, the civilian control of armed forces, military command, organisation, training, equipment, and doctrine.

Much of this preparedness also determines the ability to use organised force within the ethical parameters of *jus in bello*. As Kimberly Hutchings concluded from a similar train of thought, "the meaning of war as a practice is complex and difficult to delimit. Understanding the practice of war involves more even than facing up to its bloodiness [...] [which] is itself a gendered trope, entangled with the everyday practice and justification of war."[51] Hutching's critique of the inherent claim of Just War Theory that there is such a thing as good or bad war, as she pointedly casts the claim to a distinction between just and unjust war, then leads her to the fundamental critique that "constantly reasserting the possibility of different kinds of moral discriminations within the category of war, [...] keeps open the possibility of war that is morally better or even best, and thus reinforces all of those practices that keep the idea of a need for war open."[52]

Yet, much of the objections of traditional philosophers of war to pacifism are built around the examples from the perspective of individuals, as if all individuals had the same freedom to exercise the right to self-defence and no other constraints on their freedom to choose. In addition to the objections to this assumption discussed above, it is also simply not the case that one can extrapolate from an individual to a state, even if one were to see such a reification of the state as permissible, or the government of, or representing, a state or polity whose 'will' emanates from complex structures, processes and the relative position of individuals within this organisation and social structures.

Jovan Babic describes a conundrum at the heart of pacifism, in whichever specific form it manifests. It lies in "one common characteristic of pacifism, that can be ascribed to it with certainty: it is in a way the standpoint which both involves and denies being in counterposition."[53] The implication is that counterposition here means being prepared to exercise violence and potentially take another human's life. Narveson incidentally assumes the same when he demands that pacifists "prove" such a "momentous contention as that we have no

[51] Hutchings' contribution to O'Driscoll, 866.

[52] Ibid., 867.

[53] Babic, 57.

right to resist."[54] Measuring being in counterposition by the willingness to act with physical violence does neither the argument nor pacifists much justice.

Pacifists or adherents to nonviolence do not evade a stance of being in counterposition. They refuse to apply one type of counter-action, that is, physical violence and potentially killing, especially other humans, but being and staying in nonviolent couterposition is not 'the easy option.' Nonviolent resistance campaigns have demonstrated for decades, if not centuries, that even living by narrow pacifist principles demands a high degree of preparedness to remain in nonviolent counterposition, which opponents, especially if they are agencies of the state, will be determined to make increasingly intolerable and potentially life threatening for the resister. Hannah Arendt acknowledged this when she observed that:

> Popular revolt against materially strong rulers [...] may engender an almost irresistible power *even if it foregoes the use of violence* [emphasis added] in the face of materially vastly superior forces. To call this "passive resistance" is certainly an ironic idea; it is one of the most active and efficient ways of action ever devised, because it cannot be countered by fighting, where there may be defeat or victory, but only by mass slaughter in which even the victor is defeated, cheated of his prize, since nobody can rule over dead men.[55]

Even if we discount the instrumentality in Arendt's verdict that non-violent resistance can be more effective than violence, which might make hers an argument on a matter of tactics, her position suggests strongly that violence per se is neither a sufficient nor a necessary condition for taking and enacting a counterposition meaningfully. Implicitly, she connects negatively to the cyclical, self-reinforcing nature of violence. It would be broken with the deaths of all who rebelled, but for the ruler it would be self-defeating, "since nobody can rule over dead men."

Indeed, non-violence requires a strong preparedness to make sacrifices, from loss of material possessions, including safe spaces to live, over loss of freedom over body and agency to loss of use of all of an intact body (e.g., through torture) and even life. If we measure the

[54] Narveson, 264.

[55] Hannah Arendt, *The Human Condition* (Chicago and London: The University of Chicago Press, 1998), 200-201.

commitment of a person to human values, especially ideational values, by their preparedness to take very serious pain and punishment or even die for a cause, then civil resisters and pacifists who reject violence against fellow humans and refuse to engage in actions that inflict such violence, certainly meet that criterion.[56]

We can argue that the use of violence in (self-)defence may be morally justified for the immediate purpose of "the preservation of some particular value which is threatened (e.g. life, dignity, physical integrity),"[57] but is it necessary? Is it the nature of violence *sui generis* which marks out the suitability of violence to protect values or qualifies it as a superior criterion for a moral philosophical standpoint? If, for a practice to be morally justified, it is necessary that everyone can be expected to exercise it, that is, it is or can be universalised, then Babic is right, but only within an ethic of justice, that there cannot be an expectation that everyone abstains from defending themselves, but is there an obligation to defend oneself with violence?

The problem is the derivation from the line of reasoning, that "if I decide never to defend myself whatever the circumstances I do not have the right to expect, and even less to require, from others to follow me and abstain from defending themselves when they need it;" hence pacifism is a "private enterprise" and cannot be universalised.[58] A claim that non-pacifists have the right to demand of pacifists that they use violence to defend another is, however, unjustifiable for the non-pacifist. That is implied, although with severe limitations, in Jovan Babic's judgment that "at best pacifism is permissible," but the next step in the argument, that non-pacifists can hold pacifists accountable for failing "to defend" them against violence and that "it is often morally indifferent" is much less convincing.[59]

There is indeed a moral problem, but it lies with the pacifists' conscience with reference to the life of another. They cannot preserve their morality for three reasons, related in essence to acts of commission, omission, and denial. If they defend someone who is threatened by an aggressor but cannot defend themselves, they may have to kill the aggressor, breaching the prohibition against killing by an act of commission. If they had the means and opportunity to defend the victim, but refuse to breach the pacifist prohibition on killing, they jeopardise

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[56] Evan Perkoski and Erica Chenoweth, *Nonviolent Resistance and Prevention of Mass Killings During Popular Uprisings* (Washington, D.C.: ICNC, 2018).

[57] Babic, 58.

[58] Ibid., 59.

[59] Ibid.

the potential victim's right to life thus also transgressing against the prohibition against killing, but by omission. If the principle of total prohibition of killing were to be universally true they would also have to deny the potential victim the right to kill should that be necessary to preserve the victim's own right to life. Either way they would have to violate the fundamental morality underpinning pacifism.

These arguments are consistent within a moral philosophy that drives and is driven by an ethic of justice which assumes that a potential need of physically violent acts is ever present anywhere and that as long is can be defined as defensive and deemed to be the last resort it is justified. As discussed above, however, the purity of the position is under constant jeopardy from the political and strategic context in which it is applied through Just War Theory. In the final section we will briefly return to the argument laid out in the first part of the paper and outline that more active engagement between philosophers and practitioner from both perspectives, an ethic of justice and an ethic of care, can enable a more ethical approach to conflict, war, and peace.

## V. In lieu of conclusions – Balancing an ethic of justice with an ethic of care

Our starting point is Cheney C. Ryan's debate with his own conscience as much as the opposing philosophies on the scope and limitations of the arguments between traditional moral philosophy and pacifism, in particular those Narveson had triggered.[60] The salient aspect of Ryan's reasoning is that the pacifist "cannot create, or does not wish to create, the necessary distance between himself and another to make the act of killing possible;" pacifists can only see 'the other' as "a fellow creature." For Ryan "this latter point is important to showing that the pacifist's position is indeed a moral position, and not just a personal idiosyncrasy," a position that is "motivated by the picture of the personal relationship and outlook one should maintain toward others, regardless of the actions they might take toward you" thus creating a bond even between the aggressor and defender of "fellow creaturehood" which, although it superficially legitimises "killing in self-defence," is so deep as to "render it impossible."[61]

Ryan's approach shares some crucial perspectives with the feminist positions discussed above and the philosophers of an ethic of care.

[60] Cheyney C. Ryan, "Self-Defense, Pacifism, and the Possibility of Killing," *Ethics* 93, no. 3 (1983): 508-524.

[61] Ibid., 522.

His is a fundamentally connected moral philosophy. His pacifist human being is part of, and partly constituted in, their 'creaturehood' through their relations with other creatures, that is, fellow humans. Under the ethic of justice all individuals are treated as if they had the same rights, but as shown above this claim became much less tenable upon distinguishing between rulers and ruled. This distinction is masked by the reasoning underpinning Just War Theory. It is significantly more central to matters of human dignity and ethical treatment than the theory permits. The insistence of Ryan's pacifist to emphasise the common creaturehood with fellow humans is fundamentally compatible with an ethic of care and indeed a feminist approach to peace and peacebuilding.

What he does not address sufficiently are the underlying reasons for the shortcomings of an ethic of justice, especially the scope in Just War Theory for reinforcing existing power hierarchies and structures, both within states as well as internationally, or at least leaving them intact. A feminist ethic of care addresses the effects of these dynamics in at least two important ways. It assumes that working to protect the conditions that sustain life and creativity has a greater prospect of leading to a better, positive peace than Just War thinking. To this end it actively seeks to challenge and change the political structures and processes that so far sustain the conditions for war.

If our aim is to capture the whole of the human condition in a philosophical framework for moral conduct, not just the one destructive side that is ultimately associated with death, but also the other, the creative and nurturing side which is ultimately associated with life, then we must recognise that both are inextricably linked. In this sense we might say that both ethics, that of justice and that of care, view the human condition from opposite ends, that of death and that of life. This is not to say that the ethic of justice endorses or even desires death in and of itself, but it does purport to offer a framework of ethical justifications for the taking of some life in order to save other life. The ethic of care on the other hand seeks to protect life by creating conditions that nurture life, strengthen the conditions for peace and thus reduce the risk of the need to take life.

Philosophers of peace like Galtung and even more so feminists do not deny the existence of unjust violence. Galtung sees the major obstacle to positive peace in the permissive socio-political structures and norms that inflict everyday violence on, and facilitate the exercise of personal, physical violence against, people. Feminists in particular have acute awareness of the wide spectrum and manifold manifestations of the continuum of violence. It is for this reason that they seek to reduce its incidence and opportunities for

its occurrence, but the way to do this cannot be to protect the status quo of governance structures and power hierarchies in the manner Just War Theory does at least currently.

The self-reinforcing nature of violence traps humans in cycles of violence. There is another reading of the aims of Just War Theory to impose *constraints* on the use of physical violence. The necessary mirror image is the *permissibility* of physical violence, which gives humans permission to avoid the hardship of pursuing peaceful or non-violent change. As discussed above taking peaceful action in pursuit of nonviolent change is anything but an easy option. Holding fast to one's moral principles to not commit violent acts prohibits the individual from responding to violence inflicted upon them with violence.

Care must be oriented towards the future and growth. Just War Theory is *re*active to the existence of an aggressor and their acts of aggression, and the peace it enables in principle is defined by the return to an absence of war, negative peace. An ethic of care confronts the ethic of justice of war with a radically different perspective with its starting point of life. With its *pro*active perspective, it holds up the mirror to Just War Theory and forces the view upon breaking thought the cycles of violence by building social orders at local, regional, and global levels that enable human endeavour thus creating positive peace.

This is why only both perspectives, that of Just War Theory and non-violence, or an ethic of justice and an ethic of care, together allow us to capture the inherent promise and tragedy of the human condition. To move beyond the current weaknesses of Just War Theory's constraints on the use of force, let alone its ineffectiveness in achieving its declared aims, its ethic of justice must be balanced with and against an ethic of care. Only together can they capture the supreme challenges arising from the ability of humans to use tools combined with their will and, we must not forget, their emotions to act as arbiters over other humans' life or death, nurturing or killing, and creation or destruction for purposes of not prima facie sustaining life, but other ideational or material values.

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# Progressus as an Explanatory Model: An Anthropological Principle Illustrated by the Russia-Ukraine War

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**Abstract**

*At the beginning of the Russian Federation's attack on Ukraine in February 2022, the European Union put up massive resistance, but due to its sudden overload, it was unable to deal with the situation adequately. It was in a state of paralysis for some time. Therefore, five explanatory models for the Russian actions are presented: an offensive, a defensive, a situational, a socio-cultural, and an ideological-historical one. It is then shown that the German term Gewalt, which combines the English terms violence, power, and force ontologically, is best suited to summarize and describe all these models. It is also shown that Gewalt is a neutral, fundamental human concept that can be described as one of the basic driving forces of man. By piercing society, Gewalt constitutes an impulse, a motivation that stimulates and fuels the individual and society in toto. This leads to what we call Progressus, which depends on four variables – group desire, potential means of violence and force, group aims and objectives, as well as group comparison and evaluation. Progressus is inherent in all persons and in all societies. It can be analyzed and managed in a variety of different ways. Combined with the foundation of Gewalt, seen as neutral agent in varying levels of intensity, Progressus forms a matrix for efficient analysis to describe positive and frictional interaction, establishes social relations from friendship up to war; and this between individuals, groups and/or states. How this is possibly implemented in practice is described at the end using an example from the previously presented explanatory models.*

**Keywords:** *Russia-Ukraine war; Ukraine-conflict; Gewalt; Progressus; Gewalt-Progressus-Matrix; individual and social violence; power; force*

## I.

The beginning of our reflections on the topic is made by an observation from the Ukraine conflict, when the Russian Federation started the war in February 2022. Many people in Europe were surprised and stunned by the Russian Federation's actions.[1] The brutality and partial lack of direction in the use of armed force seems brutal and inhuman to a "Central European capable of reflection." The effects of the invasion therefore changed priorities and thus life within the European Union. Whereas the EU had previously focused mainly on economic prosperity, the focus immediately shifted to securing basic needs (with a weapons-based approach) such as, for example, energy and gas reserves or grain. Power, violence, and force determined the discourse of the states from that point on. Putin's invasion also prompted Europe to take a more aggressive approach. The international community imposed sanctions to cripple Russia's economy. They sent weapons and aid to Ukraine. Almost all countries also increased their military spending to better counter any aggression by Russia, individually or collectively. All because of the illegality and recklessness of this campaign.[2] Without favoring either side or taking sides, it must be stated that from a purely legal point of view, i.e., from the point of view of international law, Ukraine should never have been attacked by Russia. Moreover, there are many scholars who go deeper and state: "Russia's invasion of Ukraine violates the UN Charter and cannot be justified under international law as an act of self-defense or humanitarian intervention."[3]

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[1] Cf. Dumitru Minzarari, "Failing to Deter Russia's War against Ukraine: The Role of Misperceptions," *Stiftung Wissenschaft und Politik Comment* 33 (2022): 1-8. Or even before the event: Cf. Caroline de Gruyter, "The West Fell Into Putin's Trap," *Foreign Policy*, January 24, 2022, https://foreignpolicy.com/2022/01/24/west-europe-putin-russia-ukraine-deter-war/.

[2] When a nation drops non-guided semi-kiloton bombs on civilian sites today, it is reasonable to conclude that it also commits other war crimes and unjustified actions. Similarly, the attack on Ukraine is an example that Russia could follow up with analogous actions if no reactions were to follow. This is at least the fear of the Western world.

[3] John B. Bellinger III, "How Russia's Invasion of Ukraine Violates International Law," *Council on Foreign Relations*, February 28, 2022, https://www.cfr.org/article/how-russias-invasion-ukraine-violates-international-law. Moreover, evidence of the illegality of the Russian campaign is outlined by many international scholars. To name only a few: cf. Cathleen Powell, "Russia's Invasion of Ukraine is Illegal under International Law: Suggesting It's not Is Dangerous," *The Conversation: Academic Rigour, Journalistic Flair*, March 15, 2022, https://theconversation.com/russias-invasion-of-ukraine-is-illegal-under-international-law-suggesting-its-not-is-dangerous-179203, or Milena Sterio, "The Russian Invasion of Ukraine: Violations of International Law," *Jurist: Legal News & Commentary*, July 12, 2022, https://www.jurist.org/commentary/2022/07/Milena-Sterio-Russia-war-crimes-Ukraine/, and many others.

## II.

Nevertheless, there are several viewpoints and theories which explain Russia's war of aggression, if not legally, then at least politically and/or socially. It is well known that there are essentially four competing macro-explanations of Russia's behavior in the Ukraine conflict: an offensive, a defensive, a situational, and a domestic political interpretation.[4] Two of these explanations are neorealist explanatory models. One is defensive and one is offensive. They take the following approach.

According to offensive neorealism, anarchy, great power politics, distrust and strategic interests characterize all international relations. As a superpower, it is therefore necessary to be self-centered and to strive for power and security. Norms of international law do not direct goals in this regard. If we follow this interpretation, then Russian behavior is the culmination of a rivalry, which has developed out of growing resistance to a unipolar system and out of competition between the EU and Russia in the post-Soviet space. It also means that Russia is expansive and not cooperative. It has withdrawn from the Euro-Atlantic world to revise its loss of status after the end of the Soviet Union and to assert the post-Soviet space as an exclusive sphere of influence.

In defensive neorealism, Russia only reacts to a previous expansion of the West, i.e., the expansion of NATO and EU. To make matters even more complicated, Russian security interests are not accepted and the EU shows no willingness to coordinate its association policy with Russia. Putin is thus merely imitating the example of Western disregard for international law in overthrowing unpopular incumbents.[5]

Then, there is a situational interpretation of the Russian agenda. This model states that there is no sufficient evidence for a pre-existing master plan for the annexation of Crimea and the Donbass secession in 2014. The first signs of a corresponding option have been discernible since September 2013. Indications suggest that the annexation of

[4] Cf. Andreas Heinemann-Grüder, "Außenpolitische Denkschulen und der Ukrainekonflikt," in *Lehren aus dem Ukrainekonflikt: Krisen vorbeugen, Gewalt verhindern*, eds. Andreas Heinemann-Grüder, Claudia Crawford, and Tim B. Peters, 11-30 (Leverkusen: Barbara Budrich Verlag, 2023).

[5] Putin would have had little choice but to respond to Western defiance. In this view, the Ukraine conflict is the consequence of other players' problems. Namely the EU's lack of its capacities and abilities, NATO's own overestimation and ability to act, and the USA's withdrawal in the wake of President Biden's neglect of the European theater. Russia's behavior in the Ukraine conflict could have been prevented if one follows a defensive view. Cf. John J. Mearsheimer, "Why the Ukraine Crisis is the West's Fault," *Foreign Affairs* 93, no. 5 (2014): 77-89.

Crimea and the attempt to imitate this scenario in eastern Ukraine were the result of a situational calculation in which Putin updated existing planning games and thought that dominance was on his side.[6] Following this ratio and calculation he then invaded Ukraine using the same background but with much more official state-actors such as regular forces.

The next explanation is of socio-cultural origin. One of the most important reasons for Moscow's considerable military, political, and rhetorical aggressiveness in the Ukrainian war, however, is not so much Kiev's and the West's disregard for Russian national interests. Rather, a sustainably reforming, economically well-developing Ukraine joining the EU would be a considerable threat to the power of the Kremlin. After all, given the cultural closeness between Ukrainians and Russians, this would become a legitimacy problem for Russian elites. A successful Ukraine could become a counter-model to Russia's current autocratic, patrimonial system. This has already happened before, especially for the Russian educated middle classes. This would trigger a similar democracy movement in Russia as it did in Ukraine.[7]

And lastly an individual, (better) ideological-historical explanation. The former German ambassador to Russia, Rüdiger von Fritsch, sees Vladimir Putin's motivation for the Russian war of aggression against

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[6] This is precisely the point Heinemann-Grüder makes when he shows that the Russian military analyzed the mistakes of the Georgian war and rehearsed war scenarios involving unconventional warfare. Cf. Heinemann-Grüder, 20-21. Russia's then Chief of Defence Staff Gerasimov developed this concept, flexibly shifting the line between war and peace, between internal and external, and between lawbreaking and legalistic conduct. This was formerly laid down in the so-called "Gerasimov-Doctrine" in 2014. Cf. Murphy Martin, "Understanding Russia's Concept for Total War in Europe," *The Heritage Foundation*, September 12, 2016, https://www.heritage.org/defense/report/understanding-russias-concept-total-war-europe#. Also: Molly McKew, "The Gerasimov Doctrine – It's Russia's New Chaos Theory of Political Warfare. And it's Probably being Used on You," *POLITICO Magazine*, September-October 2017, https://www.politico.com/magazine/story/2017/09/05/gerasimov-doctrine-russia-foreign-policy-215538/. The West had renounced red lines from the Georgian War in 2008 and did nothing to respond to Russian military protectorate over Georgian territories. Putin could count on this Western avoidance of conflict. This probably encouraged Putin to push out the limits of military action in the case of Ukraine – a policy which assumed that the West feared the abyss more than he did. Cf. Heinemann-Grüder, 19-20.

[7] Domestic political interpretation: In fact, neither Ukrainian domestic politics nor European geopolitics per se played a decisive role in the emergence and escalation of the 'Ukraine conflict.' Rather, the aggressive way the Kremlin reacted to the Ukrainian Revolution of Dignity illustrates the close connection between Russian domestic and foreign policy. In its media justification and diplomatic apologetics, the Kremlin constantly refers to domestic Ukrainian and Western geopolitical threats to Russian interests. It is not uncommon to hear talk of a threat to Russian nationality, identity, and sovereignty, such as the danger of fascism in Kiev, territorial expansion by Western organizations (EU, NATO), repression of ethnic Russians in Ukraine, and so on.

Ukraine as deeply rooted in the disintegration of the Soviet Union.[8] Russia and the rest of Europe have perceived the past 30 years very differently. While the collapse of the Soviet Union led to the reunification of Germany, it was a catastrophe for Russia. The Russian Empire, he said, has been degraded by its own failures – without admitting it. It has been weakened and Russia has not succeeded in doing what China, for example, has done: namely, to build a modern national economy. Thus, Putin is a "prisoner of the regime's own shortcomings." The war in Ukraine is his last resort, which he believes can still work. However, von Fritsch said, this was a terrible miscalculation on Putin's part. He has a distorted perception of the reality in Ukraine, of the performance of his forces, of the Ukrainian forces, and of the willingness of the West to resist. And this miscalculation also means that "the war is likely to drag on for a long time," said von Fritsch. And he concluded: "Because this war that he started is going so badly for him, he is now also fighting in Ukraine for his own political survival at home. [...] And that's why he can't lose this war."[9]

Despite all the prophecies of doom, Putin apparently sees himself as an impeccable humanist, if his speeches are to be believed. He stated at the German Bundestag already in 2001:

> I am touched that I can talk about the German-Russian relations, [...] about the problems of international security – especially here in Berlin, in a city with such a complicated destiny [...]. But even in the worst times – not even in the difficult years of Hitler's tyranny – it was not possible to extinguish in this city the spirit of freedom and humanism for which Lessing and Wilhelm von Humboldt laid the cornerstone [...]. Culture has never known borders. Culture has always been our common good and has united the peoples.[10]

Putin's impetus can also be seen in this ideological-historical tradition when it comes to the case of unifying Russians and Ukrainians, so that they can once again come together as a larger cohesive and prosper-

[8] Cf. Rüdiger von Fritsch, "Ukraine-Krieg für Putin, 'letztes Mittel,'" *ZDF Heute*, June 20, 2022, https://www.zdf.de/nachrichten/politik/putin-ziele-motivation-ukraine-krieg-russland-100.html.

[9] Ibid.

[10] Vladimir Putin, "Speech of Vladimir Putin at the German Bundestag," transcript of the speech, *Deutscher Bundestag*, September 25, 2001, https://www.bundestag.de/parlament/geschichte/gastredner/putin/putin_wort-244966.

ous nation.[11] In his article on the historical unity between Russians and Ukrainians he states that Russia and Ukraine are "parts of what is essentially the same historical and spiritual space" and that natives of Ukraine held the highest posts in the leadership in USSR (Putin mentioned Nikita Khrushchev and Leonid Brezhnev). And, very importantly, he mentioned the common literary and cultural heritage, that modern Ukraine is entirely the product of the Soviet era, and that "Russia was robbed" because of the split.[12] So much for the ideological-historical explanation of the Russian behavior in a nutshell.

## III.

Having briefly discussed these five explanatory models, it is possible to highlight some common features and common lines of development which link them. What they all have in common is that there is a relationship between the two states. This relationship between nations and states is built on conditions of coexistence which must be socialized, practiced, 'negotiated' in the broadest sense. It is like a sign of culture; work which must be done together in an unfriendly environment with the capacities and assets available. If man wants to survive in nature and against the adversities of nature, he needs a minimum of strength, skill, courage and assertiveness (friendly or hostile is irrelevant at this point). This is needed to a greater extent when survival is not the only goal, but when one strives for 'higher' standards and objectives. The same applies to societies and states, this fact is obvious: Every society develops, evolves inevitably, if it does not want to perish in the confrontation with its environment or other societies. This (technical, cultural, political, social, etc.) (r)evolution occurs in the center of the confrontation between individual and environment. Therefore, both the individual and society obey the same rules. In this respect, the facts and considerations presented in this article apply to both the individual and the community.

If we look more closely at the five explanations, we can see that in each of them it is necessary to apply some force to get what you think you need or desire. Thus, force is of existential importance. Also, in any of these models, when assertiveness is involved, power is needed to get what you want. No power, no profit. And in the end, each of these models also involves violence which must be exercised – or at

[11] Cf. Vladimir Putin, "Article by Vladimir Putin 'on the Historical Unity of Russians and Ukrainians,'" *President of Russia*, July 12, 2021, http://en.kremlin.ru/events/president/news/66191.

[12] Ibid.

least credibly threatened. Even if it is not exercised in practice, violence is still centrally anchored, specifically in the models discussed but also generally in society. All three types are clearly included in every relationship and can be found in varied proportions in different situations. In our example, the Russia-Ukraine war, it is unfortunately the case that violence is the main instrument to get what one side or the other needs (or thinks it needs).

The interplay of force, power and violence in international relations is often problematic and although there is a relationship between the three terms there is also a great difference between them. This makes it hard to examine these endeavors and relationships. We propose to simply bypass this problem in order to make the big picture investigable, and to this end we propose a German noun for further study. It is a word which contains all three meanings and can lead to better understanding and deeper insight at a higher level. This word is *Gewalt*.[13]

First, we must point out a linguistic peculiarity of the German language which is central to our investigation: In English a distinction is made between *force* and *power*, and between *violence* and *power*. In German the term *Macht* refers to what in English is *power* and the term *Kraft* means *force*, but there is also the term *Gewalt* (mostly negatively used), which corresponds most closely to *violence*, but also refers to the aforementioned terms in its usage. In English a distinction is also made between *violence* and *force*. Whereas in the first case the negative aspect predominates, in the second case the interpretation is more neutral. *Gewalt* also combines these two aspects. It is analogous to the one presented by Walter Benjamin in his *Critique of Violence* (in German: *Kritik der Gewalt*).[14] This also only becomes comprehensible to the English reader with the translator's note.[15] The interaction of all aspects in German – that of power and that of strength – together with

[13] Cf. Paul Ertl, *Gewalt-Herrschaft-Totalität. Eine strukturanalytische Studie zur Globalisierung der Gewalt in der Postmoderne* (PhD diss., Alpe-Adria-University of Klagenfurt, 2010), 24-29, https://netlibrary.aau.at/obvuklhs/download/pdf/2410752?originalFilename=true. Here, and in the following we touch mainly on the results produced by the systematic approach used in this publication.

[14] Walter Benjamin, "Critique of Violence," in *Walter Benjamin – Selected Writings Vol 1 (1913-1926),* eds. Marcus Bullock and Michael W. Jennings (Cambridge and London: Belknap Press, 1996), 236-252.

[15] Regarding *Gewalt*, we primarily focus on the inherent Benjaminian differentiation between *violence* and *force*. Cf. Benjamin, 252. But we go one step further: *Gewalt* can not only mean *violence* or *force*, but also *power* (as shown in the main text). It is the mixture of all these concepts inherent in this noun and the consequences of this inclusion which we would like to highlight here.

violence, becomes clear if we take a look at etymology: the noun *Gewalt* originally comes from Germanic and is a term which denotes actions, processes and social contexts in which or through which people, animals or objects are influenced, changed or harmed. *Gewalt* is rooted in the Middle High German *Walten* meaning exercising, performing a mode of operation, which has 'to be strong' or 'to dominate.' Thus, *Walten* denotes an action, a deed. It is this conceptual root which is present in all *Gewalt*. It is also the basis of the German concept of *Staatsgewalt* (state power), *Gerichtsgewalt* (power of a court of law) and others. In addition, there are also effects which are described in its use as an adjective, for example 'gewaltige Medizin' (powerful medicine), 'gewaltige Wirkung' (huge effect), or 'gewaltiges Schauspiel' (tremendous spectacle) and the like. In German therefore, the term *Gewalt* can denote something negative, something positive, and something neutral. We would like to preface this interpretation of the term *Violence*, which is a central issue for further analysis.[16]

Already in this short description, we can see that *Gewalt* is not bound to the negative connotation of *violence* alone. Also, *power* plays a big role. In this regard, Thomas Hobbes stated that power is the present means to obtain a future good, i.e., the ability to get what one wants.[17] Bertrand Russell's conception of power was very similar, i.e., power means getting what one wants (deriving from man's desire to expand), and that power will not be satisfied unless those wants are satisfied.[18] Hobbes and Russell therefore assume power in one dimension. However, it is necessary to combine several dimensions to assess the phenomenon in practice. Already Max Weber defined power as the technique of a group within a society to determine power and production as well as the distribution of social products, be they of a material or ideal nature, even against the interests of other groups within this society.[19] In addition, he analyzed the social aspects of dominance and discipline, as Michel Foucault did (who had little to say directly on violence *per se*, but covered the topic in almost all his works), who

[16] As described in our (German) interpretation we use the capitalized form for the term *Gewalt – Violence*. Where the English, more differentiated form is needed, cf. the distinction between violence and force, we use the lower case, which is correct in English – *violence*.

[17] Thomas Hobbes, *Leviathan* (London: J. M. Dent, 1914), 43.

[18] Bertrand Russel, *Power: A New Social Analysis* (London: George Allen and Unwin Ltd, 1938), 9; 275.

[19] Max Weber, *Economy and Society. An Outline of Interpretive Sociology*, eds. Guenther Roth and Claus Wittich (Berkeley, CA: California University Press, 1922), 53.

also placed them at the center of his investigations.[20] According to the sociologist Zygmunt Bauman, the social organization of modern societies cannot exist without violence, that is, above all, without force. Thus, a society without *Gewalt* has never occurred in human history and it will not be possible to build a society without it in the future.[21]

Basically, *Gewalt*, like Weberian power, initially presents itself as an unequal distribution of resources or as a factor of influence. It is primarily force, or violence, and shows up as power, which initially belongs to a greater extent to one of two groups (domination vs. oppression). This unequal distribution also results in an asymmetrical, mutual dependence of the different groups on each other within a society. Moreover, it is the actual reason for stratification between individuals or groups within a society as well as the stratification of relations between societies. Because of this dependence, the use of *Gewalt* and its constraining effect also changes or establishes itself again: it is transition, it is change, it is evolution on the level of its foundations. This change refers, initially, to the applied, real violence as exercised by the stronger part. It then shifts to threatened Violence presumed by the weaker part – so to speak, to the suspected, the virtual effect of the original violence. It finally turns into the modified, structurally shifted *Gewalt*, as it is omnipresent, for example, in our set legal order of the constitutional state. The principal capacity for all *Gewalt* thus results from the respective practically and virtually presupposed potentials for change.

The statement about violence which Walter Benjamin placed at the beginning of his *Critique of Violence* is only partly correct when understood as brute force. He says that "a cause, however effective, becomes violent, in the precise sense of the word, only when it enters into moral relations."[22] We assume, as does Benjamin, that *Gewalt*

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[20] For him, domination means obedience to a command among a group of people; and discipline means the prompt, automatic and schematic obedience to a command among this group by virtue of a practiced attitude. Weber, 53. And Foucault discussed it in his late piece (originally an interview with Paul Rabinow in 1982) in very narrowed terms as physical harm to bodies – a part of his biopolitical enterprise. Cf. Michel Foucault, "The Subject and Power," in *Power: The Essential Works of Michel Foucault 1954-1984*, ed. James D. Faubion, trans. Robert Hurley et al., 326-348 (New York: New Press, 2000), 342. In this interview, he distinguished violence and power via its direction. Where the first acts directly on the body, the latter acts indirectly. A strong quantitative differentiation, but from the qualitative point of view and structurally it remains the same – namely *Gewalt*. Perhaps this was not what Foucault had in mind, but it nevertheless appears to be precisely this.

[21] Cf. Zygmunt Bauman, "Alte und neue Gewalt," *Journal für Konflikt- und Gewaltforschung* 2, no. 1 (2000): 28-42.

[22] Benjamin, 236.

only becomes *realiter* effective, and thus more recognizable, when it is applied to social relations. Therefore, violence is also to be sought in the first instance in the realm of means, i.e., in moral instances of legitimation, which can or may be criticized from a moral point of view. According to Benjamin, the primary question is whether the use of *Gewalt* in purpose-oriented systems is just or unjust. Therefore, *Gewalt* is always placed in a scheme of justice. All other Violence is described by him as "primeval," as "crude."[23] The most primeval for him is warlike, whether it expresses itself in a battle or in a general strike. It has a legislative character. It is the original force that makes systems possible in the first place and through which everything else can be justified. Nothing else is the application of this force, it is *Gewalt* in the form of brute violence, in war and warlike conditions.

## IV.

War, or war-like conditions, are a very high, if not the highest, level of escalation of violence in social contexts. An aim should always be achieved, analogous to Clausewitz's famous quote: "War [...] is an act of violence intended to compel our opponent to fulfil our will."[24] He also places the motivation to start a war at the beginning of his considerations. "Two motives lead men to War: instinctive hostility and hostile intention."[25] A little later in his piece he states that: "It is impossible to conceive the passion of hatred of the wildest description, bordering on mere instinct, without combining with it the idea of a hostile intention."[26] In his words, it is the intention – i.e., motives of individual or collective satisfaction of needs; be it basal needs like water, food etc., or secondary needs like political power, economic growth or the like, that lead to war. And war implies force at the highest level of violence.

However, its in-principle application (i.e., both practical and virtual) presupposes that the victors can expect something in return and that the defeated are also willing to endure this oppression. The violence of the victors is thus nothing other than a barter transaction. It is a general instrument to achieve specific goals. But in the case (as we have already often seen in history) that the vanquished are not able to

[23] Ibid., 238.

[24] Carl von Clausewitz, *On War*, eds. and trans. Michael Howard and Peter Paret (Princeton, NJ: Princeton University Press, 1989), 75.

[25] Ibid.

[26] Ibid., 76.

perform the services demanded by the victor, they have to be at his will in the future. This force finds its counterpart in a kind of 'credit,' which can be transformed into executing power by the victor at any time. It functions in the future as a threat to the defeated. This idea about the genesis of violence necessarily depends on an anthropologically oriented idea of (im)balance. Exactly this will-based, needs-oriented intention of two initially different actors can be observed in the Ukraine war: The will of the aggressor must be fulfilled. Although, depending on the explanatory model, his motivation is different, the output is the same.

Let us now take the case, not directly addressed by Benjamin and only partly by Clausewitz, in which the vanquished are unable or unwilling to provide reparation demanded by the victor and refuse to serve him in the future. Ukraine's repulsion of the Russian attack is no different. Ukraine has no exclusive position in this regard. Many, if not most, of the conventional war-like conditions of the past can also be subsumed under it. Here the answer is: more violence. This time, however, a violence that comes from 'below.' A suppressed and desperate violence. This violence can range from passive resistance to terror respectively to the 'gift of one's life,' as Jean Baudrillard so aptly put it for the suicide bomber.[27] In the most striking case, the suicide terrorist, violence clearly shows itself as a technique, as a power-generating means, which can lead from absolute powerlessness to the total expression of *Gewalt* – in this context omnipotence – and thus to the shutdown of any system regardless of its power.[28]

Apart from the strict argumentation following Benjamin, however, *Gewalt* represents one, if not the very possibility of any transition. It is the fulcrum for the application of force, the establishment and exercise of power, and consequently of domination and governance. *Gewalt* is the catalyst of sovereignty.

This modification does not invalidate Benjamin's analysis of Violence, it only dissolves the triad he found between mythical (lawgiving), administrative (law-keeping), and divine (governing) violence, in favor of a dynamic view of *Gewalt* to produce a fundamentally human quality – *Progressus*. It is developed further, ontologically deconstructed, and thus prepared for deeper investigation. The Benjaminian parts

[27] Cf. Jean Baudrillard, *The Spirit of Terrorism and Requiem for the Twin Towers* (New York: Verso, 2002).

[28] The war on terror, understood as a fight against an opponent who is neither visible nor tangible, is an example of this fight against an '-ism.' The most powerful nation in the world has not been able to win it so far. On the contrary, it has only destabilized many regions of the world without providing real exit routes from the spiral of violence.

do not disappear in the process; they are both present and suspended within it. Benjamin is thus not negated; he is only interpreted in such a way as to allow the direct derivability of one Violence into the other, this means *Gewalt*. This derivability is in fact also a pivot of the theory on Violence and *Gewalt* presented here. In addition to the fundamental necessity of the structure of *Gewalt* in man or in all human expressions of life, two manifestations of *Gewalt* can be distinguished, which are mutually dependent, and which are always to be interpreted in relation to the system to which the person or the group belongs.[29]

Crucially, *Gewalt* itself must be understood and judged as a 'technical' phenomenon. It derives from basic human structures and once again establishes other structures in its usage. The interpretation of this *Gewalt* is always the interpretation regarding its effects and is done by society (or the individual as a part of society). We know two of these interpretations: In the first interpretation, *Gewalt* is something negative. This starts with intolerance, moves on to threat mechanisms and sanctions, and ends with the elimination of biological life. In the second, the positive reading of *Gewalt*, it represents the reverse side of the negative interpretation; again starting from the bottom up: as tolerance, permission, promoting the other, up to the gift of one's own life as illustrated in figure 1.

| ***Gewalt* - Interpreted by Society** | |
|---|---|
| - negative - | + positive + |
| **Increase** | |
| Taking of Life | Giving of Life |
| Enforcing Sanctions | Active Help |
| Threat | Favor |
| Intolerance | Tolerance |
| **Decrease** | |

Figure 1: Interpretation of *Gewalt*

[29] Cf. Ertl, 57-63.

The positive side of violence is that of tolerance. We propose, as stated above, a four-stage 'escalation.' First, tolerance itself. It represents the silent acceptance of each other's aspirations and will, or at least their permission. The second level, *Goutation* or favor, is causally connected with the basic agreement with the goals of the other. It is consequently the openly positive movement towards it. The third level of positively interpreted *Gewalt* is (practical) encouragement, i.e., helping to achieve the goal, 'complicity' with a particular action or intended effect that the other one desires. It is active promotion, active help to achieve the goal. Here, for the first time, there is also a practical intervention in a process. Finally, the fourth dimension is the altruistic offering of life, which can also be proactively conceded to the other as a 'gift.' Here think, for example, of a mother's love for her child.[30]

Analogous to the positive dimensions of *Gewalt*, there are also four negative dimensions. Here, too, we see the different levels of its operation, increasing in intensity and quality. The first level is intolerance, which can be described as an inner dismissal of the goals and aspirations of the other. The second level is an active threat to undermine the other's desires and will. However, there is still no real active intervention. After that comes the application of violence, be it brutal (as depicted by Benjamin and Clausewitz) or displaced, suspended in the social structure. As an example of third-level practical violence, *Gewalt*, is already available to society as structurally internalized violence and is also applied, such as in the court system. This is also the beginning of the active part, the intervention in the ongoing or presumed process, which is considered necessary – corresponding with the aforementioned positive third level. Finally, analogous to the (positive) gift, taking away the other's life occurs here. This could occur, for example, in the struggle for life and death, the annihilation of the opponent in ideologized war or, as Giorgio Agamben so aptly put it for the most extreme case of deprivation of life, in the concentration camp.[31]

The classification into positive and negative *Gewalt* is directly understandable and can also be observed in society. The classification into the four different levels of positive and negative is to be understood as a purely technical distinction for the study of *Gewalt*. The different levels may well occur simultaneously, side by side, and in combination within a group or society. However, all these levels of positive and

[30] Ibid., 71-72; 82.

[31] Cf. Giorgio Agamben, *Homo sacer. Die souveräne Macht und das nackte Leben* (Frankfurt am Main: Suhrkamp, 2002), 177-179.

negative *Gewalt* are always present in any social system; most often in reality, but at least potentially. The more differentiated this system is, the more differentiated the entanglement of the individual person in the different levels of social violence.

The threat, manifestation and utilization of violence is thus inherent in all individuals and societies. It is not only fundamentally present but must also be applicable and evolvable if society is to be developed and made permanent. Evidently, human society(-ies) exist; and they exist more or less in perpetuity. It is therefore an ability of the human being in itself. And this principal capacity for *Gewalt* is part of what makes human relationships (political, social, economic, etc.) possible in the first place. So, if it is a matter of applying this (practical and/or virtual) violence in the form of the above-mentioned *Gewalt* and not to perish immediately afterwards, this is only possible under certain preconditions. These preconditions and their application in human society we call *Progressus*.[32]

## V.

History has shown that there are positive and negative impulses in every society. These impulses are what motivates *Progressus*. The more of these positive or negative impulses occur and the more important a certain *Progressus*-purpose appears in comparison to other groups in the same system, the more *Gewalt* is applied within that society. The problem also exists within all parts of society, within groups, and other ensembles. For example, violent intergroup conflict remains one of the most pressing problems of our time. A key factor which triggers and sustains conflict is support for violence against the outgroup. This is equally tied to specific factors which should be contained through psychological, educational, economic, and strategic means.[33] It seems to be especially evident in comparison with other units within a society; e.g., dehumanization enables members of a certain group to 'morally disengage' from another group's suffering, thereby facilitating acts of intergroup aggression such as colonization, slavery and genocide.[34] The same pattern can be seen in our example, the Rus-

[32] Cf. Ertl, 47-52.

[33] Cf. Tamar Saguy and Michal Reifen-Tagar, "The Social Psychological Roots of Violent Intergroup Conflict," *Nature Reviews Psychology* 1 (2022): 577-589.

[34] Cf. Emile Bruneau and Nour Kteily, "The Enemy as Animal: Symmetric Dehumanization during Asymmetric Warfare," *PLoS ONE* 12, no. 7 (2017): e0181422. In this (open access) study the authors examined the question of dehumanization and thus (in our sense) Violence in the context of intergroup warfare between Israelis and Palestinians during the 2014 Gaza war. They observed that all expressed comparable levels of blatant dehumanization, these were

sia-Ukraine war. It only depends on the explanation or interpretation which is invoked to see the results. See, for example, the reaction to NATO and EU expansion as a threat to Russia – as suggested by the defensive explanation. In this example, it probably would have been enough to rattle sabers early enough on the part of the EU and NATO, and Putin would not have invaded. A clear reference to the negative side, level 2. Possibly the positive side in level 3 would have helped additionally. Or the prevention of self-protection by regaining the status of a world empire, as suggested by the ideological-historical explanation. There, total domination and control over the territory is of great importance. Here, presumably, only the same force would have prevented him from doing what he did in 2022, i.e., negative, Stage 4. But we already see at this stage that it is very important to realize which goals are desirable, in which (individual) intensity they are needed, how the comparison with the other actors turns out, and so on. All these elements contribute to both *Progressus* and *Gewalt*.

What can be derived from these considerations is that a society is more prone to violence the more positive or negative *Progressus* goals it pursues within a social system; and the more it is able to make these practically effective against other societies. Also, the more important the goals of a rational nature are perceived to be in comparison to the goals of other societies, the greater the willingness to use and the use of violence within a society. Thus, there are four determinants or variables which determine the direction and intensity of *Progressus*, shown here in figure 2.

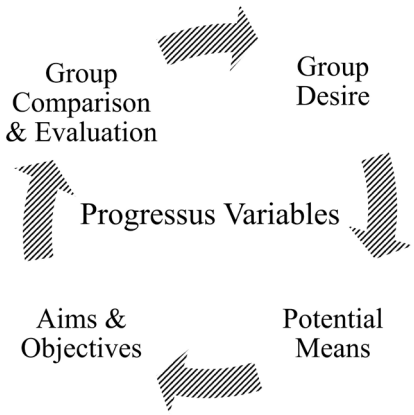


Figure 2: Variables of *Progressus*

uniquely associated with outcomes related to outgroup hostility for both groups in the same way and the strength of association between blatant dehumanization and outcomes was also similar across both groups.

First, the more *Progressus*-bound goals a society/group pursues within a system, the stronger is its violence – in contrast to comparable progressive goals of other societies or groups. That is, there is an original connection between the various transitions as well as changes considered necessary and the degree of violence used. A revolution is not based on a marginal asymmetry. For this, a society needs a large degree of perceived injustice (which brings us back to Benjamin) and, in addition, a perspective that brings a certain form of *Gewalt* to be used.

Moreover, depending on the means of Violence available to the society in question, the nature of *Gewalt* will vary from case to case. The means of a high-tech society, a nuclear state or a constitutional state make different demands than those of an agrarian society, a medieval feudal state or even a virtual state of the future. Here, too, the use and the possibilities of the use of *Gewalt* change. This is thus also the second variable of *Progressus*.

The third variable is the society's aims and objectives. The more important these societal goals appear, the more forcible and violent the interaction of one group with the other is. This is specifically true in comparison to the goals of the other society.

Finally, the more important one's own provided means are presumed to be (or really are) in comparison with the means of other groups, the stronger the gradation of violence. The same is true of one's own resources or those withheld by others to a particularly high degree. That is, in the gradation of Violence, the more important the resources it provides, or the resources withheld by others are valued in comparison with the resources of other groups, the stronger *Progressus* is and therefore also the 'performance' of *Gewalt*.[35]

Thus, the four *Progressus* variables interact continuously and produce effects both in individuals and society, they force them (to some extent) to use *Gewalt*. A group's desire sets the goals, and the potential means of power and violence show them the possibilities of an impact on the desired goals. During and after this process, the group comparison is made, as well as the evaluation of the achieved goals after the event.[36] We have now seen that *Progressus* and violence interact

[35] Cf. Ertl, 63-66; 252-254.

[36] It would be necessary at this point to show how these effects and tendencies are formed, which are affected by the *Progressus*, how they spread in society and through which metabolisms they unfold their effects. Unfortunately, this cannot be described in the necessary detail in this article. Thus, it should serve as a thought-provoking impetus to think and discuss the topic further – to reach greater depth in argumentation and knowledge. For this purpose, we refer to the forthcoming work of the author, which is being prepared in the context of a habilitation at the Eötvös-Lorand University in Budapest.

with each other. *Progressus* uses *Gewalt,* and *Gewalt* (metaphorically) invokes *Progressus*. Therefore, in this interrelation, a matrix is created between these two human fundaments, the *Gewalt-Progressus-Matrix*.

## VI.

The interaction and intervention of the *Gewalt-Progressus-Matrix* with and in social reality can be observed almost everywhere when it comes to the enforcement of individual, social, political, economic, and/or cultural goals. For instance, let us take an example from the five preceding explanatory models and apply it to the *Gewalt-Progressus Matrix*. In the last, ideological-historical explanation, it was said that Russia regards it as a terrible catastrophe to have lost the status of a world empire, and the 'old' Russian Empire – the USSR – feels diminished by its own failures. Russian self-perception corresponds to the first three negative levels (intolerance, threat and enforcement of sanctions) in the field of violence. If we want to change their perception or if we want to get along without violence, then these three negative expressions of violence must be countered by exactly opposite or reversed means. In the second part of the matrix, the area of *Progressus*, we find the Russian attitude in parts 1 and 4 (group desire, group comparison & evaluation). Again, this is analogous to what went before: if peace and harmony are the goals, the variables must be treated against the drive they develop. This may be an institution which is better treated or honored, a better economic network, a higher political standing, or the like. All in all, for the group desire *more inclusion* ('social/psychological treatment'), for the potential means *more efficacy* ('economic treatment'), for the objectives *more knowledge* ('pedagogical treatment'), and for the group comparison and evaluation *more fairness* ('justice treatment') should apply.

Finally, it seems clear but also important to note here that the positive tendencies presented can of course produce opposite effects with the same tools. The tools are now known. It depends on who uses them and with which intention – hopefully for the better of the world.

The logical continuation (and this is unfortunately not possible at this point) lies in the question whether the factors *desire*, *means*, *goal* and *comparison* are independently changeable. Can a group or an individual pursue additional *Progressus*-goals without having to use additional means at the same time? Can they enforce goals to which *Gewalt* should lead without prioritizing them more highly? Can one goal be upgraded over others without having to increase the associated resources? In our opinion, the answer is yes: in the short term, it is certainly

possible. Take, for example, the suicide bombers who, because of an overemphasis on socially imposed *Progressus*-goals, internalize them to such an extent that they themselves are convinced in their reasoning that they will achieve the goal by means of absolute violence. However, this represents only a goal-achievement potential transformed into a brief historical event which can be made only 'semi-permanent' without the mediation of other agents of *Gewalt* such as the media, propaganda, and the like. In the long run, the goals and means must correspond to each other, which can lead via *Progressus* to a well-defined relatively positive status of society, its comparability, and the desire in it. Society without *Progressus,* this is based on force, violence, Violence, and power – therefore *Gewalt* – is imaginable but impossible.

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# Just War Determination through Human Acts Valuation: An Igbo-African Experience

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**Abstract**

*This paper analytically reflects and x-rays the African perspective of just war using human act valuation as the basis of argument. In the wake of time, philosophers, psychologists and ethicists have differentiated between two kinds of actions, namely human action and action of man. Accordingly, man is convinced that he is different from the rest of the animal family; hence he acts at a level which dogs, for example, cannot attain. In any case, man does not always act as a man; his activity is not always stamped by what distinguishes him from other beings, namely rationality. Sometimes, he acts at the level he shares with other living beings; in other words, his activity at this level is ruled by a natural necessity or determined in the sense that doings at this sphere are not called actions, for they are 'instinctive, thoughtless movement, mannerisms, reflex actions, or what is done under the influence of psychic constraints, hypnotic suggestions or demented frenzy etc.' Such actions are rightly called actions of a human being, since their source is that bodily and spiritual individual who is called Peter, Paul, etc., but they are not human actions per se. They do not express the individual being; they do not proceed from him precisely as a human being. The only genuinely human action is the one which a human being performs in virtue of what distinguishes him from other beings. Since this is nothing other than reason, or rather, rationality, human actions are the actions which are performed when he acts as a rational being. Therefore, human acts are those actions of man that have their source in man's rationality or spirituality, understood in terms of human's interiority from which his activities flow. Beyond this, the African has got another sense of human act valuation, which is community-based or community-centered. In line with this, an attempt is made here to demonstrate how just war can be determined through human act valuation using the Igbo-African perspective as a case study.*

**Keywords:** *just war; human acts; valuation; community-based action; Igbo-African*

## I. Introduction

The world we live in today is a world that is seemingly saturated with different kinds of disputes leading to various kinds of conflicts, violence, and wars. Yes, a dispute can result in conflict, violence or war, however, not all disputes lead to violence or war. This work is focused on dispute leading to violence or war and how this violence and wars can be justified in the African perspective using human act valuation as the basis. First and foremost, the concepts of dispute, violence and war are difficult concepts to acknowledge and analyze within philosophical disciplines. However, according to Njoku,[1] as cited in Ezebuiro et al,[2] a dispute can lead to quarrels or heated debates because positions and issues are contested, and people may have different views on the facts of a situation, and disagreements about how it can be managed or handled. So, in disputes, views are challenged and people make claims and counter claims about what the issue is all about. Although the appearance that the ultimate purpose of dispute is to find ways and argue to persuade others to agree with their viewpoints or negotiate their meaning structure, a dispute can degenerate and lead to conflict, violence or war. A conflict is a serious disagreement about something. It is also an argument, a struggle, a fight, a clash. The Cambridge Dictionary says it is "an active disagreement between people with opposition of opinions or principles."[3] The essence of conflict seems to be disagreement, contradiction, or incompatibility; hence, conflict refers to any situation in which there are incompatible goals, cognitions, or emotions within or between individuals or groups that lead to opposition or antagonistic interaction. When conflict occurs, violence or war is also equally likely to occur. The Encyclopedia Britannica defines violence as an act of physical force that causes or is intended to cause harm.[4] According to Luis Cordeiro-Rodrigues,[5] violence is the form of behaviour which involves physical force with

[1] Francis O. C. Njoku, *Philosophy, Communication, Conflict Resolution and Peace* (Abuja: Claretian Publications, 2014), 106-107.

[2] R. Obiora, A. U. Ezebuiro, O. Anichebe, C. Ihesiaba, and N. Nwankwo, "An Ontological Enquiry into the Anatomy of Dispute, Conflict and Violence in Contemporary Africa," *Journal of Religion and Cultural Studies* 9 (2021): 51-62.

[3] *Cambridge Dictionary*, vol. 4, ed. V. Winter (Cambridge: Cambridge University Press, 2004), 260.

[4] *Encyclopedia Britannica*, vol. 7, ed. P. Edward (New York: Macmillan Company and Free Press, 1967), 113.

[5] Luis Cordeiro-Rodrigues, "African Perspective on Just War," *Philosophy Compass* 17, no. 3 (2022): 1-11.

the intention to damage, hurt or kill people or property. The damage inflicted by violence can be physical or emotional, psychological or both. On the other hand, war is an intense armed conflict between states, governments, societies, or paramilitary groups such as mercenaries, insurgents, and militias. It is generally characterized by extreme violence, destruction, and mortality, using regular or irregular military forces. Extreme violence and wars are completely detestable. However, there are occasions where or when they could be allowed. In this paper, attention will be focused on the conditions capable of justifying extreme physical violence or war using an Igbo-African perspective or experience of human act valuation as a case study. Africa is a vast continent of diverse people with diverse cultures, religions, and languages. Incidentally, the Igbo people are one of the ethno-cultural groups in Africa with no expansionist drive. Since this is the case, coupled with the fact that the researcher is also an Igbo with considerable knowledge of Igbo life and thought, this work will draw significant views and positions from the Igbo-African experience. Igbo wars provide illustrations of just wars in accordance with the assumption of this work that such war must aim at the corporate harmony of the group with no expansionist drive. However, a number of references will be made to other ethno-cultural groups in Africa where and when necessary.

## II. Background of study

There is a motivation for this work. The world we live in is a world characterized or seemingly inundated with different kinds of disputes leading to various kinds of conflicts, violence, and wars. It is a world where violence exists in its extreme and highest proportion. It is also a world where wars exist between nations, countries, and states across the globe. Yes, different countries and nations of the world today have experienced, and in some cases, are currently experiencing war. Whether in the East, West, North or South, there were, there have been, and there are still wars going on between nations, groups, or the other bodies. In most cases, one reason or the other is given as the basis for the war. While we cannot deny that violence or wars could be caused or fought for several reasons, an ethical assessment of wars or violent events that do happen is very critical and important at this time. It is important, for example, because in some quarters, it is claimed that many of these wars or violence that once occurred could not have occurred or taken place had A, B or C happened. That means that they could not have taken place in the first place if certain

things had happened or were taken into consideration. Unfortunately, most of these avoidable or preventable wars did take place because some people preferred to listen to the voices of their emotions and passions rather than the voice of reason. Hence, perpetrators of these wars or violence allowed themselves to be consumed by the influence or fire of psychic constraints, hypnotic suggestions, or demented frenzy and so on. Obviously, this sort of revelation indicates that, truly, not all wars are fought with good, right, or just reasons. On this ground, it shows that actually, there is a great difference between just war and unjust war.

## III. Talking about justice and just war

Certainly, just war arguments revolve around or include what is the ethical behavior in a war and what to do following a war. No doubt, the words "justice," "just cause," and "right" are mostly concepts that are contextually driven in the sense that they are usually defined and defended through distinct and different worldviews. Nevertheless, justice is conceived of as right actions desired and cherished in all cultures, even if the grounds through which these actions are held to be right may differ. In this sense, a just war is a war fought for right or just reason. According to Ugwuanyi, "It is a war fought as the only means to claim rights."[6] An unjust war is fought with any reason other than just ones. Perspectives abound and differ on what distinguishes just wars from unjust wars. So far, it is the Western perspectives that have been leading many of the literature on just war. They have been driven by the Western notions of the idea which do not account for alternative conceptions of it.[7] On the other hand, African perspectives, for example, have so far been neglected and in most cases have been considered inferior. The need to chart a new course becomes critical. The present study focuses on addressing the issue through the assessment of human acts valuation. We recall however, that some scholars like Okeja,[8] Metz,[9] Luis

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[6] Lawrence Ogbo Ugwuanyi, "Towards an African Theory of Just War," *Revista de Estudios Africanos* 1 (2020): 53.

[7] Ibid.

[8] Uchenna Okeja, "War by Agreement: A Reflection on the Nature of Just War," *Journal of Military Ethics* 18, no. 3 (2019): 189-203.

[9] Thaddeus Metz, "An African Theory of Just Causes for War," in *Comparative Just War Theory: An Introduction to International Perspectives*, eds. Luis Cordeiro-Rodrigues and Danny Singh, 131-155 (London: Rowman and Littlefield, 2020); Thaddeus Metz, "The Motivation for 'Toward an African Moral Theory,'" *South African Journal of Philosophy* 26, no. 4 (2007): 331-335.

Cordeiro-Rodrigues,[10] and Ugwuanyi[11] have made various philosophical contributions on the issue of just war from an African perspective. However, none of them has sought to consider the problem from the point of view of human act valuation. Their works were philosophical though, as against those of Uzoigwe,[12] Ukpabi,[13] Ajayi,[14] Crowder,[15] and Smaldone[16] who were more of historians than philosophers; having dwelt more on the issues that relate to or derive from war, such as prevention of war, conflict resolution and mediation. Ogot,[17] Ajayi and Smith,[18] and Awe[19] have also done some work in that direction, although they dwelt heavily on the sociological aspects of war in Africa by discussing the nature and type of military organization, the nature of execution of wars, the economy of warfare, the nature of military technology, and the goal of warfare in Africa. Ukpabi, for example, focused specifically on the "types of military organisations," and "effects of the military on traditional societies,"[20] and "the role of women, slaves and mercenaries in traditional armies."[21] All these efforts are commendable. However, they remain insufficient (perhaps with the exception of Okeja), creating gaps that need to be filled. The present study is an attempt in that direction to tackle this same issue from the perspective of human act valuation using the Igbo-African standpoint as a case study.

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[10] Cordeiro-Rodrigues, 23.

[11] Ugwuanyi, 53.

[12] G. N. Uzoigwe, "The Military in Politics in Pre-colonial Africa: A Case Study of the Interlacustrine States of Bunyoro Kitara and Buganda," *Nigerian Defense Academy Journal* 1, no. 2 (1990): 85-102.

[13] Sam C. Ukpabi, *Military Involvement in African Politics: A Historical Background* (New York: Conch Magazine Limited, 1972).

[14] Sam C. Ukpabi, "The Military in Traditional African Society," *African Spectrum* 9, no. 2, (1974): 200-217.

[15] Michael Crowder, ed., *West African Resistance: The Military Response to Colonial Occupation* (London: Hutchinson, 1971), 212.

[16] Joseph P. Smaldone, *Warfare in The Sokoto Caliphate: Historical and Sociological Perspectives* (Cambridge: Cambridge University Press, 1977), 76.

[17] Bethwell A. Ogot, ed., *War and Society in Africa: Ten Studies* (London: Frank Cass, 1972), 119.

[18] J. F. A. Ajayi and R. Smith, *Yoruba Warfare in the Nineteenth Century Ibadan* (Cambridge: Cambridge University Press, 1971), 7.

[19] Bolanle Awe, "Militarism and Economic Development in Nineteenth Century Yoruba," *The Journal of African History* 14, no. 1 (1973): 65-77.

[20] Ukpabi, "The Military in Traditional African Society," 294.

[21] Ibid.

## IV. The Igbo-African experience of conflicts and wars in pre-colonial era

The Igbos are one of the indigenous ethno-cultural groups in Nigeria, West African region. They co-exist alongside other tribes, namely, Yoruba, Hausa-Fulani, Efik, Ijaw, Ibibio, and Ishekiri among others. The Igbo people are located predominantly in the present South-Eastern part of Nigeria, consisting of five States, namely, Abia, Anambra, Enugu, Ebonyi, and Imo. They share border with the Igala and Idoma people to the North, the Ijaw and Ogoni to the South, the Yako and Ibibio to the East and the Bini and Warri to the West.[22] However, there are other indigenous Igbo people in some other States in Nigeria like Delta, Rivers, and Benue, etc. There are claims that some populations of Igbo people are also found in Cameroon, Gabon, and Equatorial Guinea, as migrants. Before the advent of colonial administration, the largest political unit was the village group, a federation of villages averaging 5,000 persons. Members of the group shared a common market and meeting place, a tutelary deity, and ancestral cults that supported a tradition of descent from a common ancestor or group of ancestors. Authority in the village group was vested in a council of lineage heads and influential and wealthy men. In the eastern regions, these groups tended to form larger political units, including centralized kingdoms and states. Village life for the Igbo people is like many other villages in Africa, but still unique in an Igbo way. Igbos live in villages that have anywhere from a few hundred to a few thousand people comprised of numerous extended families. Something very interesting about these villages is that there is no single ruler or king that controls the population. Decisions are made by almost everyone in the village. There are established institutions such as a council of elders (a group based on age), a council of chiefs, women's associations, and secret societies. The Igbos simultaneously emphasize individual actions and community living. Igbo society in the pre-colonial period was not always peaceful. There were moments, as we witness today, when tensions and open physical conflicts ensued.[23] Examination of human affairs has in many cases showed that interactions among human beings are sometimes characterized by intolerance which in turn engenders tensions and conflicts. In other words, as long as human beings exist and inter-

[22] Ferdinand C. Ezekwonna, *African Communitarian Ethic: The Basis for the Moral Conscience and Autonomy of the Individual: Igbo Culture as a Case Study* (New York: Peter Lang, 2005), 24.

[23] Anthony Ekwunife, "African Culture: A Definition," *African Christian Studies* 3, no. 3 (1987): 5-18.

act, conflicts are bound to ensue amongst them. In the pre-colonial period, some of the issues that sparked off conflicts among individuals, communities, and states have remained basically the same as today. These include issues arising from marriages, inheritance, religion, land, boundaries among others. It is important therefore to understand the fact that conflicts, though they may cause division and enmity, would always occur so long as human beings live and interact with one another in a given society. The introduction of fire arms into Igbo land by the Europeans in the nineteenth century engendered a series of communal conflicts and crises.[24] Not much is known about these conflicts, beyond the fact that they usually resulted from issues arising from factors such as murder, land disputes, kidnapping, and so on. Wars between several Owerri village groups in the 1880s were caused by land dispute while the attack of southern Igbo town of Obegu by Aro was associated with debt recovery.[25] Typically, wars between village groups were however, regulated by a number of conventions.[26] Nevertheless, the resolution of a conflict did not have to include a definite victory for one of the parties involved. Judgment among the Igbo usually involved compromise and accommodation. The Igbo insist that a good judgment "cuts into the flesh as well as the bone" of the matter in dispute. This implies a "hostile" compromise in which there is neither victor nor vanquished; a reconciliation to the benefit of – or a loss to – both parties.[27] Various institutions in Igbo land played vital roles in conflicts resolution. These included the council of elders, the *Umuada* institution, the oracle Priest or *Eze Ala* amongst others. Those whose actions caused unrest in the society were severely punished to ensure lasting peace. However, conflict resolution mechanism among the Igbo as in other pre-colonial African societies was not meant only to assuage or pacify the victim(s) but to act as deterrent to all those who may want to commit such crime(s); not only to appease the living but also the ancestors and gods of the land.[28] It has been considered by Oguntomisin that the various communities in pre-colonial Nigeria had varied conventions aimed at mitigating inter-human and intra and inter communal con-

[24] Elizabeth Isichei, *A History of Igbo People* (London: Macmillan, 1976), 109.

[25] Ibid, 78.

[26] Ibid, 80.

[27] Victor C. Uchendu, *The Igbo of Southeast Nigeria* (New York: Holt, Rinehart and Winston, 1965), 14.

[28] R. Brukum, *The Power of Myth* (London: Doubleday, 1998), 39-47.

flicts.[29] These conventions were not without being backed by taboo which must be observed for peaceful regulation of human activities such as co-habitation, relationship between husband and wife, father and children, one community and the other among others. According to him,

> Conflict resolution mechanism was an integral part of pre-colonial Igbo village democracy. The absence of a centralized system of government among the people in pre-colonial period did not mean that the people were in a state of anarchy. As in most pre-colonial African societies, there were bound to be conflicts amongst individuals and communities but there also existed traditional methods by which they were resolved to ensure that peace and order were achieved and maintained in the society.[30]

Pre-colonial Igbo-African societies were reputed to hold secrets of peacemaking and conflict resolution embedded in their customs and traditions before the disruptive activities brought about by colonization.[31] This can be seen in the principle of *Ubuntu*[32] as in East-Central and Southern Africa for example or *Egbe bere Ugo bere* (live and let live)[33] as in Southeastern Nigeria. These are concepts that demonstrate that Igbo-Africans had, over the years, developed and tested varied methods of conflict resolution. This is an all-embracing African interpretation of both negative and positive peace.[34] The concept of *Ubuntu,* for example, was also widely applied in the resolution of conflicts among the peoples of East-Central and Southern Africa. It is also found in varied forms in different communities in other parts of Africa. The term is known to be humanistic and holistic in the conception of peace which states that human beings are one in their relationships with one another. The management of conflicts amongst pre-colonial Igbo as in other African societies according to Beier involved the following six principles:

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[29] G. O. Oguntomisin, *The Processes of Peacekeeping and Peacemaking in Pre-Colonial Nigeria* (Ibadan: John Archers Publishers, 2004), 17.

[30] Francisca A. Ezenwoko and Joseph I. Osagie, "Conflict and Conflict Resolution in Pre-Colonial Igbo Society of Nigeria," *Journal of Studies in Social Sciences* 9, no. 1 (2014): 135-158.

[31] J. B. Akam, *Man: Unique but in Plural* (Enugu: Snaap Press, 1991), 23.

[32] A. E. Afigbo, *An Outline of Igbo History* (Owerri: Tobanshi, 1986), 65.

[33] Anthony Ekwunife, *Consecration in Igbo Traditional Religion* (Enugu: Jet Publishers, 1990), 2.

[34] Francis Arinze, *Sacrifice in Igbo Religion* (Ibadan: University Press, 2008), 26.

> [...] First, the principle of impartiality of the manager of conflict. Rulers in all Nigerian communities were expected to behave impartially in their office [...] Second, the principle of fairness. That is, the poor and weak should receive a fair deal as well as the rich and powerful [...]. Third, the [...] principle of accommodation, compromise and a disposition for reconciliation, as opposed to the principle of "winner takes all" or the "zero sum game" [...]. Fourth, the principle of reciprocity. The spirit of accommodation must be mutual and reciprocal to be effective [...]. Fifth, the principle of moderation and of measured action and response. It was this principle that informed the deliberate limitation of the level of violence in conflicts within Nigerian communities in the past [...]. Sixth, the principle of incompatibility or separation. That is where the parties to a conflict cannot be reconciled, the best policy would be to separate them [...].[35]

All of these were regulated or carried out because of the way and manner the human person was conceived, seen, and acknowledged in pre-colonial Igbo-African time. No doubt, they were different from the western notion or conception of the human person.

## V. Between the Igbo-African and Western conception of the human person

Understanding the perception or conception of the human person in pre-colonial Africa is quite critical and germane in understanding just war determination in African perspective. Between the Igbo-African and the Western perspective or concept or notion of the human person lies a huge ingredient to understanding just war determination in pre-colonial Africa. Yes, there were some obvious measures of differences between the way Africans understood the human person before the arrival of the colonial masters and the way the human person was being conceived, understood, presented, and paraded by the West at the same time. Obviously, these different conceptions, no doubt, have their implications and influences on how a war can be considered or determined as, or seen to be just. For example, according to Chigekwu G. Ogbuene, traditional Africans conceived the human per-

[35] Ulli Beier, ed., *The Origin of Life & Death: African Creation Myths* (London: Heinemann, 1966), 1-8.

son in relation to life (*Ndu*). The term 'person' in Igbo understanding is '*Mma-ndu*' the beauty of life. Man has *Ndu*' and the Igbo believes that *Ndu bu isi* life is of supreme importance.

> *Ndu* is the most precious, holiest and greatest gift of nature. It is the sumum bonum or highest value in nature. Man loves it and loves to have it long and abundantly. *Ndu dika aguu; ona agu onye, ona agu ibe ya* (Every human has an inborn desire to live as he instinctively longs to eat). Axioms of this nature, expressing the importance of life, are very common in the Igbo language. *Ndu*, for instance, is used in salutation. It is identified with the power, breath, sound or word of Chukwu (God). *Ogologo Ndu n'aru isike* (long life and prosperity), like posit or cheers, is something the Igbos say to each other just before drinking an alcoholic drink. In some areas people greet one another with *Anwula or anwuchula*: which literally means, 'do not die early or prematurely; live on and live well." The significant belief in the supremacy of life is reflected also in personal names like *Ndukaku* (life is more important than wealth); *Osonduagwuike* (one is never tired of the struggle for life), *Chinwendu* (life belongs to God) etc.[36]

The obvious lesson of all these names and many others in connection with *Ndu* is to know the mystery of *Ndu* and that life is precious and should not be toiled with. This is behind the Igbo belief in the principle of "*Egbe bere, Ugo bere*": Live and let live, as earlier stated. In fact, it is the foundation of African communitarian ethics, for in the community, each person is his brother's keeper. Community is very important and vital to what transpires in one's life. Without the community there is no individual and without the individual, there is no community.[37]

> People are more intimately bound by common ends. They fraternally share a sense of belonging, solidarity, an awareness of dependence and personal identification which prompts the individual to claim the particular community as his own and as the place where he belongs. This awareness makes the bond that unifies all the members even stronger.[38]

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[36] Chigekwu G. Ogbuene, *The Concept of Man in Igbo Myths* (New York: Peter Lang, 1999), 97-98.

[37] Ezekwonna, 21.

[38] Margaret M. Green, *Igbo Village Affairs* (London: Routledge, 1964), 27.

Any action capable of destroying an individual's life and in turn the unity of the community is totally forbidden. Hence, a typical African sees himself or herself as under an oath to be his or her brother's keeper. It is from this direction that Menkiti conceived personhood in Igbo-African perspective as entailing a maximal definition abrogating to the community the right to affirm personhood.[39] This is what is known as Menkiti's 'ontological primacy' of the community. In Bantu philosophy, Tempels also acknowledged personhood according to the relational interaction extending to the spirit world.

> Bantu holds that created beings preserve a bond with one another, an intimate ontological relationship, comparable to the causal tie which binds creature and creator. For the Bantu there is interaction of being with being, that is to say, of force with force. Transcending the mechanical, chemical and psychological interactions, they see a relationship of forces which we should call ontological.[40]

In *African Religions and Philosophy,* Mbiti accepted Tempels' view but added the performance of 'worthy social obligation/rites.'[41] And in *The Image of Man in Africa,* Dzobo described the conditions under which one attains personhood to include achievement of creative personality, a productive life and the capacity to have and maintain a productive relationship with others.[42] Generally, what is common with these perspectives is the fact that the individual's self is inseparable from the '*telos*' of the community in which he lives. They viewed selfhood from the relational perspective. In other words, without the community, the individual lacked personhood; for they conceived the self as a group affair. Thus, an individual African person is a person to the extent that he is a member of a family, clan, or community. This is where the conception of the human person in African perspective differs and does not agree with the Western view notably represent-

[39] J. Menkiti, "Person and Community in African Metaphysics," in *African Philosophy: An Introduction*, ed. Richard A. Wright (New York: University of America Press, 1984), 74.

[40] Placide Tempels, *Bantu Philosophy* (Portland, OR: HBC Publishing, 1959), 100.

[41] John S. Mbiti, *African Religions and Philosophy* (Oxford: Heinemann, 1997), 106-107.

[42] N. K. Dzobo, "The Image of Man in Africa," in *Person and Community: Ghanaian Philosophical Studies*, eds. Kwasi Wiredu and Kwame Gyekye, 123-135 (Washington, D.C.: The Council for Research in Values and Philosophy, 1992): 131-132.

ed here by Immanuel Kant's categorical imperative[43] and Rene Descartes' *cogito ergo sum.*[44] For example, originally, the Greek had no explicit conception of the human being as a person. Ancient culture revolved around the 'cosmos' or nature and saw the human being in relation to that.[45] It was only in the middle ages that the human being came into play as part of the order established by God. Okere believes that the self, in the Western perspective, remained, in a way, only an abstraction. For him, the individual is never a pure isolated individual.[46] But on the contrary, the modern mind separated the human being from such support from his community and set it out on its own, but predominantly as 'subject' or reason. This was not without price as this reason became perceived as the transcendental subject as in Rene Descartes. In the process, the real human being was lost in favour of abstract 'subject' and abstract reason. Thus, Descartes conceived of the human being in terms of an *ego cogitans* or 'thinking self,' an active spiritual agent in contrast to mere extended matter or *res extensa*. Descartes moved the discourse of selfhood away from the divine to the concrete subject, thereby identifying the self with the mind. Thus, in its liberty, the human being is like God, and because, for Descartes, freedom is power; hence, God endows the human person with the power of liberty. By this, the human person was objectified. The individual thinking substance is the one that feels, doubts, understands, affirms, denies, wills, unwills, imagines, and has sense of perception.[47] Following Descartes was Kant who also saw the human being at its peak as the moral assertion of autonomy. As moral agent, the human being lives in a world of freedom, as an end and not as a means. In other words, the term 'person' is a word that designates ends in themselves. Thus, the worth of a human being is not dependent on the assessment of others but on the individual's rational nature. Therefore, Kant associated the individual with both reason and autonomy and moral status.[48] The implication of these

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[43] Ernst Cassirer, ed., *Immanuel Kant's Werke*, Band IV (Berlin: Bruno Cassirer, 1922), 287.

[44] René Descartes, *Meditationen: Uber die Grundlagen der Philosophie,* ed. Lüder Gäbe (Hamburg: Felix Meiner, 1960), 23.

[45] Izu Marcel Onyeocha, "The Christian Concept of the Dignity of the Human Person," *West African Journal of Ecclesial Studies* 5 (1993): 72-73.

[46] Theophilus Okere, "The Structure of the Self in Igbo Thought," in *Identity and Change: Nigerian Philosophical Studies I*, ed. Theophilus Okere (Indianapolis, IN: Cardinal Station, 1996), 159.

[47] René Descartes, *A Discourse on Method, Meditations on the First Philosophy, Principles of Philosophy,* trans. John Veitch (London: J. M. Dent & Sons, 1912) 3-4.

[48] Immanuel Kant, *Groundwork for the Metaphysics of Morals*, ed. and trans. Mary Gregor (New

lines of conceptions is manifestly demonstrated in the way just war is being determined in African perspective.

## VI. Implications of the duo conceptions on just war determination

There are so many implications to be drawn from both perspectives about the human person in relation to just war. It is obvious one might think there is not much difference between the African and western notions since both conceptions talk about the good or preservation of life of the individual; hence the need for just war instead of unjust war. But there are a whole lot of differences.

In the western notion, for example, Ugwuanyi highlights some conditions that regulate the western determination of war as just. For example, the state must approve of it. Citing Austin Fagothey, he writes:

> The state, since it is a natural society, has from the natural law, the right to use the "means necessary for its preservation and proper functioning." But conditions may be such that the only means by which a state can preserve itself in being, and can protect or recover its lawful right, is by war. Therefore, under such conditions, the state has from the natural law the right to wage war.[49]

The second condition is that the mandate to declare war must come from a lawful authority. It must be for a just cause, with the right intention and right means. This is the view of Thomas Aquinas,[50] which Ugwuanyi also cited.[51] Just cause means that the war must be a justified one. That is to say, it should be to promote the goal of the state and the good of the citizens whose wellbeing might be in danger without a war. But a legitimate authority should not just declare war and be indifferent to the prosecution of the war. It should also supervise the war. The legitimate authority also has the duty to terminate the war when the situation demands that the war should be brought to a halt. Right intention refers to just cause. It is about having pure and proper intention. The view here is that if a war is waged for an un-

York: Cambridge University Press, 1997), 37; 42-43.

[49] Ugwuanyi, 54.

[50] Thomas Aquinas, *Summa Theologica,* trans. Fathers of the English Dominican Province (New York: Benziger Brothers, 1947), 1223.

[51] Ugwuanyi, 54.

just cause, the intention cannot be a right one. Only a war declared by the right intention (defined as one that is driven by the intention to realize a social, moral or political good that cannot be realized otherwise) should be permitted. Ordinarily, intention is held to be right when the outcome of the good that is meant to be realized through it can be held to be good. It is this notion of intention that is applied in this instance. This means that wars declared to revenge personal harm, or some selfish reasons are not just wars. Just as wars fought for power are not just wars. The final condition for a war to be considered just is if the war is declared using the right means. Right means refers to the means of fighting the war. This must be proportionate to the reason for declaring the war. It includes weapons applied and the manner the weapons are used. For example, if a gun is applied to execute war but instead of applying the gun on the combatant it is rather applied to kidnap and torture children of the combatants, then the gun is a wrong means. The above represents the implications that can be drawn from the western view of the notion of human person as it relates to declaring a war as just. But beyond these western implications are African implications. In determining just war according to African tradition, more attention is given to acts capable of enthroning and safeguarding the communitarian ethics of African culture. In this regard, wars are not just entered into simply because they emanated from a legitimate authority. Instead, it is looked at from the point of view of the community orientation. The community is the determining force or reason to go to war. It is called community-oriented war. That is to say, that it is the community standard that regulates war. African communitarian ethics does not permit one to go into war as the first option in resolving a conflict. Measures are taken to ensure that negotiation, mediation, and arbitration have been made to avert war. Situations where it becomes expedient to go to war, proportional means and end are recommended. This understanding gives credence to the fact that war is not meant to annihilate the other party; hence, efforts are made to ensure that the use of weapons is proportionate to the war. On no account are sophisticated weapons allowed. In traditional African societies, war was not one of battles and head-on attacks but what Ajanyi and Smith (cited in Ukabi[52]) call "ambushes, skirmishes and feints."[53] In line with the fact that war is not for total annihilation of the opponent, participatory pain is allowed. There were often less

[52] Ukpabi, "The Military in Traditional African Society," 215.

[53] Ugwuanyi, 54.

causalities as those who caused heavy casualties were compelled to donate people to the losing side.[54] This confirms the fact that African believes that the essence of war is to prevent an unjust treatment of one group by the other party to a level of recognizing the right of the other group to exist and to be respected as a separate entity. War is not fought in a manner that makes it possible to annihilate the other but with recognition that the other is a community of human beings whose losses also amount to negative feeling for the opponent. Thus, African communitarian ethics prides itself on maintaining harmony across all borders.

> Hence the overall goal of war is to bring the other party to a level of recognizing the rights of the other group to exist and to be respected as a separate entity. For this reason, war is not fought in a manner that makes it possible to annihilate the other but with recognition that the other is a community of human beings whose loses also amounts to negative feelings for the opponent.[55]

Ethics of harmony recognizes that actions capable of destroying the principle of harmony in a community are avoided. Actions that promote physical and metaphysical equilibrium where humans and the "living dead" operate harmoniously in an atmosphere of peace are allowed. African societies believe that a certain measure of moral and spiritual order is necessary for the functioning of the human community. This order enables all forces and agents to play their role and safeguard any one of their own. For this reason, war, if necessary, could be employed to achieve this order. But in executing the war, there would be no need to do more harm than is necessary, since this may often lead to another process of restoration. The ethics of harmony ensures that wars are fought not for defeat, but to achieve a higher moral gain of reconciliation and reunion. And such an act of reconciliation is often held to be social, moral and ontological. Morality in this context is an intimate relationship with the ontological order of the universe. Hence any action capable of infraction of this order is a contradiction in life itself and brings about a physical disorder, which reveals a fault.[56] The desire to protect or restore this ontological order is what leads to just war. Beyond restoring physical

[54] Ibid., 62.

[55] Cordeiro-Rodrigues, 122.

[56] Ibid.

and ontological order/harmony is the quest for the preservation of cultural heritage. The fight against any form of subjugation where individual persons achieve their independence and power to rule themselves amounts to community-oriented actions. Cordeiro-Rodrigues contends that violence can be morally justified in order to protect African people's cultural heritage.[57] Culture, he says, has a significant role in liberation. Thus, actions that are valued as just are actions that are geared towards community and cultural liberation. Africans suffered so much in the hands of their colonial lords. Therefore, any action that engages violence in order to emancipate Africans from the inferiority complex inculcated during colonial rule is justified. Societal consciousness of its inferiority complex leads them to war. War is a community event; hence it is declared by the community. Community engages in dialogue within itself leading to an agreement that does not alienate anyone and involves all the parties in the decision. That means that it suffices that parties are able to feel that adequate account has been taken of their points of view in any proposed scheme of future action or coexistence. Pantaleon Iroegbu similarly contends that "the purpose of our life is community-service and community-belongingness."[58] Summarizing the reasons why Africans believe that social harmony is to be praised, and that it is the greatest good of all, and to act in ways that accord with the greatest good of social harmony necessarily entails that one's actions exhibit both identification and solidarity, Cordeiro-Rodrigues lists the following conditions, namely:

> First, that one conceives of oneself as part of a group; that the group considers that individual a member and members also see him or her as a member of the group; that individuals who see themselves as members of the same group share common goals, and that members of the group coordinate their actions in ways that achieve share common ends.[59]

So, to act in accordance with solidarity means to invest one's emotions and behaviour in others. To exhibit solidarity, one ought to act

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[57] Ibid.

[58] Pantaleon Iroegbu, "Beginning, Purpose, and End of Life," in *Kpim of Morality Ethics*, eds. P. Iroegbu and A. Echekwube, 440-445 (Ibadan: Heinemann Educational Books, 2005), 442.

[59] Luis Cordeiro-Rodrigues, "African Views on Just War in Mandela and Cabral," *Journal of Speculative Philosophy* 32, no. 4 (2018): 657-673.

and feel in ways that prioritize caring about others. This combination of solidarity and identification is what is called social harmony and friendship in the Western world. But taking this on board, an action is right just insofar as it is a way of living harmoniously or prizing communal relationships. It is one in which people identify with each other and exhibit solidarity with one another; otherwise, an action is wrong.[60] Just war is one which the Igbo call "*Ogu eji ofo anu*" (i.e., a fight grounded on truth and justice). However, "*Ogu eji ofo anu bukwa ogo mmeri*" (i.e., a fight grounded on truth and justice is one that wins). *Ofo* is a sacred symbol of justice in Igbo thought. To fight with *Ofo* symbolically means to have all the relevant values, such as truth and justice that would enable the *Ofo* function to one's favour.

## VII. Conclusion

The primary intention and objective of this work has been to demonstrate how possible it would be to provide, from the Igbo-African perspectives, alternative conditions upon which a war can be considered or determined as just. This, the paper achieved by putting certain factors into consideration. The work critically looked at the Igbo people of Nigeria as they constitute an indigenous people and represent a part of the African people whose thoughts are generally being referred to in this discussion. Furthermore, the work examined the two notions of perspectives of the human person (the Western and African) and from there moved to determining how each of the notions leads to the determination of just war in Africa. Observations were made of the different implications each of the notions paved to the determination of just war. At the end, the work concludes that assessing war through human act valuation from African perspective is the best alternative the world can have to mitigate the enormous conflicts and wars that have ravaged and confronted the entire humanity. African perspective of just war determination, as being canvassed here, is hinged on the general values of African communitarian ethics that consider both the act and the actor himself and how the act of the actor aligns – or not – with the general communitarian ethics and values of the people. The pre-colonial Igbo societies had well defined social political institutions that helped to facilitate conflict resolution. This basic political organization existed

[60] Thaddeus Metz, "Final Ends of Higher Education in Light of an African Moral Theory," *Journal of Philosophy of Education* 43, no. 2 (2009): 179-201; Thaddeus Metz, "African and Western Moral Theories in a Bioethical Context," *Developing World Bioethics* 10, no. 1 (2010): 49-58.

throughout pre-colonial Igbo societies. Elizabeth Isichei describes it as village democracy – a system of government that gave everyone – old and young – certain roles to play in society.[61] The mechanisms for this conflict resolution in pre-colonial Igbo society were embedded in the tradition and culture of the people. Hence, conflicts and disputes were resolved mainly by mediation. This is the conclusion this work can arrive at the moment.

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[61] Isichei, 109.

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# Just War contra Drone Warfare

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**Abstract**

*In this article, I present a two-pronged argument for the immorality of contemporary, asymmetric drone warfare, based on my new interpretations of the just war principles of "proportionality" and "moral equivalence of combatants" (MEC). The justification for these new interpretations is that drone warfare continues to this day, having survived despite arguments against it that are based on traditional interpretations of just war theory (including one from Michael Walzer). On the basis of my argument, I echo Harry Van der Linden's call for "an international treaty banning all weaponized UAV [uninhabited aerial vehicles]."*

**Keywords:** *just war theory; drones; proportionality principle; moral equivalence of combatants; Michael Walzer; Harry Van der Linden; Ronald Dworkin*

In this article, I present a two-pronged argument for the immorality of contemporary, asymmetric drone warfare, based on my new interpretations of the just war principles of "proportionality" and "moral equivalence of combatants" (MEC).[1] The justification for these new interpretations is that drone warfare continues to this day, having survived despite arguments against it that are based on traditional interpretations of just war theory (including one from Michael Walzer, to which I return below). On the basis of my argument, I echo Harry Van der Linden's call

[1] More specifically, I am concerned here with the two most commonly used drones in the so-called "War on Terror," namely the General Atomics MQ-1 Predator and the General Atomics MQ-9 Reaper, the payload of which vehicles are called "Hellfire" and "Scorpion" missiles.

for "an international treaty banning all weaponized UAV [uninhabited aerial vehicles]."[2] My first section offers a summary of the argument. The second elaborates and clarifies it. The third and fourth sections offer additional arguments in support of Premise 1 and Premise 2, on proportionality and MEC, respectively. My primary source for the articulation of these two key aspects of just war theory is Michael Walzer's classic text, *Just and Unjust Wars*.[3] My penultimate section anticipates the dominant objection to this argument, namely that my interpretations of proportionality and MEC are so unorthodox that they sever any meaningful connection with the orthodox versions thereof. To explain and defend this creativity, I draw on Ronald Dworkin's influential conception of interpretation in general (and specifically in ethics, morality and politics) in his final opus, *Justice for Hedgehogs*.[4] And my concluding section offers a brief recapitulation.

The official emblem of the Reaper drone

Before getting into the details, though, a brief word about the secondary literature on drones, which has mushroomed in recent years. The two sides of the debate are well-established. The first, exemplified by Bradley Strawser, goes so far as to argue for a positive moral duty for states to use drones (as opposed to conventional tactics and weapons). Though Strawser briefly mentions the proportionality principle, in connection to drones' allegedly precise killing, his emphasis is squarely on the lower risk to U.S. combatants.[5] The opposing side consists of attacks

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[2] See Harry van der Linden, "Arguments against Drone Warfare with a Focus on the Immorality of Remote Control Killing and 'Deadly Surveillance,'" *Radical Philosophy Review* 19, no. 2 (2016): 331-358; Harry van der Linden, "Drone Warfare and Just War Theory," in *Drones and Targeted Killing: Legal, Moral, and Geopolitical Issues*, ed. Marjorie Cohn, 169-194 (Northampton, MA: Olive Branch Press, 2015).

[3] Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic Books, 2015). The text is now in its fifth edition, which features a new preface on contemporary asymmetric warfare, which I will consider below.

[4] Ronald Dworkin, *Justice for Hedgehogs* (Cambridge, MA: Belknap Press, 2013).

[5] Bradley Jay Strawser, "Moral Predators: The Duty to Employ Uninhabited Aerial Vehicles," *Journal of Military Ethics* 9, no. 4 (2010): 342-368. See, for example, Jeff McMahan, "Targeted Killing: Murder, Combat or Law Enforcement?" in *Targeted Killing: Law and Morality in an Asymmetrical World*, eds. Claire Finkelstein, Jens David Ohlin, and Andrew Altman, 135-155 (Oxford: Oxford University Press, 2012); Todd Burkhardt, "Justified Drone Strikes are Predicated on R2P Norms," *International Journal of Applied Philosophy* 29, no. 2 (2016): 167-176; Mark Coeckelbergh, "Drones, Information Technology, and Distance: Mapping the Moral Epistemology of Remote Fighting," *Ethics and Information Technology* 15, no. 2 (2013): 87-98.

on this position from both centrist and leftist perspectives. The centrist attacks, exemplified by Jai Galliott, argue (in the footsteps of Walzer) that drone warfare violates the proportionality principle properly understood, and conclude that drones should be more heavily regulated, cut back, eliminated, and/or made illegal through international law.[6] The leftist theorists insist that the deeper and more important unethical aspect of drones is that they are symptomatic of our current world order of perpetual war, violence, surveillance, and control.[7] I understand my argument to offer support to both approaches. To the centrists, I offer an additional argument against drones satisfying the proportionality principle (given, to repeat, the failure of existing arguments to persuade those in power to abandon drone warfare). And to the leftists, I offer a new argument that drones are wrong at a no less than ontological level.

## I. Initial formulation

1. Since drone warfare's "means" include drone combatants killing human combatants, then if its "ends" are to be proportional, those ends must include a world in which drones are of equal value to humans; but this is not the desired end.
2. If warfare between the drone and human combatants were just, then the drones would have to be equivalent in moral status to the humans; but this is not the case. Therefore,
3. Contemporary asymmetric drone warfare is unjust according to two distinct moral perspectives (deontological and utilitarian), and as such stands in violation of international law (as represented, for example, in the Preamble to the Charter of the United Nations).

## II. Elaboration and clarification

Beginning with Premise 1, though it explicitly references the principle of proportionality, it could also be understood as involving the following question: what is the ontological makeup of a political state that is engaged in warfare? That is, does a state consist exclusively of its people, and does the warring subset/aspect of the state thus consist exclusively

[6] Jai C. Galliott, "Closing with Completeness: The Asymmetric Drone Warfare Debate," *Journal of Military Ethics* 11, no. 4 (2012): 353-356. See, for example, Megan Braun and Daniel R. Brunstetter, "Rethinking the Criterion for Assessing CIA-Targeted Killings: Drones, Proportionality, and *Jus ad Vim*," *Journal of Military Ethics* 12, no. 4 (2013): 304-324.

[7] See for example, Derek Gregory, "Drone Geographies," *Radical Philosophy* 183 (2014): 7-19; Grégoire Chamayou, *A Theory of the Drone* (Paris: The New Press, 2013).

of its soldiers? Or does the warring component of a state also include other entities, some of which belong to other (nonhuman) ontological categories? These could include, for example, weapons and equipment, the civilian citizens and residents, or the multiple dimensions of the domestic and global economy that are funding a state's war effort. More particularly, are drones properly understood as entities, members of the war effort for a given nation? If not, then can drones be used as spatially independent combatants in war? By "spatially independent," I refer to the fact that a drone occupies a battlefield, without a human "pilot," but in the presence of enemy human combatants and civilians.

Putting the previous point differently, can drones be meaningfully understood as fighting for "their" state's future, if a state does not "belong" to them in the first place? My claim is that for the use of drone combatants to be just, drones would have to be a part of, and have a stake in, their state. They do not, but their crews do, including what are termed drone "pilots." But the drone pilots are half a world away, and do not risk their physical well-being. While the drones, who are there on the battlefield, are unable to experience threats to their physical well-being as risk. This leaves only the enemy human combatants and civilians who are even capable of risking their physical well-being, and of experiencing that risk as risk. And this, arguably, is the fundamental reason why we do not currently regard humans and drones as of equal value, because neither humans nor drones experience drones as centers/sources/subjects of value (though we do experience them as *objects* of value). This is also the reason why, for thinkers like Jeremy Bentham and J. S. Mill, each sentient being "counts once" in the felicific calculus, while non-sentient entities do not count at all.

It might be helpful, before turning to Premise 2, to address two likely objections. First, my argument does not center on the fact that drones are merely on the battlefield, in which case it would also seem to apply to various other objects, including houses, roads, and rivers. What makes drones relevantly different from the latter, and thus the focus of my argument, is that they are both mobile (locomotive) and possess deployable weaponry. Second, I am not suggesting that the proportionality principle treats harm to property insofar as that property is of equal value to humans (and I recognize that it treats harm to property insofar as it affects humans). Instead, from the fact that drone warfare treats the drone operators' lives as sacrosanct while killing maximally vulnerable enemy combatants and civilians, I infer that, if they were following the proportionality principle, then they would have to bite the bullet and admit that they view the enemies as equal

in value to, at most, the drones, while certainly lower in value than the drone operators.

As for Premise 2, it turns on the principle of MEC, and is thus deontological (where Premise 1 is utilitarian, via the principle of proportionality). As MEC is less well-known and more complex than proportionality, it might help to summarize MEC's orthodox meaning before elaborating on my reinterpretation of it. Essentially, MEC is understood to mean that moral fault cannot be attributed to soldiers who are fighting on (what is determined to be) an unjust side of a war. For an example of this interpretation of MEC, one should not judge U.S. soldiers to be immoral for killing Vietnamese soldiers in the Vietnam war, even though the U.S. was as a nation engaged in an unjust war.

Though this is the surface or standard meaning of MEC, I am claiming in Premise 2 that the phrase "moral equivalence of combatants" commits one who affirms that phrase to something more. And this something more is more interesting, and powerful: a state wars unjustly (*jus in bello*) when it deploys combatants who are not morally equivalent to an opposing state's human combatants. In the case of drone warfare, the moral inequality of drone and human combatants is based on an ontological inequality. Put in Kantian terms, humans are free, moral legislators possessed of reason, while drones possess none of these powers.

To clarify this claim, consider a more intuitive, non-drone example, keeping in mind that, for just war theory, if state A fields human combatants intentionally or recklessly against non-combatant humans from state B, then A is engaged in an unjust war with B. Consider a hypothetical deployment by A of professional soldiers against a force from B consisting exclusively of farmers, specifically because B has no professional soldiers. This would also constitute unjust warfare on A's part because B's lack of military resources means that it does not pose a threat to the "political independence" or "territorial integrity" of A (these two phenomena, according to Walzer, being the two central rights of "political communities").[8]

That is, a state with the capacity to field drones cannot be under the kind of threat, as defined in terms of its political independence or territorial integrity, from another state which can only field human combatants in response to the drones. To shift to a drone example, if a state (such as the U.S.) is willing and able to use drones to kill humans from another state (and infamously, in the U.S. case, its own citizens

[8] Walzer, 53.

as well), then the resulting moral inequality of combatants (i.e., drones and humans) entails that the U.S. is engaged in an unjust war.

There are also likely objections to Premise 2. First, one might think that the argument against drones is based on the fact that they are weapons and would thus apply to all weapons on the battlefield, making the entire argument a *reductio ad absurdum* (since, that is, all wars use weapons and would all violate the proportionality principle, making just war an oxymoron). On the contrary, I wish to challenge the assumption that drones are mere weapons, on the grounds that weapons are not typically capable of moving themselves across the battlefield indefinitely, nor are weapons typically capable of being equipped with other weapons. A closer analogue than weapons would be a weaponized vehicle, such as a tank or a bomber, the obvious difference being that the latter are manned vehicles.

To name a second objection to Premise 2, it might be thought that I have simply misunderstood the MEC principle, specifically by thinking that it applies to combatants on both sides, who acquire the right to kill each other by equally giving up their right not to be killed. In the words of one early reviewer of this article, "Drones and other weapons do not have a right to life and there is no need to explain their 'right to kill.'" Instead, my point is that a human combatant cannot be said to meaningfully give up their right to be killed by a combatant such as a drone, which – and the word "which," as opposed to "who," is crucial here – cannot be killed, and thus cannot equally give up the right not to be killed. Put more positively, if forced to defend drone warfare using MEC, they would have to admit that they assume that drones are ontologically equal, having something as precious to lose as do the enemy human combatants and civilians who face the drones.

To consider a final objection to Premise 2, it might be thought that I am treating drones as if they are fully autonomous, making decisions independent of their operators. On the contrary, my objection is that, though there is never a direct encounter between the autonomous agents of both sides (operators and enemy combatants and civilians), theorists nevertheless deploy MEC as if there were. Put starkly, what happens between drones/operators and combatants/civilians is arguably not even war, let alone just war. It is execution, or extermination, to which rhetoric I will return in detail below.

As for the conclusion of my argument, it draws on the phrase (from the Preamble to the U.N. Charter) forbidding violations of "conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained."[9]

[9] United Nations, "Preamble," in *The Charter of the United Nations and Statute of the Interna-*

The background assumption here, based on a long history of consensus of political philosophers, is that justice consists of a network of relationships, obtaining among sentient beings endowed with self-consciousness. Usually, the latter category is restricted to humans, though sometimes superhuman entities are included (such as angels, a Supreme Being, and extraterrestrial aliens, as for example in Kant). But it has never yet involved a non-sentient entity, such as a drone.

But if a drone can participate as a lethal combatant in warfare, then, contrary to the history of theories of justice, it is not clear whether justice remains the exclusive provenance of the sentient. And even if most people have the intuition that the latter point is at least somewhat clear, there is certainly not sufficient clarity to prevent the undermining of the Preamble's imperative (namely, the imperative to not undermine the conditions for the "sources of international law"). Thus, drone warfare also constitutes, along with its immorality, a violation of international law. This should be recognized in the form of a new, explicit, positive law against drone killing in international law.

## III. Supporting arguments for Premise 1

As a reminder, Premise 1 is as follows:

> 1. Since drone warfare's "means" include drone combatants killing human combatants, then if its "ends" are to be proportional, those ends must include a world in which drones are of equal value to humans; but this is not the desired end.

The basis of Premise 1, as I noted above, is the utilitarian principle of proportionality, first articulated by the philosopher Henry Sidgwick. Walzer paraphrases Sidgwick's original conception (quoting him in the process) as follows:

> In the conduct of hostilities, it is not permissible to do "any mischief of which the conduciveness to the end [of victory] is slight in comparison with the amount of the mischief."[10]

Put differently, the point of proportionality for Sidgwick is that one cannot commit senseless acts of violence, where "senseless" appears

*tional Court of Justice* (San Francisco, CA: 1945).

[10] Ibid., 128-129.

to mean something like "does not directly and efficiently target the goal of ultimate victory."

Given this initial interpretation of "proportionality," contemporary asymmetric drone warfare appears, to many theorists today, not only unproblematic, but even asymptotically approaching that principle's ideal.[11] That is, drone warfare's proponents claim that drones focus violence on small, essential targets, and thus reduce the total amount of violence, as well as the ratio of senseless violence to total violence. Put more simply, drones are presented by their apologists as allegedly facilitating the quick and efficient destruction of enemy targets with minimal so-called "collateral damage" to civilians.

As Walzer points out, however, in his only reference to drones (in the "Preface to the Fifth Edition" of *Just and Unjust War*):

> But successful air attacks, aimed at legitimate targets, depend heavily on information from the ground, and the collection of information is a dangerous business. Too often, attacks have been launched without sufficient knowledge about the targets or with knowledge provided by unreliable informants, who are often pursuing private vendettas.[12]

In other words, although the drone, when attacking, is an independent combatant that does not risk any allied human combatants, this tends to obscure the fact that the preparation for an attack that is both successful and just does risk (a) human allies collecting intelligence on the target, and thereby also (b) enemy non-combatants when that intelligence is inadequate.

Buttressing Walzer's critique is that of Grégoire Chamayou, in his book *A Theory of the Drone*.[13] For Chamayou, drone proponents' "precision" arguments implicitly rely on what he argues is a weak analogy between drones and mass bombing technology. A better analogy, Chamayou claims, is that between drones and other precision killing tactics, regardless of whether the latter are machines or not. In other words, Chamayou's alternative analogy is based not on form (in this case, flying death machines), but instead on function (precision killing). "There is a crucial difference," Chamayou writes, "between hitting the

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[11] I add "asymmetric" here because if both states were using drones, or even if both states could economically afford to deploy drones – in a drone-versus-drone theater of war – my criticism would no longer be relevant.

[12] Walzer, xxi.

[13] Chamayou.

target and hitting only the target."[14] More specifically, he notes that the Predator's Hellfire missiles have an estimated "kill radius" (or "kill zone") of 15 meters, and a "wound radius" of 20 meters. By contrast, a grenade has a much more precise kill zone of only 3 meters, making them 500% more precise. But grenades are more dangerous for U.S. combatants, which for Chamayou is the reason why drone proponents miss this analogy.[15]

Returning to Walzer, as for Chamayou, this problem with drones (and other air attacks in contemporary asymmetric warfare) is symptomatic of a deeper problem with the principle of proportionality. To wit, far too much morally horrendous violence can be – and has been – justified merely by exaggerating (a) the contribution of that act of violence to victory, and (b) the necessity of victory to some transcendent goal. One example of (b) is H. G. Wells' infamous description of WWI as "the war to end all wars," which now rings hollow in light of the war's staggering 17 million combatant and civilian deaths. "Any act of force," in Walzer's words,

> that contributes in a significant way to winning the war is likely to be called permissible; any officer who asserts the "conduciveness" of the attack he is planning is likely to have his way.[16]

Paraphrasing Yehuda Melzer, Walzer affirms that "there is an overwhelming tendency in wartime to adjust ends to means," instead of the other way around.[17] In Walzer's concise formulation, this amounts to an "inflation of ends."[18] In summary, though the principle of proportionality seems, in theory, to require reducing violence for tighter operations, in practice it has historically been used primarily to rationalize more violence by positing ever more expansive goals.

Extending Walzer's critique, I argue that a state's decision to enlist a nonhuman entity as a combatant against human combatants implies that the nonhuman entity possesses value equal to, or greater than the human targets. From such a state's perspective, deploying its own human combatants represents a disproportionate risk. In other words, if an

[14] Ibid., 141.

[15] Ibid.

[16] Walzer, 129.

[17] Ibid., 120.

[18] Ibid.

enemy you perceive as inherently inferior to you harms you, then a kind of cosmic imbalance has occurred. For example, during the Civil Rights Movement, the predominantly Caucasian police force of Birmingham, Alabama infamously used attack dogs (and water hoses) against predominantly Black protestors. My suggestion is that the white authorities preferred to risk the physical wellbeing of dogs – viewed as less valuable than the (white) police – before risking the physical wellbeing of the police themselves.

Perhaps the reader will object that there are other possible implications of this decision by the racist white police, such as that the authorities (a) did not want the blood of the protestors directly on the white officers' hands, or (b) believed that the dogs would induce greater fear in the protestors. The former theory is undermined by the fact that the police did also engage in direct violence against the protesters. And the latter theory is undermined by the aforementioned use of fire hoses (since water is less fear-inducing than either dogs or armed police). This leaves my original interpretation, which should perhaps be modified, as follows: in choosing to use attack dogs, the authorities were trying to reduce the ratio of human-on-human violence to total violence. Insofar as my interpretation is correct, the implication seems to be that the racist authorities viewed the dogs (as nonhuman combatants) as (c) less valuable than the white officers (as potential human combatants), and yet (d) equally as valuable as (if not more so than) the predominantly Black protesters (as human enemy combatants).

One piece of supporting evidence for the validity of (c) and (d) can be found in the history of the selective use of capital punishment in the United States. Studies have shown that, not only are Black folks who are convicted of murder more likely to be killed by the state than white folks are, but also that the best predictor of someone being given the death penalty is the race of the murder victim (with white males' killers most likely to be executed, followed by white females' killers, then nonwhite males' killers, and finally nonwhite females' killers).[19] As with the Civil Rights example, the collective state authorities appear to operate on the logic that it is most acceptable to use a machine (such as the electric chair, or the delivery system for the chemical "cocktail" of a lethal injection) to kill a Black man, especially when that Black man acted in a way that implies he can kill the white man as his equal. One explanation for both of these racialized examples is that white author-

[19] See, for example, Death Penalty Information Center, "The Death Penalty in Black and White: Who Lives, Who Dies, Who Decides," June 4, 1998, http://www.deathpenaltyinfo.org/death-penalty-black-and-white-who-lives-who-dies-who-decides.

ities (and perhaps post-Emancipation U.S. American white authorities in particular) tend to relate, albeit perhaps unconsciously, (e) to pets (such as dogs) as *obedient* slaves, and (f) to nonwhite humans (such as Black folks) as *rebellious* slaves who do not deserve the freedom of equality, as evidenced by their alleged tendency to abuse that freedom (to, as the saying goes, "go bad").

There is another historical phenomenon which would logically follow from (e) and (f). During dangerous infestations, authorities tend to begin their eradication efforts by deploying members of what their people view as "lesser" "races" or species, to combat members of another species which are designated as "pests." This, in contrast to the hypothetical alternative of beginning eradication with a one-on-one engagement between (g) the allegedly superior race or species, and (h) the allegedly inferior race or species (such as the use of an "exterminator"). Consider, for example, the use of cats during the bubonic plague to hunt mice and rats (rather than risking the exposure of humans to what are feared to be carriers of the plague).

In support of my linkage of "pest extermination" to drone warfare, drone advocate Richard Strawser, whom I noted above argues for a moral imperative to use drones rather than any alternative, uses the same rhetoric at the same moment when he comes closest to conceding the potential immorality of drones, in the context of his discussion of a quote from German political scientist Herfried Münkler. "It must be admitted," Strawser writes, "that there does appear something ignoble or dishonorable in such a vision of warfare as 'pest control' that Münkler's quote describes."[20]

Turning from literal pests to groups of human beings described as "pests," consider the Nazi practice during the Holocaust of recruiting Jewish people to coordinate the mass murders of other Jewish people, and sometimes forcing them to kill themselves (as in the practice of forcing them to trigger the gas in the gas chambers). The Nazis viewed the Jewish people (among others) as subhuman, and explicitly described them as "pests." This also provides further evidence against

[20] Strawser, 357. The quote in question is as follows: "To be sure, I do not deny that there is something fishy about attacking the defenseless. What is fishy about it might be captured very well in this passage: 'The pilot of a fighter-bomber or the crew of a man-of-war from which the Tomahawk rockets are launched are beyond the reach of the enemy's weapons. War has lost all features of the classical dual situation here and has approached, to put it cynically, certain forms of pest control.'" Moreover, in what is arguably the result of this "pest control" strategy of drone warfare, the discourse around drone ethics mutates. In its evolving rhetoric, the "pests" become, in addition, "prey." The latter term is used liberally in Chamayou's analysis of drone warfare, including his neologism, "enemy-prey." Chamayou, 30-36.

the two alternatives to my interpretation of the Civil Rights example, because there can be no question that the Nazi authorities were willing and able to use "white" Germans to directly assault their victims, and with ruthless efficiency. Instead, as in the Civil Rights example, the "white" authorities preferred, if possible, not to risk their fellow white lives in committing anti-nonwhite violence.

For a third example, consider the world dramatized in Scorsese's film *Gangs of New York*, in which anti-Irish racism was at its peak in the U.S., and the predominantly Anglo-Saxon authorities aggressively recruited Irish men as police officers for predominantly Irish neighborhoods. For a third time, white violence against the (then) nonwhite Irish was widespread; but for a third time, the white authorities preferred that the violence be done by other nonwhite folks, to protect their fellow white folks from a violent response.

For a final example of this phenomenon, consider U.S. soldiers fighting against Arab folks categorized as terrorists. Since the last use of involuntary military conscription (i.e., "the draft"), most U.S. military members seeing combat have been poor people of color; and the predominately white authorities tend to view such people (due to both classism and racism) as less valuable than their whiter and wealthier countrypeople (with the latter being far less likely, statistically, to serve in person-to-person combat).

## IV. Supporting arguments for Premise 2

Recall the second premise of my argument, as follows:

> 2. If warfare between the drone and human combatants were just, then the drones would have to be equivalent in moral status to the humans; but this is not the case.

To repeat, the source of Premise 2 is the just war concept of moral equivalence of combatants (MEC). In the orthodox interpretation of MEC, however, this principle does not arise in drone warfare. The main point of MEC is supposed to be that even combatants fighting for a political state, the cause of which is unjust, cannot be held morally responsible for killing enemy combatants. But no one (to the best of my knowledge) claims that a drone has the capacity to bear responsibility, for anything. For this interpretation of MEC, whereas human combatants remain innocent regardless of their nation's participation in unjust war, drones remain innocent, as it were, ontologically (as non-sentients).

Although I concede the latter point, it is an interesting question as to whether drone pilots are morally equivalent to those whom their drones kill. One reason to think them nonequivalent is that, as Walzer argues in a more general way, such moral equivalence derives from the risk to the human combatant's life and physical wellbeing. This is particularly true in modern warfare, he adds, since it entails compulsion to serve (whether through conscript or an internalized sense of patriotic obligation).[21] That is, the injustice of a human combatant's cause does not undermine the fact that they are coerced into risking life and limb. From this perspective, since drone pilots do not take a comparable risk, they might be reasonably held morally accountable for those killed by the drones they operate.

In fact, Walzer goes even further, implying at one point in *Just and Unjust Wars* that the moral equivalence does not derive from

> humanity, for it is not the recognition of fellow men that explains the rules for war; criminals are men too. It is precisely the recognition of men who are not criminals.[22]

In other words, a human combatant in war who is also a criminal should be held morally responsible for their killing. Although this claim is problematic at several levels, in light of Foucault's famous analyses of the social construction of "the criminal," it does support my contention that humanity is *at least a necessary condition* (though, for Walzer, *not a sufficient condition*) for the applicability of MEC.

Further support in Walzer for my claim regarding drones and MEC can be found in his claim that there is a degree of free will in each human combatant which is rarely eliminable. "Their will is independent," Walzer writes, of human combatants "only within a limited sphere, and for the most part that sphere is narrow. But except in extreme cases, it never completely disappears."[23] And within that sphere of free will, Walzer concludes, "they are responsible for what they do."[24] Drones, by contrast, having no free will, can never experience responsibility. "Ought implies can," according to Kant, the founder of the deonotological theory that is the historical basis for MEC. If Kant and his deontological descendants are right about this, then how could human and drone combatants possibly be morally equivalent?

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[21] Walzer, xix, 28, 30.

[22] Ibid., 36.

[23] Ibid., 40.

[24] Ibid.

Finally on this note, Walzer's account of the history of MEC provides further support for my reinterpretation of it. "Initially," Walzer explains, MEC

> was not based upon any notion of the equality of soldiers but upon the equality of sovereign states, which claimed for themselves the same right to fight (right to make war) that individual soldiers obviously possess.[25]

Having made this claim, however, Walzer immediately modifies it. MEC was first invoked,

> rather on behalf of [states'] leaders, who, we were told, are never willful criminals, whatever the character of the wars they begin, but statesmen serving the national interest as best they can.[26]

That is, the original subjects of equality were neither ordinary human combatants, nor their respective states, but their leaders.

To connect the latter point to Premise 2 of my argument, there is no equivalence at the level of states, nor at the level of leaders (to address Walzer's two versions of his claim). At the state level, one entity (the U.S.) is a kind of cyborg entity (in Donna Haraway's sense: a human/machine hybrid), while the other entity (for example, Iraq) is a conventional, robot-less human state. And at the leader level, the drone state's leaders are engaged partially in nonhuman technological killing (using remotely – "piloted" drones), while the leaders of the drone-less state do not deploy machines without human pilots, who as such risk their physical wellbeing (such as "suicide bombers"). The contrasting cases of suicide bombers and drone pilots have evoked powerful, opposing moral intuitions from many, in the U.S and globally. On the one hand, many people – including many U.S. Americans – feel a species of admiration for the bombers' courage and feel contempt for drone pilots. By extension, moreover, many feel a similar contempt for the leaders of the U.S. as a drone-cyborg state.

## V. Supporting argument for my creative interpretations

I anticipate that the most common objection to my argument will be that it might appear, at least initially, to distort the meaning (or original mean-

[25] Ibid.

[26] Ibid., 41.

ing, or intended meaning) of both MEC and proportionality. To address that concern, I first note that my creative reinterpretation of those doctrines is part of an attempt to promote justice through international law. For this reason, I will attempt to support it by turning to Ronald Dworkin, whom *The Guardian* praised as "the most original and powerful philosopher of law in the English-speaking world," and who argues that adequate moral and legal reasoning requires such creative interpretation.[27] As I will show, Dworkin's argument for the inherent and salutary creativity of interpretation lends further support to my overall strategy here, which is to reconceive MEC and proportionality in the context of drone warfare, such that those doctrines resound in harmony with both their original interpretations and contemporary intuitions of justice. In short, to use Dworkin's words, "Moral responsibility is never complete; we are constantly reinterpreting our concepts as we use them."[28]

In support of his creative conception of interpretation as creative, Dworkin argues that moral reasoning is necessarily circular. "We are always guilty of a kind of circularity," he writes. "There is no way I can test the accuracy of my moral convictions except by deploying further moral convictions."[29] The question, Dworkin continues, is not one of "accuracy," involving a correspondence between moral claims and moral facts, but rather of "responsibility."[30] The latter, in Dworkin's sense, is a method of rational justification which undergirds one's moral claims, in which one interprets each moral claim in the context of indefinitely many other moral claims. As a result, Dworkin concludes, "the epistemology of a morally responsible person is interpretive."[31]

The centrality of interpretation in Dworkin's view of moral reasoning, though surprising in a respected philosopher of the analytic/Anglo-American tradition, is less surprising when one considers that his background is in law. That is, a central feature of Anglo-American legal practice is the casuistic interpretation of common law, according to which legal reasoning consists of a self-consciously circular process, in which a historical people is correct to affirm a new thing as right quite simply because they have previously affirmed (relevantly) similar things as right in their past.

Dworkin further justifies the foundational importance of interpretation, in part, by referencing developmental psychology (citing Piag-

[27] Godfrey Hodgson, "Ronald Dworkin Obituary," *The Guardian*, February 14, 2013, https://www.theguardian.com/law/2013/feb/14/ronald-dworkin.

[28] Dworkin, 119.

[29] Ibid., 100.

[30] Ibid.

[31] Ibid., 101.

et, Kohlberg, and Gilligan in an endnote).[32] "As young children," Dworkin begins, "we deploy mainly the idea of fairness, and then we deploy other, more sophisticated and pointed moral concepts: generosity, kindness, promise keeping, courage, rights, and duties." Later, Dworkin continues, "we add political concepts to our repertoire."[33] But the latter, too, are insufficient, because we finally, he concludes, "need much more detailed moral opinions when we actually confront a variety of moral challenges."[34] And here, at the end of the lifespan narrative, interpretation takes its cue, and steps into the conceptual spotlight:

> We form these [more detailed moral opinions] through interpretation of our abstract concepts that is mainly unreflective. We unreflectively interpret each in the light of the others. That is, interpretation knits values together. We are morally responsible to the degree that our various concrete interpretations achieve an overall integrity so that each supports the others in a network of value that we embrace authentically.[35]

Thus, for example, one interprets the concept of justice in terms of the concept of kindness, and further interprets both justice and kindness in terms of generosity, and so forth. Applied to drone warfare, Dworkin would have us interpret MEC and proportionality in terms of each other, of justice, and the rest of our axiological concepts. And that, albeit before reading Dworkin for the first time, is what I have been trying to do with my overall argument here.

Having thus justified the centrality of interpretation for Dworkin in moral reasoning, the reader might object that I have yet to clarify the exact meaning of the concept of interpretation in Dworkin. To begin, he describes it as "one of the two great domains of intellectual activity, standing as a full partner in science in an embracing dualism of the understanding."[36] In other words, for Dworkin, there are two legitimate accesses to genuine knowledge. Interpretation is for the human dimensions of reality, and science is for reality's non-human dimensions.

Second, he insists that "there is no such thing as interpreting in general."[37] Instead, each interpretation takes place "in some particular

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[32] Ibid., 449, note 6.

[33] Ibid., 101.

[34] Ibid.

[35] Ibid.

[36] Ibid., 123.

[37] Ibid., 124.

genre."[38] On the one hand, across all genres, interpretation remains for Dworkin a truth-seeking endeavor. But on the other hand, the basis of this truth is not necessarily what Dworkin calls the "psychological state theory" of interpretive truth. According to the latter, it is a psychological state of an artifact's creator which "makes an interpretive claim true."[39] To clarify, he is not claiming that the psychological state theory is never true, just that it is not always or necessarily true; and this is, in part, a question of the abovementioned genre-specific nature of interpretation.

Dworkin then supports the latter claim by reference to legal interpretation, which he describes as having no room for the psychological state theory. "It is now widely thought preposterous among sophisticated lawyers," Dworkin observes, "that the correct interpretation of a statute depends on the mental states of the legislators who enacted it."[40] He then offers an example of the latter. "Many legislators," Dworkin claims, "do not understand the statutes they vote on."[41] Applying this point to drone warfare, it appears that the original meanings of MEC and proportionality are entirely irrelevant, at least when interpreted as part of a proposed statute for international law (as I am interpreting them here).

To get clearer on how this could be the case, it might be helpful to consider Dworkin's three-"stage" account of interpretation. Each act of interpretation, according to this account, interprets the following three distinct and semiseparate things: (1) which genre a given artifact should be understood to inhabit, (2) the purposes of any artifact qua member of said genre, and (3) the degree of success of the given artifact relative to the purposes of said genre.[42] To be clear, Dworkin does not claim that this account constitutes "a psychological report of how" most interpreters consciously proceed in their interpreting.[43] Instead, he characterizes the account as a "reconstruction" of the intuitive reasoning process behind their judgments.[44] In other words, Dworkin's interpretation of interpreting is a reinterpretation of interpreters' acts of interpretation.

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[38] Ibid.

[39] Ibid., 129.

[40] Ibid.

[41] Ibid.

[42] Ibid., 131.

[43] Ibid., 132.

[44] Ibid.

To move this back toward the legality of drone warfare, I note that Dworkin chooses legal interpretation as his first example of stage (2) of interpretation. He justifies this choice on the grounds that legal interpretation is particularly straightforward and well-established. "Statutory interpretation," Dworkin writes, "aims to make the government of the pertinent community fairer, wiser, and more just."[45] He then relates this example to stage (1) of interpretation, by noting that statutory interpretation "forces upon [U.S.] American lawyers, at least, further and more general questions of democratic theory."[46] And these "more general questions," he concludes, lead in turn to "still further questions" regarding "political and moral theory."[47]

Arriving back at my drone examples of MEC and proportionality, the latter are present in statutory law as components of just war theory, which is foundational for much international law. As such, according to Dworkin, MEC and proportionality should be (a) interpreted (qua statutory laws) in such a way that they make international government fairer, wiser, and more just, which (b) can be expected to require rethinking contemporary notions of politics, democracy, and morality. This is precisely the undertaking of my own argument, in part by implicitly (c) redefining "democracy" as "the rule of humans alone (and not drones)," (d) rethinking political justice as the confrontation of ontological equals (living beings vs. living beings), and (e) extending and refining morality in light of drone technology.

Further support for my argument can be found in Dworkin's division of all interpretation into three types, which he terms "collaborative," "explanatory" and "conceptual."[48] First, collaborative interpretation attempts to "work with" (which is the literal translation of the word "collaborate") an assumed author or originator, to help realize the originator's intended meaning. Second, explanatory interpretation "presupposes that an event has some particular significance for the audience the interpreter addresses."[49] And finally, conceptual interpretation aims for a truth which is "created and recreated not by single authors but by the community whose concept it is, a community that includes the interpreter as a creator as well."[50]

Dworkin initially claims that all legal interpretation is necessarily collaborative. Later, though, he concedes that at least one school of legal

[45] Ibid., 133.

[46] Ibid.

[47] Ibid.

[48] Ibid., 134.

[49] Ibid., 136.

[50] Ibid.

interpretation is better understood as explanatory, namely critical legal studies (CLS).[51] Dworkin's prime example of explanatory interpretation is the business of historians, which choice of example gives Dworkin's reader a clue as to what makes CLS special. To wit, it reweaves the practice of law into its actual historical fabric, in which the law is revealed to be as dirty and complex as any other ancient human institution in that fabric. As for conceptual interpretation, Dworkin's only example is the discipline of philosophy. Although this three-part system is arguably inaccurate (in that it forces discourses into mutually exclusive categories, despite their actual overlap), if one assumes its accuracy for the sake of argument, there still remain close affinities among legal, historical and philosophical interpretation.

Still further support for my argument can be found in Dworkin's classification of the relationship that obtains among any two interpretations. These relationships, he classifies (again with what is arguably a Kantian Trinitarian compulsivity) as "independent," "complementary" or "competitive."[52] If interpretations X and Y are "independent," then the truth of each is irrelevant to the other. If X and Y are, instead, complementary, then the truth of each buttresses the truth of the other. And if X and Y are competitive, then each is truer to the degree that the other is falser.

Applied to my creative reinterpretations of MEC and proportionality, I would argue that they (X) are complementary to the older, more orthodox interpretations of those two doctrines (Y). As such, one need not choose between mine and the originals. On the contrary, accepting the originals should give one greater reason to affirm mine, and vice versa. My reasoning here is similar to that behind Dworkin's argument for the complementarity of traditional legal interpretation and CLS interpretation.

Before presenting the latter argument, I will first summarize Dworkin's insightful discussion of what he calls an "interpretive school." Dworkin defines an interpretive school as a group constituted by "a shared interpretation of the point of the larger practice a group of interpreters take themselves to have joined."[53] For example, traditional Marxian literary critics view literary criticism as a practice which is ethically and politically obligated to facilitate proletarian revolution. The basis of these interpretive schools, in other words, is the schools' interpreters' interpretation of their responsibility qua interpreters of a particular genre. Or, in Dworkin's words, what ties these interpretive schools and differentiates them (respec-

[51] Ibid., 144.

[52] Ibid., 139.

[53] Ibid., 141.

tively) is "the shared assumption of responsibility to a practice together with different assumptions about what that responsibility now demands."[54]

Dworkin's example of the latter, differentiating assumptions, is the abovementioned example of CLS, which is also ideally suited for my argument against drone warfare. "In recent years," Dworkin relates, "in universities and particularly in law schools, a variety of self-styled 'critical' schools of interpretation have flourished and waned," and the members of these schools refer to themselves as "Crits."[55] Though Dworkin was infamously hostile to CLS in his earlier work, here in his later book, *Justice for Hedgehogs*, Dworkin opts for a quite charitable criticism. Provided one understands CLS as "explanatory" (rather than "collaborative") interpretation, he begins, "There is no reason why critical legal studies" should

> think itself competitive with conventional collaborative interpretation that aims to improve the law by imposing some greater degree of integrity and principle on doctrine whose causal roots may have been what the Crits claim they were.[56]

With the latter phrase, Dworkin is referring to his summary of the CLS view, earlier in this text. Legal doctrines, he claims of CLS, amount to "powerful groups pursuing their own interests rather than the impact of moral and political principle."[57]

To connect this back to my argument, its unorthodox reinterpretations of MEC and proportionality are informed by influences on my thinking which overlap significantly with CLS (including critical race theory and feminist theory). As such, those reinterpretations would presumably receive Dworkin's blessing, insofar as they are "complementary" with the more orthodox definitions. After all, it was those orthodox interpretations which initially inspired my unorthodox ones – and this is almost always the case.

For an example of the latter truth, consider Dworkin's own reinterpretation, a few pages later, of his famous mentor Willard Van Orman Quine's interpretation of "radical translation."[58] Dworkin argues that

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[54] Ibid., 142.

[55] Ibid., 143.

[56] Ibid., 144.

[57] Ibid.

[58] Ibid., 148. For my own reinterpretation of Quine and his radical translation, which is moreover sympathetic to Dworkin's, see Joshua M. Hall, "Logical Theatrics, or Floes on Flows: Translating Quine with the Shins," *European Journal of Pragmatism and American Philosophy* 8, no. 2 (2017): 1-19.

Quine's concept of radical translation consists of "a kind of collaborative interpretation" between Quine's imaginary (and problematically christened) "native informant" and "jungle linguist."[59] Moreover, Dworkin presents his interpretation of Quine's interpretation of interpretation (i.e., "translation") as "complementary" to Dworkin's interpretation of Quine's interpretation, and thus does not require the reader to choose between Dworkin and Quine. Put in these terms, I have attempted to radically translate MEC and proportionality, but in a way that is collaborative with their original, now orthodox interpretations.

## VI. Conclusion

To recap, I have argued for the immorality of contemporary asymmetric drone warfare, on the basis of new interpretations of MEC and proportionality (according to which only human combatants can kill each other), and on that basis join Van der Linden (among others) in calling for an explicit international law outlawing drone warfare. The justifications for my conclusion are that (1) only ontologically equal combatants are morally exonerated from killing each other (*from MEC*), and (2) the most-valued beings in a society (in our case, human animals) may not be killed with moral justification by less-valued beings in a society (in our case, drones) (*from proportionality*). The need for such creative reinterpretations, I have illustrated by exploring Walzer's deepening of MEC and his radical critique of proportionality. Finally, the legitimacy of my reinterpretations is buttressed by Dworkin's conception of interpretation in general, and of legal interpretation in particular, as an inherently and admirably creative form of reasoning in pursuit of justice.

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# Suspending Voluntary Reserve Service: New Questions in Israeli Military Ethics

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**Abstract**

*Military activities with the framework of the IDF [Israel Defense Force] is carried out by citizens in a variety of positions. In addition to the ordinary positions of career officers and NCOs, the IDF consists of conscripted men and women as well as reservists. Some of the latter serve under an ordinary command to serve for a certain relatively short period. Other reservists, including pilots and special forces officers have served since they volunteered to serve. Facing the political clash between the government, who have been viewed as trying to change the democratic nature of the state, and the popular opposition, who have tried to protect the judiciary and other elements of democracy, many officers who belong to the latter reservist group have suspended their voluntary service or even retired. Their decision has raised the obvious issue of whether such decisions can be justified, morally, ethically, and democratically. This is the topic of the present paper.*

**Keywords:** *military ethics; moral justification; reservist; voluntary reservist service; suspension of service; Israel; IDF; democracy; political opposition; spirit of IDF*

## I. Background

In late 2022, elections were held in Israel resulting in a coalition government consisting of five right-wing parties. The government's slim parliamentary majority depended upon the participation of all of these parties in the coalition. Although the election campaign focused on issues such as the cost of living, domestic security, and similar matters, the government's main legislative activity has been in a "judi-

cial reform" aimed at severely weakening the status of the "gatekeepers" of the democratic regime, the Supreme Court and the Attorney General.

What the government presented as judicial reform was perceived by a large part of the country's citizens as an attempt at a regime change that would strip the country of its democratic character and place unconstrained legislative and executive power in the hands of the Prime Minister and his supporters. Opposition to the attempted regime change was primarily manifested in mass demonstrations. Impressive numbers of people participated week after week for many months. Demonstrations took place all over the country and were conducted without violence or lawbreaking other than temporary blockage of traffic.

A unique expression of resistance to the government's policy arose in reserve service in military units, mainly the Air Force and Intelligence Corps. Three groups make up the IDF: soldiers serving their conscription service, career military, and soldiers serving in the reserves. The professional and operational training of a man or woman for their roles begins during mandatory service and continues during career service. After being discharged, many who are not obligated continue to perform reserve duty in their units voluntarily. For example, pilots maintain and develop their readiness by serving one reserve duty day per week in their operational unit. The arrangement of volunteering for reserve duty allows the operational activity to retain highly professional individuals, with rich operational experience and unique capabilities. Volunteers for reserve duty constitute a significant component of the military force in those branches of the military.

As an expression of protest against the attempt at a regime change, many reservists of all ranks, up to the rank of brigadier general, announced the cancelation or suspension of their volunteering for reserve duty or their intention to consider doing so in the future. From time to time, meetings were held with the participation of hundreds of reservists to discuss options for changing their volunteer status. The author of this article participated in one of these meetings and received the organizers' permission to publish what he said. Some of the ideas in this article were expressed on that occasion.

## II. The ethical questions

The following discussion relates to the decision of a person serving voluntarily in the reserves to cease to do so or to temporarily suspend doing so as a practical expression of opposition to the regime change

that the government and the coalition are trying to carry out in the country.

The ethical questions are questions of justification: Is there justification for ceasing to volunteer for reserve duty as a personal, unilateral decision, regardless of the view of the related military unit or the army's opinion? Is it justified to cease to volunteer for reserve duty as a practical expression of protest against the "regime change" actions of the government and the coalition? To answer these questions in an orderly manner, we must present the ethical standards we will use to formulate those answers.

Let us distinguish between explicit and implicit standards. Explicit standards are the values delineated in the IDF's basic ethical document, "The Spirit of the IDF"[1] and standards derived from them, without added interpretation of a partisan nature. Since the principles of "The Spirit of the IDF" explicitly include the identification of Israel as a Jewish and democratic state, implicit standards include, among other things, the principles of democracy. To avoid possible disputes about the nature of a democratic regime, whether of a general theoretical nature or those particular to an Israeli context, we will discuss only the value of human dignity, which is one of the IDF's explicit values. The principle of equality, the principles underlying civil and human rights, and their protection by the court and the "gatekeepers" can all be derived from a full understanding of the value of human dignity.

## III. Methodological introduction

Our discussion takes place against the backdrop of an intense public controversy, with distinct political aspects. Naturally, disputes reflect, among other things, the different points of departure of the conflicting parties. These differences in points of departure influence the entire discussion and hinder reaching shared conclusions. It is important to overcome this difficulty, as one of the goals of our discussion is to form positions and propose suggestions for officers and soldiers interested in the disputed issues not only because they are citizens likely to be involved in the affairs of the state, but also because they are considering the practical possibility of adopting a certain stance and taking action that represents their personal position.

[1] The author of the present paper played a major role in writing the first IDF code of ethics, "The Spirit of the IDF – Values and Fundamental Principles," and its implementation within the IDF since it was established in 1994. See Asa Kasher, "Teaching and Training Military Ethics: An Israeli Experience," in *Ethics Education in the Military*, eds. Paul Robinson, Nigel De Lee, and Don Carrick, 133-145 (Aldershot: Ashgate, 2008).

To hold a discussion whose conclusions could apply to every officer and soldier, regardless of their political views, we impose on ourselves a methodological limitation. We do this using one of the IDF's principles, a principle that has been discussed for many years but was only added to the IDF's ethical document, "The Spirit of the IDF," in 2022. This is the principle of *mamlakhtiyut* [respect for the role of the IDF within the framework of the state], which requires all those serving in the army to refrain from actively taking sides in any political dispute. We will therefore conduct the discussion in the spirit of *mamlakhtiyut*.

## IV. Military ethics and democratic principles

The ethics of any organization, as expressed in its ethical code, reflect the organization's identity, mission, values, and procedures. The IDF's ethics include its values, which manifests its identity and guides the behavior of the soldiers. It is clear to anyone reading the IDF's ethical code, the "Spirit of the IDF," that Israel is a democratic state and the nation-state of the Jewish people.

Any change in Israel's regime, from a democratic state to a dictatorial one, or from the nation-state of the Jewish people to a state that is not a nation-state but only a state of all its citizens, like the USA, would fundamentally change the ethics of the IDF (as well as the ethics of any other state body, like the Shin Bet, Mossad, Police, and Ministry of Defense). The expected change is not merely a change in name or of a background side component. The change is substantial, with a clear impact on values and norms. A non-democratic regime can erase from the IDF's values the value of human life (which applies not only to Jews) or the value of "purity of arms" (which restricts the use of force, in war, in operations, and in routine security). Without these two values, the IDF would change its identity, it would not be the same organization, would not be the same IDF. This is a central assumption of our discussion, and this assumption is clearly relevant to *mamlakhtiyut*.

## V. Democracy and volunteering

A person who volunteers to act within a certain organization does so based on the identity of the organization. I volunteered to act in a community center because it is an organization with educational goals that I want to help realize. What happens if the identity of the organization I volunteered to work in changes? What if it turns out that the community center is a cover for drug dealing? I did not volunteer to work for a drug dealer, so my volunteering for the community center is canceled. If I volunteer to

serve in the IDF, as the military of a democratic state, my volunteering is canceled if the IDF becomes the military of a non-democratic state.

a. Change of status as a volunteer

For a citizen, often a reservist, to change his or her status as a volunteer is not a simple step and it is appropriate to distinguish between the different possibilities. A person in uniform can signal to his commanders that there is a possibility that in the foreseeable future, he will cease to volunteer; he can announce to his commander that he intends to stop volunteering in the near future; he can announce that he is partially suspending his service as a volunteer; he can announce that he is fully suspending his service as a volunteer; and he can announce that he is immediately ceasing to volunteer to serve in the reserves. An officer or soldier contemplating the possibility of changing his status as a volunteer must justify to himself the specific change he intends to make, within this range of possibilities. The question of the possibility of justifying such changes is at the heart of this article.

In addition, the timing of the decision to change one's status as a volunteer can vary. The change could take place during the Knesset (Israeli parliament) committee discussions of a specific relevant law; it can happen after the committee vote or after the Knesset plenary vote; it can also wait for the decision of the Supreme Court on a controversial law whose acceptance is considered a step in changing the regime from democracy to dictatorship. Again, the justification the soldier gives for his decision regarding his status as a volunteer will clarify why the timing he chose is justified.

b. Proportionality

An intelligent decision by a responsible person on a complex issue is supposed to stand the test of proportionality, a comparison test weighing the expected positive outcomes of its execution and the expected negative outcomes of its execution.[2] A responsible person acts in accordance with whichever side weighs more heavily. Let us see now how the comparison is made and what in fact weighs heaviest. We will also see what should be done after the decision.

[2] For a general discussion of proportionality and the doctrine of double effect, see Alison McIntyre, "Doctrine of Double Effect," *The Stanford Encyclopedia of Philosophy* (Fall 2023 Edition), eds. Edward N. Zalta and Uri Nodelman, https://plato.stanford.edu/archives/fall2023/entries/double-effect/.

c. The positive value

A decision regarding a change in one's status as a volunteer contributes to the prevention of three dangers:

> (a) The danger of receiving orders contrary to the law, international law, or IDF values. We call these orders "Hawara orders," named after a claim raised by the current Minister of Finance who heads an extreme right-wing party. He called to wipe out the Palestinian village of Hawara after several of its residents carried out a terrorist attack against Jews in which two Jews were murdered.
> (b) The danger of legal proceedings at the International Criminal Court in The Hague, against officers and soldiers participating in military activities in Palestinian territories.[3] As long as Israel operates an independent, professional court that fundamentally examines the legality of planned military actions, the International Criminal Court in The Hague will operate according to the "complementarity" principle, which allows reliance on the internal review conducted by a state regarding the activity of its military personnel, without the need for an external, professional and independent review. A significant weakening of the court in Israel will preclude the International Criminal Court in The Hague from using the principle of complementarity. Officers and soldiers who participate in military activities in Gaza or the Judea and Samaria areas may find themselves under arrest throughout parts of Europe and brought to trial in The Hague.
> (c) The danger of providing significant service to a non-democratic regime. This is a danger that affects not only one aspect or another of a person's life, but his supreme values, his ideals, and his identity. The life of a person who significantly works for a regime with values opposed to his own is like the life of a slave and servant. This is a danger that cannot always be translated into the language of harm, but it is a severe, deep, and unsettling injury.

The combination of preventing these dangers is the positive value of the decision. The comparison required for a practical decision based on considerations of proportionality between the positive value of a practical decision and its negative value is not based on merely identifying

[3] On the ICC, see the most informative site of the court: https://www.icc-cpi.int.

the dangers and marking their prevention as having a positive value. The practical decision must consider not only the danger itself and the importance of preventing it, but also the assessment of the danger, the assessment of the damage involved in it, and the assessment of the expected contribution of the implementation of the decision to the prevention of the danger, under the given conditions. Such detailed assessments are beyond the scope of the current article, so we will suffice with an outline.

The danger of "Hawara orders" is not negligible. Anyone serving in uniform in Israel has undergone training that presented the distinction between an illegal order and a "manifestly illegal" order. Everyone is familiar with the 1956 incident in which citizens were shot during military operations, after receiving a patently illegal order to do so, and everyone knows that it is their duty to refuse to execute such an order.[4] Commanders know they are forbidden to issue such orders. There might be "Hawara orders" that will be refused as manifestly illegal, but there is no basis for assuming that this will completely thwart the danger. An order may not be considered manifestly illegal if it is an order to carry out the procedure of warning civilians of an imminent attack (a "knock on the roof" procedure) after which the order will be to destroy a line of houses in the village of Hawara one after another, as an act of revenge to a terrorist attack carried out by residents of that village. This order may be presented as a deterrent action. Such an order, which sends military personnel to carry out collective punishment, is contrary to international law even if not every soldier may see it as a manifestly illegal order. The danger of "Hawara orders" is thus not thwarted by the doctrine of the manifestly illegal order. If there is a danger that there will be a political actor who will use their power to issue such orders, the danger will continue to exist for those in uniform. In the current situation, there is a possibility that politicians from the extreme right will issue instructions to execute "Hawara orders," despite the objections of the military legal advisors, especially if the Supreme Court and Attorney General lose the authority to prohibit the execution of such orders.

Apparently, the danger of "Hawara orders" can be thwarted on the basis of the Air Force commander's announcement that soldiers will not be given orders that do not conform to the spirit of the IDF and

[4] On the Israeli conception of "manifestly illegal command" see Mark J. Osiel, *Obeying Orders: Atrocity, Military Discipline and the Law of War* (New Brunswick, NJ: Transaction Publishers, 1999), and Alona Dana Roded, *What "Pierces the Eye and Revolts the Heart": Boundaries of Obedience and Complexities in Moral Reasoning in the Israeli Military* (PhD diss., University of California Berkeley, 2013).

moral principles (respect for human dignity), but even this mechanism does not completely thwart the danger, as long as there is a possibility that the political echelon will order military activity that the Air Force commander cannot block, despite it being unethical and immoral. A person in military uniform cannot accept the authoritarian regime of a non-democratic state in which only the Air Force commander, a moral and excellent person in all respects, protects the soldiers from involvement in unethical and immoral activity.

The danger of "Hawara orders" has not subsided. It is undoubtedly a real danger, but it is hard to estimate the degree it is likely to occur. Certain politicians can be identified as those who might be the source for "Hawara orders," but other politicians can also be identified who would likely not allow such orders to reach the people in military uniform. It is hard to estimate what can be expected in our fluid political situation. Therefore, while it is not appropriate to dismiss this danger, it is also not appropriate to assess it as an imminent danger.

The risk assessment of standing trial before the International Criminal Court in The Hague is not straightforward. The prosecution's considerations for trying someone in this court are not transparent and there is no way to assess the risk to, for example, an Israeli pilot who carried out military operations in Gaza who one day arrives at the airport in London, whether as a civilian pilot or as a tourist. He could find himself arrested due to a suit brought in the International Criminal Court in The Hague. The analysis of the risk he faces from such a suit is, as we have seen above, in the realm of defenses that should stand to his credit if a lawsuit is filed against him. The "complementarity" defense is, of course, a central element in the defense of the pilot against the very existence of proceedings in the International Criminal Court. The risk that such a defense will not be available to the pilot due to changes in Israel's legal system and especially the status of the Supreme Court and the Attorney General, is a significant risk. To see how much this defense is already undermined in the current state of the law in Israel, it is enough to mention a proposal raised by a minister in the current government to legislate a law that would prohibit the investigation and prosecution of person in military uniform for their actions in the course of their duties. If such a law is passed, an Israeli pilot will not be able to claim, if he stands before the Court, that his conduct in the course of military operations was conducted in a way that was examined and approved by the legal authorities of the state. If these authorities cannot be involved in examining military operations, this will open the door to the International Criminal Court examining mili-

tary operations. They may have stricter standards than those approved by the Israeli court. The attitude with respect to the separation barrier between different parts of the territories conquered by Israel in 1967 is an example.

Resistance by a reservist pilot, in our example, to changes that the government is trying to introduce into the courts and legal advisory systems is, therefore, part of an attempt to thwart the danger of losing the complementarity defense in case there is a need to use it. The risk assessment depends, of course, on the assessment of the chances of the government successfully introducing the changes into the legal and legal advisory systems. Although this is a political and public process, it is difficult to estimate its results. It would be reasonable to assume that the risk of success of the government's attempt is far from negligible and therefore the risk of losing the "complementarity" defense when needed is not negligible and there is justification for acting to thwart it.

Finally, we need to assess the risk of serving a non-democratic regime. Indeed, the fact that a person in military uniform acts within a framework operated by the current government or any other government does not in itself justify any objection or reservation. According to the Israeli Basic Law: The Army, which is one of the first basic laws of the state, the army is subject to the command of the government, and conducting military operations without the government's authorization is forbidden. However, the establishment of a non-democratic regime changes the picture substantially. If the regime is democratic, the person in military uniform's actions in the government's name are supposed to follow democratic principles and any deviation from them will be prevented by the constitution, the law, and ethics. However, in a non-democratic regime, these obstacles will not exist or will have changed to the point where there is no guarantee that the person in military uniform will act according to democratic principles, morals, and ethics. Even if the possibility of inappropriate action by the person in military uniform in service to a non-democratic government is not realized on every occasion, it exists and constitutes a real and immediate threat to the person in military uniform's ability to be confident that his orders accord with the norms that motivated and obligated him from the time he put on the military uniform until now.

The situation of a person in military uniform in the service of a non-democratic regime can be compared to that of a citizen of a non-democratic country, whether or not he works for that government. The practical rules by which he will act will include a practical

distinction between laws and guidelines that are appropriate for any regime (such as traffic laws) and those that are inappropriate for a democratic regime (such as the suppression of political expression). It is not only the difficulty of living according to this distinction that pains the citizen of a non-democratic country. It is also his very participation in a framework whose basic principles preclude just social arrangements.

The weight of this burden is not objectively measurable. Beyond the common recognition of anyone who bears this burden, that it is a burden with no moral justification, there may be individual differences between different citizens and different people in military uniform based on their relationship to the forced partnership imposed on them within a framework that has no moral justification.

The probability that the government will succeed in establishing a non-democratic regime in the country is also not objectively measurable. These are processes that, while not very prolonged, are very complex, because at every stage many factors are involved that pull in different directions. One of the main factors is the protest movements against regime change. These movements are many, with different purposes and values. Over dozens of weeks, they have demonstrated a joint ability to hold mass non-violent protests across the country but our ability to assess their continued activity is still highly subjective.

We therefore have no choice but for the assessment of this third danger, alongside the assessment of the effectiveness of the volunteer's refusal to continue to serve as a means of thwarting the danger, to be left to the discretion of each person in military uniform individually. In any case, the value of changing his status as a volunteer seems positive, without entering the details of how he does so.

### d. The negative value

On one side of the proportionality considerations, we saw the positive value of any decision regarding changing one's status as a volunteer. We will now look at the other side of the scale, to see the damage that such a decision may cause. These damages are of three types: (a) readiness; (b) unit cohesion; and (c) other damages.

It is clear that stopping training or changing the amount of training in which a soldier actively participates somewhat reduces his readiness to perform certain military actions. However, experts recently explained that the damage to readiness is low and reversible. Major General (Ret.) Amos Yadlin, former head of Military Intelligence and previously a combat pilot and commander of Air Force bases, recalled a period in which training was frozen for budgetary reasons that did not cause damage once regular training was restored.

The damages to unit cohesion are more complex. There is no doubt that such cohesion is one of the important values in the ethics of any fighting army. Unit cohesion (or by other names, camaraderie, or brotherhood of warriors) is a necessary condition for the existence of a fighting force. Military psychology has long established that a major motive for soldiers' actions in battle is their relationship with the soldiers fighting with them, including their commanders. This understanding of soldiers' motivation is also reflected in military ethics. The most striking manifestations of camaraderie are cases where soldiers save the lives of their comrades in danger at great personal risk. This behavior is obligatory: The norm of "not leaving a wounded man in the field," even at the risk of one's life, is one of the norms known to soldiers from the early stages of their military training.

The suspension of volunteering for reserve service may in practice occur in situations where members of a unit are called for volunteer reserve service, and some turn up and others do not. Unit cohesion will be damaged, as the fundamental assumption of every person in military uniform is that during military actions his comrades will be by his side, will fight together with him, and will participate in any mission needed to come to his aid.

This general claim includes a component worth noting in the current context. General willingness to serve in the reserves corresponds to situations of preparation for a military action, war, or operation. Readiness is certainly one of the foundations of combat power during a war or an operation. It is necessary for functioning of the unit, but is it also necessary for building the unit? It may be that the importance of readiness is lower when it comes to reserve service that is based on the partial response of reservists to a call-up, whether planned or in the routine circumstances of partial response to reserve call-up. The obligation to maintain unit cohesion remains an important one, but the precise conditions under which it should be acted upon vary and may leave room for volunteers' partial or complete suspension of reserve service. The question of whether the conditions of reserve service allow a particular person in military uniform to suspend his volunteering, in part or in whole, without harming the integrity of his unit, needs to receive a detailed and responsible answer from the person in military uniform himself, according to his service conditions.

Another type of damage that could be caused by someone's suspending or canceling his volunteering could be a feature of the special circumstances of his service. Imagine a person in uniform whose service is in the field of defensive or offensive cyber warfare and who has special expertise in this field. His absence from reserve duty could cause unique damage insofar as the military activity relies on the expertise of that soldier.

There may be circumstances in which a person in military uniform knows exactly what his unique expertise is and the extent of the damage caused by his absence from reserve service for a certain period. This soldier will need to include on the negative side of the balance of his proportionality considerations the damage he knows he is about to incur by his absence from reserve service, which he canceled or suspended. However, there may be circumstances in which the person in military uniform with a particular expertise does not know how to assess the damage his absence might cause. His commander may be better able to assess the damage that the absence of a reservist with unique expertise from reserve service could cause. To properly assess proportionality considerations regarding the decision to change the volunteering status for reserve service, the person in military uniform should meet his commander in advance to receive a more complete and responsible assessment of the expected or at least possible damages due to his suspension or cancelation of his volunteer reserve service.

To summarize the considerations on the negative side of the decision to cease or suspend volunteering for reserve service, several prominent issues stand out. First, significant parts of the assessment of the damage that the decision could cause are of an individual, subjective nature and depend on the soldier's personal assessment. There is no room for sweeping generalizations in these cases. Secondly, in cases where the person in uniform has special expertise such that his not serving could cause unique damage, his commander's opinion on this matter must be taken into consideration and again there is no room for sweeping generalizations. Thirdly, parts of the damage on the negative side of the balance can be objectively assessed, primarily the harm to operational readiness. Here, the professional assessment that attributes a low value to the danger of this harm occurring is relevant.

To summarize the considerations of proportionality, we can distinguish between components of different types. Certain components of the picture can be objectively valued, both in the realm of positive value and in the realm of negative value, and our discussion leads to the conclusion that the positive value of these components outweighs their negative value. Other considerations do not allow for a sweeping assessment of their weight, as they depend on subjective assessments or changing data available only to commanders. There is therefore no place for a general conclusion that would say that considerations of proportionality indicate a positive or negative assessment of the decision to change one's status as a volunteer. The proportionality considerations leave the decision in the hands of each person in military uniform, who will assess the balance based on his own subjective assessments and the data in his possession.

## VI. Minimizing damage

The full solution to any dilemma involves more than just deciding in favor of one of the two opposing sides. After a person faced with a dilemma has concluded that side A outweighs side B and he should act accordingly, he has reached the central part of the solution to the dilemma, but not the only part. The full solution to the dilemma has another component since both horns of the dilemma contain positive elements. A decision against one horn of the dilemma thus involves harm in its implementation.

A secondary set of considerations must thus be added to the central part of the resolution of the dilemma. Its role is to minimize the damage caused to those positive elements of the minor horn of the dilemma. Of course, this should be done without harming the full implementation of the preferred horn.

The considerations of proportionality we dealt with are considerations for decision-making in a dilemma between the advantages of ceasing or suspending volunteer reserve service and the damages that this change might incur. Whatever the decision may be, it is appropriate to also discuss the appropriate steps for minimizing damages.

If the positive value is greater than the negative value, then the issue is how to minimize the damage to military readiness, unit cohesion, and whatever damage arises from the soldier's not making use of his expertise.

It is difficult to find an effective way to minimize the damage considering the risk of damage to operational readiness. There are no civilian frameworks in which one can train in a way equivalent to the training in a military framework. Even if someone wanted to establish an alternative civilian framework, it is hard to see how it would be possible given the organizational, professional, and budgetary requirements of establishing and maintaining that alternative framework.

However, there may be contexts where certain types of training can be done less intensively without harming operational readiness. In such contexts, the ethical obligation to minimize damages requires considering the option of reducing the intensity of training in volunteer service rather than ceasing to volunteer altogether.

It is easier to take steps to minimize damage in the context of the danger to unit cohesion. Maintaining cohesion requires joint activity in a context that clearly expresses the obligations and feelings of each of the members in relation to all the rest. Military units can organize educational activities to maintain cohesion, in a format of open conversations and joint activity and not necessarily in actual training. People in military uniform who have suspended or ceased to volunteer as

reservists can still organize such activities, in collaboration with their military units or independently.

Minimizing damages considering the fear of damage rooted in the unique expertise of the person in uniform depends on the special circumstances of that expertise and there is no place for generalization here other than pointing out the ethical obligation to try to minimize the damages.

Minimizing damage is also ethically required in the reverse situation when the negative value of refraining from volunteer service becomes decisive. In such a case, minimizing harm will be directed towards the dangers that arise from the background circumstances.

Naturally, the danger will be of providing significant services to a non-democratic regime. At this point, minimizing damage will require an increased effort to act against a non-democratic takeover of the state. Protest movements against regime change provide citizens with many options for actions to resist the attempt to change the character of the state. It can be assumed that lowering the risk of regime change also lowers the risk of "Hawara orders" and of people in military uniform being brought to trial before the International Criminal Court in The Hague.

## VII. Counterclaim: Refusal

Against our line of argument, various objections are sometimes raised. At the end of this article, we will briefly discuss three of these claims.

The first claim is about the meaning of our discussion, that not only does it not completely reject changing one's status as a volunteer for reserve service, it admits the possibility that a person is entitled, ethically and morally, to do so. This objection is that the meaning of this discussion is that refusal to participate in military activity is thus rendered legitimate. This is a misleading claim.

Refusal is an action taken by a person in military uniform on active service, to carry out a legal order given to him. Refusing an order is an action within the military. Ceasing to volunteer for reserve service is not done within the military but is the act of a civilian. It is possible to take a position like that in this article, on the one hand, and at the same time claim that refusing legal orders is illicit. In the routine activity of the Air Force, there is no place for refusing orders, but, as this article shows, ceasing or suspending volunteer reserve service can be legitimate.

## VIII. Counterclaim: Politics

A common claim against protest activity involving suspending volunteer reserve service is that such protest activity politicizes the army. If reservists allow themselves to influence the army based on their political positions by suspending their reserve service, it can be expected that under other circumstances, when a government with completely different views is in power, reservists with other political opinions will do the same. Linking participation in the military and identification with the government's policy makes it very difficult for vital and effective military activity to take place.

Among the values of the IDF is the value of *mamlakhtiyut* which obligates all those serving in military uniform to act in a way that leaves the army out of routine political activity in the Knesset, the media, or social media. The army formulates and presents professional policy positions, identifying with no party or political body. Linking participation in the military to political identification does not comply with what is required according to the value of *mamlakhtiyut*.

This argument is mistaken because the dispute at hand is not a routine dispute between political opinions that we are familiar with from the Knesset, the media, and social media. Countless soldiers and officers have participated in vital, complex, and often dangerous military operations while not identifying with the political positions of the government when they think as citizens about the political issues at hand. The present issue at hand is not a political dispute, which people in military uniform are supposed to ignore, but a danger to the character of the regime, which also includes a change in the identity of the army, its values, and norms. Future disputes on routine political issues will not justify protests of the kind occurring at present, because they will not call into question a basic component of the state's identity, that of being a democracy. The current protest activity does not open the door to creating persistent linkage between participation in military operations and identification with government policy (or the policy suggested by the opposition) and thus does not undermine the value of *mamlakhtiyut*.

## IX. Counterclaim: Emigration

On one occasion, after presenting the arguments of the current article, I was asked what I think about someone who is now contemplating leaving the country, as a radical solution to the problem of regime change. I answered that every person and family have the right to make their own decisions, but leaving the country is for me not an option,

first of all for the personal reason that the graves of my firstborn son and forefathers are located here, and I would never consider abandoning them. Moreover, I believe that it is appropriate to continue to fight for the character of the state, especially given the real chance of succeeding in this struggle.

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The present paper was written and submitted before the present Iron Sword War. All the pilots and reservists mentioned in the paper have reported to their units and participated in the war as usual.

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# Just Wars Theory as a Key Element of Germany's New Sonderweg

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## Abstract

*The article traces the evolution and key characteristics of the German Sonderweg – Germany's special path starting from the end of the 19th – the middle of the 20th century. The article considers geopolitical, ideological, and historical reasons for its emergence, transformation, and the specificity of its normative constitution, designed to morally justify the use of military force as an indispensable lever for Germany to achieve its goal of creating a "German Europe." We develop a hypothesis of a possible remake at the beginning of the 21st century of a new German Sonderweg, focused on creation of the "European Germany," stemming from liberalism and just war theory. It is demonstrated that Zeitenwende, announced in 2022, facilitated the possible resort to arms and made militant solution of political dilemmas a reality again. The discourse analysis of the German political speeches makes it possible to claim that the political elites in Germany are preconcerted with normative justification of the possible war. The article considers two major lines of transformation of the contemporary just war theory and their possible implication in the German military and defense policy. One of these is the emergence of human rights paradigm of the just war doctrine, another – the growing tendency of the theory to stick to national cultural tradition instead of moral universalism. The combination of the two tendencies may trigger an array of very special and unpredictable normative developments of the military policy in Germany. The further movement alongside the idea of jus ad bellum may provoke specific national perceptions of the justice of the war, which may merge the idea of just war with traditional German realism if not militarism. This tendency may lure Germany into a trap of, what we term, "human rights militarism." To what extent the trap is viable depends on the normative constitution of the key elements of Sonderweg.*

**Keywords:** *just war theory; Germany; Sonderweg; moral fundamentalism; political realism; militarism*

## I. Introduction

In the first third of the 21st century the security environment at its global and regional levels is undergoing significant changes. This fact forces many political states to search for more viable normative alternatives to the existing approaches in the field of ensuring national security by means of force. The question is about the change of strategic behavior and its predispositions, strategic culture, and the transformation of national military identity itself. This is especially the case with some states of South Asia, Middle East, or South America, as it was defined by B. Buzan and O. Waever.[1] Perhaps it is even more true about contemporary Russia, which provides the most radical example of the general trend.[2] When it comes to the countries of the "old world," such transformations towards more militant foreign policy at the first glance are less visible. However, we may witness a certain potential drift towards much more militant foreign policy. These transformations may correspond to both external and internal policy, triggering the political course, which may be generally termed as "justice with the sword."[3] Germany is of particular interest in this regard. The turn to a more militant stance is also underway in this country and this is an issue of significant importance already provoking a widespread discussion in the press.[4]

Germany is not particularly notable for its cultural tradition of pacifism, but the idea of possible radical transformation from non-militant approach to strong security measures has been rejected for a long time. From 1945 to the early 1990s Germany pursued a foreign and security policy characterized by restraint, anti-militarism, rejection of unilateral military actions, and preference for multilateral peaceful solutions. With the reemergence of the conditions of multipolarity,

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[1] Barry Buzan and Ole Waever, *Regions and Powers: The Structure of International Security* (Cambridge: Cambridge University Press, 2003).

[2] The propaganda of the current "special military operation" in Ukraine, unlike the previous Russian wars, widely refers to the principles of the just war theory, including the "protection of rights of the Russian population of Ukraine."

[3] We refer to a seminal work by Ivan Ilyin, *On Resistance to Evil by Force* – Russian religious philosopher of the early 20th century and a vigorous opponent of Tolstoy's pacifism, whose legacy was recently reclaimed by Vladimir Putin. See Paul Valliere, "Ivan Ilyin: Philosopher of Law, Force and Faith," in *Law and the Christian Tradition in Modern Russia*, eds. Paul Valliere and Randall A. Poole, 306-327 (London and New York: Routledge, 2022).

[4] See Anna Sauerbrey, "Germany is Learning a Hard Lesson," *New York Times*, July 05, 2023, https://www.nytimes.com/2023/07/05/opinion/germany-africa-west.html.

German foreign and security policy started to adopt much less restrained and soft character for which there are many factual confirmations. For example, there was an unexpected decision promulgated by the coalition of the SPD/ "Greens" to participate in the military conflict in Kosovo in 1990s.[5] At the same time, Germany did not support the occupation of Iraq by the United States in 2003, did not participate in the intervention in Libya in 2011 and until the events of February 2022 took a rather evasive position towards Russia.[6] Three days after the start of the Russian "special military operation" on Ukraine, German Chancellor Olaf Scholz, in an address to Bundestag, announced a turning point – *Zeitenwende* – in state's foreign policy and cardinal changes in German strategic thinking as a *fait accompli*.[7] The idea of change has acquired a complete if not a radical form. Its essence was expressed in very specific measures: the creation of a one-time special defense budget in the amount of 100 billion euros to finance large-scale and long-term arms procurement projects; an increase in the national defense budget to over 2% of GDP, which makes it the biggest defense budget in Europe, and a complete modernization of the air force.[8]

The answer to the question of why it all became possible and how it triggered the German *Zeitenwende* – to the extent to Germany's rethinking of its national interests; the effect of the *Ampelkoalition*, expressed in its willingness to abandon the German tradition of *keine experimente* (no experimentation); the transformation of political elites, the emergence of new generation of politicians, the crisis of the idea of European nation-states as well as of the idea EU itself, etc. But what is even more fundamental, it has much to do with the very normative background of the military politics. In this article, we focus on one of the related aspects – characterizing the essence of Germany's departure from pacifism and transition to the just war rational. In a wide range of academic and expert studies, *Zeitenwende* has already been interpreted by Russian academics either as an outright transition to

[5] Kerry Longhurst, *Germany and the Use of Force* (Manchester and New York: Manchester University Press, 2004), 6.

[6] Jacub Eberle and Vladimir Handl, "Ontological Security, Civilian Power, and German Foreign Policy toward Russia," *Foreign Policy Analysis* 16, no. 1 (2020): 41-58.

[7] Olaf Scholz, "Resolutely Committed to Peace and Security," *The Federal Government*, February 27, 2022, https://www.bundesregierung.de/breg-en/news/policy-statement-by-olaf-scholz-chancellor-of-the-federal-republic-of-germany-and-member-of-the-german-bundestag-27-february-2022-in-berlin-2008378.

[8] See Philip Trunov, "The Line of the FRG in the Military Field: Drift from the Concept of 'Strategic Restraint?'" *Social Sciences and Modernity* 1 (2023): 83-100.

militarism or as "a departure from pacifism."[9] In our opinion, it is more accurate to pin down the German "paradigm change" as a transition to just war theory.

However, which just war theory? There is a diversity of versions. Unlike militarists, who glorify war as an intrinsic moral value, just war theorists seem to be more aware of the indispensable dangers of war and tend to seek moral constraints on the use of force.[10] Nevertheless, as it was emphasized in our previous publications, the just war theory is driven by its unfolding logic, paving the way to full-fledged militarism and should be conceptualized not as a middle ground on the continuum between the extremes of realism and pacifism, but rather as a normative conception, hovering uneasily between pacifism and militarism.[11] As a result, the normative leap from pacifism to militarism may stem from gradual cultural developments towards the obsession with implementation of global justice and further on towards just war frenzy. This should be considered when we characterize the most recent normative transformations in Germany. It is true, the recent discourse of the German political elites and the public opinion of the country still stands firmly against militarism, objects to the reemergence of militant adventurism and propagates vigilance to the danger of war. Still, the formation of a new ideological landscape in Germany is also clearly visible, namely, the general trend to outright normative justification of the use of military force, which may trigger new militarism. In March 2022, opening the discussion on the national security strategy of the Federal Republic, Annalena Burbock stated: "When it comes to the questions of war and peace, when it comes to the issues of good and evil, not a single country, even Germany, can be neutral."[12] Very similar statements of the Russian politicians triggered the 2022 war in Ukraine. In our opinion, this notifies the drift in the direction of just war doctrine if not outright militarism as a political marker of the announced *Zeitenwende*. This marker designates the new special way of

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[9] See Alexander Davydov, "Rearmament of Germany? Militarization without Strategy," *Valdai Discussion Club*, May 4, 2022, https://valdaiclub.com/a/highlights/rearmament-of-germany-militarisation-without-strat/.

[10] Nicholas Fotion,et al., "Introduction," in *Moral Constraints of War: Principles and Cases*, eds. Bruno Coppieters, Carl Ceulemans, and Nicholas Fotion, 1-24 (London: Lexington Books, 2020), 12-15.

[11] Boris Kashnikov, "What of Jus Post Bellum if Just War Theory Rests on a Category Mistake," in *Jus Post Bellum*, ed. Patrick Mileham, 146-169 (Leiden and Boston: Brill, Nijhoff, 2020), 151.

[12] Karolin Schäfer, "Ukraine-Krieg: Baerbock kündigt neue Sicherheitspolitik an 'Kann nicht neutral sein,'" *Frankfurter Rundschau*, March 18, 2022, https://www.fr.de/politik/ukraine-krieg-annalena-baerbock-sicherheitspolitik-nato-deutschland-russland-putin-news-zr-91420580.html.

Germany in Europe – *Sonderweg*. The key research question of the article is how the doctrine of just war as a constituent of the new German *Sonderweg* is constructed and to where it may lead.

## II. Research methodology

The research brings together three basic methodologies: the philosophical normative analysis; historical-comparative method, which allows to understand the political-historical development of Germany in a diachronic perspective; and the discourse analysis. Discourses may be regarded as means by which the authorities create the logic of the political events, problems and tasks of domestic and foreign policy. In particular, the paper uses N. Fairclough's model of discourse analysis, the essence of which is to trace the "explanatory links" between the use of language (discourse) and social reality (structure).[13] Focusing on ideas and identities, discourse analysis goes through three stages: the analysis of linguistic, discursive and social practices through description, interpretation and explanation. Description reveals the linguistic features of the statements; interpretation is an analysis of the production, distribution and consumption of statements.

> Interpretation can be seen as a complex process with various different aspects. Partly it is a matter of understanding what words or sentences or text mean, understanding what speakers or writers mean [...]. But it is also partly a matter of judgement and evaluation [...].[14]

Explanation is an analysis of the sociocognitive effects of what the participants in the discourse say. Linguistic (text) and social practice (context) are connected through discursive practice.

Discourse analysis is applicable at three possible levels: individual (microperspective), where the subject speaks for himself as an individual citizen; institutional (mesoperspective), when the subject speaks as an official or unofficial representative of a political unit, for example, a party (Chancellor, Minister of Foreign Affairs, Minister of Defense, etc.); social (macroperspective), where the subject speaks as a citizen of the country, identifying himself with the German society at large. At the same time, it is assumed, that what individual subjects think and

[13] Norman Fairclough, *Discourse and Social Change* (Cambridge: Polity Press, 1992), 72; 80; 95.

[14] Norman Fairclough, *Analyzing Discourse: Textual Analysis for Social Research* (London: Routledge, 2003), 11.

say positively or negatively, correlates with the "statements" of political institutions to which they belong or with which they fully/partially identify themselves. It also correlates with a broader social context. In our case, it is socio-political processes related to *Zeitenwende*, a rethinking by the Germans of their attitude to war, military and defense policy. Through language and concrete linguistic realizations, manifested at the micro, meso and macrolevels, discourse analysis reveals the political and ideological phenomena of German defense and security policy. When it comes to normative analysis of the current transformation, we will have to look on the latest development of the just war theory and put it in conjunction with both the current discourse and political-historical development.

## III. The concept of just war

The just war theory, a special area of normative and applied ethics, is well developed and represented in scientific literature. However, it is rather diverse. The limited space of this article does not allow to expand on all trends and paradigms of the theory. But it is necessary to pay attention to at least the two most recent developments, which are not only the most telling, but which may also provide the most cardinal driving force for the major normative transformations of German military policy. First, there is an important general major shift of paradigms taking place in the just war theory. The traditional paradigm, represented by M. Walzer,[15] the so-called *sovereignty paradigm* is rapidly substituted by what is called *human rights paradigm*, represented by J. McMahan and others.[16] The former insists on national self-defense as the only conceivable criterion of the justice of the war. The latter insists on the protection of human rights all over the world as the true justice of the war. Accordingly, whilst the second paradigm triggers humanitarian intervention, the first more or less corresponds to the UN Charter, which does not presuppose any other justification for war except national self-defense and which may be already regarded as a relic of the past. Correspondingly, there is a threat of the returning militarism in the sheep's skin of humanitarianism. This transformation obviously has its cost, as Claude puts it:

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[15] Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustration* (New York: Basic Books, 1977).

[16] Jeff McMahan, *Killing in War* (Oxford: Clarendon Press, 2009); Brian Orend, *The Morality of War* (New York: Broadview Press, 2006); Steven Lee, *Ethics and War: An Introduction* (Cambridge: Cambridge University Press, 2012).

> The world no longer seriously purports to accept the view that peace is unconditionally a higher value than justice. We have returned to the medieval view that it is permissible and perhaps desirable and, conceivably, even mandatory – to fight to promote justice, broadly conceived. Evil ought to be overturned, and the good ought to be achieved by force if necessary.[17]

Despite the fact that the multidimensional conceptions of the just war of the "traditionalists-Walzerians" and the "revisionists-McMahanians" are extremely different in terms of moral criteria that they provide to identify the core of a just war, they all share a common approach: a just war is necessitated by a moral fundamentalism of sorts. The idea of morality – immaculate, incorrigible and unchangeable in peacetime and in wartime is behind it. However, it has been argued, although the formal principles of the just war theory may be the same, moral values behind them may differ significantly through cultures and times. Even if the same principles are applied, they are applying by the bearers of different foundational values and thus the question tends to arise: which culture should provide universal moral standards, to normatively unlock the formal principles of the just war theory? There are allegations that the values promoted by the just war theory are far from being universal, but are still western liberal values of the contemporary European nations in disguise. This may trigger not only the metaethical dispute on universality of values, but what is even worse, can create a new ground for hostilities – the battle of narratives. Therefore, in recent years, a number of researchers abandoned doubtful moral fundamentalism as the foundation for the just war theory and switched to "non-fundamentalist" approach.[18]

Its supporters argue that moral fundamentalism in matters of war and peace has no sufficient foundation, and when practically applied, proves to be useless if not harmful and dragging into absolute war. In contrast to fundamentalism, these researchers state that the international law of military conflicts can become a normative force in its own right and can acquire normative power, only if it is based on

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[17] Inis L. Claude, Jr, "Just War: Doctrines and Institutions," *Political Science Quarterly* 95, no. 1 (1980): 94.

[18] Allen Buchanan, *Beyond Humanity* (Oxford: Oxford University Press, 2011); Seumas Miller, *Just War Theory and Counterterrorism* (New York and London: Routledge, 2013); Daniel Statman, *War by Agreement: A Contractarian Ethics of War* (Oxford: Oxford University Press, 2019); Uwe Steinhoff, *Self-Defense, Necessity and Punishment*: *A Philosophical Analysis* (New York and London: Routledge, 2020).

shared legal, religious and cultural foundations, and not on doubtful universalism. We should not necessarily understand this approach as an exercise in cultural relativism. Rather we should refer to it as a case of overlapping consensus – the normative methodology widely implemented by John Rawls and displayed in contemporary international law.[19] The writings of scholars, belonging to this trend also contain an explanation of why the moral rules applied in peacetime cannot be used in wartime or during an armed conflict, as well as serve as a basis for engaging into a conflict. The "non-fundamentalist" approach to just war shows that modern war cannot stem from abstract justice or from presenting one's own moral prejudice as the summit of law and morality. This promising approach also comes with its price. The drawback of this approach is the possibility of falling into resentful traditionalism.

These two trends within just war theory are of particular importance, when it comes to understanding the possible lines of development of the German normative conception of military policy. In the long run, due to the very logic of what we termed as human rights paradigm, this policy may adopt a more traditional "crusade like" direction, remindful of the traditional medieval just war paradigm of Augustine and Aquinas. If the second tendency gains ground, it may merge for good or ill with the German cultural tradition instead of universalistic ethics. What is called particular German *Sonderweg* may be stemming in the way of paradox from recent developments within just war theory and these particular tendencies. Just war approach has its dangers as well as normative advantages, when it comes to peace and security. Global human rights are worth fighting for, but not at the expense of plunging into the hell of war. Universal ethics is to be respected, but perhaps the domestic traditions and cultural background should be taken into account. Again, which exactly the tradition and cultural background? Which interpretation of the just war theory will gain ground in German policy is hard to predict. Germany as well as many other countries is on the crossroad.

## IV. The essence and evolution of *Sonderweg*

In the mid-1950s Ludwig Dechio, exploring the place of Germany in world politics of the 20th century defined it as "*Halbhegemonie*" – "semi-hegemony" as the legacy of the former empire.[20] Hans Kundnan,

[19] John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993).

[20] Ludwig Dehio, *Germany and World Politics in the Twentieth Century* (New York: Norton, 1959), 15.

draws attention to the "German question" as the problem of Germany's overcoming its "semi-hegemonic status": in the period from 1871 to 1945.

> It was not powerful enough to impose its will on the continent; but it was powerful enough to be perceived as a threat by other powers. Its size and location in the very center of Europe – the so-called *Mittellage* – made it inherently destabilizing. This, in essence, was what became known as the "German question."[21]

Relying on military force and nationalism, Germany tried to resolve this issue by establishing its full hegemony in Europe during the two world wars. The key goal of these endeavors was to create a "German Europe." Kudnani believes that during the two World Wars, "German foreign policy was informed by a complex interaction between structural factors of 'semi-hegemony' and what might be called ideological factors of 'nationalism.'"[22] Currently, German nationalism was revealing three features: authoritarianism of the political regime; sociological legitimacy of the social imperialism, created by the Germans during the Third Reich; and the phenomenon of *Sonderweg*, the ideology of the "special way," forged by German intellectuals to pin down the differences between German political culture and political culture of the rest of the West. All in all, it was indicating the German opposition to the Anglo-American liberal-democratic values. The origins of the thesis of a special historical and political development of Germany (*Sonderwegsthese*) can be found as early as the end of the 18th and beginning of the 19th centuries, for instance, in the discussion on the dissimilarity of German classical philosophy and the philosophy of the French Revolution.[23] By the end of the 19th – the beginning of the 20th century it seemed evident that authoritarianism, the blocking of parliamentarism, reforms from above as a substitute for the revolution, the adherence to the bureaucratic tradition, the rise of welfare state and the longevity of paternalism gave weighty arguments to the claim of gross dissimilarity of the two.[24] Bismarck's historic mission of creating the new German

[21] Hans Kundnani, *The Paradox of German Power* (London: Hurst Company, 2014), 8.

[22] Ibid., 20.

[23] Alexei Kruglov, "Kant as a German Theorist of the French Revolution: The Emergence of Dogma in Marxist-Leninist Philosophy," *Kant's Collection* 40, no. 3 (2021): 63-92.

[24] Jürgen Kocka, "German History before Hitler: The Debate about the German Sonderweg," *Journal of Contemporary History* 23, no. 1 (1988): 13.

Empire "seemed to be to forge a new synthesis of culture and force, authority and freedom, tradition and modernity, to which the future belongs."[25] Ultimately, Bismarck's mission became the mission of Germany itself in its European policy, its Sonderweg, the mission of creating a "German Europe." World War I, the defeat of Germany and the revolution of 1918-1919 changed the political situation, but the core of the Sonderweg, its traditional, undemocratic, pre-modern mental orientations, retained great power over the minds of ordinary burghers, political, military and business elites, exerting huge influence on domestic and foreign policy, which became one of the important reasons for the collapse of Weimar with its ideals of democracy and liberalism. Germany viewed military force as a decisive tool for the policy of ensuring national security, economic development and welfare state.

## V. Overcoming the *Sonderweg*

After 1945 West Germany faced the task of overcoming *Sonderweg* and sticking to the Western *Normalweg*. Similar processes took place in another part of Germany – the GDR, during the regime of V. Ulbricht, later E. Honecker. The main difference was that in western Germany, the "Allied Control Council," taking into account the lessons of the fall of Weimar, emphasized the values of democracy and liberalism in German society, and thus creating a platform for the cohesion of liberal political elites. It was a process of renouncing of the integral part of national and political identity as a prerequisite for entering the Western world. In the GDR, a similar process of change was carried out under the control of USSR on the basis of emphasizing the political identity of Germans as fighters for socialism. Socialism itself should be regarded as the alternative to liberal version of modernity. The common feature for both FRG and the GDR ideological arrangements was the condemnation of militarism. Simultaneously the "Bonn Republic" heading to the West was not just to implement the bygone Weimar liberalism, but to surpass it in such an innovative manner, so that it would never repeat its plight. In such a way the new social practices of the new elite groups were forged and new norms and values were coined. The Constitution of the FRG had a trademark of a liberal legitimate social state, with some minor and reasonable exemptions. It did not, for example, provide the collective right of national referendum, which

[25] Andreas Wirsching, "Bismarck und das Problem eines deutschen 'Sonderwegs,'" *Bundeszentrale für politische Bildung*, March 20, 2015, https://www.bpb.de/shop/zeitschriften/apuz/202981/bismarck-und-das-problem-eines-deutschen-sonderwegs/.

significantly reduced the perspectives of popular democracy, thus forcing the public to rely on the decision making of elected political elites or to rely on collecting signatures and applying to the good will of the elites, promoting popular political initiatives. The course of the unified Germany seemed to be a success: the Germans officially overcame their midterm *Sonderweg* in 1990 by reunification and restoration of the German national state and finally "arrived in the West," whatever it could mean. In addition to the unification of Germany, there was an elite change, which would be more appropriate to call not so much a change, but a circulation-like transfer.[26] The new Berlin Republic set new goals and established new values for political elites. "The normative integration of elites is in many ways more important for the formation of political views than East German socialization."[27]

## VI. Formation of a new *Sonderweg*

Seemingly, soon after the war, the FRG has managed to create a window-dressing for democracy, which happened to be attractive to the GDR:

> In the minds of German politicians, experts and media moguls formed after the unification of Germany, there is confidence that the model of the internal political functioning of Germany is an example of a modern democratic state.[28]

Western liberal-democratic values have become part and parcel of the political climate of Germany, turning it into a beacon of liberal ideas and practices. To no small extent the success of democratic transition and unification was ensured by the effectiveness of German economic and social policy. The national context, "Rhenish capitalism," differs from classical Anglo-American principle of coordinating corporate goals, directly influenced the conducting of business, which still works perfectly well as an "established habit."[29]American and British companies are more

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[26] Ursula Hoffmann-Lange, "Elites in Germany: Historical Changes and New Challenges," *Power and Elites* 4 (2017): 43.

[27] Lars Vogel, "(Ostdeutsche) Politische Eliten zwischen Integration und Repräsentation," in *Ostdeutsche Eliten: Trume, Wirklichkeiten und Perspektiven* (Berlin: Deutsche Gesellschaft e.V., 2004), 52.

[28] Andrey Bagay, "Russian-German Relations 'after the Crimea': From the 'Partnership for Modernization' to the Degradation of Dialogue Formats," *Bulletin of St. Petersburg University. International Relationships* 3 (2019): 363.

[29] Max Weber, *Wirtschaft und Gesellschaft: Grundriss der verstehenden Soziologie* (Frankfurt am

focused on common business performance criteria and the financial market. The referents of the strategies of German companies are the production, quality and promotion of their products. These strategies are also supported by the German corporate finance model: a home banking system, less dependence on financial and capital markets. The political elites of Germany constantly present "*Modell Deutschland*" as the most valid model, to be imitated by other European partners.[30]

With the surge of moralistic terrorism at high tide of migration crisis in 2015, Germany threw all its forces into creating a new trend in the public consciousness not only of its country, but also of the EU, factually blackmailing the public by appealing to the imperative of the necessity to comply with the highest standards of human security at the expense of rights and freedoms. This provoked the crisis of solidarity, exacerbated disagreements between opponents and supporters of multicultural Europe, but Germany lobbied the conclusion of a migration agreement between European Union and Turkey.[31] As to climate and energy policy, Germany has embarked on the path of European leadership, proclaiming back in 1970s *Energiewende*. Its key component was the elimination by 2000 of nuclear power plants, provided by the famous "Atomic Consensus" reached by the federal government and the energy concerns of Germany.[32] The decarbonization of the economy and the promotion of the "green" agenda is enshrined in the "Law on Renewable Energy Sources" ("*Erneuerbare-Energien-Gesetz" – EEG*) of 2000, continued in its updates, as well as programs for abandoning gas and coal.[33] Having signed an agreement with the United States on partnership in the field of climate and energy, Germany positioned itself not only as a European, but also as a world leader, leading the movement of the world economy towards carbon neutrality.[34] In the government of O. Scholz according to the Focus

Main: Zweitausendeins, 2005), 17.

[30] Sergio Pistone, "The Paradox of German Power," *The Federalist*, 2015, https://www.thefederalist.eu/site/index.php/en/notes/2192-the-paradox-of-german-power.

[31] "EU-Turkey-Statement," *European Council*, March 18, 2016, https://www.consilium.europa.eu/de/press/press-releases /2016/03/18-eu-turkey-statement/.

[32] "Vereinbarung zwischen der Bundesregierung und den Energieversorgungsunternehmen vom 14 Juni 2000," *Das Bundesministerium für Umwelt, Naturschutz, nukleare Sicherheit und Verbraucherschutz* (BMUV), June 14, 2000, https://www.bmuv.de/download/vereinbarung-zwischen-der-bundesregierung-und-den-energieversorgungsunternehmen-vom-14-juni-2000.

[33] "Das Erneuerbare-Energien-Gesetz," *Das Bundesministerium für Wirtschaft und Klimaschutz*, https://www.erneuerbare-energien.de/EE/Redaktion/DE/Dossier/eeg.html?docId=5800e547-778e-4aaf-afc0-bf6d34b3f39c.

[34] "Fact Sheet: U.S.-Germany Climate and Energy Partnership," *The White House*, July 15, 2021, https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/15/fact-sheet-u-s-germany-climate-and-energy-partnership/.

newspaper, "the power over climate policy, up to heating systems, is in the hands of eco-missionaries."[35] Another important point is the phenomenon of the homogeneity of the German political and business elites, which was revealed by M. Hartmann. The composition of political elite tends to reflect the composition of economic elite and the attitude of the members of both elites towards the issues of social justice, taxes and allocation of resources understandably becomes more and more homogeneous. Still, there are not so many exceedingly rich people in the political elite of Germany than, say, in the United States.[36] This phenomenon allows the ruling circles in Germany, even better than in the US, to gradually ideologize society, turning it into a moralized instrument of their policy.

We are about to face a new incarnation of German messianism, the hasty formation of a new *Sonderweg*, less integrated with coercion, more with Kantian categorical imperative, but capable of both. As a decisive tool for security policy, economic development and the construction of a welfare state, the FRG does not as much stick to military force as to moralizing about the usage of force. The new modern, democratic, liberal, moralistic orientation of the elites and society, which replaced the pre-modern and authoritarian moralism goes out of its way to form a new disciplinary power. Thanks to its economic success, Germany has regained the status of a new European "semi-hegemon," which is accompanied by "renewed sense of a 'German mission' – which restarts questioning about Germany's relationship with the West."[37] In his speeches during his recent visits to European capitals, O. Scholz constantly emphasized the special role of Germany in the events taking place in Europe: in the speech at the Charles University of Prague, he emphasized that Germany's historic decisions brought the EU closer to realizing

> [...] of its place in the history and geography of this continent and it acts strongly and cohesively around the world. Germany, as a country at the heart of the continent, will do everything in its power to bring together East and West, North and South in Europe [...][38]

[35] Ulrich Reitz, "Mit Öko-Missionaren hebeln die Grünen das Macht-Gleichgewicht einfach aus," *Focus online*, April 25, 2023, https://www.focus.de/politik/analyse-von-ulrich-reitz-mit-oeko-missionaren-hebeln-die-gruenen-das-macht-gleichgewicht-einfach-aus_id_191994253.html.

[36] Michael Hartmann, "Die deutsche Elite wird immer homogener," interview by Leonie Schlick, *Capital*, April 14, 2019, https://www.capital.de/wirtschaft-politik/die-deutsche-elite-wird-immer-homogener.

[37] Kundnani, 6.

[38] Olaf Scholz, "Speech by Federal Chancellor Olaf Scholz at the Charles University in Prague," *The Federal Government*, August 29, 2022, https://www.bundesregierung.de/breg-en/

which requires changing the principle of foreign policy and defense decision-making in the EU. In an interview to the Spanish newspaper El País he said that Germany takes its responsibility for Europe "very seriously."[39] In this *Sonderweg*, Germany, is gradually overcoming the limitations of its post-war strategic culture and is grasping the idea of no alternative to the return of moralistic violence to the political sphere. From the language of pacifism and non-usage of military force, it has moved to the language of just war, the specificity of which still needs to be determined.

## VII. The just war discourse in Germany and moral fundamentalism

We have formed a paradigmatic corpus of samples of the German just war discourse from official statements, speeches, interviews of Chancellor O. Scholz, A. Baerbok, B. Pistorius, M.-A. Strack-Zimmermann, M. Roth and a number of other German politicians, from the materials of websites and other mass media, audio-visual sources, including meetings of the Bundestag in the period from February 27, 2022 to May 2023. They are arranged not in chronological order, but in the order of achieving analytical goals. Speeches and texts are presented in German and English, they are intended for domestic and international audiences. We may now follow its three stages: description, interpretation and reproduction, within three levels of each.

a. Description (linguistic practice): at the *individual* level, politicians describe the need for change with the words "disaster," "terrible war," "aggressive war," "the price of blood," "imperialist dream," "a gun held to the temple." At the *institutional* level, politicians claim that there is a connection between war and justice, they use strong contrasting pairs – "peace" and "war," negotiations on a "just peace" in Ukraine; principles of a "just peace," military economics (*Kriegswirtschaft*). At the *social level*: "We, Germans, are now the strongest supporters of Ukraine in continental Europe and we will remain so." "We, Germans, support Ukraine and its citizens in their struggle for freedom, unity and justice."

b. Interpretation (discursive practice) reveals a typically German political

news/scholz-speech-prague-charles-university-2080752.

[39] Elena G. Sevillano, "Olaf Scholz: 'Hay que recortar los beneficios excesivos y usar el dinero para bajar el precio de la energía,'" *El País*, October 5, 2020. https://elpais.com/internacional/2022-10-05/olaf-scholz-hay-que-recortar-los-beneficios-excesivos-y-usar-el-dinero-para-bajar-el-precio-de-la-energia.html.

vocabulary related to the issues of war, armed conflicts, security, the duty of the state to stick to universal morality in situations of disaster and misfortune, and in relation to Russia, known as *Putinversteher* – understanding Putin, *Russlandversteher* – understanding Russia. At the *individual* level, politicians refer to "good," "evil," "shock." At the *institutional* level they connect their speeches with the principles of international law, the values of the European Union – "values are necessary for the continued existence of the EU," *Wertepartner* – "a partner in values," "real politics in the 21st century does not mean putting values aside;" they do not approve of the use of violence and are in favor of peace; "to annex a piece of a neighboring state by force is unacceptable." But Germany stands for "justice" without compromise in a "cruel war" in which "Germany cannot be neutral." It is against "imposed peace and is for a 'just agreement.'" Germany must stay "in agreement and in close cooperation with the allies" and carry out "supplies of weapons," it "breaks the dogma about the non-delivery of weapons to war zones." "We will not sit idly and watch how women, men and children are killed," "If you don't help people who are fighting for their lives [...] you are at least as much guilty, maybe even more." At the same time, many politicians position themselves as pragmatists – "ideology has given way to pragmatism. We must take this as a basis." They see in what is happening (Russia has always been an "unreliable partner and an aggressor"), not only a pattern, but also a political advantage in what they themselves perceive as a disaster: "Germany will take on special responsibility in terms of building up artillery and air defense potential of Ukraine." At *social* level: "Germany is the backbone of the Western world;" "we have regained our strength;" "we accept the challenge;" Germany has undergone fundamental changes in its attitude to military issues, the war on Ukraine "breathed new life into the solidarity" of Europe.

Some signs of the formation in Germany of a new "language of the historical turn" (*Wendesprache*), which took place in the 1990s in the period of reunification are noteworthy. Among these signs is the emergence of *Schlagwort* (slogan words), sharp political formulas that are strategic in nature, which in a concise form reflect one's point of view.[40] Stalisha Kataeva shows that according to the semantic classification of F. Hermanns, "words-slogans" are divided into positive "words-banners" and negative "words-stigmas," they pursue the achievement of promot-

[40] Stalisa Kataeva, "German Political Language: Main Directions and Trends of Development (Based on Political Vocabulary)" (PhD diss., Moscow State Pedagogical University, 2009); Fritz Hermanns, *Schlüssel, Schlag- und Fahnenwörter* (Heidelberg and Mannheim: University of Mannheim, 1994).

ed goals and can, among other tasks, conceptually express the "spirit of the time." It can be assumed that such words as "*Wertepartner*," "*Zeitenwende*," "*Putinversteher*," "*Russlandversteher*" are "slogan words."

c. Explanation (reproduction practice) of reproduction in social effects, of what politicians state. At the *individual* level, they position themselves as peaceful, tolerant people, they tend "to trust the government," try to avoid conflicts in world politics. At the *institutional* level, they present their initiatives and their political institutions as peaceful, but capable of defending themselves. War in general is illegitimate, but a just war makes an exception: "We help those who have been attacked, we supply them with weapons, ensuring the security of at least the EU." Europe owes its prosperity to trade, not war, but: "European rules can be changed – in a very short time, if necessary, by means of a new European peacekeeping mission." The border between good and evil runs between the EU, which is "open to all European peoples who share our values," where "more than 500 million free citizens enjoy equal rights." It makes it different to authoritarian regimes with "totalitarian arrangements," of which Russia is the current incarnation. Germany is not fighting against Russians, but against political regimes such as "Putin's," for "correct European standpoints." Germany, like Europe, "demonstrated its great heart and great solidarity" to the victim of aggression. At *social* level, politicians reproduce the official image of Germany as a peace-loving country, remembering its past and responsible for the security of the EU. "This turning point should force European politics to build bridges, not dig trenches," however, "abstract reasoning will not help us. Germany must keep up with the times." Germany will assume defense responsibility when we lead the rapid countermeasures in 2025, "we, in Germany, will invest heavily in our air defense." The picture drawn by politicians is that the support for military actions and participation in them is not a specific German response to the challenges of the time, but is caused by an emergency situation from which Germany cannot stay away and a fair resolution of which is only possible by military means.

Discourses at the micro and meso levels are complemented by discourses at the macro level and are directly correlated with social practice, where words are followed by deeds. In our case, this is manifested in a series of events with interviewed politicians meetings citizens, for example at the so called, *Bürgerdialog* ("Civil Dialogue" by O. Scholz, etc.). Actions may also reach institutional and social level, for example, decisions on concluding contracts with *Rheinmetall,* concern with resuming production of the additional amounts of ammunition, general reform of *Bundeswehr*, etc. We believe that the just war thinking of the

ruling political elite of Germany develops in the framework of the human rights paradigm of the just war theory, mentioned above. Germany insists on the protection of human rights around the world as the true justice of the war. It is interesting to admit that from *Sonderweg* traditional perspective it is not just war, but realism (*realpolitik*) (merging with militarism), which is more embedded in the intellectual tradition of Germany. Just to note the line of succession from Clausewitz to Nietzsche, from Nietzsche to Weber and Sombart and from Sombart to paradigmatic realism of Hans Morgenthau (although Morgenthau is an American scientist, he was born in Germany and was influenced by the German intellectual tradition). On the contrary, the just war theory has no noticeable roots in the German intellectual tradition and is mainly Anglo-American ethical theory. This circumstance may play a vital role, reconsidering the essence and possible evolution of *Sonderweg*. Given the general trend of the development of the just war theory from universalism to cultural relativism and bordering at times with the idea of liberal crusade, as noted above, it can be assumed that *Sonderweg* in its *specific German* context can constitute itself as a kind of special concept of the just war theory, which will be much closer to traditional German realism than to the universalistic Anglo-American just war theory. Widely applying the language of just war in constructing social reality and not sufficiently considering the waning postwar maxim, that there can be no military solution to the contemporary political problems, can lead to dangerous consequences. Safransky rightfully holds, that Germany on its path to adolescence needs to move from the "ethics of convictions" to the "ethics of responsibility."[41]

## VIII. Conclusion

The announcement of *Zeitenwende* as a German response to the challenge of the time, in our opinion, was triggered by structural factors determining Germany's foreign policy – the return to the status of a European "semi-hegemon." The political and ideological factors accompanying this status – a stable plebiscite democracy, a developed parliamentary culture, supplemented by the mentality of occupied power, propelled a new version of Germany's "special way." We have to consider G. Rohrmoser's idea that "the national interest of Germany consists [...]

[41] Rüdiger Safranski, "The Germans Have not Matured yet," interview by Martin Helg, *NZZ magazin*, November 8, 2015, https://magazin.nzz.ch/gesellschaft/ruediger-safranski-deutschen-sind-in-pubertaet-ld.15 1820?reduced=true.

in self-affirmation."[42] In fact, this is a *resentiment*, a reaction to endless moralism of Western countries towards the Germans. Today, Germany's ruling elite seems to be sincerely pursuing its value-based hope that a German role model can really encourage other countries to "overcome the era of *Zeitenwende*."[43] The ideology of German special way is to project moral fundamentalism into world politics, in a way that excludes neutrality towards everything that confronts conservative-traditionalist thinking. This can be understood as an attempt to once again create a "German Europe," but in such a way as to identify the national interests with the supranational interests of the EU, avoiding any conflict with the Union and considering the prospects of becoming the recognized leader of the "European Germany." To achieve this goal, in addition to what Germany already has, it is *also* necessary to change its military policy and strategic culture, while mooring it to the principles of Western democracy and even surpassing them in a number of parameters. The instrument of such a change for Germany is the implementation of the idea of building up its military power, targeted at forceful, but morally justified solution of military conflicts – a *just* war of sorts. It is important that the just war theory is becoming a major foundation for the modern normative concept of security, not only in Germany, but all over Europe. In this role, the concept of just war has already substituted political realism, which previously reigned supreme as a normative conception of warfare. The remaining problem, left to be settled, is to what extent Germany will not be lured into the traps related to two major tendencies of the just war theory, mentioned above, in its current development. Namely, will it be able to stick to global protection of human rights without falling into human rights militarism and will it be able to follow its own cultural tradition of normative conceptualization of warfare without falling into traditional realism and militarism? These are the two major challenges for the future developments in terms of new *Sonderweg*.

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[42] Günter Rormozer, and Anatolii A. Frenkin, *New Conservatism: Challenge for Russia* (Moscow: RAN Institute of Philosophy, 1996), 83.

[43] Ulrich Reitz, "Scholz und Baerbock erleiden mit ihrer Moralpolitik die dritte Pleite," *Focus Online*, April 18, 2023, https://www.focus.de/politik/meinung/kommentar-von-ulrich-reitz-scholz-und-baerbock-erleiden-mit-ihrer-moralpolitik-die-dritte-pleite_id_191449631.html.

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# Anger and Reconciliation

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**Abstract**

*Emotions are a much-neglected aspect of contemporary peace ethics, which is surprising if only because the concept of positive peace encompasses a certain emotional commitment. Moreover, some emotions explicitly promote separation, conflict, and even violence. Anger is an ambivalent emotion that, on the one hand, evokes conflict but, on the other hand, expresses a sense of justice. Anger can be soothed by forgiveness, and forgiveness can lead to reconciliation. However, in individual ethics, the conceptual and factual connections are easier to explain than in political contexts, where collectives must be considered as actors. Martha Nussbaum recently subjected both anger and forgiveness to a well-founded critique. In contrast to this, however, a qualified defense will be made in the following.*

**Keywords:** *political emotions; anger; forgiveness; reconciliation; peace; ethics of peace; Martha Nussbaum; revisionist just war theory*

## I.

In the German-speaking world it is frowned upon to speak of an "ethics of war," even when ethical considerations are made about military operations or even wars. The politically correct term is "peace ethics" because one wants to free oneself from any suspicion of legitimising wars. In the peace ethics scene – and peace ethics is first and foremost a field to be dealt with in terms of the sociology of science – the expression "just war" is also unacceptable. There is talk of a "paradigm shift" (fol-

lowing Thomas S. Kuhn[1]) away from the "just war theory" towards the "just peace theory."[2] For the most part, these renamings are euphemisms. For "peace ethics" continues to reflect on violence and war – especially violence determined sociologically as "macro-violence" – and "just peace theory" also has criteriologies for the use of military force.[3] What has changed, it is often said, is the perspective: instead of thinking in terms of the legitimacy of war, the starting point is now peace and its conditions. This peace, it is claimed, must be a "just" one – since peace and justice belong together[4] – but surprisingly, more precise references to the theory of justice used in the development of this concept are missing.[5] The concept of "just peace" also emphasises the prevention of violence and active peace-building, which may indeed go beyond what the thinkers in the just war tradition had in mind.[6] But that they were not interested in peace and let alone a "just peace" does them a great injustice. (The criterion of "last resort" shows clearly that even in the so-called "just-war-tradition" peace had preference wherever possible.) Despite the diversity of approaches to just war, it is always a question of overcoming war and transforming it into peace.[7] The difference between the concepts of "just peace" and "just war" lies in something else: Just war theories assume the general (*prima facie*) moral impermissibility of wars. In them, ethics is thought of from the side of duties, and in principle there is a duty to refrain from acts of war.[8] Under certain conditions, however, there can be an exception to the general prohibition. The criteria of just war formulate these conditions; and for sure they can be abused for inappropriately justifying violence.

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[1] Thomas S. Kuhn, *The Structure of Scientific Revolutions*, 50th anniversary edition (Chicago, IL: University of Chicago Press, 2012).

[2] Cf. Eberhard Schockenhoff, *Kein Ende der Gewalt? Friedensethik für eine globalisierte Welt* (Freiburg: Verlag Herder, 2018), 578.

[3] Cf. Eine Denkschrift des Rates der Evangelischen Kirche in Deutschland [Council of the Evangelical Church in Germany], *Aus Gottes Frieden leben – für gerechten Frieden sorgen* (Gütersloh: Gütersloher Verlagshaus, 2007), no. 102, 68f.

[4] According to Psalm 85.11.

[5] A good example of this is Ines-Jacqueline Werkner, *Gerechter Frieden. Das fortwährende Dilemma militärischer Gewalt* (Bielefeld: transcript, 2018).

[6] Cf. Ulrich Frey, "Von der 'Komplementarität' zum 'gerechten Frieden.' Zur Entwicklung kirchlicher Friedensethik," *Wissenschaft & Frieden* 24, no. 4 (2006), https://wissenschaft-und-frieden.de/artikel/von-der-komplementaritaet-zum-gerechten-frieden/.

[7] Which becomes particularly clear with Hugo Grotius, who stands on the borderline between duty-based and rights-based approach. Cf. Stephen C. Neff, ed., *Hugo Grotius on War and Peace* (Cambridge: Cambridge University Press, 2012).

[8] So, it comes as no surprise that in the Latin world at first Cicero deals with the issue of just war (*bellum iustum*) in his *De officiis* (*On duties*).

War can be waged, if these conditions are met, but it does not have to be.[9] The renunciation of violence remains possible without being required, as in certain forms of pacifism. The "paradigm of just peace," on the other hand, is based on rights – especially (basic) human rights. In this concept, rights (even if the concrete form they take often remains unclear) are seen to be the core of justice, which in turn is seen as a basic condition for peace. Subjective rights can be either liberty rights or claim rights. In both cases, however, conflicts between rights are possible. If peace means that no violence is used, then this peace must obviously consist of non-violent "conflict management," which, however, never comes to an end.[10] In this sense, there is probably also talk of "just peace" being a "target perspective."[11] If a certain coming to rest is implied in the concept of peace (as is the case, for example, with the traditional concepts of peace in Thomas Aquinas[12] or Augustine[13]), "just peace" can never be fully achieved. Subjective rights are a driver of conflict as they protect human agency. Duties reduce conflict because they demand human restraint – even where they oblige action. Rights, on the other hand, conjure up conflicts, and so it is quite popular in German-language-peace-ethics to emphasise that conflicts are, after all, something good and "productive" or "constructive."[14]

## II.

Concepts of just war and concepts of just peace thus attempt to provide *normative* answers to the question of violence and war. However, what falls short in both "paradigms" (if we want to speak of them) is a look at the side of the emotions involved. This is surprising because both approaches lack a weighty moment here. Let us start with the concepts of just war. With them, the prohibition of violent action is the basic position, from which there are only certain exceptions that, however, rest on the prohibition. Where the exception does not exist, the prohibition applies. Now this may well come at great cost to an actor. Consider, for example, that a war of self-defence (*ius ad/contra bellum*) would leave a dispro-

[9] This does not apply to all authors of the so-called "School of Salamanca."

[10] Therefore, Ines-Jacqueline Werkner speaks of "peace ethics" as a "process ethics" ("Prozessethik"). Ines-Jacqueline Werkner, "Einführung in das Handbuch," in *Handbuch Friedensethik*, ed. Ines-Jacqueline Werkner and Klaus Ebeling, 1-8 (Wiesbaden: Springer, 2017), 4.

[11] Die deutschen Bischöfe: Gerechter Friede. 27th September 2000, 4th ed. 2013, 47ff.

[12] Cf. *Summa Theologiae*, II, q. 29.

[13] Cf. Augustine, *De civitate Dei*, trans. Marcus Dods (Moscow, ID: Roman Roads, 2015), XIX.

[14] Both expressions are used in a recent statement by the German Catholic military bishop, Dr. Franz-Josef Overbeck, *Konstruktive Konfliktkultur* (Freiburg: Verlag Herder, 2019).

portionately high overall damage and is, therefore, not permissible. These costs must not only be borne but also endured emotionally. This becomes even clearer in the *ius in bello*. All approaches to just war agree that a distinction must be made between legitimate and illegitimate targets. The difference between the traditional approaches[15] and the so-called "Revisionist Just War Theory"[16] lies in the question of which group of people is liable to be attacked and which is not;[17] but the distinction as such is made by both (traditionalists and revisionists). The restriction, however, can have its own costs in both theoretical approaches, even if one allows for non-intended harm to the protected persons, because then again, a principle of proportionality must be observed. Even the protection of (protected) cultural goods sometimes makes it necessary to take risks that would not be taken without the protection of these goods.[18] Thus, although she or he may have a normative answer for the type and extent of violence that can be legitimised, a just-war theorist is faced with the unresolved motivational question: Why should one adhere to the norm that may cost one's own life? The motivational problem thus unfolds its full force here. In emotivist internalism it would be solved because the norm itself would be based on an emotion, but in this way the universal validity of the norm is called into question in turn. Wars could then be understood as conflicts between "emotional communities" that can no longer be rationally resolved at all. In contrast, a rationalistic internalism gets into explanatory difficulties because it has to show "that the moral law directly determines the will."[19] An externalism could perhaps insist on divine observation including reward and punishment but would hardly find any credence in a secular society. When we want to explain how one can, nevertheless, observe potentially deadly norms (deadly to oneself), we will not be able to bypass the prob-

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[15] Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic Books, 2015).

[16] Jeff McMahan, *Killing in War* (Oxford: Oxford University Press, 2009).

[17] On the distinction of "traditionalist accounts" and "revisionist accounts" of just war theory cf. Seth Lazar, "War," *The Stanford Encyclopedia of Philosophy* (Spring 2020 Edition), ed. Edward N. Zalta, https://plato.stanford.edu/archives/spr2020/entries/war/; Bernhard Koch, "Diskussionen zum Kombattantenstatus in asymmetrischen Konflikten," in *Handbuch Friedensethik*, eds. Ines-Jacqueline Werkner and Klaus Ebeling (Wiesbaden: Springer, 2017), 843-854; Bernhard Koch, "Reflexionen zur ethischen Debatte um das *ius in bello* in der Gegenwart," in *Rechtserhaltende Gewalt – zur Kriteriologie*, eds. Ines-Jacqueline Werkner and Peter Rudolf (Wiesbaden: Springer, 2018), 75-100.

[18] Cf. Bernhard Koch, "Es geht nicht nur um Steine. Ist militärischer Schutz von Kulturgütern erlaubt oder gar geboten?" *Herder Korrespondenz* 11 (2016): 38-42.

[19] Immanuel Kant, *Critique of Practical Reason*, trans. Thomas Kingsmill Abbott (New York: Dover Publications, 2004), 5: 71.

lem of cultivating emotions. The fear of losing one's life would have to be reduced and in return a sense of pride (or other positive emotions) for adhering to the norm would have to be cultivated. Without looking at emotions as motivational components, a just war theory remains incomplete.[20]

We can take the peace-ethical relevance of emotions even deeper: If it is true that emotions have an epistemic function (as Aristotle seems to claim),[21] then the picture we form of a conflict or cooperation would not be independent of how we experience the situation emotionally. Love as an emotion can (as Christian authors argue subsequent to 1st Korintians 13.2[22]) help us grasp a situation in such a way that it does not seem to require a violent reaction (e.g., defending violence). Hate probably has the opposite effect.

But concepts of just peace do not make the task any much easier. The above-mentioned "non-violent conflict management" also requires emotional training if the use of everything that should be covered by one's own rights does not in turn lead to violent conflict. It requires a willingness to exercise restraint – that is, an attitude that values (the virtue of) moderation and keeps excessive emotions in check. (In my view, it also means being able to do without certain goods because they are too trivial to justify violence if they are pursued.[23]) Whichever way you look at it, the ethics of peace already has to deal with emotions because of the issue of motivation – and it has to each emotion in a way that is appropriate for it. But emotions – which can and should be conceptually distinguished from virtues and other attitudes[24] – do not only fulfil an important role in peace ethics in motivating compliance with norms. They are also constitutive for

[20] It is quite debatable whether emotions actually take on the motivational function attributed to them, and if they do, what it is that makes them take on this function. The subtleties of the debate must unfortunately be left out; cf. Sabine A. Döring, "Allgemeine Einleitung. Philosophie der Gefühle heute," in *Philosophie der Gefühle*, ed. Sabine A. Döring (Frankfurt am Main: Suhrkamp, 2009), 12-65. For our purposes, we can adopt a fairly simple model: Pleasure and pain are associated with emotions (such as anger). Pain drives to its overcoming, the prospect of pleasure drives to its attainment.

[21] Cf. Aristotle, *Rhetoric* II, 2, 1378a21-24, trans. John Henry Freese (London: Loeb Classical Library, 1926).

[22] Cf. Peter Heuer, "Das Verhältnis von Lieben und Erkennen bei Thomas von Aquin," in *Liebe – eine Tugend*?, ed. Winfried Rohr (Wiesbaden: Springer, 2018), 185-208.

[23] Cf. Bernhard Koch, "Zu den Grenzen konstruktiver Konfliktkultur. Verzicht, Gewalt und Toleranz," in *Konfliktkulturen in Geschichte und Gegenwart. Erkundungen eines komplexen Phänomens*, ed. Markus Thurau (Göttingen: Vandenhoeck & Ruprecht, 2024) 251-272.

[24] We have to distinguish emotions from feelings, too: Although emotions contain a certain quality of feeling (*qualia*), they are essentially aimed at something in the world and have a representational content.

peace itself (the concept of "positive peace"[25] requires a certain kindness towards the other, which is also emotionally based), and their absence can torpedo the de-escalation of conflicts. Emotions, however, can certainly be conflict drivers, especially negative or retaliatory ones such as hatred and anger. Hate is basically always irrational and therefore to be rejected. But with anger, the matter is more complex. Anger is not an irrational emotion but contains a cognitive core (of a normative conviction) that is, however, affectively grounded and expanded. We now have to address this emotion in particular – not least because it occupies a very prominent place at the beginning of Western literary history: The events in Homer's *Iliad* are – as the opening verses already show – characterized throughout by a motif of anger.

## III.

Homer uses the word *μῆνις*.[26] Aristotle defines the terminologically more appropriate *ὀργή* in the second book of his *Rhetoric*: Anger

> is a longing, accompanied by pain, for a real or apparent revenge for a real or apparent slight, affecting a man himself or one of his friends, when such a slight is undeserved. Anger is always accompanied by a certain pleasure, due to the hope of revenge to come.[27]

So, anger is not irrational. It is based on a (rationally accessible) judgement of the (in most cases harming) action of a person who does not have the right to hold ourselves in low esteem, or to hold another person in low esteem. The disrespect can take many forms, and a perceived disrespect does not have to correspond to a factual disrespect.

The term "slight" can contain many different attitudes. Here, only one important core area of disdain will be singled out, which is usually referred to as "injustice." For its part, justice is multifaceted: one need only think of distributive, retributive or restorative justice. To (deliberately) deny other people's legitimate claims to justice is to hold them in low esteem. Of course, disputes often arise about what justice actually requires to be

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[25] On the distinction of positive and negative peace cf. Johan Galtung, "Peace, Positive and Negative," in *The Encyclopedia of Peace Psychology*, vol. 2, ed. Daniel J. Christie (Chichester: Wiley & Sons, 2012), 758-762.

[26] Alexander Pope translates "wrath." https://www.gutenberg.org/cache/epub/6130/pg6130-images.html.

[27] Aristotle, *Rhetoric* II, 2, 1378a32-1378b2, trans. John Henry Freese (London: Loeb Classical Library, 1926).

done. But this dispute, too, can be carried out in such a way that the opponent is respected as such or in such a way that she or he is disdained. On the level of military ethics, we therefore distinguish the "ius ad bellum" from the "ius in bello." Violations of the *ius ad bellum* or the *ius in bello* rightly trigger anger. But this distinction can also play a role in domestic conflicts. In Western states, there are – understandably – different views on many factual issues: Climate protection, pandemic control, homosexuality, gender theory, migration, policy towards Russia or China, Israel etc. Which measures and legal positions are right and just in each case is a matter of public dispute. But this dispute is partly carried out in such a way that the core is not argumentative discourse at eye level, but in such a way that one side discredits the other (especially morally). In the 1980s, the new "Green" parties were frequently the target of such discrediting, but in the meantime the picture has completely changed: critical positions are very easily dismissed as "racist" or "sexist" or "fascist," especially by the "left." In the German election campaign of 2022, the party "Die Grünen" used an election poster that read: "Racism must be excluded, no one else." The sentence is correct in a trivial way, and yet also very dangerous, because it now shifts the ethical question of the right way to treat people to a question of authority: the one who gains the power of definition over the term "racism" can then exclude others without further justification – or as Aristotle would say – "disregard" them. This disdain, however, produces anger.

## IV.

The ethical debate on just war has undergone significant normative clarification in the past two decades. What began with works by David Rodin[28] and Jeff McMahan[29] has led to a very extensive literature on the foundations of warlike violence – especially insofar as it is justifiably derived from self-defence.[30] But every theory of defensive force also needs a theory of the self, i.e., of what may be justifiably defended with violence in the first place.[31] This question is easier to clarify when it comes to disputes between individuals than to disputes between states. We usually assume that our life belongs to us, that our body is inviolable and that we own external

[28] David Rodin, *War and Self-Defense* (Oxford: Oxford University Press, 2002).

[29] Jeff McMahan, "The Ethics of Killing in War," *Ethics* 114 (2004): 693-733.

[30] Cf. Seth Lazar, "War," *The Stanford Encyclopedia of Philosophy* (Spring 2020 Edition), ed. Edward N. Zalta, https://plato.stanford.edu/archives/spr2020/entries/war/.

[31] Cf. Judith Butler, *The Force of Nonviolence: An Ethico-Political Bind* (London and New York: Verso, 2020).

property that is granted to us in social agreements.[32] External property (e.g., money) is certainly where some dispute begins, which is why the debate about legitimate self-defence focuses primarily on life and limb. In any case, it is rarely conceded that a threatened loss of external property justifies an act of killing. However, defence against an attack on one's own life usually justifies a defensive act that endangers the life of the attacker,[33] and within limits that are difficult to determine ("wide proportionality") it may even justify damage to the body of third persons. In the case of political communities, what is permitted is more difficult to determine. Certainly, a political community can legitimately defend itself if its members are threatened in life and limb. But in most cases, this is only part of the reason for wars. Wars are mostly about political self-determination and state territory. Under international law, these are also defensible assets, which is why the state of Ukraine is currently defending itself against the Russian invasion legitimately under international law. But ethically, the question arises whether these goods – which in a certain sense are 'only' external goods – justify the killing of people and the risk of being killed.[34] However, one does not have to answer this question to understand that the mere fact of breaking international law can be understood as disrespect. Not only is the political community under attack held in low esteem, but also international law in its entirety and those who consider it valid and advocate for it. However, normative hypocrisy also constitutes disrespect, and after the NATO attack on Serbia in 1999, and the US invasion of Iraq in 2003, it is difficult for Western states to demonstrate righteous anger at the violation of international law in the case of the Ukraine war without giving the impression of hypocrisy (at least to some extent). Of course, there are other reasons to be angry about the attack on Ukraine, for example because trust has been betrayed. (However, precisely these things must then also be examined with regard to the other side as well).[35]

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[32] Cf. John Locke, *Second Treatise on Government*, § 27.

[33] In Jeff McMahan's "Responsibility Account of Defensive Force" defensive acts are permitted against the person responsible for the unjust attack (who may not be identical with the attacker). Cf. Jeff McMahan, "Self-Defense Against Morally Innocent Threats," in *Criminal Law Conversations*, eds. Paul H. Robinson, Stephen Garvey, and Kimberly Kessler Ferzan, 385-394 (Oxford: Oxford University Press, 2011).

[34] Cf. David Rodin, "The Myth of National Self-Defense," in *The Morality of Defensive War*, eds Cécile Fabre and Seth Lazar (Oxford: Oxford University Press, 2014), 69-89; Uwe Steinhoff, "Rodin on Self-Defense and the 'Myth' of National Self-Defense: A Refutation," *Philosophia* 41, no. 4 (2013): 1017-1036.

[35] Real cases are always complicated and multifaceted. A more informed judgment of the war in Ukraine would require a very thorough study of all facets and layers. But perhaps one can at least say that the violations of the *ius in bello* (International Humanitarian Law) by rocket and drone attacks on civilian targets in Ukraine must in any case provoke great anger.

## V.

The so-called "revisionist just war theory" has, not implausibly, argued that the asymmetry in the *ius ad bellum* must also come through as asymmetry in the *ius in bello*. Taking the individual right of self-defense as a starting point, it is obvious to understand the asymmetry also in the case of groups in such a way that only the members of the group that rightfully defends itself may use force at all. The members of the group that carries out an illegitimate attack would basically not be allowed to carry out any acts of violence at all, because their actions are illegitimate from the outset. This asymmetry corresponds to our moral self-experience – even that of former attackers. In the German armed forces, the concept of *Innere Führung* ("Internal Leadership") was introduced shortly after the so-called rearmament in 1955, the core of which is that soldiers themselves must question their mission. They cannot retreat to orders and obedience alone but are obliged to resign if they are ordered to perform actions that are obviously unlawful. Behind this was the experience of the *Wehrmacht* in the Second World War, when it could be clear to any person endowed with a basic sense of morality that the German war of aggression represented a colossal injustice and that the refusal of German soldiers had been the appropriate option, but unfortunately only feasible at the greatest personal risk. The "moral equality of combatants" stated by Michael Walzer was probably only plausible in very few wars. Perhaps soldiers in the First World War saw themselves as "morally equal" vis-à-vis their opponents, but then this is more true in the sense that all parties involved were engaged in rogue activity.

Nevertheless, critics of the "revisionists" have raised important objections to the asymmetrisation of combatants. If, for example, through the effect of propaganda, soldiers on both sides believe that they are in the right and the opponents are in the wrong, so that the opponents are no longer to be respected as equals at all, this leads to the totalisation of the war. Both sides claim, metaphorically speaking, to be on the side of the light and to be fighting against the darkness. As a result, they will intensify the means of struggle more and more and try to create an ever-greater power asymmetry.[36] A certain reflex to this view of conflict can be seen, for example, in the use of armed drones in Afghanistan and Pakistan in the 2000s. The "just combatants" have no "liability" and can therefore – ac-

[36] Cf. Bernhard Koch, "Moral Integrity and Remote-Controlled Killing: A Missing Perspective," in *Drones and Responsibility: Legal, Philosophical, and Sociotechnical Perspectives on Remotely Controlled Weapons*, eds. Ezio di Nucci and Filippo Santoni de Sio, 82-100 (Abingdon: Routledge, 2016).

cording to this view – legitimately protect themselves (even at the expense of third parties). At the same time, the opponents are not recognised as opponents, but represent "world criminals" who must be "rendered harmless" at all costs. Because this is not the opponents' perception of themselves, anger and aggression grow in them. This occurs to a certain extent on both sides, which can lead to an escalation dynamic.

Michael Walzer has sensibly demanded that wars, in their execution, should primarily be a business of the soldiers and that civilians should be spared from the effects of violence as much as possible.[37] In this way, warlike violence can be somewhat contained. Otherwise, the asymmetry will be pushed further and further, for example, into the question of medical care for the wounded ('Just combatants should be given preferential treatment'[38]) or into the issue of prisoners of war. Moreover, it should – according to the Walzerian view – be avoided to distinguish between "just" and "unjust civilians."[39] The practical problems would grow immeasurably. For all the consistency of the "revisionist" basic idea: at the end of the day, theoretical aporias remain, such as that of whether "unjust combatants" may defend unjustly attacked civilians and thereby become "just combatants" after all, and above all, great pragmatic difficulties remain. First and foremost, the concern for peace, which – as was said above – is also a concern of just war theories, is torpedoed by this. (Positive) peace between (previously) conflicting opponents can only exist if there has been reconciliation. But reconciliation is a two-way process for which the one-sidedness of perpetrator and victim, unjust and just combatant, is often rather a hindrance.

## VI.

Reconciliation is a difficult subject for ethical reflection. Political reconciliation is even more difficult. We know the phenomenon of reconciliation from our individual experience. We are at odds with a person, but able to overcome the dispute, perhaps relate to something in common and get along again. The process itself could probably also be described and – tentatively – explained in the scientific disciplines of psychology and social

[37] Michael Walzer, *Arguing About War* (New Haven, CT: Yale University Press, 2004).

[38] Cf. Bernhard Koch, "Cicero and the Problem of Triage: Why There Is No Moral Algorithm in Distributing Scare Resources," in *Resource Scarcity in Austere Environments. An Ethical Examination of Triage and Medical Rules of Eligibility*, eds. Sheena M. Eagan and Daniel Messelken, 173-188 (Cham: Springer Nature, 2023).

[39] Cf. the debate on the Kasher-Yadlin-Paper; Bernhard Koch, *Der Gegner als Mitmensch: Michael Walzer, Jeff McMahan und die moralphilosophische Kritik am Humanitären Völkerrecht* (Münster: Aschendorff, 2023), 331-336.

science. But ethics is a philosophical discipline, and if we want to have an ethical concept of reconciliation, we also need a philosophical description.

I have tried elsewhere to derive reconciliation from the concepts of guilt and forgiveness.[40] This will certainly be contested, but perhaps there is a benefit in that: in such a recourse to terms of moral language, ethics comes into play from the outset and not vice versa, when a certain psychological reading is taken as an ethical one. Forgiveness is connected to the issue of guilt; however, one problem with the concept of guilt is that it creates figurative associations (at least in German) that are quite misleading: "guilt" is understood like a physical object, e.g., a rock or a boulder, and in this sense, someone is said to have "brought guilt upon himself." Forgiveness, on the other hand, is then seen as the removal of this burden from the depressed person. Too little attention is paid to the fact that "guilt" actually refers to a relational structure: A person becomes guilty because she or he has wronged another person. He or she owes him or her a debt. The act of injustice is temporally past, but there is a "residue" that is, so to speak, extra-temporal, and that is called "guilt." It may be forgotten (by both sides, that of the perpetrator and that of the victim), but this forgetting does not cancel it. Guilt is only lifted through the act of forgiveness, which is itself quite mysterious.[41]

Friedrich Nietzsche rejected the whole talk of "guilt" with good reasons. He sees in it the intrusion of an economic model designed to secure power advantages.[42] In fact, the talk of guilt seems to be an economic talk, and in fact the concept of guilt is very frequently used to state an asymmetry of power: "You are guilty" is a devaluation, and the speaker can elevate himself – at least psychologically – above the blameworthy party. This self-exaltation through the apportioning of blame or guilt to others is morally dubious. It also makes forgiveness – especially unsolicited forgiveness – problematic and is sure to provoke anger in the person who is forgiven in this arrogant way. Those who expressively forgive someone for a deed without that person really asking for forgiveness can give the impression that their demonstrative act of forgiveness was primarily intended to establish that person's guilt. Forgiveness is not the same as excusing.[43]

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[40] Bernhard Koch, "Guilt – Forgiveness – Reconciliation – and Recognition in Armed Conflict," *Russian Journal of Philosophical Sciences* 64, no. 6 (2021): 74-91.

[41] Cf. *The Routledge Handbook of the Philosophy and Psychology of Forgiveness*, eds. Glen Pettigrove and Robert Enright (New York and London: Routledge, 2023).

[42] Friedrich Nietzsche, *The Genealogy of Morals* II, 4/5, trans. Horace B. Samuel (New York: Boni and Liveright, 1887), 47ff.

[43] Cf. Susanne Boshammer, *Die zweite Chance. Warum wir (nicht alles) verzeihen sollten* (Hamburg: Rowohlt, 2020), 43-56.

Externally wrong actions are excused, but they are based on mistakes on the part of the person acting for which he or she is not responsible, e.g., ignorance. An act that does not reach its goal due to certain external circumstances is also not an "object" of forgiveness, but of excuse. Morally wrong actions for which the person acting is responsible can be forgiven. Generally, it is probably less actions or attempted actions that are forgiven than persons who can act. If a morally bad deed does not reach its goal because it is prevented from doing so by unexpected external circumstances, then the actor has nevertheless failed morally. Again, forgiveness is possible, even if it then refers to the bad intention.

Now, in disputes between people, it is often the case that misguided actions are taken by both sides over the course of the dispute. For example, an unjustified attack may be followed by an excessive self-defensive action. This may lead to further wrong actions on the part of the attacker and further wrong actions on the part of the defender. It will probably be necessary for the original aggressor (if that can be clearly identified at all) to be the first to make a request for forgiveness, but it is often good and appropriate for the forgiving person to also ask for forgiveness for their mistakes in turn after a dispute. In this way, mutual forgiveness can lead to genuine reconciliation, which is a two-way process. Regarding the connection between anger and reconciliation, it can be stated: Anger is the result of disregard (or slight). Genuine forgiveness, however, tries to overcome this disregard and to bring equality between the two persons. Reconciliation, therefore, also represents the overcoming of anger. This seems to be a trivial observation.

## VII.

When it comes to wars and other forms of "macro-violence" (political violence, e.g., war or terrorism), the question is how the parties to the conflict can come to peace with each other again. This means that here, too, it is a question of reconciliation. However, the concept of political reconciliation is even more difficult to grasp than reconciliation between individuals. Stipulations such as that reconciliation represents "an improvement in the relationship" between two parties who were previously "at odds" are philosophically unsatisfactory.[44] While one may appreciate the idea, that reconciliation is a process, not a state, in this provision, it remains helpless in the face of the vague expression of

[44] Cf. the definition of reconciliation in Linda Radzik and Colleen Murphy, "Reconciliation," *The Stanford Encyclopedia of Philosophy* (Fall 2023 Edition), eds. Edward N. Zalta and Uri Nodelman, https://plato.stanford.edu/archives/fall2023/entries/reconciliation/.

"improvement." The answer to the question of whether a relationship improves or deteriorates depends on one's understanding of what is good. Presumably, an affectionate and cooperative relationship will be understood as something good. In the case of political communities, merging into a single community would also be possible in principle. Would we still be talking about reconciliation here? Or would it be the pinnacle of reconciliation? This is not a purely theoretical thought. It arises, for example, with the European Union: Must the individual states remain separate states so that one can speak of a work of reconciliation? Or would reconciliation on the European continent only be complete in a single European state?

The expression "reconciliation," if it is not to fall apart into two terms, should in essence retain something common in its use referring to individuals and referring to political groups. Since we have started from guilt and forgiveness among individuals, something like group guilt and collective forgiveness would then also have to be assumed. But this poses very serious problems, because in – especially large – groups, many people are often distanced from or even opposed to the actions that constituted the guilt. But perhaps one has to accept that even as an opponent of such actions one is dragged into the (collective) guilt. Collective forgiveness, however, is even more difficult. Often, the victims of the aggressor's political violence are no longer alive. Can then the perpetrators be forgiven vicariously at all? The question has often been answered with "no."[45] Moreover, even in the surviving collective of victims, not all will be ready to forgive. Anger at the injustice, even if it is justified, can raise a big hurdle here. So when can one speak of "(political) forgiveness" here at all? The question hardly seems to be answerable in abstract form,[46] but rather to obtain some approximate clarity in specific concrete cases.

Therefore, it seems obvious to keep the context of guilt and forgiveness out of the concept of political reconciliation altogether.[47] Then, the price is (as mentioned) that the concept of reconciliation breaks down into two terms – especially if one is not willing to adapt the concept of individual reconciliation in such a way that the problem of guilt and forgiveness is eliminated there as well. Perhaps, however,

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[45] Cf. the very influential criticism by Vladimir Jankélévitch, *Le Pardon* (Paris: Flammarion, 2019).

[46] For that reason, Svenja Flaßpöhler, for example, uses an autobiographical narrative for her philosophical book and conducts specific interviews. Svenja Flaßpöhler, *Verzeihen. Vom Umgang mit Schuld* (München: DVA, 2016).

[47] Cf., e. g., Cécile Fabre, *Cosmopolitan Peace* (Oxford: Oxford University Press, 2016), 246-280.

both concepts of reconciliation can be held together via the moral emotions and attitudes involved.

## VIII.

In her somewhat neo-Stoic book "Anger and Forgiveness," Martha Nussbaum argued that anger has a destructive effect on human relationships because of its retrospective character. Nussbaum sees a retributive thought at work at the core of anger: The angry person wants the harm that has happened to him/her (or possibly to another person) to be "atoned for" by the wrongdoer also experiencing some harm. An adequate order is then restored in a kind of cosmological harmony theory. Nussbaum herself places the view into the future in the foreground, since there is no cosmic compensation for injustice, but rather man himself must take the fate of his social coexistence into his own hands. She pleads for a 'reformed' anger; the affect of anger should only concentrate on a single moment: "The *entire* content of one's emotion is, 'How outrageous! Something must be done about this.' Let us call this emotion *Transition-Anger*, since it is anger, or quasi-anger."[48] Transition-anger is directed towards the future and motivates changes that will help prevent types of injustices of the past from happening in the future. Nussbaum has her personal heroes in the history of the 20th century – Gandhi, Martin Luther King, Nelson Mandela – in whom she sees her concern realised in a political sense. Now, we can always disagree about historical examples, and in the end, it is the science of history and not philosophy that must judge the work and heritage of these people, but certainly the use of the concept of anger in relation to collective and political processes makes sense to us. We thus concede that there is also a collective "emotionality," and good politicians – as Nussbaum wants to show with her historical heroes – shape precisely this collective emotionality.

Nussbaum thus speaks out against anger in the tradition of the Stoics and is basically opposed to forgiveness. Forgiveness, as she observes attentively and rightly, quickly becomes a means of moral self-exaltation – especially when forgiveness is conditional, forcing the guilty party into certain rituals of absolution. Even the alternative of unconditional forgiveness is unsatisfactory for Nussbaum because the asymmetry between the forgiving person and the one who is forgiven remains. The 'perfect' reaction to injustice suffered is unconditional

[48] Martha C. Nussbaum, *Anger and Forgiveness: Resentment, Generosity, Justice* (Oxford: Oxford University Press, 2016), 35 (Italics in the original).

love, which demands nothing and does not exalt itself. But Nussbaum seems to demand this unconditional love primarily for inter-individual relationships. Love is also important for justice in political life, but this love is nurtured, practiced and has grown.[49]

## IX.

To love so unconditionally that even as a victim of an act of injustice one no longer forgives the perpetrator of this act, but feels and shows unconditional love towards him, is undoubtedly a human 'peak performance.' But it is not even certain whether such unconditional love towards basically every other human being – despite some interpretations of the Christian ethos – would be entirely appropriate. For in being angry with a person, one also dignifies that person, because his or her wrongdoing is acknowledged and thus the person himself or herself is also recognised as one capable of responsibility and goodness. As is well known, Platonic moral anthropology offers two parts of the soul that lie outside reason – but are related to it: *ἔρως* and *θυμός*.[50] *Eros* is the striving dynamic that aims at union with the external (in sexuality, but also in the appropriation of goods or immaterial objects) and in doing so also dissolves, as it were, the subject from which it emanates. *Thymos*, on the other hand, attempts precisely to establish the initial subject against access and downfall, thus relying on self-status. Nussbaum calls – to exaggerate – for the demise of *thymos* in favour of *eros*. This often seems reasonable, because we have the impression that more mischief arises from *thymos* than from *eros*: nationalism, racism, sexism, and violence resulting from such attitudes can be based on excessive self-interest. Nevertheless, it is probably not reasonable to want to declare everything thymotic to be void without further ado and to allow only the erotic, e.g., the striving for equal distribution, to be valid. For these two aspects of our moral psychology cannot be strictly separated in practice anyway. If someone violates our claims to justice, he not only denies us a good to which we are entitled (violation of our *eros, ἐπιθυμητικόν*), but he also hits us as someone who can make claims (violation of the *thymos*).

It seems doubtful, then, whether Nussbaum's idea that a victim of a wrongful act meets the wrongdoer in unconditional love is a practi-

[49] Cf. Martha C. Nussbaum, *Political Emotions: How Love Matters for Justice* (Cambridge, MA: Belknap Press, 2013), 378-397. Nussbaum's point is that even in a liberal political order, personal and therein particularistic emotional attachments are possible and even desirable.

[50] Pol. IV. Cf. Hendrik Lorenz, "Ancient Theories of Soul," *The Stanford Encyclopedia of Philosophy* (Summer 2009 Edition), ed. Edward N. Zalta, https://plato.stanford.edu/archives/sum2009/entries/ancient-soul/.

cal option in the long run, or whether this victim does not expect some reciprocation of love sooner or later. Even as a victim who meets the perpetrator in love, one remains the subject of love and not simply a substance-free medium of love. But then one also wants to experience recognition in one's subjectivity (and probably even of one's love). This recognition is probably better served by the traditional model of anger and forgiveness. Reconciliation can grow out of forgiveness, which is especially facilitated when both sides are willing to recognise that they need forgiveness in a certain way after a conflict. It is possible and even probable that this 'need for forgiveness' is not equally distributed because the wrong on one side is clearly greater than on the other, but forgiveness is not a barter trade in which value is placed on the equivalence of the objects of exchange. This would – misleadingly – get us back to the erotic-economic field. Mutual forgiveness has to do with recognition of the other, i.e., the thymotic field.

## X.

As already emphasised, these connections are easier to explain in the relationship between individuals than in the relationship between political communities. But we also transfer them to collectives. This is part of our moral talk about political relations. In the political world, what is one's own and what is foreign, as well as what is external and what is internal, are even more strongly mediated than they may be in the case of individuals. Where do the borders of a state begin? This is not only a territorial question. When has a state reconciled with another state? That is not only a question of state leaders. On the other hand, there will also be different views in each state about which borders are really worth defending – or how much reconciliation should be allowed towards former adversaries. Majorities matter, but they are probably not the only decisive factor. Wise and prudent assessments must always be made here by leading statesmen and women. It is certainly necessary, however, to keep an eye on a kind of 'collective thymos' as well. The Western world often focuses too much on the desire to have more goods and possessions. Immanuel Kant thought – and was probably wrong – that the world could be unified through economic interdependence, because everywhere people strive for goods that are easier to obtain through interdependence and exchange.[51] Where there is a lack of existential goods – i.e.,

[51] "The commercial spirit cannot co-exist with war, and sooner or later it takes possession of every nation. For, of all the forces which lie at the command of a state, the power of money is probably the most reliable. Hence states find themselves compelled—not, it is true, exactly from motives of morality – to further the noble end of peace and to avert war, by means of mediation, wherever it threatens to break out, just as if they had made a permanent league

goods that are necessary for survival – this assumption may have some truth to it. But when the existential goods are no longer directly at stake, people also accept fewer goods in order to avoid humiliation or (supposedly) being treated disparagingly (which leads to anger). Even money given away with a watering can does not ensure peace, because even the giving of gifts can humiliate. It seems to me that the mistakes Western states – especially Germany – have been making in terms of both domestic and foreign policy have a lot to do with the misguided assumption that it is enough to merely help others materially, but that it is precisely in this broadly distributed aid that others feel basically humiliated. The unambitious migration policy in some Western European countries, often misleadingly labelled as particularly 'humanitarian,' could also be an example of this. To impose something on people or groups does not necessarily mean to humiliate them, but in a realistic imposition, imposition also means trust. Western policy towards Eastern Europe has often been concerned only with the amount of economic exchange (and aid), but little thought has been given to how to treat the people and communities there with due respect. Certainly, sometimes there is also excessive self-respect and excessive need for respect among people and groups. One should not give in to excessive thymotic forces out of respect for people and groups. But the feeling of being the winners of the "Cold War" for instance has nevertheless led to treating others in (supposed) aid even more disparagingly. This alone probably cannot explain the enormous political and above all human disaster of the current war in Ukraine. Yes, perhaps this resulting anger is only a small aspect of an explanation that should be much more comprehensive, but this aspect must be considered, because self-insight improves the chances of forgiveness, and forgiveness is the prerequisite for reconciliation here.

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for this purpose. For great alliances with a view to war can, from the nature of things, only very rarely occur, and still more seldom succeed. In this way nature guarantees the coming of perpetual peace, through the natural course of human propensities: not indeed with sufficient certainty to enable us to prophesy the future of this ideal theoretically, but yet clearly enough for practical purposes. And thus this guarantee of nature makes it a duty that we should labour for this end, an end which is no mere chimera." Immanuel Kant, *On Perpetual Peace*, trans. M. Campbell Smith (London: George Allen and Unwin, 1903), 8:360-368.

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# Existential Threat as a Casus Belli

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**Abstract**

*Existential threat is often mentioned in political rhetoric. While it is mostly used to denote threats to humanity as a whole, like climate change or AI, it is also used on a smaller scale. Existential threat to a state or a similar entity is often evoked too. Such a threat is considered grave enough to justify war and – possibly – the use of nuclear weapons. In the present article, the author aims to deconstruct the notion of "existential threat" in relation to the state and show that it should not be used as a reason to go to war. The main argument is that the state has a specific mode of existence which makes it impossible to speak of state death unambiguously. Therefore, there can be no apparent threats to its existence. The author proposes a normative interpretation of the state. The state is understood as a project of a certain group, or even an individual, therefore the discussion of "existential threat" to a state should be dropped in favor of a more grounded evaluation of potential gains and losses by different social groups and political parties.*

**Keywords:** *just cause; just war; existential threat; state; ontology*

Since any war of aggression has been "criminalized" by article 2 (4) of the UN Charter,[1] every war should be presented as self-defense to avoid immediate international backlash. Yet, the "inherent right of [...] self-defense if an armed attack occurs," from the article 51 of the UN Charter,[2] is a bit narrow for real politics. Waiting for real ag-

[1] United Nations, "Article 2 (4)," in *Charter of the United Nations and Statute of the International Court of Justice* (San Francisco, CA: 1945).

[2] United Nations, "Article 51," in *Charter of the United Nations and Statute of the International*

gression to enable this right is often an unaffordable luxury, therefore, one often needs a reason to strike preemptively. Here the concept of "existential threat" comes as a useful tool.

What is an "existential threat?" The term itself contains the answer – it is a threat to existence, i.e., it is something that is (or is perceived) to have a reasonable chance to end someone's or something's existence. For a human being, it is often the biggest threat and the biggest source of fear – life's end means the end of everything. Therefore, it is understandable why a reference to such a threat instills fear and urges to act, to do something to avoid the ultimate fear – death.

It may be the main reason why the notion of "existential threat" serves as a solid justification for a defensive war. Not only does it evoke the "inherent right of [...] self-defense,"[3] mentioned in the UN Charter, but also creates a rhetorically powerful sense of urgency. In the face of a truly "existential threat," one acts first, postponing doubts for a later time. For the same reason, the "existential threat" may also serve as a nice "just cause" for those who employ the Just War Theory (JWT). It is even better, because the JWT, unlike the UN Charter, is not very explicit on what possible causes are just causes, leaving room for interpretation.

The infamous USA meddling in the Middle East gives us nice examples of the "existential threat" rhetoric. George W. Bush's declaration of the operation "Iraqi freedom" twice mentioned "danger to the world" and once "danger to the USA,"[4] that Iraq posed. However, the explanation of how exactly the USA will be threatened, at best, raises doubt. The ex-president mentions terrorism and weapons of mass destruction, he claims that fighting a war overseas at that moment will prevent fighting the war on the US streets later.[5] President Obama's decision to intervene in Syria also refers to threats to U.S. security, which the Syrian regime allegedly posed at the time. He mentions, that stopping Asad from gassing children at the moment will also make American children safer over the long run. Obama is not explicit on how this is possible, he even mentions that Syrian armed forces do not pose any real danger for the USA, so the USA will be 100% secure while fighting for their security.

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*Court of Justice* (San Francisco, CA: 1945).

[3] Ibid.

[4] George W. Bush, "President Bush Addresses the Nation" (The White House Office of the Press Secretary, March 19, 2003), https://georgewbush-whitehouse.archives.gov/infocus/iraq/news/20030319-17.html.

[5] Ibid.

In the ongoing conflict in Ukraine, both sides have already claimed to be averting an "existential threat." Ukraine insists that it fights against a genocidal conquest, while the Russian Federation believes that the possible admission of Ukraine to NATO will threaten Russian Federation's security and even sovereignty.

Looking at the turn of events in the aforementioned cases one may ask: was the threat real enough to consider the use of force proportional? What exactly was going to happen were the force not used and would it have been worse than the actual events? It is even more concerning if we take into account the fact that "existential threat" is a staple cause for nuclear weapons usage. The "nuclear doctrines" of both the USA and Russian Federation imply that a threat to a state is a valid reason for the first strike. Russian nuclear doctrine as stated in the Decree of the President of the Russian Federation of June 2, 2020, No. 355 mentions that the nuclear weapons may be used when "the very existence of the state is endangered."[6] The USA Nuclear Posture Review of 2022 mentions that the threat to the "vital interests" of the USA and its Allies is a valid reason to use nuclear weapons.[7]

I aim to show that "existential threat," or its close synonyms like "grave danger," "security concern," etc., are not rationales for war. I adhere to the position that such claims are nothing more than an impressive manipulative trope, which pushes to action without giving good reasons. The concept of "existential threat to the state" and its abuse needs to be criticized. I claim that the concept of an "existential threat" is a meaningless concept when applied to states, societies, polities, and other similar objects, and it should be avoided in policy-making.

To demonstrate this, I'll cover three topics. First, I'll give an overview of the just cause principle in JWT to show that it gives little understanding as to what a truly just cause should be. It doesn't effectively restrict the "existential threat" concept from possible usage within the JWT. Therefore, I have to present the problem with the "existential threat" itself. To do this I'll move on to the problem of state death to show that states do not die in the same way as we, humans, do. The states may even resurrect or remain the same while seemingly changing a lot. To show, why the states do not die as expected, I'll try to explore

[6] Vladimir Putin, "Executive Order of the President of Russia No. 355 of June 2, 2020 'On the Fundamentals of Russia's Nuclear Deterrence State Policy,'" http://publication.pravo.gov.ru/Document/View/0001202006020040.

[7] Congressional Research Service, "2022 Nuclear Posture Review," https://apps.dtic.mil/sti/trecms/pdf/AD1193838.pdf.

the state's mode of existence which is different from that of physical objects or individuals.

## I. Just cause principle

The principle of just cause is one of the main jus ad bellum principles since the inception of the JWT. Despite this, it is still the subject of academic discussion. This principle requires the casus belli to be just, though it gives no further explanation as to what it means. Intuitively one can say that just cause should do something with justice, but justice itself is a vague concept, so it doesn't clarify anything. Most of the time the theorists simply list the causes they consider just for some reason, but these causes cannot be derived from the notion of just cause itself.

If one turns to a classic just war tradition, the most common just causes are the self-defense and restoration of previously violated rights, provided that they are subjected to the proportionality principle. This view is present in St. Augustine, Fransisco de Vitoria, Hugo Grotius, and other classics. St. Augustine claims that war is just when it's aimed to avenge wrongs or to restore the previous order, which is presumably just. Later theorists, like Grotius, add the preemption of a threat to a list of legitimate causes.

Classic Just War theorists of our era are influenced by the UN Charter and drop "restoration of rights" and "avenging wrongs" from the list of possible causes. Daniel Webster and Michael Walzer consider self-defense the only really appropriate case to wage war, though they make an exception for preemption of an imminent threat. Webster here is more restrictive, while Walzer considers it appropriate to perform a preemptive strike against a potential aggressor if he's merely preparing and has a "manifest intent to injure."[8]

Bruno Coppieters and Nick Fotion also mention a relatively new reason for war – a "responsibility to protect."[9] This responsibility is an enlargement of the principle of other defenses and vests international society with the responsibility to protect communities from crimes against humanity, genocides, and such by the so-called "humanitarian interventions." This concept was developed in the 90s through the mid-00s until it was rectified at the UN World Summit in 2005.[10] However,

[8] Bruno Coppieters and Nick Fotion, eds., *Moral Constraints on War: Principles and Cases* (Lanham, MD: Lexington Books, 2008), 31-32.

[9] Ibid., 48.

[10] The General Assembly of the United Nations, "Resolution Adopted by the General Assembly

the concept of humanitarian intervention turned out to be way too permissible and allowed aggression under the pretense of containment of "illegitimate" governments. It fell out of fashion lately, at least in public rhetoric.

Uwe Steinhoff in his post-revisionist account on just war principles tries to formulate the formal, all-encompassing principle of just cause. According to him, classical and revisionist approaches to defining just cause, are either too restrictive and self-contradictory, or allow for a slippery slope that paves the way to too much war. To avoid this, the notion of just cause should be merged with the notion of proportionality on every stage of waging war. In general, Steinhoff is comfortable with war for any cause,[11] though in formal definition he states, that

> [a]n agent has a just cause for waging war [...] if there is an injustice, an emergency, or an agreement to wage war between the potential parties to the war, such that under the given [...] circumstances the [use of military force] [...] is not necessarily disproportionate.[12]

This principle applies to the abstract right to wage a war, while the particular war only has a just cause if it is actually fought proportionally. It's a nice distinction, which further accentuates the importance of proportionality when we evaluate a war. Still, I find it lacking as a guiding norm. The war, especially the war of well-organized entities, has its own logic, and, as Carl von Clausewitz noted, tends to become an absolute war. Therefore, the second formulation of principle may be useless in "real life": when already fighting, you may have matters more important than to theorize about proportionality of your strategy and tactics.

We can see that the JWT gives only one clear just cause: self-defense in case of actual military aggression. Other causes are related to topics of self- and other-defense, but are only conditionally just and require additional considerations. How do the "existential threats" fit in such a definition? Steinhoff's overtly permissible criterion makes an "existential threat" a valid just cause, providing it is proportional to

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on 16 September 2005 60/1. 2005 World Summit Outcome," (Pub. L. No. A/RES/60/1, October 24, 2005), https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_60_1.pdf.

[11] Uwe Steinhoff, *The Ethics of War and the Force of Law: A Modern Just War Theory* (London: Routledge, 2021), 68.

[12] Ibid., 60-61.

avert it with war. And it is because a threat to someone's very existence easily allows the use of the last resort. The only remaining question is the "existentiality" of a threat. If we try to define the just cause as self-defense, or pre-emption, then it has no unambiguous correlation with the concept of "existential threat." Clearly, not every aggression aims to destroy its target, and not every alleged threat to existence means imminent aggression (or even aggression at all). Yet, the appeal to possible death has great rhetorical power, which distorts the ability to evaluate the situation.

## II. State death is a problem

As it was mentioned above, "existential threat" appeals to fear of one's death. But the validity of such a fear may be doubtful when we speak of a state – a complex object whose mode of existence raises lots of ontological questions. What is a state and how can it die? Merriam-Webster dictionary defines state as "a politically organized body of people usually occupying a definite territory especially: one that is sovereign," and "the political organization of such a body of people."[13]

These definitions imply that the state is no more, if some or all of the aforementioned qualities – territory, population, sovereignty – are lost to some extent. However, the concept of state death is relatively unexplored in political science, probably due to its seeming self-evidentiality. Authors of realist tradition in international relations theory, for example, like Kenneth Waltz, or John Mearsheimer, view "state survival" as a main interest of a state, yet they do not specify, what state death means. Moreover, Waltz mentions once that states are extremely resilient. Even Uganda will outlive most non-state entities like General Motors in the world.[14] One of the most comprehensive accounts of state death in modern international relations theory belongs to Tanisha Fazal. She defines state death as "the formal loss of foreign policymaking power to another state."[15] I tend to agree with this definition, and I'll give reasons below.

Let us speculate a little bit on the possible causes of state death, according to the above-mentioned definitions of the state. We can propose that loss of territory, population, or sovereignty may contribute to

[13] Merriam-Webster, "State Definition and Meaning," https://www.merriam-webster.com/dictionary/state.

[14] Kenneth N. Waltz, *Theory of International Politics* (Reading, MA: Addison-Wesley Publishing Company, 1979), 95.

[15] Tanisha M. Fazal, "State Death in the International System," *International Organization* 58, no. 2 (2004): 312.

state death. The quantifiable qualities – territory and population pose an immediate difficulty: how big a change should be to make matter? It reminds us of Theseus' ship and heap paradox. The population changes constantly and steadily, and is fully replaced within 100-150 years; yet, it feels wrong to say that the state dies with the change of generations. The territory of many states had also changed a lot through history, without necessarily causing state death. The increase in territory or population also does not seem to mark state death: it is more often viewed as growth and strengthening. Therefore, only the complete loss of territory or population – that coincides with sovereignty loss – marks an obvious death of the state. The growth and even partial loss of territory seem to leave the state alive. It is safe to assume, at least for now, that only the loss of sovereignty entails state death.

If we turn to Fazal's list of perished states,[16] we can see that most of them, though definitely dead at the time mentioned in the list, have resurrected since then. Of the 50 states listed, 30 are alive and well right now. Most of the dead states were temporarily subjugated by the Third Reich and were released after the Allied victory (some even retained pre-war governments). There are a couple of states that are difficult to speak about: the Austrian Empire, Germany, the Soviet Union, Poland, and the Czech Republic. Almost all of them broke down completely, yet still there exist Austria, Hungary, Russia, Slovakia, etc. Most of these countries claim to be descendants or even continuations of states that are listed as dead. Let us look closer at some of these resurrections.

Take, for example, Poland – Polish Commonwealth, to be more precise. This Eastern European State suffered three partitions: 1772, 1793, and 1795. The first two partitions resulted in great territorial losses, yet one can say, that the Commonwealth continued to exist until it was fully subjugated. However, it is debatable and one can always say that loss of territory and population made the subsequent loss of sovereignty inevitable. However, even after this loss of sovereignty, Poland reappeared on the world map after the First World War, claiming to be a descendant of the Polish Commonwealth. It was again partitioned during the Second World War, losing all territories and policymaking capabilities. Yet Poland again rose from the ashes, claiming to be a descendant of the medieval Kingdom of Poland.

Germany changed its configuration a lot during its recent history. It was fully conquered and partitioned after 1945, yet *two* Germanies sprawled on the map of Europe after a short time, only to reunite after the end of the Cold War. The loss of territories to France and Poland,

[16] Ibid., 320.

as well as other Eastern European states, didn't make Germany less German. Even the desire of modern Germany to distance itself from the 2nd and 3rd German Empires with their ideology and politics doesn't change the fact, that there is undeniable historical continuity at least since German Confederation, which makes it possible to view Germany as the same, though ever-changing state.

Russian Empire, Soviet Union, and Russian Federation pose an even more difficult case. The shifts in territory between the aforementioned states were huge in 1917-1921, 1939-1945, and 1991. Yet it would be wrong to say that the Russian Empire died because of the loss of Poland and Finland, or Soviet Union fell because it lost Baltic states and Central Asia. All these states existed before the acquisition of these territories and remained themselves all the time, which supports our assumption that territory and population do not matter that much on their own. The transition between states seems to be the result of regime change. Yet, as with Germany, the retrospective view has a similar weird effect: while the USSR is definitely not the same as the Empire, and the Federation is definitely not a continuation of the USSR, all three states without effort become stages of a continuity which can be easily named "Russia."

It seems that sovereignty is the essential characteristic of a state, and the loss of sovereignty is the point when the death of the state occurs. Yet, we have seen, that states easily come back from the dead claiming that they are the descendants of the dead states, if not the same states reborn. It is truly weird behavior, a behavior that is usually unexpected for something we consider dead. It wouldn't be too much of a claim to say that states cannot truly die to the very end like physical individuals do.

## III. State existence as an ontological problem

To explain the weirdness of state mortality we have to move to the problem of state existence. The author tried to explore this problem in the political realism in International Relations (IR) elsewhere.[17] There I tied the possibility of state resurrection to the mode of existence of the state – the state exists not as a thing, but as a norm, as a possible idea to be embodied and realized. My main claim about the mode of state existence was derived from Alfred Schuetz's article on multiple realities. In the late 40s he developed the idea of a hierarchy of reali-

[17] Sergey A. Kucherenko, "Existence of a State as a Value Problem in Political Realism," *Voprosy Filosofii* 7 (2021): 5-16.

ties, where different value-based realities existed against the backdrop of the Paramount reality – the "world of workings" – "the world of physical things [...] the realm of my locomotions [...] it offers resistances to overcome which requires effort." The main characteristic of this world is the directed time where working happens and is recorded in history. As Schuetz emphasizes:

> Working [...] [unlike mental action] is irrevocable. My work has changed the outer world. At best, I may restore the initial situation by countermoves, but I cannot make undone what I have done.[18]

I may glue my favorite mug if it's broken, or even buy a new one, but the event of the mug being broken will remain in history and the mug will never be the same.

Following Shuetz, I too will consider the world of workings to be ultimately real (if this word is of any meaning), where the true irreversible death – the one we fear – happens. This death we fear most because it means the complete end of existence. The death of entities from other planes of reality may be reversed because their very existence is the result of ever-changing interpretations. The "death" on other planes of reality, on the opposite, is a matter of interpretation and may be reversed. Let us take literary characters as an example. Sherlock Holmes never really dies in waterfall – we may return to previous books to revive our impressions of his past adventures, wait for Conan-Doyle to revive his hero, or even write our own fan fiction. The great detective from Baker Street exists in a way quite distinct from that of a physical individual and this way allows him to never truly die, no matter how many times we depict his death or read this depiction.

In a way, it is analogous to a state. When a physical individual dies, she is irreversibly dead, no matter what we do. We may try to redefine death, pretend that her life goes on in her children, pretend that another person is her, etc. All these actions do not revert the fact of her death: the body that acted in a way that made us recognize it as a person started to irreversibly decay. The political state, on the opposite, may be easily revived with the means of imagination and interpretation. When Poland rises from the ashes after 1945, we say that it is pretty much the same Poland that was in the 30s, and it doesn't feel intuitively wrong. Therefore, it is possible to assume, that the state

[18] Alfred Schuetz, "On Multiple Realities," *Philosophy and Phenomenological Research* 5, no. 4 (1945): 541.

exists on a different plane of reality than regular physical objects and individuals.

Despite this, the state is often perceived as something resembling an individual, or an organism, who is born, lives, and dies, who has different organs and abilities, who has its own motives, and interests, and who is almost consciously struggling for survival. This way of thinking was popularized in IR theory by political realists, especially by structural realists like Kenneth Waltz. The "tenets" of political realism view the state as a basic unit of international relations. The states divide the territory into jurisdictions, making possible international relations. This view is widespread across most IR scholars nowadays, even outside realism and it has its own merits. Yet, this position has downsides: by thinking of the state as an individual we tend to ascribe to it not only motives and agency but moral values similar to that of an individual. Yet, even the realists themselves – namely Hans Morgenthau and Kenneth Waltz – mention that the state is not an empirical thing, but a mere abstraction.[19] As mentioned already, it changes the game. If the state does not truly exist, we do not have to fear its death, like we don't truly fear the death of Sherlock Holmes. Still, the states seem to exist to some degree, so we have to clarify, how exactly they exist and why they cannot experience a true "existential threat."

We've said before, that sovereignty is the most important part of an object we call state. The state can possibly lose almost all its territories and people, but if sovereignty remains, the state remains too. If sovereignty is restored, then the state comes from the dead, even if it has different territories and people. What is this sovereignty that matters so much? Though often mistaken for independence in common knowledge, sovereignty means the supreme authority. The modern discourse on sovereignty can be roughly traced to Jean Bodin's "Six Books of the Commonwealth," where sovereignty is defined as unrestricted power. This power should be truly unrestricted: no authority, even formal should be exercised over the sovereign, the power should not be conditional, divided, or temporary. Sovereign is not bound even by his own law or word.[20]

Such sovereignty is not an empirical fact but a political and/or legal claim on how things should be – it is a norm. Bodin himself mentions that a people – a free city, for example – may be sovereign as a

[19] Hans J. Morgenthau, *Politics among Nations: The Struggle for Power and Peace* (Singapore: Mc Graw Hill, 1997), 117; Kenneth N. Waltz, *Man, the State and War: A Theoretical Analysis* (New York: Columbia University Press, 2001), 175-176.

[20] Jean Bodin, *On Sovereignty* (New York: Cambridge University Press, 1992), 1.

whole. No matter how exactly the free city is administrated, the source of the governmental institutions' power is assumed to be the supreme authority of the city as a whole. It creates a lot of potential problems because such sovereignty is a matter of interpretation: how do we know for sure, if a magistrate acted on behalf of a whole city and not out of his self-interest? The sovereignty of this kind is a norm, and an unclear norm it is. Not only there is an instance that claims to be a source of unrestricted power; but this instance is often not an empirical thing and its will is never fully known. This abstract notion of sovereignty is also present in Thomas Hobbes, Jean-Jacques Rousseau, and other social contract theorists with the only notable exception being Baruch de Spinoza.

I find insightful the notion of sovereignty developed by Stephen Krasner. In his 1999 book on sovereignty, he stresses that sovereignty means different things within the same discourse. It is a "multi-faceted concept" that describes facts and norms that are related but are not tied hardly to each other. He himself chooses four aspects of sovereignty. Two of them are purely legal – international legal recognition and Westphalian sovereignty, understood as the legal; exclusion of foreign authority in domestic affairs. The other two are practical goals – full domestic control and full control of borders.[21] These parts of sovereignty do not covariate strongly. A state may have Westphalian sovereignty – legally excluding any outside actors – but be unable to control borders, or it may be effective at domestic control while being unrecognized in the international arena.

As we've noted above, sovereignty is a bunch of interrelated legal claims on how things should be – a system of norms. We've already defined state as the sovereign over a territory because trying to define a state via territory, population or specific institutions is impractical and almost futile. So, if we equate state to sovereignty, then we say that state is first and foremost a bunch of norms, and goals to achieve. On this level, the state can never be destroyed, for norms and values exist as a possibility that cannot be truly eliminated. What can be destroyed is the compliance of empirical facts to these norms. However, it is a matter of interpretation to a degree.

The state may be viewed as a project, belonging to an individual or a group. It won't be an exaggeration to assume that every citizen may have her own version of this project. Despite the claim that sovereignty is popular and the state realizes the general will, every single

[21] Stephen D. Krasner, *Sovereignty: Organized Hypocrisy* (Princeton, NJ: Princeton University Press, 1999), 4.

person may have her own unique understanding of this will, therefore different opinions on the degree of sovereignty. The same ruler may be a popular leader or a usurper, depending on the point of view. The examples are abundant, from the National Socialist German Workers' Party (NSDAP) and Hitler in the 3rd Reich to Saddam and Al Asad in Iraq and Syria respectively.

Therefore, an existential threat to a state may mean only a failure to realize a certain project. It doesn't necessarily make it less of a threat, yet it opens up a possibility for a more detailed discussion. We cannot speak of the state as a simple multitude of men and territories; probably we cannot assume that this multitude may have a single state project. Therefore, when we speak of the state, we should always keep in mind its structure, we should always check what group is currently in power and imposes its project over others.

By doing this, we can have more substantial discussions about actual risks to the interests of different groups, instead of trying to instill panic by reference to "existential threats." By no means do I claim that sovereignty loss never has any downsides, yet I want to stress that it may have various effects on different groups of the population, which should be discussed and evaluated in detail instead of rushing to war in an apocalyptic urge.

## IV. Conclusion

As I've tried to show, the state per se is not a thing that can be truly destroyed. For the state is not a thing, but a myriad of social interactions, interpreted via a political project. The discourse of "existential threat" as a cause for war is almost meaningless if we look closer at a state. If the state is a project, pursued by a political party, it may be endangered by unexpected things. Let's return to the nuclear weapon doctrines: some of them say that the use of nukes is allowed when the very existence of a state is at stake – if its sovereignty is endangered. Yet, the sovereignty may be "endangered" by the results of Parliamentary elections. If the ruling party considers remaining in power vital for its project, then losing elections is more dangerous than losing a chunk of the population to an epidemic or a local conflict. Yet, is it a cause for using nuclear weapons?

I have tried to show above that an "existential threat" to a state is not a valid just cause for war. The state cannot cease to exist because it does not really exist in the first place. The state is a set of norms and values, a project pursued by someone. Every group, maybe every individual, may have her own project of the state – therefore her own criteria of what amounts to this state's death. And the "death" here means

a hindrance to the realization of a particular project, not a catastrophe for everyone. It is common to assume that loss of sovereignty means grave losses to everyone in a state, yet it is not necessarily so. Sure, the political party in power will definitely lose something, yet some groups of people will make gains or move on to the realization of their project. Iraq, mentioned in the very beginning, is a nice example. While some would say that it lost its sovereignty after the USA invasion, Al Maliki and his Shia government would definitely disagree; for them, it was Saddam and his Ba'ath party who brutally usurped power in Iraq and deprived the people of sovereignty. For them, the losses from the decades of oppression seemed larger (at least at the moment) than the destruction caused by the process of regime change.

Therefore, I claim that the "existential threat to a state" is a manipulative trope, not a valid reason to justify a war. It creates a false sense of urgency by appealing to the natural fear of death that every individual has. The notion of "existential threat" should be dropped completely in favor of the discussion of groups of interest within a state. It will help to keep in mind that the state is not a single unit, but a complex system, where different groups compete to realize their political projects. Thorough evaluation of potential gains and losses of different groups will make military decisions less hasty, while more proportional and prudent.

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# An Ethics of Sanctions? Attempt and Critique of the Moral Justification of Economic Sanctions

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**Abstract**

*In this article, I raise the question of whether economic sanctions are morally legal. I present the jus ad bellum principles and the Doctrine of Double Effect (DDE) as the theoretical basis for analyzing the ethical foundations of this political instrument. I show that economic sanctions are an instrument of war, that can be morally legitimized through the DDE and the just war principles. Using the example of the EU-sanctions against Russia I show how proponents of the DDE justify the use of economic sanctions and what negative side effects result from their application. From a critical perspective, I want to show that this kind of moral justification is wrong. My critique is based on the assumption that the individual intention of an acting person/government can be misdirected by various external factors. As the groupthink concept illustrates, dissenting opinions are neglected in the consensus-building process. In addition, advisors, experts and employees influence the opinion of government officials to a considerable extent. This leads to the formation of specific moral concepts. This is particularly evident regarding the Russian war of aggression against Ukraine. The Russian government has created its own moral code based on historical events, individual opinions and fantasies of maintaining power. This is contrary to the moral codes of Western states. The difference in moral concepts also results in different intentions to act. These different views make it difficult to evaluate sanctioning procedures as morally good or bad. Consequently, the mere focus on intention is insufficient as an assessment standard for the moral status of an action.*

**Keywords:** *economic sanctions; just war principles; doctrine of double effect; intention; European Union; Russia; Ukraine-war*

## I. Introduction

Sanctions have always played an important role in the context of international politics. Political and economic sanctions are fundamental tools in the foreign policy behavior of states, the central actors in the sphere of international politics. States or governments use international sanctions[1] to criticize the political behavior of a state. This form of reprimand has a symbolic effect and usually serves to draw the attention of the public to a state's political misconduct. However, with the use of symbolic sanctions, a sender does not only demonstrate his critical attitude towards the political behavior of a state. He wants to flaunt the moral status of his own political actions to the public.[2] In the relevant research literature, little attention is paid to the symbolic impact of sanctions. Rather, international sanctions are characterized as an instrument of political action that serves, as a means of pressure for states to exert the greatest possible influence on the political actions of another state and, in this regard, to achieve that the sanction receiver is forced to change his behavior in favor of the ideas of the sanction sender due to the sustained pressure situation. This form of influence on the state's political actions presupposes the condition, that immense pressure is exerted on a sphere of action that is important for the sanction receiver, so that his room for maneuver is considerably restricted in this sphere. For example, the use of economic sanctions reduces a state's ability to act in an economic sector. These restrictions not only lead to negative economic consequences, but also have effects on the political course of action of the sanction receiver.[3] According to the argumentation of supporters of economic sanctions, the pressure situation on the economic and political sectors leads to an adjustment of the political actions of the sanction receiver, which corresponds the ideas of the sanction sender. However, what is forgotten in the context of imposing economic sanctions is the fact that the economic damage resulting from the use of these sanctions, not only affects the political elite of a sanction receiver (state), but also causes considerable suffering, especially on the side of his civilian

[1] In the following, I will use the term *international sanctions* to refer to both political and economic sanctions applied on the global political stage.

[2] Cf. Hossein G. Askari, John Forrer, Hildy Teegen, and Jiawen Yang, *Economic Sanctions: Examining Their Philosophy and Efficacy* (Westport, CT: Praeger Publishers, 2003).

[3] In South Africa, for example, severe economic sanctions and sports boycotts led society to criticize the Afrikaner government's political course. The Afrikaner government's room for manoeuvre was thus limited. Cf. Bruce Jentleson, *Sanctions: What Everyone Needs to Know* (New York and Oxford: Oxford University Press, 2022).

population due to the economic impairment.[4] Due to the infliction of suffering of innocent people, the use of such instruments constitutes an action that has both a positive and a negative effect. Accordingly, it is an action with a double effect. From a moral philosophical perspective, the question arises as to how such actions can be legitimized? Proponents of such actions point to the Doctrine of Double Effect, which makes such an action appear morally legitimate, insofar as the actor performs the action solely with a good intention and foresees any negative consequences but does not bring them about deliberately. Another attempt to justify the sanctions process as morally legitimate is the use of certain conditions taken from the just war theory. If the moral status of an action is examined based on the criteria of just war theory, then this action must be an act of war. Likewise, the tools of action used during the act must have a belligerent character. A sanctions procedure can be equated with siege wars, since the use of certain means generates suffering on the side of the sanction receiver. In this respect, economic sanctions can also be ascribed a warlike nature, since being a fundamental tool of sanctions processes, they play a significant role in bringing about suffering.

In the context of this article, I would like to show that sanctions procedures, understood as actions that generate civil suffering, can be morally justified with the help of just war principles and the Doctrine of Double Effect. However, these attempts are problematic. Problematic especially regarding the intention of an action. As will be shown, sanctioning procedures can be described as actions that have positive and negative consequences. The intention behind a sanctioning procedure can be morally good. However, the consequence that follows the action can be bad. What happens if the bad consequence is deliberately intended by the actor? From the standpoint of an absolutist view, intended harm cannot be morally justified. The intentional harm of a person constitutes a direct violation of his right to life. A nonabsolutist view expands the possibility to justify intentional harm morally. However, the moral justification of incidental harm proves to be much more difficult. This becomes particularly clear regarding the distortion of intentions by external factors. Consensus-based decisions that do not consider alternative interpretations of a problem generate distorted ideas about morally good behavior. Subsequently, this leads to misconceptions about the moral status of an intention. To explain

[4] Cf. Joy Gordon, "A Peaceful, Silent, Deadly Remedy: The Ethics of Economic Sanctions," *Ethics & International Affairs* 13 (1999): 123-142.

the justification of the moral status of sanctions, especially economic sanctions, the EU sanctions against Russia serves as an empirical example. The second section briefly explains different types of sanctions. Here, a differentiation is made between symbolic and result-oriented sanctions. Economic sanctions which stay in the focus of my analysis are considered to be result-oriented sanctions. The third section explains their belligerent nature. The assumption is made that sanctioning procedures are equivalent to siege wars. Comprehensive and smart/targeted sanctions are tools of warfare. They violate a person's individual right to life. The fourth section briefly explains why the EU sanctions against Russia can be seen as acts which contain positive consequences as well as negative ones. Sections five and six set out the attempts to justify the moral status of economic sanctions. In the seventh section I set out my critique of the attempts to justify sanctions.

I assume that the intention of an action cannot be considered as a standard of valuation for the moral status of an action, because the intention is distorted by false moral concepts and external factors.

## II. Types of sanctions

According to Bruce W. Jentleson, there is a variety of sanctions that have divergent objectives depending on their motivation and scope. Following Jentleson, economic sanctions are the most frequently applied measures in the context of international politics.[5] The importance of economic sanctions can be justified by the fact that political/diplomatic sanctions tend to be of a symbolic type. In contrast to result-oriented sanctions,[6] symbolic sanctions are not primarily intended to exert influence on the political actions of the sanction receiver and to force him to change his previous behavior with the help of sufficient pressure. Symbolic (political) sanctions serve more as an expression of a protest attitude or as an act of self-assurance of one's own moral actions.[7]

A key aspect that stands out when considering international sanctions, especially economic sanctions, is that such sanctions processes have a punitive character. The basic structure of such procedures shows parallels to sanctioning processes which come into play in the legal

[5] Cf. Jentleson.

[6] I consider economic sanctions as result-oriented sanctions, because with their use sanction senders want to achieve a concrete result. Political sanctions, however, are not result-oriented. Sanction senders use them to harmonize existing disagreements without having a defined goal in mind.

[7] Cf. Askari et al.

sphere. As Peter Wallensteen points out, sanctions are viewed from a legal perspective as measures designed to ensure compliance with specific legal norms.[8] The UN Charter – a central instrument of international law for the preservation and maintenance of a global peace order – considers international sanctions as appropriate measures to punish acts of state aggression which constitute a threat to international peace.[9] Such acts of aggression constitute a violation of the norms set forth in Article 1 of the UN Charter.[10] In order to counter this violation effectively, punitive measures in the form of sanctions are needed. The punitive character of international sanctions is revealed by the fact that non-compliance with a norm of international law entails considerable consequences for the rule-breaker. The punishment of a norm violation, however, is not the only goal that international organizations such as the United Nations (in the context of multilateral sanctions procedures) or states (in the context of unilateral sanctions procedures) associate with international sanctions. As David Cortright and George A. Lopez have noted, the use of sanctions is always linked to the intention that the sanction sender can exert considerable influence on the political behavior of the sanction receiver and in this respect force him to adapt his actions: "Both, the means of influencing the target and the criteria for lifting pressure are set in terms of demand, compliance, and ostracism."[11] Johan Galtung specifies the punitive nature of international sanctions and the objectives associated with them in more detail and emphasizes that influencing the political actions of the sanction receiver and the accompanying intention to realize a change in behavior are nothing else than the enforcement of the national interests of the sanction sender. He assumes:

> We shall define sanctions as actions initiated by one or more international actors (the senders) against one or more others (the receivers) with either or both two purpos-

[8] Peter Wallensteen, "Economic Sanctions: Ten Modern Cases and Three Important Lessons," eds. Miroslav Nincic and Peter Wallensteen, 87-130 (New York: Praeger Publishers 1983).

[9] Article 41 of the UN Charter defines economic sanctions as key measures that are decided by the Security Council and implemented by UN member states in the event of a threat to peace at the global political level. According to the Charter, however, such measures are only used if the diplomatic measures listed in Article 40 cannot contribute to end the threat situation; cf. UN-Charter, https://www.un.org/en/about-us/un-charter/chapter-7.

[10] Cf. Article 1.1 UN-Charter, https://www.un.org/en/about-us/un-charter/chapter-1.

[11] David Cortright and George A. Lopez, *The Sanctions Decade: Assessing UN Strategies in the 1990s* (Boulder, CO: Lynne Rienner Publishers, 2000), 28.

> es: to punish the receivers by depriving them of some value and/or to make the receivers comply with certain norms the senders deem important.[12]

The application of international sanctions takes two different forms: comprehensive and smart/targeted sanctions. Since the 1990s, comprehensive sanctions have received less and little attention on the world political stage. Multilaterally imposed sanctions have been used considerably less by sanction senders such as the UN. Biersteker et al. point out that

> [i]n only two instances (the former Yugoslavia in 1992 and Haiti in 1994), the Security Council imposed new comprehensive measures for a period (following targeted ones), but the last time a comprehensive trade embargo was imposed by the UN was in 1994.[13]

The reason for this were the humanitarian consequences that comprehensive sanctions had for the civilian population. While comprehensive sanctions aim to punish the political elite as well as the civilian population for political misconduct initiated by government officials, smart/targeted sanctions seek to avoid such an unbalanced punishment. Although their application requires more preparatory work and time, proponents of smart/targeted sanctions consider them more promising than comprehensive sanctions. The latter are significantly more time and cost-saving in their use. However, they are less successful than smart/targeted sanctions because of the existing negative consequences. Biersteker et al. explain the difference as follows:

> [T]argeted sanctions are more complex than comprehensive sanctions. They entail decisions about whom to target, how to limit indiscriminate unintended consequences, and often, a strategy for how to suspend or lift them in an incremental manner as the situation on the ground changes.[14]

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[12] Johan Galtung, "On the Effects of International Economic Sanctions: With Examples from the Case of Rhodesia," in *Dilemmas of Economic Coercion: Sanctions in World Politics*, eds. Miroslav Nincic and Peter Wallensteen, 17-60 (New York: Praeger Publishers 1983).

[13] Thomas J. Biersteker, Sue E. Eckert, and Marcos Tourinho, "Thinking about United Nations Targeted Sanctions," in *Targeted Sanctions: The Impacts and Effectiveness of United Nations Action*, eds. J. Thomas Biersteker, Sue E. Eckert, and Marcos Tourinho, 11-37 (Oxford: Oxford University Press 2016), 11.

[14] Ibid., 13.

Critics of smart/targeted sanctions emphasize, however, that the suffering caused by these measures on the side of the sanction receiver is not reduced and exists to a similar extent as in the case of comprehensive sanctions. Instead of the desired change in behavior, which is supposed to be brought about by targeted sanctions procedures, governments of sanctioned states reinforce domestic repression against the population when smart/targeted sanctions are applied.[15] Another criticism concerning the economic inefficiency of smart/targeted sanctions is that the restriction of economic trade resulting from the imposition of sanctions affects the sanction receiver far less than the sanction sender would hope. There are enough loopholes for sanction receivers to use the imposed sanctions to their advantage and thus be able to mitigate the effectiveness of the sanctions directed against them. Sorpong Peou is clearly right in saying that

> [a]s one market closes with the imposition of sanctions [...] the target nation can simply shift its economic focus to new markets and trading partners, bypassing sanctions, and maintaining a healthy level of trade.[16]

Since international sanctions, whether comprehensive or targeted, are always associated with the creation of suffering, their application appears problematic from a moral philosophical perspective. This aspect becomes particularly clear regarding the use of economic sanctions, because comprehensive or targeted economic sanctions resemble siege wars in their design and modus operandi.

## III. Comprehensive and smart/targeted economic sanctions as instruments of warfare

The application of comprehensive economic sanctions is so broad in its form that the extent of the damage not only affects individual sectors of the economy, but also leads to untold suffering within the civilian population of the sanctioned state. The economic consequences resulting from trade restrictions affect, among other things, the job security of the working population and lead to a shortage of domes-

[15] Sorpong Peou, "Why Smart Sanctions Still Cause Human Insecurity," *Asian Journal of Peacebuilding* 7, no. 2 (2019): 272.

[16] Ibid., 270.

tic food supplies, which in further consequence leads to famine.[17] Instruments of comprehensive sanctions – understood as a fundamental component of an act of war – violate international humanitarian law by punishing not only the political elite of a sanctioned state but also the civilian population for political misconduct. Comprehensive economic sanctions not only affect those who are responsible for bringing about the conflict, but also those who are completely uninvolved in bringing about the conflict situation. Michael Gross and Tamar Meisels point out that this serious disregard of the duty to protect innocent civilians is not unusual in the context of comprehensive sanctions procedures:

> Civilians are not legitimate wartime targets and must not be targeted directly. When states resort to economic warfare, however, civilians are at the forefront and often the first to suffer.[18]

The same can be said regarding the application of smart/targeted sanctions. Although targeted sanctions are aimed at a specific group of individuals or institutions, they can still cause extensive damage. This is the case when the political elite affected by smart/targeted sanctions diverts the negative sanctions consequences onto the population. The causation of civilian suffering resulting from the use of comprehensive or targeted economic sanctions proves to be difficult for their moral legitimization. Difficult in this case because the disregard of the difference between those causing the conflict and those not involved in it is a violation of the individual right to life.

Based on the historical process of establishing the right to life as an essential and universally valid human right at the global political level, there arise two essential prerequisites for the validity of this right, which Pierre Emmanuel Dupont characterizes as protection against the arbitrary deprivation of individual life and as a state duty to preserve and respect the right to life. According to Dupont, protection against deliberate deprivation of life claims validity at both national and international political levels for all socioeconomic concerns and also implies an unqualified obligation of respect for this right, which states must comply with by all conceivable means. The imperative to preserve and respect the individual right to life of every person implies for states the task to analyze the consequences of their actions on a national and international level in order to recog-

[17] Cf. Gordon.

[18] Michael L. Gross and Tamar Meisels, "Soft War: The Ethics of Unarmed Conflict," in Michael L. Gross and Tamar Meisels, eds., *Soft War: The Ethics of Unarmed Conflict* (Cambridge: Cambridge University Press, 2017), 22.

nize possible negative effects on political and social spheres, which subsequently lead to difficulties regarding the individual life of a person. An act carried out by a state must therefore be designed in such a way that the preservation and respect of the individual right to life applies not only to the area in which the act is carried out, but also to spheres that are not directly affected by this act.[19]

With regard to economic sanctions, Dupont comes to the conclusion that their application at the level of international politics is a violation of the two conditions mentioned above – protection against arbitrary deprivation of individual life and preservation and respect of this essential human right. Accordingly, the use of economic sanctions is an act of deliberate disregard of the right to life of any person. Dupont assumes:

> [I]t can be argued that the effective realization of the right to life requires States implementing economic sanctions to refrain from deliberately enacting measures, the effect of which would be the deprivation of individuals of food, or worse, their subjection to hunger or starvation.[20]

The fact that economic sanctions, either in the form of comprehensive or smart/targeted sanctions, are measures which violate the individual right to life underlines the assumption that such foreign policy instruments are tools of war that can be compared to siege wars in terms of their nature and objectives. For Joy Gordon, a siege is a particularly cruel instrument of a warfare because it seeks to change the behavior of the enemy by imposing massive restrictions on vital supplies and, by doing so, deliberately intends the suffering of the population which comes as a result of these restrictions.

> Gordon states that [s]iege operates by restricting the economy of the entire community, creating shortages of food, water, and fuel. Those who are least able to survive the ensuing hunger, illness, and cold are the very young, the elderly, and those who are sick or injured. Thus, the direct consequence of siege is that harm is done to those who are least able to defend themselves, who present the least mil-

[19] Cf. Pierre-Emmanuel Dupont, "Human Rights Implications of Sanctions," in *Economic Sanctions in International Law and Practice*, ed. Masahiko Asada, 39-61 (London and New York: Routledge, 2020), 43.

[20] Ibid., 43.

> itary threat, who have the least input into policy or military decisions, and who are the most vulnerable.[21]

Although comprehensive as well as targeted economic sanctions in their form as instruments of war produce civilian suffering, there are nevertheless possibilities that prove the moral status of such measures.

Such attempts of justification, on the one hand, incorporate the basic tenets of just war theory. On the other hand, the Doctrine of Double Effect also serves as a theoretical basis to justify the moral status of economic sanctions. The economic sanctions imposed by the European Union against the Russian Federation are an ideal empirical example to illustrate how sanctions procedures causing civilian suffering can be considered in line with moral principles. Before going into detail on the respective justification attempts and their empirical application, it is first necessary to take a closer look at the sanctions example, including the objectives of the sanction sender and the negative effects that the use of such measures entails.

## IV. The EU sanctions against Russia: Good intentions, bad consequences

As has already been made clear, when imposing economic sanctions, the sanction sender not only pursues the goal of punishing political misconduct created by the sanction receiver, but also pursues the goal of exerting influence on the political actions of the sanctioned state. By inflicting considerable damage in the economic sphere, the sender induces the receiver to correct his behavior.

The fact that economic sanctions are an instrument of foreign policy which pursue a mixture of punishment and influence is illustrated by the sanctions against the Russian Federation imposed by the European Council in the case of the Ukraine war. Combined with financial sanctions that force the exclusion of Russian banks from the global financial system, EU economic sanctions aim at inflicting significant damage on the Russian economy. Among other things, a ban on the import and export of Russian and European goods is intended to significantly limit the productivity of the Russian economy. The export restrictions on European goods to Russia as well as the import ban of Russian goods to Europe serve not only as a punitive measure against the aggressive actions of the Russian government. By imposing such measures, the EU (European Council) is also pursuing the goal of stop-

[21] Gordon, 125.

ping the war of aggression on Ukrainian territory, the continuation of which is essentially financed by Russia's economic output.[22] The end of the war is also indirectly associated with the hope that a collapse of the Russian economy and the ensuing negative consequences for the political elite will lead to unrest and bring about a change in the political system.[23] Since the collapse of the Soviet Union, the interconnectedness of politics and economics has fostered the system of oligarchy. The Russian economy is basically used by this system to promote private interests. Economic sanctions, especially in the form of smart/targeted sanctions, target oligarchs accordingly. This measure is combined with a specific hope: if companies of Russian oligarchs incur financial losses due to trade restrictions, then oligarchs will take a more critical stance towards the war initiated by the Russian government. The same can be expected if their assets abroad are frozen due to targeted sanctions regulations.

Since governments are a collective of rationally acting individuals, they are aware of the negative effects of sanctions and initiate countermeasures to prevent possible subversion initiated by backbenchers who want to use the situation for their own profit. Such a circumstance considerably reduces the punitive function of economic sanctions. Accordingly, if a sanction sender wants to initiate a successful sanctions process, he must increase the pressure on the sanction receiver. This is usually done by mixing comprehensive and smart/targeted sanctions.

For example, the first EU sanctions package (February 23, 2022) included personal smart/targeted sanctions against members of the Russian parliament as well as comprehensive measures that significantly restrict the Russian state's access to European capital and financial markets and the use of related services.[24] However, the targeted and comprehensive nature of such financial and economic restrictions has also a considerable impact on the everyday life of the Russian population. The exclusion of Russian banks from the international SWIFT system and the discontinuation of the provision of euro banknotes to Russian banks[25] make it difficult for Russian citizens to obtain financial assistance from family members living in Europe. Small businesses

[22] Cf. "EU Sanctions against Russia Explained," European Council, accessed July 30, 2023, https://www.consilium.europa.eu/en/policies/sanctions/restrictive-measures-against-russia-over-ukraine/sanctions-against-russia-explained/.

[23] Cf. Jentleson, 10.

[24] Cf. "EU response to Russia's invasion of Ukraine," *European Council*, accessed July 30, 2023, https://www.consilium.europa.eu/en/policies/eu-response-ukraine-invasion/.

[25] Ibid.

which have relations with European companies no longer receive orders from them, resulting in job losses and bankruptcies.

Consequently, the EU's economic sanctions against Russia are a direct violation of the individual right to life. The Russian population cannot be held responsible for the annexation of Crimea in 2014 and the outbreak of the Ukrainian war in 2022, as they lack any political decision-making authority in this regard or have been deprived of it by the government through corresponding legal regulations. However, the European Union, as sanction sender, equates the Russian population with the conflict perpetrators sitting in the Kremlin. This is evident, among other things, in the tightened entry regulations for Russian citizens. So far, the European Council has imposed travel sanctions on more than 1.800 people, mostly Russian politicians and businessmen. Since September 2022, the visa facilitation agreement between the EU and Russia has been suspended. For Russian citizens travel visa applications to EU member states are now associated with higher costs, additional bureaucratic work and longer waiting times.[26] Although at first glance travel restrictions cannot be directly assigned to the catalog of measures of economic sanctions procedures, they are nevertheless to be understood as a sanctions instrument of economic nature. The unrestricted possibility to travel is an essential part of the realization of a free and happy life and thus part of an individual right to life. If this possibility is made more difficult by means of bureaucratic hurdles, individuals can no longer freely decide how and where they can contribute their labor. The increasing globalization of the economy and the labor market make it possible for people to freely decide which profession they want to take up and in which country they want to practice it. The freedom of movement of workers stipulated in the EU treaties is the best example of how the unrestricted possibility to travel can contribute to the development of a person's professional and private life.[27] If, due to travel restrictions, Russian society is deprived of this element for freely shaping one's own life, it is a violation of the individual right to life. Russian citizens are not only deprived of the opportunity to educate themselves through cultural exchange and to contribute to the realization of an open society, but they are also prevented from using their professional skills elsewhere. Consequently, the EU sanctions against Russia represent a concrete disregard of the individual right to life and a violation of the unrestricted development of one's professional life.

[26] Ibid.

[27] Cf. "EU Regulation on the Free Movement of Workers within the Union," EUR-Lex, accessed July 30, 2023, https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32011R0492.

At the beginning of this analysis, sanctioning processes which take place at the international political level were declared to be acts of war. Economic sanctions, understood as central instruments of sanctions processes, must consequently be understood as tools of war. According to just war theory, wars can be morally justified if they fulfill certain conditions. Thus, insofar as there is a way to examine whether acts of war are morally justified, this approach can also be applied with regard to examining the moral content of economic sanctions. In this context, the jus ad bellum principles – the rules which clarify whether the initiation of an act of war can be regarded as morally justified – appear to be suitable. As already stated, the EU sanctions against Russia serve as an empirical example.

## V. Justification of economic sanctions from the perspective of Just War Theory

According to Joshua Stuchlik, just war theory represents a middle ground between pacifism and political realism.[28] While the theoretical concept of pacifism regards morality as a fundamental criterion for evaluating acts of war and consequently prohibits any act of war, since it can never be in conformity with moral principles, political realists relativize the position of morality. For them, moral standards are irrelevant in the context of foreign policy.[29] Just war theory considers war to be fundamentally problematic from a moral point of view. However, the theory also allows assumptions, which do not fundamentally label an act of war as morally illegitimate. Jus ad bellum specify concrete conditions that must be all fulfilled in order to morally justify an act of war.[30] The number of criteria, however, appears variable. While Helen Frowe names seven concrete jus ad bellum principles,[31] Robert L. Holmes names eight principles.[32] In the context of this analysis, the number of conditions is reduced to four. The principles of just cause and proportionality are considered as one condition. The principles of reasonable chance of success and last resort form together also one condition. Legitimate authority represents the third condition. The principle of right intention is classified as the fourth condition.

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[28] Cf. Joshua Stuchlik, *Intention and Wrongdoing: In Defense of Double Effect* (Cambridge: Cambridge University Press 2022), 15.

[29] Ibid.

[30] Ibid.

[31] Cf. Helen Frowe, *The Ethics of War and Peace: An Introduction* (London and New York: Routledge, 2015).

[32] Cf. Robert L. Holmes, *On War and Morality* (Princeton, NJ: Princeton University Press 1989).

The condition *legitimate authority* means that the authority to act in a war embodies a person or group with political responsibility. This means that private individuals or businessmen do not have the authority to declare war, wage war or end war.[33]

As for economic sanctions imposed by the EU against Russia in the case of the Ukraine war, proponents of such a sanctions policy see the EU measures as legitimate, since they were issued by a legitimate authority. Among the general public, the European Union is often named as the sanction sender. In general, the EU represents a political entity composed of various institutions. The EU sanctions process is a multi-layered procedure involving several actors. The European Council, an EU body composed of the government leaders of the 27 member states, plays an important role in the sanctions process. "All decisions to adopt, amend, lift or renew sanctions are taken by the Council following examination in the relevant Council working groups."[34] The EU Member States, in their turn, are responsible for the domestic implementation of the provisions adopted by the Council. The High Representative of the Union for Foreign Affairs and Security Policy and the European Commission also have important roles in the sanctions process:

> For its part the European Commission presents proposals, jointly with the High Representative for regulations. Once regulations are adopted the Commission works to facilitate their implementation in the EU and addresses questions of interpretation by economic operators. The European Commission is responsible for ensuring the uniform application of sanctions.[35]

The *just cause* principle states, that an act of war must be based on a reasonable and just foundation. Thomas Aquinas assesses the *just cause* principle as closely linked to the principle of proportionality.

According to this, war should only be waged against those who have played a decisive role in bringing about war. Referring to the connection between the principle of just cause and the principle of proportionality Thomas Aquinas states: "[A] just cause is required, namely

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[33] Cf. George Lukas, *Military Ethics: What Everybody Needs to Know* (New York: Oxford University Press, 2016), 71.

[34] "European Union Sanctions: How does the EU Impose Sanctions?" *European Union: External Action*, accessed July 30, 2023, https://www.eeas.europa.eu/eeas/european-union-sanctions_en#10705.

[35] Ibid.

that those who are attacked, should be attacked because they deserve it on account of some fault."[36]

The self-defense of a state against an unlawful attack by an aggressor constitutes a just cause in this respect. From the perspective of international law, this is regulated in Article 51 of the UN-Charter.[37]

The condition of proportionality, however, includes another factor. Thus, the response to an act of war must be the result of a balancing process of negative action consequences and intended objectives associated with the declaration of war. The evil caused by a belligerent action must be always consistent with the intentions of the involved actors. The EU sees the sanctions packages that it has adopted as morally justified and links its justification to the political misconduct created by the Russian government:

> The EU and its member states strongly condemn Russia's brutal war of aggression against Ukraine and the illegal annexation of Ukraine's Donetsk, Luhansk, Zaporizhzhia and Kherson regions. They also condemn Belarus' involvement in Russia's military aggression.[38]

The Russian war of aggression, which contradicts international law, implies not only that the Ukrainian state has a right to self-defense, but it also assumes that actors which are not directly involved in the conflict perceived this war as a threat to their own national existence.

From the perspective of the EU, the Russian war of aggression constitutes a concrete violation of territorial sovereignty. The Russian annexation of Ukrainian territory is a clear disregard of Ukraine's state independence. All acts of war on Ukrainian territory constitute a violation of territorial integrity. This is already mentioned in an EU Council Regulation of 2014 as a legitimate reason for imposing sanctions on Russia:

> [T]he Heads of State or Government of the Union's Member States strongly condemned the unprovoked violation

[36] Thomas Aquinas, "Question 40: On War, Article 1: Whether it is always Sinful to Wage War?" in *The Ethics of War: Classic and Contemporary Readings*, eds. Gregory M. Reichberg, Henrik Syse, and Endre Beby (Malden, MA, Oxford, and Victoria, TX: Blackwell Publishing, 2016), 177.

[37] Cf. Lucas, 72.

[38] "EU responses to Russia's invasion of Ukraine," *European Council*, accessed July 30, 2023, https://www.consilium.europa.eu/en/policies/eu-response-ukraine-invasion/.

> of Ukrainian sovereignty and territorial integrity by the Russian Federation and called on the Russian Federation to immediately withdraw its armed forces to the areas of their permanent stationing, in accordance with the relevant agreements.[39]

However, the EU itself considers these violations as an indirect disregard of its own sovereign independence and territorial integrity, which is why a reaction to them seems justified from a moral point of view. In terms of the principle of proportionality, the imposition of economic sanctions is an appropriate action on the part of the EU. Although the Russian war of aggression is not directed at the EU and does not take place on European territory, Ukraine is nevertheless an immediate geographical neighbor whose loss of sovereignty and territory also indirectly poses a threat to Europe.

Accordingly, economic sanctions also represent the last resort before a military confrontation. As just war theory assumes, war as ultima ratio means that political (diplomatic) attempts to resolve the conflict have failed. Notwithstanding, war also represents a continuation of the negotiation process. However, the protagonists at the negotiating table have switched places, politicians and diplomats are now being replaced by the military as negotiating partner. Instead of intensive rounds of talks, the focus is now on the use of armed force as a central means of conflict resolution.

Regarding sanctions, the principle of last resort diverges somewhat from the course. Economic sanctions represent a kind of middle ground between diplomacy and armed force. However, since sanctions procedures resemble siege wars by their very nature, sanctions can already be seen as a breeding ground for a future armed conflict. If economic sanctions are deemed insufficient to resolve a conflict, their ineffectiveness provides the argumentative basis for the use of armed force.[40] Since all diplomatic negotiations to resolve the Russia-Ukraine conflict have failed since 2014 and no direct Russian attack on European territory has taken place, the EU considers the imposition of economic sanctions as a last resort to end this military conflict. President of the EU Commission Ursula von der Leyen describes this course of action as follows:

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[39] "Council Regulation (EU) No 269/2014 of 17 March 2014," EUR-Lex, accessed July 30, 2023, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32014R0269.

[40] Cf. Jack T. Patterson, "The Political and Moral Appropriateness of Sanctions," in *Economic Sanctions: Panacea or Peacebuilding in a Post-Cold War World*, eds. David Cortright and George A. Lopez, 89-96 (Boulder, CO: Westview Press, 1995), 90.

> For almost one year now, Russia's war of aggression has been sowing death and destruction. Putin is not only waging a brutal war on the battlefield but he is also viciously targeting civilians. The aggressor has to pay for this.[41]

The use of economic sanctions, as the statement shows, is also associated with a reasonable chance of success.

The principle of right intention takes up an essential aspect that also forms a central standard of valuation for the moral status of actions within the framework of the Doctrine of Double Effect. According to the classical interpretation of the just war theory made by Thomas Aquinas, the principle of right intention must always have the good in view and must take up the avoidance of evil. An action that pursues something bad as its goal is considered morally reprehensible. George Lucas writes in this regard: "Only the desire to restore peace and establish justice under the rule of law constitute right intentions on the part of the declaring authority."[42]

Regarding the imposition of economic sanctions on Russia, the EU justifies its approach with the fact that the use of these measures is linked to the intention to massively restrict Russia's technical as well as infrastructural possibilities to continue the war of aggression against Ukraine: "The measures are designed to weaken Russia's economic base, depriving it of critical technologies and markets and significantly curtailing its ability to wage war."[43] Consequently, by imposing economic sanctions, the European Union is pursuing the goal of exerting considerable influence on the political actions of the Russian government with the help of economic restrictions and, by exerting pressure in the economic sphere, to persuade the political leaders to correct their political misconduct.

The attempt to morally justify the EU economic sanctions against the Russian Federation with the help of generally accepted principles of just war theory reaches its limits when applying the condition of right intention. With the outbreak of the Ukraine war and Europe's disengagement from Russia as a primary energy supplier, the governments of

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[41] "Statement by President von der Leyen on the 10th Package of Sanctions against Russia," *Delegation of the European Union to Ukraine*, accessed 30 July, 2023, https://www.eeas.europa.eu/delegations/ukraine/statement-president-von-der-leyen-10th-package-sanctions-against-russia_en?s=232.

[42] Lucas, 74.

[43] "Sanctions Adopted following Russia's Military Aggression against Ukraine," *European Commission*, accessed 30 July, 2023, https://finance.ec.europa.eu/eu-and-world/sanctions-restrictive-measures/sanctions-adopted-following-russias-military-aggression-against-ukraine_en.

EU member states had to take swift action to prevent a rise of energy prices which could become a burden for their economy and civilian population.

EU sanctions against the Russian energy sector initially focused on a ban on imports of Russian coal (fifth sanctions package, April 8, 2022) and an import restriction on crude oil and refined petroleum products (sixth sanctions package, June 3, 2022). However, these import restrictions include exceptions for Bulgaria and Croatia, which continue to rely on oil products from Russia due to their geographic location and technical deficiencies, respectively. These exceptions are temporary.[44] It was also not possible to enforce a comprehensive ban on imports of Russian gas, as some EU countries, such as Germany, were significantly dependent on its purchase. An immediate halt to the supply of Russian gas would have had a significant negative impact on the German economy due to the lack of alternative sources of supply. These problems with the imposition of sanctions make it clear that the EU's intention to act has a good aim in mind (ending the war by weakening the economy through sanctions), but at the same time its intention works against the realization of this positive aim and bring about a prolongation of the war. As Julian Walterskirchen et al. point out, the economic sanctions generated a significant increase in energy prices, which resulted in a current account surplus for the Russian budget in 2022. Moreover, the sanctions did not cause a significant drop in the Russian energy market in the first months:

> In the first 100 days of the war, Russia gained 93 billion euros from energy exports, of which the EU imported 61%. Even though import volumes fell, export prices are 60% higher on average than 1 year ago, and fossil fuel revenues are estimated to exceed Russian spending on the invasion of Ukraine.[45]

The economic sanctions imposed by the EU with the purpose to influence the war in Ukraine have produced a negative effect of action. Instead of a quick end to the war through massive damage to the Russian economy, the sanctions have produced the opposite. Thanks to high energy prices, the Russian budget has been able to reap rich profits, thereby further replenishing the war chest.

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[44] Ibid.

[45] Julian Walterskirchen, Gerhard Mangott, and Clara Wend, *Sanctions Dynamics in the Cases of North Korea, Iran, and Russia: Objectives, Measures and Effects* (Cham: Springer, 2022), 62.

The justification of such an action with positive and negative consequences appears problematic from a moral philosophical point of view. The question arises as to how the action as a whole is to be judged morally if the respective parts of the action, however, have different evaluations.[46] Thus, as in the case of the EU sanctions against Russia, the intention of the sanction sender (EU) can be evaluated as morally good. The action consequences, however, can be all in all morally reprehensible or some of them can be good, some of them can be bad. The Doctrine of Double Effect is a conceptual approach that attempts to resolve this problem and to subject an action – despite divergent evaluations of the respective parts of the action – to moral scrutiny in its entirety.[47]

The Doctrine of Double Effect is based on the attempt to morally justify an act of self-defense described by Thomas Aquinas. The conditions contained in this attempted justification are essentially identical to the above listed principles regarding the legitimacy of a just war. In this respect, the Doctrine of Double Effect offers a complement to the previously described attempted justification of the moral status of economic sanctions. The doctrine starts with its justification where the just war principles attempt fails: Namely the actor's intention.

In the following section, the Doctrine of Double Effect is briefly explained. Subsequently, the EU sanctions against Russia will be used to show how sanctions processes with positive and negative action consequences can be morally justified.

## VI. The Doctrine of Double Effect

The basic assumption of the Doctrine of Double Effect is that an action with a conscious evil intention cannot be permitted because it violates moral principles, such as the individual right to life. This includes actions that have the realization of something good in mind, however, intend to achieve this goal with the help of a bad intention. As Kamm argues, "[i]f we intend an evil (even as a means), bringing about the evil would give us a reason for action and this is thought to be wrong."[48] An exception to this rule exists if the actor has the realization of something good in mind and a good as well as a bad side consequence de-

[46] Cf. Dietmar von der Pfordten, "Moralisches Handeln und das Prinzip der Doppelwirkung," in *Handbuch Handlungstheorie: Grundlagen, Kontexte, Perspektiven*, eds. Michael Kühler and Markus Rüther, 334-340 (Stuttgart: J. B. Metzler Verlag, 2016), 334.

[47] Ibid., 334.

[48] Frances Myrna Kamm, *Intricate Ethics: Rights, Responsibilities, and Permissible Harm* (New York, Oxford: Oxford University Press, 2007), 21.

velops within the framework of his action. If the actor does not have an evil intention from the outset and the negative action consequence can be interpreted as a collateral damage that occurred by chance, an action with a double effect can be regarded as morally justified. In his work *Summa Theologiae*, Thomas Aquinas describes the self-defense of a person against an attacker who seeks to end the life of the defender as an act of double effect. The defense against the attacker constitutes a good intention because it is an act against an unjust action. The death of the attacker resulting from the self-defense represents a negative consequence of this act of self-defense.[49] The same applies to the example of a fugitive horse-rider whose life is threatened. To escape his attackers, he is forced to ride through a narrow alley. In this alley, however, a child is lying on the ground. When the horse-rider rides down that alley the child will be trampled by the horse's hooves and as a result will die. If the rider escapes through the alley where the child lies, his action is morally permissible, even if the child is killed. The condition for the moral legitimacy of the action is that fleeing from the pursuers is the rider's basic intention. Killing the child is a side effect that he does not consciously intend and thus does not willfully bring about.[50] This reading of the Doctrine of Double Effect is absolutist, since it regards consciously intended negative intentions to act as morally reprehensible in the context of an act of double effect.

But as Joshua Stuchlik notes [s]ome contemporary proponents of double effect prefer a nonabsolutist version of the principle. On this view, the constraint against intentional harm is more stringent than the constraint against incidental harm, but is not the case that intentional harm is categorically prohibited. Instead, the prohibition against intentional harm is capable of being overridden by consequentialist considerations when a great enough good is at stake.[51]

In order to reconcile the Doctrine of Double Effect with the attempt to justify sanctions by just war principles, I consider the Doctrine of Double Effect to be non-absolutist In this regard I refer to Stuchlik who designs a special version of the Doctrine of Double Effect "that includes at least a very strong presumption against intentional harm, leaving open the question of whether the constraint against intentional harm is ab-

[49] Cf. Thomas Aquinas, "Question 64: On Murder, Article 7: Whether it is Permissible to Kill a Man in Self-Defense?" in *The Ethics of War: Classic and Contemporary Readings*, eds. Gregory M. Reichbertg, Henrik Syse, and Endre Beby (Malden, MA, Oxford, and Victoria, TX: Blackwell Publishing, 2016), 190-191.

[50] Cf. von der Pfordten.

[51] Cf. Stuchlik, 11-12.

solute."[52] On this point how strict the presumption against intentional harm is, is in the end decided on a case-by-case basis. With reference to the question in which way incidental harm is morally permissible, Stuchlik stresses that the Doctrine of Double Effect "does not say that it is always morally permissible to act in a way that brings about incidental harm,"[53] but in comparison with the absolutist condition of prohibition of intentional harm the doctrine emphasizes "that incidental harm is permissible in a wider range of circumstances than intentional harm."[54]

As Stuchlik points out, whether a negative consequence of action is intended or not can be determined with the help of the *Principle of Proportionality* and the *Principle of Due Care*. The *Principle of Proportionality* states that an action which includes an unconsciously created harm as a side effect is morally permissible if the harm that occurs is not disproportionate to the aspired goal.[55] In contrast, the *Principle of Due Care* states that an action is morally permissible if the actor has tried to limit the foreseeable but unintended harm resulting from his action from the outset. Stuchlik states this more precisely: "It is permissible to pursue a course of action that brings about incidental harm only if all reasonable steps are taken to avoid or minimize that harm."[56] In the context of the EU sanctions against Russia, growing poverty due to rising food prices and living costs as well as job losses within the Russian society due to the withdrawal of Western companies from the Russian market can be interpreted as negative consequences that follow the use of economic sanctions. Due to the abandonment of the visa facilitation agreement, it is no longer possible for Russian citizens to escape easily domestic repression conducted by the Russian government. This primarily affects opposition figures and citizens who are critical of the Putin regime but are unable to leave Russia due to their financial situation or family reasons. The rate of poverty in Russia has risen in the wake of the annexation of Crimea and the resulting sanctions against the Russian economy. A significant part of the Russian population, regardless of their political orientation, lives in poverty:

> According to official Russian statistics, the percentage of the population living under the poverty line has grown

[52] Ibid.

[53] Ibid.

[54] Ibid.

[55] Ibid., 13.

[56] Ibid., 14.

> from 10.8% in 2013 to 13.8% in 2016 – which means that nearly 20 million Russians now do not have enough money to live on. Perceived poverty is even higher – according to one survey, 20-23% of the population considered itself poor in 2017, up from 15% in 2014.[57]

The mobilization of male civilians carried out by the Russian government is another factor that silences critical voices, especially among the young population. Well-educated academics who can financially afford to move to other countries and quickly find a job there have an advantage over those ones who are less educated and have less financial chance to lead a life for themselves outside Russia.

The disconnection of Russian banks from the SWIFT system, significant restrictions regarding the issuance of work and travel visas, and the damage to the Russian economy, which means significant losses in cost of living and job security for Russian civilians, are all factors that foster the so-called rally around the flag problem. The population of a sanctioned state rallies behind the government's political decisions because the sanctions and the suffering generated by the sanction sender are perceived as an act of war. Such an act of solidarity between the civilian population and the government becomes particularly problematic when there is a one-sided propagandistic media coverage in the sanctioned state.

In this regard Robert Gold, Julian Hinz, and Michele Valsecchi argue that

> sanctioning countries should think about ways to minimize the rally around the flag effect resulting from economic sanctions. In the Russian case, economic sanctions nicely fit into the Kremlin's narrative of a hostile Western World interfering with the Russian way of living. Obviously, it is difficult to counter such propaganda in a country where the government controls the media.[58]

All these factors make it clear that economic sanctions are actions that involve negative consequences in addition to a positive effect. An absolutist reading would regard such actions as morally reprehen-

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[57] "Socioeconomic Inequality in Russia," *European Parliament*, accessed 30 July, 2023, https://www.europarl.europa.eu/thinktank/en/document/EPRS_ATA(2018)620225.

[58] Robert Gold, Julian Hinz, and Michele Valsecchi, "To Russia with Love? The Impact of Sanctions on Regime Support," *Kiel Working Papers* 2212 (2023): 19.

sible insofar as the negative consequences are deliberately brought about by the actor taking the action. Based on Stuchlik's assumptions, the EU economic sanctions against the Russian Federation can be seen as morally justified, since the consciously induced suffering of innocent people serves the realization for the greater good. This consequentialist interpretation of the Doctrine of Double Effect states that economic harm resulting from the imposition of economic sanctions may also lead to further harm within Russian civil society, as this all serves the purpose of bringing the Russian war of aggression in Ukraine to a swift end. In a statement of the European Council, it becomes clear that the use of economic sanctions and the resulting damage to the Russian economy is intended to stop the belligerent activities of Russia in Ukraine. Creating suffering among the Russian population is explicitly emphasized as an undesirable intention: "The export and import restrictions exclude products primarily intended for consumption and products related to health, pharma, food and agriculture, in order not to harm the Russian population."[59] If suffering nevertheless occurs within the population, this is not due to the deliberate creation of it on the part of the actor. However, since the economic sanctions against Russia and the resulting negative consequences serve the purpose of bringing the war in Ukraine to a rapid end, the existence of suffering within the Russian population is permissible, since this serves the realization for the greater good. In accordance with the Principle of Proportionality, the economic sanctions imposed by the EU are in proportion to the countersanctions imposed by Russia. Citizens from EU member states must accept stricter regulations when entering Russian territory than was previously the case.

The import of European goods to Russia is also subject to strict prohibitions, with exceptions only in rare cases. The Principle of Due Care is also observed within the framework of the EU economic sanctions against Russia, as the EU has created various exemptions in imports and exports of European goods from and to Russia in order to minimize possible negative consequences for the Russian population.[60] The attempt to justify the moral legitimacy of the EU economic sanctions against Russia based on the Doctrine of Double Effect, explains the moral status of such measures as given, since the EU as a central actor did not consciously intend the negative consequences for the Russian population within the framework of the sanctioning process. According to Stuchlik's nonabsolutist concept, deliberately induced

[59] "EU Sanctions against Russia Explained."

[60] Ibid.

suffering would not be judged morally reprehensible from the outset, provided that corresponding conditions are met. Bringing Russia's war against Ukraine to an end represents an objective that can be described as something for the greater good. From a consequentialist point of view, civilian suffering of the Russian population might even exist, if it would contribute to the end of war. However, focusing on the actor's intention is problematic because the intention to act is itself subject to external influencing factors. The intention to do something good, even if something bad follows from it, can be morally legitimate if the actor compares the action with his moral code of values and comes to a positive evaluation result in the course of this comparison. Nevertheless, this moral code, which is used to check intention, is a variable construct that is available to actors in different forms and characteristics. Whereas one actor, with the help of his moral code, concludes that his intention to act is not to be regarded as morally bad (even if negative consequences follow from the action) another actor regards the action of his counterpart as morally bad because, in his view, the intention behind it is already considered as morally reprehensible. For the EU, sanctions are a good thing because they are a reaction to the reprehensible behavior of the Russian government. For the Russian government the EU sanctions are, on the contrary, a bad act which view Russian behavior as morally bad and punish it in this respect. Focusing on intention as the fundamental standard of moral evaluation appears to be so difficult because the actors' intentions are based on different moral concepts. These concepts are the result of a consensus process. For example, the view set forth in the Charter of the United Nations that all member states are obligated to preserve a global peace order and must expect negative consequences if they do not comply with the obligations is the result of a consensus process. The same can be said regarding the decision-making processes at EU level. Thus, the intention behind EU decisions is the result of a substantive consensus among the 27 EU member states and the EU institutions. Accordingly, the sanctioning process on Russia is the result of a negotiation process reached by consensus among all member states. Similarly, the intention behind the imposition of sanctions is the result of a collective decision-making process influenced by various external factors. It is crucial to consider these factors when examining the moral status of actions. The two presented attempts to justify economic sanctions neglect external factors of influence. These attempts assess intention as a rigid entity that is free from external influencing factors.

## VII. Criticism of the justification attempts: Intention is not suitable as a point of reference

As the attempts to justify economic sanctions have made clear, intention is the basic point of reference for examining the moral status of such measures. In the case of the EU sanctions against Russia, the intention to act is produced by several actors. The EU member states, and EU institutions make their individual contribution to generating a common intention. Russia's intention to act, on the contrary, is created by a singular actor. Both the EU and the Russian Federation legitimize their intentions to act by referring to different ideas of what moral action means on the world political stage. Since political decisions, which include sanctions, are usually a product of collective decision-making processes, their emergence is characterized by a multitude of different opinions made by government representatives, advisors, experts and also formed through external factors (e.g., political world situation, wars, crises). Nevertheless, a big amount of internal and external influencing factors increases the risk that the decisions made are flawed. Thus, individual views on certain issues significantly influence a decision-making process. The intention of the government officials of one state to act vis-à-vis the government of another state is often unknown for both sides.

According to Sebastian Rosato, this is due to insufficient information resources available to the actors about their respective counterparts. In Rosato's view, collecting and organizing primary and secondary sources of information about the respective intentions of states poses hurdles, as unlimited access to these sources of information is difficult. Primary sources of information about states' intentions to act present a particular obstacle because these intentions are known only to a small circle. Since a state represents a structure of a political unit, the state's intentions to act cannot be judged from the outside by looking only at the state itself. It is necessary to look inside the political entity, specifically at the government, which is the head of the unit. Rosato stresses that "[a] leadership group is [...] made up of several officials – typically the head of the government plus a handful minister and advisers – all of whom have their own personal opinions."[61] The government's intentions are the result of a negotiation process, an agreement on a common denominator. The divergent opinions prevailing in the government must be brought to a common point through a negotiation process. However, it is difficult for other states or their governments to obtain accurate in-

[61] Sebastian Rosato, *Intentions in Great Power Politics: Uncertainty and the Roots of Conflict* (New Haven and London: Yale University Press 2021), 10.

formation about the outcome of this negotiation process – the government's intention – because they do not participate in the process themselves. This, in turn, makes it difficult to obtain precise certainty about a state's intention or behavior in a given situation, which in turn leads to a high degree of uncertainty and knowledge disadvantage.[62] The reasons why policy makers come to flawed decisions are due to their limited cognitive abilities. Alex Mintz and Karl de Rouen Jr. describe this issue as follows: "One of the main problems that leaders may encounter in crises is their tendency to be influenced by biases and errors in decision making because of cognitive limitations."[63]

An essential psychological approach explaining political decision-making processes at the international political level is the concept of groupthink developed by Irving Janis. He describes how decisions are made within groups and why decisions made within these groups can be flawed and miss the actual goal of group dynamics. According to the groupthink model, decision-making in groups occurs through consensus. At the same time, consensus-building leads to disregard of alternative ways of decision-making. Given the conformity of opinion, dissenting opinions or alternative proposals are seen as damaging to consensus. Group members who hold a position that deviates from the majority opinion are put under pressure by other members in order to adjust their opinion to the prevailing unified opinion.[64]The Russian countermeasures against the economic sanctions imposed by the EU illustrate how flawed consensus decisions on the part of the sanction sender can be and how problematic it is for the sender to correct possible mistakes. After the annexation of Crimea in 2014, the Russian government adopted an austere budgetary policy.

The generated state surpluses were transferred to a state property fund. In this way, financial reserves were built up, allowing Russia a certain degree of political and economic freedom of action even after the imposition of massive economic sanctions. Moreover, since 2014 the Russian state has already worked out alternative ways of action which reduce its dependence on Western goods and services. Jentleson implies that "[e]ven when senders have major economic advantages target states can have [...] counterstrategies to reduce costs incurred from the sanctions. One is to import substitution and shortage man-

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[62] Ibid., 21-22.

[63] Alex Mintz and Karl de Rouen, Jr., *Understanding Foreign Policy Decision Making* (Cambridge: Cambridge University Press 2010), 38.

[64] Cf. Irving L. Janis, *Groupthink: Psychological Studies of Policy Decisions and Fiascoes* (Boston, MA: Wadsworth/Cengage Learning, 1982).

agement."[65] The Russian state also braced itself against Western energy sanctions at an early stage. Since 2014 and especially since 2022, Russia has been seeking non-European consumers for its energy products. The Russian government responded to the sanctions imposed on Russian banks in the wake of the annexation of Crimea by setting up an independent credit card system (Mir).[66] According to John Mearsheimer, the Russian war of aggression against Ukraine is the result of a misguided consensus thinking of Western countries, first of all the European Union and the USA. Leaders in Europe and the US agreed that greater political integration of Ukraine into the Western Hemisphere would weaken Russia's influence on Ukraine's political system.[67] According to Mearsheimer, the economic sanctions imposed by the EU are not effective because the sanctions have an intention that disregards the Russian intentions behind the war of aggression against Ukraine:

> Given that most Western leaders continue to deny that Putin's behavior might be motivated by legitimate security concerns [...] [t]he West is instead relying on economic sanctions [...]. But [...] History shows that countries will absorb enormous amounts of punishment in order to protect their core strategic interests.[68]

Limited cognitive abilities of political decision makers on the part of the EU, lack of insight into political events in Russia due to missing or inaccurate sources of information as well as decision-making processes which – in the sense of the Groupthink concept – insist on consensus and do not allow dissenting opinions, not only lead to a flawed understanding of what is meant by a good moral action on the global political level. All these factors also produce a flawed intention to act, which decision-makers invoke in terms of justifying the moral viability of their actions.

## VIII. Conclusion

As this study has shown, there are ways to morally justify economic sanctions. Precisely because of their warlike nature, the application of

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[65] Jentleson, 15.

[66] Cf. "The Fight over the Future of Global Payments," *The Economist*, May 18, 2023, https://www.economist.com/leaders/2023/05/18/the-fight-over-the-future-of-global-payments.

[67] Cf. John J. Mearsheimer, "Why the Ukraine Crisis is The West's Fault: The Liberal Delusions That Provoked Putin," *Foreign Affairs* 93, no. 5 (2014): 77.

[68] Ibid., 86.

just war principles appears to be suitable for the verification of their moral status. However, the application of the right intention principle reveals a weak point. As the empirical example of the EU sanctions against Russia has shown, the actor's intention can be good, but during the action there might emerge negative consequences. Correcting this weakness with the help of the Doctrine of Double Effect does not completely solve the existing problem. This becomes particularly clear when one takes a closer look at the intention of the actor.

Political decisions are consensus-decisions. As the groupthink concept illustrates, dissenting opinions are neglected in the consensus-building process. In addition, advisors, experts and employees influence the opinion of government officials to a considerable extent. This leads to the formation of specific moral concepts. How and in what way an action can be evaluated as morally good is assessed differently by governments. This is particularly evident regarding the Russian war of aggression against Ukraine. The Russian government has created its own moral code based on historical events, individual opinions and fantasies of maintaining power. This is contrary to the moral codes of Western states. The difference in moral concepts also results in different intentions to act. While the Russian government sees its war against Ukraine as an act based on a good intention, the EU considers this behavior morally illegitimate, as it violates fundamental moral as well as legal norms. These different views make it difficult to evaluate sanctioning procedures as morally good or bad. Consequently, the mere focus on intention is insufficient as an assessment standard for the moral status of an action. As the example of the EU sanctions against Russia shows, a broader perspective is needed that also includes external factors in the analysis.

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# Exploring Enhanced Military Ethics and Legal Compliance through Automated Insights: An Experiment on Military Decision-making in Extremis

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**Abstract**

*Numerous factors are known to impact human decision-making: fatigue, stress, fear, sleep deprivation, organizational culture, ethics, and even substances consumed, among others. Making decisions within the context of a military operation poses exceptional challenges. Time constraints are consistently tight, and military personnel often contend with physical and mental exhaustion, along with substantial stress and fear. Our proactive strategies for addressing these hurdles predominantly revolve around educating military personnel, incorporating both theoretical training and immersive simulations that may include different types of war games, role playing and VR applications that mimic real-world challenges. However, can we extend our efforts further to ensure that military personnel surmount difficulties and consistently make morally and legally sound decisions amidst exceptional situations? Moreover, where does trust lie: in the insights of a comrade, a commanding officer, or the guidance provided by sophisticated algorithms and Artificial Intelligence (AI) systems? Could AI potentially outperform human guidance when it comes to elevating the ethical and legal discernment of military personnel amid the intensity of combat situations?*

**Keywords:** *moral enhancement; military decision-making; serious games; war games; Artificial Intelligence (AI); International Humanitarian Law (IHL); Just War Theory (JWT); Rules of Engagement (RoE)*

## I. Introduction

Discussions on the possibilities and risks associated with human enhancement are a focal point in applied ethics.[1] Various fields, including medical ethics, military ethics, and technoethics, struggle with an expanding range of questions concerning the ethical and legal implications and practical applications of human enhancement.[2] However, the aspiration to augment human abilities is not a recent concept; throughout history, individuals have been pursuing means to enhance physical and mental capacities, whether through vision correction, dietary adjustments, or medical interventions. Recent advances in science, medicine, and technology have led to the tantalizing prospect of transcending traditional human limitations.[3]

In the military context,[4] human enhancement has predominantly revolved around augmenting cognitive functions like memory retention, situational awareness, alertness, and individual decision-making. This encompasses the use of substances such as drugs, stimulants, and supplements, as well as tailored dietary regimes and specialized physical exercises that have evolved over time. Moreover, specialized devices designed to meet specific needs, like Heads-Up Displays (HUDs) for fighter pilots, are already actively being used. Concurrently, the digital landscape offers a multitude of applications accessible via computers, mobile devices, and online platforms that bolster cognitive efficacy. Simultaneously, wearable technologies such as augmented reality glasses, smartwatches, and intelligent textiles contribute supplementary data inputs that aid optimal decision-making.

This paper introduces a pilot experiment conducted at the War Games Lab of the Hellenic Air Force Academy, which seeks to probe the potential of moral enhancement[5] in fostering effective decision-making during

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[1] John Harris, *Enhancing Evolution: The Ethical Case for Making Better People* (Princeton, NJ: Princeton University Press, 2007); Alberto Giubilini and Sager Sanyal, "The Ethics of Human Enhancement," *Philosophy Compass* 10, no. 4 (2015): 233-243; also, Julian Savulescu and Evangelos D. Protopapadakis, "'Ethical Minefields' and the Voice of Common Sense: A Discussion with Julian Savulescu," *Conatus – Journal of Philosophy* 4, no. 1 (2019): 125-133, especially 127-129.

[2] Steve Clarke, Julian Savulescu, Tony Coady, Alberto Giubilini, and Sagar Sanyal, eds., *The Ethics of Human Enhancement: Understanding the Debate* (Oxford: Oxford University Press, 2016), 145-260.

[3] Fabrice Jotterand and Marcello Ienca, eds., *The Routledge Handbook of the Ethics of Human Enhancement* (London: Routledge, 2023).

[4] Ioana Maria Puscas, "Military Human Enhancement," in *New Technologies and the Law in War and Peace*, ed. William H. Boothby, 182-229 (Cambridge: Cambridge University Press, 2018).

[5] Thomas Douglas, "Moral Enhancement," *Journal of Applied Philosophy* 25, no. 3 (2008): 228-245; Birgit Beck, "Conceptual and Practical Problems of Moral Enhancement," *Bioethics*

extreme conditions. The multifaceted realm of human decision-making is subject to an array of variables, including fatigue, stress, fear, sleep deprivation, organizational culture, ethics, and individual consumption habits. Within an idealized battlefield scenario, military personnel would have the luxury of time for nuanced decisions that align with both legal and ethical dimensions-a dynamic reminiscent of a strategic chess match. However, the reality is far from this ideal. Unyielding time constraints persist, and military personnel often grapple with physical and mental exhaustion, coupled with substantial stress and fear. Despite the significant roles played by education and simulation-based training in addressing these challenges, instances of ethical and legal non-compliance persist.

This provokes a central inquiry: when traditional educational approaches fall short, can supplementary measures ensure that military personnel consistently navigate challenges while making ethically and legally sound decisions? Within this context, it is pertinent to acknowledge the roles of the Just War Theory (JWT), the International Humanitarian Law (IHL) and the Rules of Engagement (RoE). These frameworks provide essential guidelines for military conduct, dictating when and how force can be ethically employed in conflict situations. The principles embedded within these frameworks emphasize the necessity of proportionality, discrimination, and minimizing harm to non-combatants. Importantly, the JWT, IHL and RoE play a pivotal role in guiding the ethical and legal calculus that military personnel must undertake in extreme circumstances.

Could the concept of human enhancement serve as a safeguard in aligning military decisions with these ethical and legal frameworks? Our interpretation of moral enhancement involves employing mechanisms that continuously remind individuals of the ethical and legal dimensions intertwined with their choices and actions. From the outset, our research sought to examine the feasibility of achieving moral enhancement through wearable devices. Our core hypothesis posited that even in the face of educational gaps, there are remaining avenues to evoke an individual's ethical and legal consciousness.

By exploring this experiment, we aim to discover whether wearable devices can effectively foster moral enhancement. Implicit in this inquiry is the belief that, even in scenarios where educational methodologies fall short, opportunities exist to reinforce an individual's commitment to ethical and legal obligations, thereby aligning their decisions with the principles

29, no. 4 (2015): 233-240. For key moral concerns that come hand in hand with the prospect of transcending the capabilities of human nature see Evangelos D. Protopapadakis, *Creating Unique Copies: Human Reproductive Cloning, Uniqueness, and Dignity* (Berlin: Logos Verlag, 2023).

of JWT, IHL and RoE. This research, thus, delves into the confluence of technological intervention and ethical decision-making within the intricate dynamics of military operations.

## II. Methodological approach

### a. Enhancing ethics and legal compliance in a typical class: The theoretical approach to military ethics

War literature[6] and moral philosophy[7] are widely incorporated in cadets' ethical training because they refer to warrior ethos, conduct of hostilities or other, specific aspects of war (such as the protection of civilians).[8]

On the one hand, war literature serves as a valuable tool in enhancing the teaching of military ethics. Through the narratives cadets are exposed to complex ethical dilemmas and moral challenges that often arise in the crucible of war. Literature provides a unique window into the personal and emotional dimensions of warfare, shedding light on the intricate interplay between duty, honor, compassion, and the demands of the battlefield, thus cadets gain insights into the multifaceted nature of ethical decision-making during combat situations. Narratives may highlight the tension between adherence to codes of conduct, protection of civilians, and the exigencies of warfare encouraging cadets to face questions of morality, empathy, and responsibility, fostering a deeper understanding of the broader implications of their actions. Through the lens of war literature, cadets are exposed to diverse perspectives and experiences, prompting critical reflection on their own values and beliefs. This exposure helps cultivate a heightened sensitivity to the ethical dimensions of military service, equipping them with the intellectual tools to navigate complex moral challenges. In essence, war literature enriches the education of military ethics by offering cadets a platform to explore the ethical complexities of war through the eyes of those who have experienced it first-hand. This engagement nurtures a more holistic understanding of the ethical considerations that shape military decisions and actions, ultimately contributing to the development of morally informed and ethically resilient military professionals.

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[6] Reed Bonadonna, "Doing Military Ethics with War Literature," *Journal of Military Ethics* 7, no. 3 (2008): 231-242.

[7] Dragan Stanar, "Moral Education in the Military: Optimal Approach to Teaching Military Ethics," *Theoria Beograd* 66, no. 1 (2023): 37-51; Paul Robinson, "Ethics Training and Development in the Military," *Parameters* 37, no. 1 (2007): 23-36.

[8] Jovan Babic, "Ethics of War and Ethics in War," *Conatus – Journal of Philosophy* 4, no. 1 (2019): 9-30; Oleg Konstantinovich Shevchenko, "Question About the Ethics of Yalta Agreements in 1945: Archaeology of Power in Historiographical Discourses," *Conatus – Journal of Philosophy* 4, no. 1 (2019): 99-108.

Moral philosophy, on the other hand, forms the bedrock of teaching military ethics,[9] providing a robust framework to guide military personnel in navigating the ethical challenges inherent in their profession.[10] By delving into various moral theories and principles, instructors equip individuals with the intellectual tools to critically analyze complex ethical dilemmas that arise in the context of armed conflicts. Teaching military ethics through moral philosophy encourages a deep exploration of fundamental questions about right and wrong, justice, and the intrinsic value of human life. It empowers military professionals to engage in thoughtful and informed discussions about the ethical implications of their decisions, fostering a culture of ethical awareness and responsibility within the armed forces.[11] Furthermore, teaching moral philosophy instils critical thinking skills that are invaluable in the dynamic landscape of modern warfare. Military professionals learn to assess the consequences of their actions by considering the broader impact on individuals, communities, and global stability. This heightened ethical consciousness equips them to make well-informed decisions that reflect their commitment to upholding ethical standards even amidst the complexities of contemporary conflicts. In summary, integrating moral philosophy into the teaching of military ethics enhances the capacity of military personnel to grapple with the ethical dimensions of their roles. By encouraging reflective analysis, critical reasoning, and a commitment to ethical principles, this approach contributes to the development of morally conscious and responsible military professionals who navigate the challenges of their profession with integrity and a commitment to ethical conduct.[12]

Nevertheless, while war literature and moral philosophy offer valuable insights to the instruction of military ethics, a more methodical approach is imperative to effectively address the intricate ethical predicaments inherent in warfare.

To this end, moral theories offer cadets a valuable framework to contemplate ethical challenges within a structured context. JWT,[13] for in-

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[9] Peter Olsthoorn, "Educating for Restraint," in *Violence in Extreme Conditions*, eds. Eric Heinen Kramer and Tine Molendijk, 119-130 (New York, Cham: Springer, 2023); Peter Olsthoorn, *Military Ethics and Virtues: An Interdisciplinary Approach for the 21st Century* (London: Routledge, 2010), 132-140.

[10] Jovan Babic, "Ethics of War as a Part of Military Ethics," in *Didactics of Military Ethics*, eds. Thomas R. Elßner and Reinhold Janke, 120-126 (Leiden: Brill-Nijhoff, 2016).

[11] Marcus Schulzke, "Rethinking Military Virtue Ethics in an Age of Unmanned Weapons," *Journal of Military Ethics* 15, no. 3 (2016): 187-204.

[12] Gerhard Kruip, "Values and Norms: Don't 'Teach,' Encourage Independent Acquisition!" *Ethics and Armed Forces* 2 (2019): 11-15.

[13] Lonneke Peperkamp and Christian Nikolaus Braun, "Contemporary Just War Thinking and Military Education," in *Violence in Extreme Conditions,* eds. Eric Hans Kramer and Tine Molendijk, 101-117 (New York, Cham: Springer, 2023).

stance, delves into a range of topics, including the justification of war (*jus ad bellum*) and the ethics of conduct in war (*jus in bello*). While moral theories help cadets recognize the ethical implications of their decisions, they may not provide definitive solutions to every intricate battlefield scenario. A crucial aspect often absent in these teachings is situational training exercises (STX), which immerse cadets in officers' roles, prompting them to consider the pros and cons of their actions. STX also prepares them for addressing failures to make the right ethical choice at the tactical, operational, or strategic levels of warfare.

Additionally, adapting an interdisciplinary approach and incorporating IHL to enhance the military ethics education holds immense significance.[14] IHL provides a comprehensive framework of rules designed to protect civilians and combatants during armed conflicts, fostering ethical conduct in the heat of battle.[15] By integrating real-world legal principles into a military ethics curriculum, cadets gain a tangible understanding of ethical decision-making on the battlefield. The study of IHL equips future military leaders with the knowledge to navigate complex scenarios, promoting humane treatment and respect for international norms.[16] Through IHL, cadets not only learn the ethical boundaries of warfare, but also cultivate the skills needed to uphold moral imperatives amidst the challenges of modern conflict.[17] However, while IHL and moral theories collaboratively set the ethical parameters for military actions, they occasionally struggle with the complexities that arise in the dynamic landscape of modern warfare.[18] Integrating these broad principles into on-the-ground decisions poses a challenge, as real-time constraints and interwoven factors complicate their straightforward application.

To prepare officers to face effectively the dilemmas of the complicated battlefield serious games and simulations step in to offer a virtual hands-on-training solution by simulating scenarios[19] with rational partici-

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[14] Yitzhak Benbaji and Daniel Statman, *War by Agreement: A Contractarian Ethics of War* (Oxford: Oxford University Press, 2021), 116-162.

[15] Jeremy Waldron, "Deep Morality and the Laws of War," in *The Oxford Handbook of Ethics of War,* eds. Helen Frowe and Seth Lazar, 80-95 (Oxford: Oxford University Press, 2018).

[16] James Turner Johnson, "A Practically Informed Morality of War: Just War, International Law, and a Changing World Order," *Ethics & International Affairs* 31, no. 4 (2017): 453-465.

[17] Henry Shue, "Do We Need a Morality of War?" in *Just and Unjust Warriors: The Moral and Legal Status of Soldiers,* eds. David Rodin and Henry Shue, 87-111 (Oxford: Oxford University Press, 2008).

[18] Regina Sibylle Surber, "Military Training and Revisionist Just War Theory's Practicability Problem," *The Journal of Ethics* (2023): 1-25.

[19] Jorge Brandão, Ferreira Tiago, and Vítor Carvalho, "An Overview on the Use of Serious Games in the Military Industry and Health," in *Handbook of Research on Serious Games as Educational, Business and Research Tools*, ed. Maria Manuela Cruz-Cunha, 182-201 (Hershey,

pants possessing limited knowledge about each other's capabilities-akin to real-world situations.[20] Leveraging simulations and gaming for the study of the ethical and legal challenges of war can be highly advantageous, equipping us with essential tools to delve into practical matters like the ramifications of war, assessing ethical quandaries linked to the use of force in battlegrounds or urban settings where safeguarding civilians is paramount. War games[21] emerge as indispensable tools in shaping operational and tactical decision-making.[22]

Undoubtedly, this constitutes a noteworthy advancement in adopting a practical approach to the teaching of military ethics. Nevertheless, the essential question persists: Does this development signify the ultimate stride in fully preparing officers to adeptly confront complex ethical quandaries on the battlefield and comply with the ethical and legal obligations?

### b. Our approach: Simulating the battlefield

Instead of presenting the ethical parameters and the possible legal implications of making hard choices during a tactical operation in a theoretical manner, we opted for addressing this issue by simulating the ethical and legal challenges of the urban battlefield. Our experiment is primarily focused on:

- Whether moral enhancement through AI could be tested with the use of wearable devices; the players would be notified by the device that a course of action would be preferred in a specific situation or that a course of action should be avoided, and,
- If the players would be affected more by the guidelines of a human agent.

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PA: I. G. I. Global, 2012).

[20] Savvas Veziridis, Ioanna Lekea, and Panagiotis Karampelas, "Learn by Playing: A Serious War Game Simulation for Teaching Military Ethics," in *2017 I.E.E.E. Global Engineering Education Conference (EDUCON)*, 915-920.

[21] Denise Schmorrow, Joseph Cohn, and Dylan Nicholson, *The PSI Handbook of Virtual Environments for Training and Education: Developments for the Military and Beyond: Volumes 1-3* (Westport, CT: Praeger Security International – Greenwood Publishing Group, 2009).

[22] Mark Herman, Mark Frost, and Robert Kurz, *Wargaming for Leaders: Strategic Decision Making from the Battlefield to the Boardroom* (New York: McGraw-Hill, 2009), 11-77; Reid Hastie and Robyn M. Dawes, *Rational Choice in an Uncertain World: The Psychology of Judgement and Decision Making* (London: Sage, 2001), 47-72; Ioanna Lekea and George Lekeas, "Balancing Between Ethics, Prevention, Non-Intervention and the Law When Mass Atrocities Happen: A Case for Syria?" *Annual Workshop, European Centre for the Responsibility to Protec*t (Leeds: University of Leeds, 2018); Lucia Martinez Ordóñez, "Game Theory and the Decision-Making Process in Military Affairs," in L. M. Ordóñez, *Military Operational Planning and Strategic Moves*, 3-10 (New York: Springer, 2017).

To this end we created a war game which included two chapters:

> *i. Attacking the Christmas Spirit in London (1.3.1, 2023)*: participants were asked to design a tactical operation and they could get help from a legal advisor, and,
> *ii. Combat Conundrums: Precision Trials (1.2.1, 2023):* participants engaged in a first-person shooting game having to choose who to shoot against in a very limited amount of time.

Both chapters of our war game are based on the principles of the JWT and the IHL and are suitable to explore the military decision making and the execution of the players' decisions; both ethical and legal dilemmas are included in our gameplay.[23]

Under the rules of the JWT and the framework of IHL two key principles guide ethical and legitimate conduct: the principle of discrimination/distinction[24] and the principle of proportionality:[25]

> 1. The Principle of Discrimination/Distinction: The principle establishes two fundamental rules in the field of both international and non-international armed conflicts. These rules are codified in Articles

[23] The emergence of new actors and activities has shaken the foundations of IHL, as they challenge its core values, especially regarding the distinction between combatants and civilians. Non-state actors and transnational armed groups involved in international terrorism show little regard for fundamental IHL principles. While some argue that terrorism should be primarily treated as a criminal activity, certain States view terrorist acts, like the events of September 11th, as acts of war, possibly invoking the application of IHL. Although not all aspects of the "war on terror" qualify as armed conflicts, some operations within it can be classified as such. Hence, our war game asserts that IHL is relevant and applicable to these conflicts.

[24] The term "principle of discrimination" is used mainly by philosophers in JWT (*jus in bello* and *jus ad bellum*), as the term "principle of distinction" is used in law texts; Jens David Ohlin and May Larry, "Necessity and Discrimination in Just War Theory," in *Necessity in International Law*, eds. Jens David Ohlin and Larry May, 67-90 (New York: Oxford Academic, 2016); Hanne M. Watkins and Simon M. Laham, "The Principle of Discrimination: Investigating Perceptions of Soldiers," *Group Processes & Intergroup Relations* 23, no. 1 (2020): 3-23; Quénivet Noëlle, "The 'War on Terror' and the Principle of Distinction in International Humanitarian Law," *Anuario Colombiano de Derecho Internacional-ACDI* 3 (2010): 160; Thomas S. Harris, "Can The ICC Consider Questions on *jus ad bellum* in A War Crimes Trial?" *Case Western Reserve Journal of International Law* 48, nos. 1-2 (2016): 282; ICC, Case v. Bosco Ntaganda, No: ICC-01-04-2/06 A2, 2020, para. 6.

[25] Amichai Cohen and Zlotogorski David "A General Overview of Proportionality in IHL," in *Proportionality in International Humanitarian Law: Consequences, Precautions and Procedures*, eds. Amichai Cohen and David Zlotogorski, 23-56 (New York: Oxford Academic, 2021); Ben Clarke, "Proportionality in Armed Conflicts: A Principle in Need of Clarification?" *Journal of International Humanitarian Legal Studies* 3, no. 1 (2012): 73-123; Patrick Tomlin, "Proportionality in War: Revising Revisionism," *Ethics* 131, no. 1 (2020): 34-61; Jeff McMahan, "Proportionality and Necessity in *jus in bello*," in *The Oxford Handbook of the Ethics of War*, eds. Helen Frowe and Seth Lazar, 418-439 (New York: Oxford University Press, 2016).

48, 51(2), and 52(2) of Additional Protocol I to the Geneva Conventions, pertaining to international armed conflicts, and in Article 13(2) of Additional Protocol II, pertaining to non-international armed conflicts:[26] The first rule designates that the parties to the conflict must at all times distinguish between civilians and combatants. The second rule designates that the parties to the conflict must always be able to distinguish between civilian objects and military objectives. Under these distinctions, attacks may only be directed against combatants and military objectives.[27] Attacks must not be directed against civilians[28] and civilian objects.[29] As a result, the principle delineates permissible targets in warfare, prohibiting direct attacks on non-combatants and their property. The morally and technically innocent civilians, who do not participate in combat, are to be spared intentional harm. IHL underscores the obligation to protect civilian lives[30]

[26] The legal origin of the principle of distinction can be traced back to the Preamble of the 1868 Declaration of St. Petersburg Renouncing the Use, in Time of War, of Explosive Projectiles under 400 Grammes Weight ("[T]he only legitimate object which States should endeavor to accomplish during war is to weaken the military forces of the enemy"); Adam Roberts and Richard Guelff, *Documents on the Laws of War: Second Edition* (Oxford: Oxford University Press, 1995), 30; Subsequently, it was incorporated into the Regulations annexed to the 1907 Hague Convention Respecting the Laws and Customs of War on Land under Article 25, which prohibits "the attack or bombardment, by whatever means, of towns, villages, dwellings, or buildings which are undefended."

[27] Jean-Marie Henckaerts and Doswald-Beck, *Customary International Humanitarian Law Volume I: Rules* (Cambridge: Cambridge University Press, 2005), 3-77.

[28] Under the Statute of the International Criminal Court, "intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities" constitutes a war crime in international and non-international armed conflicts, ICC Statute, Article 8(2)(b)(i), (e)(i). The International Court of Justice in its advisory opinion in the *Nuclear Weapons case*, stated that the principle of distinction was one of the "cardinal principles" of international humanitarian law and one of the "intransgressible principles of international customary law" (ICJ, *Nuclear Weapons case*). The prohibition on directing attacks against civilians is also laid down in Protocol II [Article 3(2)], Amended Protocol II [Article 3(7)] and Protocol III [Article 2(1)] to the Convention on Certain Conventional Weapons and in the Ottawa Convention banning anti-personnel landmines (preamble).

[29] The Statute of the International Criminal Court does not explicitly define attacks on civilian objects as a war crime in non-international armed conflicts. It does, however, define the destruction of the property of an adversary as a war crime unless such destruction be "imperatively demanded by the necessities of the conflict," Article 8(2)(e)(xii). Therefore, an attack against a civilian object constitutes a war crime under the Statute as much as such an attack is not imperatively demanded by the necessities of the conflict. It must be stressed out that it is argued that the rule contained in Article 52(2) of Additional Protocol I, which provides that "attacks shall be limited strictly to military objectives," only prohibits direct attacks against civilian objects and does not deal with the question of incidental damage resulting from attacks directed against military objectives.

[30] The determination of whether an individual falls under the category of combatant or civilian holds immense significance in IHL. Additional Protocol II does not contain a definition of civil-

and property.[31] While military forces and installations are justifiable targets, the principle mandates the avoidance of non-combatant casualties and the protection of essential civilian infrastructure. Medical personnel and equipment, both military and civilian, are also immune from intentional harm.

2. The Principle of Proportionality: The inescapable reality of civilian harm during conflicts prompts the question of ethical conduct in warfare. The principle of proportionality becomes pivotal in assessing the ethics of military actions. It guides decisions on how to engage and which weaponry to employ to achieve military objectives without causing disproportionate collateral damage. In complex situations where civilians are intertwined with combatants, the principle of double effect comes into play.[32] It recognizes that sometimes the principles of distinction and proportionality yield to military necessity, such as when a nation's survival is at stake. However, such instances are distinct from the scenario under discussion.

For a military action to be permissible under the principle of double effect,[33] four conditions must be met:

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ians or the civilian population even though these terms are used in several provisions (Articles 13-15 and 17-18). The term "civilian" is defined as persons who are not members of the armed forces. But there is a limit to this designation: According to the Article 51(3) of Additional Protocol I and Article 13(3) of Additional Protocol II civilians lose their protection against attack when and for such time as they take a direct part in hostilities; Noëlle Quénivet, "The 'War on Terror' and the Principle of Distinction in International Humanitarian Law," *Anuario Colombiano de Derecho Internacional-ACDI* 3 (2010): 162.

[31] The definition of civilian objects is set forth in Article 52(1) of Additional Protocol I and has to be read together with the definition of military objectives: Only those objects that qualify as military objectives may be attacked; other objects are protected against attack. This definition was not included in Additional Protocol II, but it has subsequently been incorporated into treaty law applicable in non-international armed conflicts, namely Amended Protocol II to the Convention on Certain Conventional Weapons. Moreover, according to the Article 8(2)(b)(ii) of the ICC Statute, intentionally directing attacks against civilian objects is listed as a war crime, provided that these objects "are not military objectives." See also Article 8(2)(b)(ix) and (e)(iv) concerning attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected and Article 8(2)(b)(v) concerning attacks against towns, villages, dwellings or buildings which are undefended.

[32] Normative ethics presumes an absolute deontological proscription against harming the innocent. The loss of innocent life that is incidentally unavoidable by the armed conflicts of the war is a product informed by the doctrine of double effect; Bradley Gershel, "Applying Double Effect in Armed Conflicts: A Crisis of Legitimacy," *Emory International Law Review* 27, no. 2 (2013): 741-754.

[33] Joseph Boyle, "Just War and Double Effect," *Philosophy in the Contemporary World* 19, no. 2 (2012): 61-71; Joshua Stuchlik, *Intention and Wrongdoing: In Defence of Double Effect* (Cambridge: Cambridge University Press, 2021), 7-19.

1. The action itself must be morally legitimate.
2. The immediate effect of the action must align with ethical norms.
3. Any harmful outcomes must not be intentional.
4. The intended outcome must outweigh foreseen negative consequences, considering the good resulting from the military achievement.

Even when these conditions are met,[34] every effort should be made to minimize foreseeable negative consequences. This multifaceted approach strives to navigate the intricacies of ethical military decisions, offering a comprehensive perspective that transcends the complexities of the battlefield.

Besides the perspective of the ethical conduct in warfare, the same reality of civilian harm during conflicts arises the question of legitimate conduct in warfare.[35] As such, the principle of proportionality is codified in Article 51(5)(b) of Additional Protocol I to the Geneva Conventions, and repeated in Article 57(2)(a)(iii).[36] According to these provisions, launching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited. In short, belligerents do not enjoy an unlimited choice of means

[34] Kai Draper, "Liberating Just War Theory from Double Effect," in *War and Individual Rights: The Foundations of Just War Theory*, ed. Kai Draper, 122-147 (New York: Oxford Academic, 2015), 122-147; Eduardo Rivera-López, "The Limited (But Relevant) Role of the Doctrine of the Double Effect in the Just War Theory," *Ethics & Global Politics* 10, no. 1 (2017): 117-139.

[35] Michael A. Newton, "Reframing the Proportionality Principle," *Vanderbilt Journal of Transnational Law* 51, no. 3 (2018): 878.

[36] While Additional Protocol II does not contain an explicit reference to the principle of proportionality in attack, it has been argued that it is inherent in the principle of humanity which was explicitly made applicable to the Protocol in its preamble and that, as a result, the principle of proportionality cannot be ignored in the application of the Protocol; Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law Volume I: Rules* (Cambridge: Cambridge University Press, 2005), 48; Michael Bothe, Karl Joseph Partsch, and Waldemar A. Solf, eds., *New Rules for Victims of Armed Conflicts* (The Hague: Martinus Nijhoff, 1982): 678; Thomas S. Harris, "Can The ICC Consider Questions on *jus ad bellum* in a War Crimes Trial?" *Case Western Reserve Journal of International Law* 48, no. 1 (2016): 286. See also the advisory opinion of the International Court of Justice in the Nuclear Weapons case and Nuclear *Weapons (WHO) case,* in which the Court acknowledged the applicability of the principle of proportionality, stating that "respect for the environment is one of the elements that go to assessing whether an action is in conformity with the principles of necessity and proportionality." The principle of proportionality in attack is also contained in Protocol II [Article 3(3)] and Amended Protocol II [Article 3(8)] to the Convention on Certain Conventional Weapons. In addition, under the Statute of the International Criminal Court [Article 8(2)(b)(iv)], "intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects [...] which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated" constitutes a war crime in international and non-international armed conflicts.

to inflict damage on the enemy.[37] According to the Commentary on the Additional Protocols, the expression "concrete and direct" military advantage was used in order to indicate that the advantage must be "substantial and relatively close, and that advantages which are hardly perceptible and those which would only appear in the long term should be disregarded."[38]

## III. War game implementation

The game design process has conformed to the stages proposed by Adams.[39] The concept stage was completed with the definition of the objectives and the outcomes of the war game simulation as well as the scenario. The next step was to start the elaboration stage or the development of the virtual platform. For the scenario to be as realistic as possible and attract cadets' interest we decided that both chapters would have time limitations and we would simulate the urban environment using the following freeware applications: Google Maps, Google Earth and the Military Map App.

The implementation of the game has spanned over the course of two years (2021-2023) and has involved a diverse range of participants, totalling 183 individuals. This comprehensive participant pool was carefully selected to include a mix of cadets from various academic years and specialties at the Hellenic Air Force Academy and collaborating military academies, as well as postgraduate students specializing in Philosophy and Law from different universities in Greece and aboard. The integration of these distinct groups ensured a multifaceted exploration of the game's objectives.

Among the participants were:

- 26 4th-year cadets,
- 18 3rd-year cadets, and
- 113 2nd-year cadets hailing from the Hellenic Air Force Academy and collaborating institutions.

These cadets were chosen due to their evolving knowledge of military ethics and their capacity to engage deeply with the game's scenarios. Their

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[37] Judith Gardam, "Proportionality and Force in International Law," *American Journal of International Law* 87, no. 3 (1993): 391; Jasmine Moussa, "Can *jus ad bellum* Override *jus in bello*? Reaffirming the Separation of the Two Bodies of Law," *International Review of the Red Cross* 90, no. 872 (2008): 976.

[38] Yves Sandoz, Christophe Swinarski, and Bruno Zimmermann, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (Geneva: International Committee of the Red Cross – Martinus Nijholf Publications, 1987), §2209.

[39] Ernest Adams, *Fundamentals of Game Design* (Thousand Oaks, CA: New Riders Publishing, 2009), 44-52.

diverse academic standings allowed for a cross-sectional analysis of how different levels of exposure to ethical training impact decision-making within the simulated military context.

Adding further depth to the participant pool, 26 postgraduate students specializing in Philosophy and Law from various universities in Greece and aboard were also involved. Their academic backgrounds brought a nuanced perspective to the experiment, enriching discussions about the ethical principles underpinning the game's scenarios. These postgraduate students brought their theoretical expertise to the table, allowing for a more robust examination of the intersection between ethical philosophy and practical military decision-making.

The cadets participating in the experiment were divided to facilitate focused exploration within the distinct chapters of the game. This division considered the varying academic levels and training specializations of the participants, ensuring a comprehensive investigation into the role of AI in shaping ethical decision-making in military scenarios.

For the 4th- and 3rd-year cadets, who encompass trainee pilots and air defence controllers, the *Attacking the Christmas Spirit in London* chapter unfolded. Engaging in a virtual war game, these cadets found themselves at the forefront of tactical decisions with far-reaching consequences. What set this chapter apart was the integration of legal advisors into the experience. These advisors stood ready to offer their insights whenever required, cultivating a collaborative environment that skilfully bridged the gap between instantaneous decision-making and the intricacies of legal considerations. This unique collaboration aimed to enhance the realism of the scenarios while providing cadets with valuable perspectives on the ethical dimensions of their actions.

In contrast, the 2nd-year cadets, also consisting of trainee pilots and air defence controllers, embarked on an individualized journey within the *Combat Conundrums: Precision Trials* virtual first-player shooting game. Immersed in this game, these cadets navigated a landscape where ethical decision-making intersected with tactical challenges. What made this chapter stand out was the reliance solely on AI assistance. As these cadets grappled with intricate ethical dilemmas, the AI provided a constant companion, aiding them in assessing their choices from an ethical standpoint.

Furthermore, the postgraduate students, already equipped with a robust foundation in applied ethics and international humanitarian law, were granted the freedom to tailor their participation. These students, who had attained an advanced academic standing, had the choice to engage either individually in the virtual shooting game or collaborate with AI. This flexibility acknowledged their expertise and allowed them to explore ethical decision-making in a manner aligned with their academic pursuits.

An overarching commonality among all participants was their successful completion of the Applied Ethics and International Humanitarian Law courses. For some 3rd- and 4th-year cadets, who had undergone the Military Ethics course as well, this experience enriched their understanding of ethics within an applied military context. This intricate division and thoughtful alignment of participants ensured a comprehensive exploration of the role of AI in moral enhancement, catering to the distinct levels of knowledge and experience among the cadets and postgraduate students.

The implementation process encompassed several phases. Initial sessions were dedicated to acquainting participants with the game's mechanics and providing a short briefing on the principles of the Just War Theory and International Humanitarian Law. Following this preparatory phase, participants engaged in gameplay sessions that progressively challenged their ethical decision-making prowess within complex military scenarios.

Participants' in-game actions were meticulously analysed examining both qualitative and quantitative facets of decision-making. Post-gameplay debriefing sessions were conducted, facilitating reflective discussions where participants shared insights, ethical considerations, and thoughts on the interplay between military objectives and ethical responsibilities.

In essence, the game's implementation has brought together cadets from different academic years and postgraduate students from various disciplines, creating a dynamic and intellectually stimulating environment. The extensive and varied participant composition has resulted in a comprehensive dataset that encapsulates a wide spectrum of perspectives, experiences, and ethical viewpoints. The analysis of this data will contribute valuable insights into the potential effectiveness of moral enhancement on the battlefield and its impact in promoting ethical decision-making skills among individuals with diverse backgrounds and levels of ethical training.

### a. Chapter I: Attacking the Christmas spirit in London

The first group of participants (n: 44) embarked on a dynamic journey within a virtual war game, immersing themselves in a multifaceted tactical operation. Tasked with designing a strategic endeavour, these individuals were afforded the opportunity to enlist the guidance of a legal advisor, should they choose to seek counsel. As they set out to navigate the challenges of the game, they encountered a time-bound environment where their decisions would be crucial in accomplishing the mission's objectives.

Within the virtual platform, the cadets encountered a richly detailed backdrop that evolved in real-time, mirroring changes within the operational area. Variables such as traffic patterns, civilian presence, the enemy's escape routes, and other contextual dynamics were integrated into the scenario.

The setting of the virtual exercise was grounded in the context of November 2022, with the impending military operation slated between 2:00 p.m. and 3:15 p.m. As the game's narrative unfolded, participants found themselves assuming the critical role of defenders tasked with safeguarding London.

The impending attack threatened a shopping area, renowned for attracting both Londoners and tourists alike. In this bustling locale, the adversaries took shape as members of the Taliban fundamentalist movement. Their modus operandi was meticulously defined by the rules outlined in "Taliban, A Book of Rules (2009)." The players, representing the British military forces, were expected to adhere to principles derived from the Just War Theory (JWT), Military Manuals, National Legislation, and International Humanitarian Law (IHL). The tactical complexities deepened as terrorists exploited the chaos of Christmas preparations and shopping, establishing their presence within an already crowded vicinity.

Their malevolent intentions were directed toward three prominent British and American establishments along Oxford Street: Marks and Spencer, Disney Store, and Apple Regent Street. Their plan included moving towards the London Central Mosque via Regent Street. Suspicious activities were detected in proximity to the Bond Street Metro Station and the Oxford Circus Metro Station, demanding astute decisions from the players.

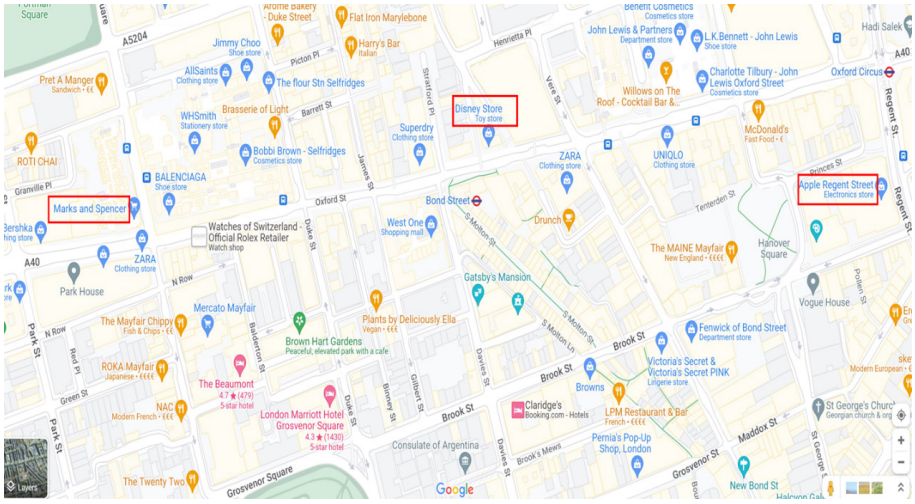


Image 1. The map of the operational area.

Amidst this intricate scenario, the cadets grappled with a multitude of decisions:

- Strategically deploying their forces across the given map.
- Selecting the most suitable weaponry for the task at hand.

- Devising an optimal approach for manoeuvring their forces.
- Determining how to apply the rules of engagement, considering the specific circumstances.
- Navigating the ethical and legal intricacies entwined within their tactical blueprint.

The overarching operational objective hinged on the precise disarmament and capture of the terrorists while minimizing collateral damage. This encompassed mitigating potential loss of resources and human lives, encompassing both military personnel partaking in the operation and the civilian populace. Players were presented with a range of resources, each playing a distinct role, as can be seen in the Table 1.

| British Armed Forces | Terrorists |
|---|---|
| • Fighter Jets: 1 Eurofighter Typhon<br>• Transport Helicopters: AgustaWestland AW159 Wildcat, capable of carrying 7-9 soldiers<br>• Attack Helicopters: 2 Boeing AH-64 Apache<br>• Patrol Helicopter: 1 Aérospatiale Gazelle<br>• Transport Vehicles: 3 Land Rover Wolf, accommodating up to 6 passengers each<br>• Infantry: 1 company comprising 4 platoons, each consisting of 30 individuals<br>• Special Forces: 4 squads, each with 12 members<br>• Informers and/or Spies: Inactive (Ø) | • Improvised Explosive Devices (IEDs)<br>• Martyr Terrorists<br>• Car Bombs/Vehicle-Borne Improvised Explosive Devices (VBIEDs)<br>• Rocket-Propelled Grenades (RPGs)<br>• Individual/Squad Weapons: Including grenades, machine guns, rifles, and more<br>• Use of Civilians as Human Shields<br>• Informers and/or Spies |

Table 1. Means and gears of the enemies

Amidst this complex scenario, the players were tasked with a multifaceted challenge: estimating the potential for collateral damage. Their strategic decisions would determine the fate of both resources and lives. Importantly, they were required to elucidate their Military Decision-Making processes using an appropriate document, thereby providing a comprehensive rationale for their chosen course of action.

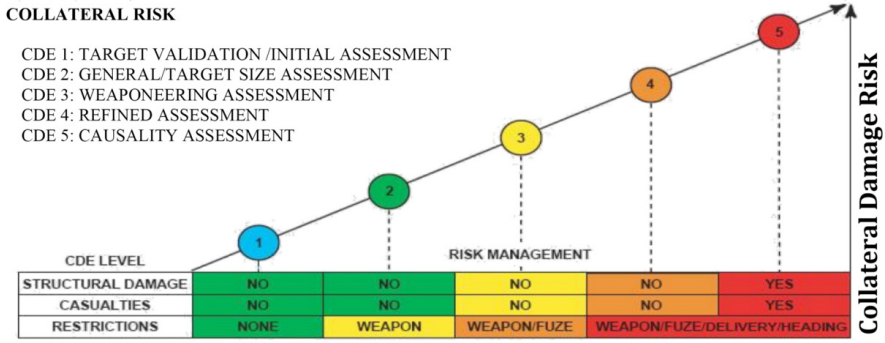


Image 2. The Collateral Damage Estimation Methodology

As the war game unfolded, participants were tasked with not only designing a military operation but also confronting the ethical and legal quandaries inherent to the battlefield. This immersive exercise provided a platform for testing their decision-making prowess within a complex and ever-evolving environment.

b. Chapter II: Combat conundrums: Precision trials

As stated, this is a first-person shooting game that immerses players in a dynamic and morally challenging environment. So, the second group of participants (n: 113) engaged in a distinct aspect of the experiment, involving a virtual shooting lab where decisions held the power to determine whether to open fire against images representing potential targets. Players were confronted with the task of distinguishing between legal and illegal targets, adding an intricate layer of decision-making beyond traditional gameplay. As players navigated through different images, they encountered a mix of combatants and civilians, each with unique visual cues and within different backgrounds.[40]

The player's objective was to engage hostile combatants while refraining from harming innocent civilians. Precision and quick decision-making

[40] The game's design ensures that players must carefully assess their surroundings and the actions of characters to determine their status as either legitimate combatants or non-combatant civilians. Legal targets may exhibit hostile behaviour, wear distinct uniforms, or engage in aggressive actions that signify their combatant status. On the other hand, civilians might display fearful or defensive reactions, wear civilian clothing, and seek cover to escape the combat zone.

were critical, as players needed to evaluate each potential target within a very limited amount of time, simulating the high-stakes nature of real-world conflict scenarios. To add an additional layer of complexity, the game incorporated evolving situations.[41] For instance, players encountered combatants who attempt to use civilians as human shields, testing the player's decision to target the combatants that may lead to eventually harming the non-combatants too.

Photos of potential targets were meticulously selected and divided into batches of 100, 250, and 500 images creating three levels of difficulty for the players. Each participant faced the task of making a rapid decision within a limited timeframe regarding the appropriateness of shooting the presented target. Notably, the transition time between images differed between the sets. For the initial batch of 100 photos, the transition interval was set at a more deliberate pace of 25 seconds per image, encouraging meticulous contemplation. In contrast, the third set of photos allowed only 15 seconds between transitions, demanding quick, instinctual assessments.

As the virtual simulation commenced, the cadets found themselves tethered to the control device, a virtual weapon wielded within the digital realm. Within this context, the participants were divided into two subgroups, each with a distinct approach to decision-making.

- The first subgroup (n: 52) of cadets confronted the task relying solely on their acquired knowledge and training. They assessed the images and swiftly determined whether to take action against the perceived targets based on their expertise and understanding of ethical and tactical considerations.
- In contrast, the second subgroup (n: 61) of cadets was equipped with an additional layer of assistance. Alongside their knowledge, they were provided with a wearable device, embodied as a headset. This device proved to be more than a mere accessory-it served as a virtual assistant for complex decisions. In scenarios where the appropriateness of targeting was not immediately evident, this wearable device played a pivotal role. It signalled its wearer through a sharp, distinctive alarm sound, notifying them that the situation likely called for restraint. This auditory cue acted as a support mechanism, leveraging technology to enhance the cadets' ethical discernment in the virtual environment.

[41] As players progressed, their performance in distinguishing legal and illegal targets influenced the game's outcome. Successful discrimination between combatants and civilians led to mission success and positive outcomes, while harm to civilians (whether intentional or due to misjudgement, misuse of the equipment, overreaction, accidental shooting or other unintentional reason) resulted in mission failure or negative consequences.

The meticulous division and design of the second group's experience ensured a comprehensive exploration of decision-making dynamics, while simultaneously incorporating technology in an innovative manner. Through this intricate approach, the experiment delved into the realm of virtual shooting scenarios, dissecting the interplay between knowledge, rapid judgment, and technological assistance.

Through this game, players gain insights into the ethical complexities faced by military personnel on the ground. It prompts players to weigh the ethical implications of their actions, fostering a deeper understanding of the challenges inherent in distinguishing between friend and foe during chaotic conflict.

## IV. Findings

In relation to *Attacking the Christmas Spirit in London,* a comprehensive analysis of the cadets' decision-making tendencies reveals several noteworthy trends. Predominantly, a significant proportion of cadets (89%) opted to consult the legal advisor prior to arriving at a tactical decision. This inclination toward seeking legal guidance underscores the cadets' recognition of the intricacies of ethical and legal dimensions within their decision-making processes. It's evident that they acknowledged the value of informed counsel when navigating the complex landscape of military operations.

Curiously, a minority subset of cadets (4%) exhibited a distinct willingness to deviate from the legal advisor's recommendations and make decisions that contradicted the provided guidance. This tendency suggests an internalized sense of autonomy in decision-making, wherein the cadets may have prioritized other factors over legal perspectives.

A marginal proportion of participants (2%) experienced challenges in their decision-making process, leading to delays that ultimately hindered their ability to complete the game. This subset reflects the potential impact of decision-making constraints in real-world situations, underlining the significance of prompt and effective responses in tactical scenarios.

Notably, the vast majority of cadets (92%) expressed a positive reception of the assistance they received in addressing ethical and legal quandaries. This response indicates a high level of appreciation for the external guidance, reinforcing the pertinence of offering informed advice in intricate military decision-making contexts. On the contrary, a minor segment (3%) perceived the advice as exacerbating the complexity of the situation. This discrepancy possibly reflects the challenge of simplifying intricate legal and ethical issues for practical application.

Lastly, a significant proportion of cadets (72%) conveyed a preference for discussing the situation with a fellow comrade as opposed to relying solely on the legal advisor's counsel. This inclination underscores the perceived value of a peer perspective in the decision-making process. This preference potentially stems from the camaraderie and shared experiences that are inherent in military training, suggesting that a collaborative approach could enhance both decision quality and the cadets' overall comfort in their choices.

In relation to *Combat Conundrums: Precision Trials,* an in-depth analysis of the cadets' performance within the two subgroups provides valuable insights into their decision-making patterns and psychological responses.

In the first subgroup, irrespective of the level of difficulty, a considerable proportion of cadets demonstrated a consistent tendency to miss targets, resulting in a failure to complete the game (easy level: 12%, medium level: 12%, difficult level: 22%). This outcome is significant as it indicates a challenge in accurately identifying and engaging targets in a very short time span and under stress. Furthermore, the data reveals that these cadets frequently engaged targets that should not have been targeted (easy level: 9%, medium level: 11%, difficult level: 17%), showcasing a difficulty to make ethical and legitimate decisions in the heat of the (virtual) battle. These observations collectively suggest that this subgroup struggled with target discrimination, potentially due to a lack of clarity or uncertainty in evaluating the legitimacy of targets.

An interesting psychological response emerged from this subgroup, with a notable percentage (14%) of participants expressing a sense of helplessness by the end of the game. Additionally, a portion (11%) attributed their decision-making difficulties to confusion or the need for more time. The latter observation is particularly intriguing, as it indicates that a considerable number of participants may have grappled with time pressure, leading to suboptimal decision-making outcomes. The data also points to a median rate of 14% across all difficulty levels, reinforcing the consistent challenge of time-related pressures.

In the second subgroup, participants generally exhibited a positive reception of the AI assistance provided by the device. A majority (62%) valued the support, highlighting the role of AI in aiding decision-making processes. However, a subset (16%) expressed concern about being overly influenced by the AI's suggestions, suggesting a potential inclination to blindly follow AI recommendations without thorough consideration. The data further indicates that a significant majority (78%) of cadets in this subgroup adhered to the AI's suggestions during the game.

Intriguingly, a substantial portion (28%) noted that they felt rushed and had insufficient time to contemplate their decisions. This observation raises questions about the balance between the AI's efficiency and the cadets' cognitive and ethical engagement in decision-making. Moreover, the post-game reflection revealed that despite initially accepting the AI's suggestions during gameplay, many participants contemplated alternate choices they might have made given more time or a second opportunity.

In conclusion, this analysis underscores the dynamic interplay between decision-making efficacy, psychological responses, and AI support in the two subgroups. While the first subgroup struggled with target discrimination and decision-making challenges, the second subgroup demonstrated a nuanced relationship with AI assistance, both embracing its guidance and later engaging in post-game evaluation.

Similarly to the second group, the third group of postgraduate students (n:26) also faced the task of determining whether to shoot or abstain from shooting at potential targets displayed in the virtual setting. The configuration remained consistent with Group no. 2, utilizing medium and hard levels of difficulty.

Among the postgraduate students who opted to use the AI device (n:10), a noteworthy pattern emerged. A significant percentage (84%) reported being influenced by the AI's suggestions, indicating that the device played a role in shaping their decision-making process. Interestingly, however, only 22% of these participants adhered to every suggestion provided by the AI. This observation suggests a nuanced relationship between the AI's guidance and the participants' independent judgment. This could imply that while the suggestions were influential, participants still exercised their discretion in final decision-making.

A substantial percentage (38%) of postgraduate students who utilized the AI device encountered challenges leading to a failure to complete the game. Many (62%) cited the limited time window as a significant barrier, expressing their inability to decide within the stipulated timeframe. Despite the hints received from the AI (34%), the constraint of time seemed to hinder effective decision-making, revealing the complexity of rapid ethical choices within a dynamic environment.

Conversely, postgraduate students who chose not to utilize the AI device (n:16) revealed distinctive patterns. Nearly half of them (49%) acknowledged their failure to complete the game. A substantial portion (34%) attributed this failure to a perceived lack of preparedness, while others cited an inability to recall the rules (39%) or a lack of relevant experience (18%) as contributing factors. Interestingly, despite these challenges, a notable proportion (87%) of this subgroup indicated their

reluctance to employ the AI hints. Their hesitancy seemed rooted in concerns about trusting AI for decisions involving ethical or legal implications.

In conclusion, the third group's dynamics exemplify the intricate interplay between AI assistance, decision-making influences, time constraints, and individual readiness. This analysis highlights the complexity of integrating AI into decision-making processes and underscores the significance of participants' willingness to rely on AI's suggestions, as well as their reservations in contexts with ethical and legal stakes.

## V. Conclusion

The objective of our experiment was to investigate the potential effectiveness of moral enhancement as a safety net in extreme situations, along with the implications of utilizing AI for moral enhancement. Our primary question revolved around whether moral enhancement, facilitated by AI, could alter the way individuals make critical tactical decisions under high-stress circumstances. The outcomes, while preliminary due to limited data, provide valuable insights.

Interestingly, the reception of AI as a means of moral enhancement was mixed among the experiment's participants. The participants appeared to perceive AI less as a supportive tool and more as an opinion leader. This raises questions about the perceived role of AI in ethical decision-making processes, suggesting that the participants may have had reservations about AI's ability to genuinely enhance their moral considerations.

Another crucial aspect we sought to explore was the extent to which participants would be open to receiving advice from either a human agent or AI, as well as the implications of AI enhancement on their autonomy and decision-making freedom. The results revealed that a significant majority (68%) of participants across all three groups preferred human agents for discussions related to ethical or legal challenges. Additionally, a substantial 76% expressed an absence of trust in AI for decision-making, emphasizing the perceived necessity of human involvement in the decision-making process.

Interestingly, participants indicated a demanding threshold for accepting AI's suggestions, setting the bar at a proven success rate above 95%. This threshold signifies a cautious approach to AI assistance and underscores the participants' need for high levels of confidence in AI's accuracy before relinquishing their own decision-making authority.

An insightful perspective emerged from participants who expressed concerns that heavy reliance on AI could potentially lead to diminished

critical thinking and increased dependency on technology. This notion points to broader societal implications regarding the integration of AI into ethical decision-making contexts, highlighting the balance between leveraging technology and preserving human agency and cognitive capabilities.

In conclusion, our experiment delved into the intricate interplay between moral enhancement, AI, human agents, trust, autonomy, and critical thinking. The participants' responses underscore the complexity of navigating the role of AI in shaping moral considerations and decision-making processes, while also revealing their reservations and preferences for human involvement. These findings provide a foundation for further exploration and considerations when integrating AI into contexts requiring ethical and tactical judgments.

## VI. Future work

Future research in this domain presents several promising avenues for exploration, building upon the insights gleaned from our experiment. The initial results have highlighted areas that require attention and refinement to enhance the effectiveness and credibility of AI-driven moral enhancement in decision-making scenarios.

One key focus for future work involves training the algorithm to achieve a higher success rate than the observed 86%. This lower success rate may have contributed to the participants' scepticism towards AI's suggestions. By improving the algorithm's accuracy, we can instil greater confidence among users, encouraging them to consider AI recommendations more seriously. This endeavor would require an in-depth analysis of the factors contributing to the algorithm's limitations and the development of strategies to mitigate them.

Furthermore, the complexity of ethical decision-making in extreme situations calls for the development of more intricate and challenging scenarios. Expanding the range of challenges presented to players can yield valuable insights into their decision-making processes and responses. These enriched scenarios should encompass a spectrum of moral dilemmas, legal considerations, and tactical complexities, allowing participants to engage with a wider array of situations.

In tandem with scenario development, there is an opportunity to enhance the platforms and interaction mechanisms used in the experiment. Refining the interfaces and mechanisms through which players interact with the virtual environment can create a more immersive and intuitive experience. This step involves integrating sophisticated technology to provide real-time feedback, adaptive challenges, and interactive ele-

ments that simulate the dynamic nature of ethical decision-making on the battlefield.

To gain a more comprehensive understanding of individual choices and responses, future research should focus on collecting a more extensive dataset. Gathering data from a larger and more diverse participant pool can yield nuanced insights into the factors influencing decision-making processes. This could involve analyzing participants' demographic information, personal beliefs, and prior experiences to ascertain potential correlations with their choices and preferences.

In summary, the current study's findings have paved the way for future research endeavors aimed at refining and expanding the implementation of AI-driven moral enhancement.[42] Addressing the challenges of algorithm accuracy, scenario complexity, interaction design, and data collection will contribute to a more comprehensive understanding of the dynamics between AI assistance and human decision-making in complex ethical contexts. As AI technologies continue to evolve, these insights will be invaluable for creating effective and trustworthy tools for promoting ethical decision-making in high-stress environments.

## Author contribution statement

The conceptualization and methodology of this research was conceived by I. K. Lekea. The software and its validation was performed by G. K. Lekeas. The interdisciplinary discussion on the ethical and legal aspect of the experiment was carried out by I. K. Lekea and P. Topalnakos. The respective legal part was documented by P. Topalnakos. All authors reviewed the results and approved the final version of the manuscript.

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[42] For an interesting discussion on the use of AI as a means of moral enhancement in the context of the Machine Ethics Research Program, see Michael Anderson, Susan Leigh Anderson, Alkis Gounaris, and George Kosteletos, "Towards Moral Machines: A Discussion with Michael Anderson and Susan Leigh Anderson," *Conatus – Journal of Philosophy* 6, no. 1 (2021): 177-202.

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# Morals and Ethics in Counterterrorism

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**Abstract**

*Political leaders, philosophers, sociologists, historians, political scientists, law scholars and economists approach terrorism in diverse ways, especially its definition. Politicians assign the meaning to the term terrorism that best suits them. Political scientists analyze the actions of those in the geopolitical framework. Moral philosophers look at terrorism from the viewpoint of fairness. Historians make a comparative assessment of the phenomenon through its evolution over time, and scholars of law simply dissect counterterrorism measures and assess their consistency with customs and current legislation. Sociologists stress the importance of culture, social relationships and social interactions. Eventually, politicians and lawmakers are not immune to the influence of the common ethics and morals of their own societies and the uses and habits of their own cultures, including religious aspects. Morals and ethics relate to "right" and "wrong" conduct; the first provides guiding principles, and the latter refers to rules provided by an external source, e.g., codes of conduct in workplaces or principles in religions. While morals are concerned with principles of right and wrong, ethics are related to right and wrong conduct of an individual in a particular situation. Ethics, morals and religion are intertwined in the antithetical principles "good and evil." This work aims to scrutinize the crucial concept of just and unjust war, and just and unjust combatants, and to elaborate on some critical moral and ethical elements within the modern understanding of the interplay between terrorism, counterterrorism, fundamental human rights, and international humanitarian law. Through the examination of all pertinent theoretical positions the paper seeks to shed light on the limits of the use of force and the justification of the violation of fundamental rights in the War on Terror.*

**Keywords:** *ethics; morals; terrorism; counterterrorism; just war; unjust combatant; unlawful combatant; terrorist*

## I. Introduction

The War on Terror which followed the September 11, 2001, attacks opened for gross human rights violations including abduction and detention without trial in "black sites"[1] of which Guantánamo is the most notorious.[2] The term "war" is not a purely formal definition, but a conscious choice which led to a new doctrine: the application of the rules provided in time of war against non-state "enemy combatants" who are not nationals of countries at war with the United States. In the War on Terror, the U.S. government assumes that the best defense is the constriction of fundamental rights which are granted under the major international human rights and instruments and the core international humanitarian law (IHL). The crucial factor is the contested relationship between law and morals that puts at risk fundamental human rights.

Nardin gathers that the rule of law is a moral idea, that cannot distinguish between law as an instrument of power from law as a constraint on the exercise of the power itself.[3] Hurd argues that the international rule of law simply reflects the way in which states use law to justify and pursue foreign policy.[4] Taylor thinks that moral issues in counterterrorism are poorly understood and therefore offers a systematic normative theory for guiding, assessing, and criticizing counterterrorist policy.[5] He observes that many commentators claim that in the fight against terrorism state actors should set aside ordinary moral and legal frameworks, and instead bind themselves by a different (and, generally, more permissive) set of ethical rules.[6] Taylor finds

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[1] See, e.g.: European Parliament, Committee on the Alleged Use of European Countries by the CIA for the Transportation and Illegal Detention of Prisoners, Rapporteur Giovanni Claudio Fava, *Report of the European Parliament on the Alleged Use of European Countries by the CIA for the Transport and the Illegal Detention of Prisoners* [2006/2200(INI)], Final A6-0020/2007, RR\382246EN, PE 382.246v02-00 (Strasbourg: European Parliament, 2007).

[2] See, e.g.: European Center for Constitutional and Human Rights (ECCHR), *Rupture and Reckoning: Guantánamo Turns 20. Reflecting on the Legacy of the Notorious Detention Camp and US Counter-Terrorism Policy Two Decades After 9/11* (Berlin: ECCHR, 2022), https://www.ecchr.eu/flipbook/gtmo20/#0; Amnesty International, *USA: Right the Wrong: Decision Time on Guantánamo*, Index no. AMR 51/3474/2021 (London: Amnesty International, 2021), https://www.amnesty.org/en/documents/amr51/3474/2021/en/.

[3] Terry Nardin, "Theorizing the International Rule of Law," *Review of International Studies* 34, no. 3 (2008): 385-401.

[4] Ian Hurd, "The International Rule of Law and the Domestic Analogy," *Global Constitutionalism* 4, no. 3 (2015): 365-395.

[5] Isaac Taylor, *The Ethics of Counterterrorism* (Abingdon and New York: Routledge, 2018).

[6] Ibid.

that counterterrorist efforts by states are sometimes thought to be subject to different moral principles than superficially similar practices, and concludes that normative elements, which explain how terrorism is morally distinct from other sorts of harmful actions, may be significant in thinking about what moral limits should be maintained when combating terrorism.[7] Most of the ethical and moral questions on and around terrorism stem from the lack of a legally binding definition of the term, which this paper does not aim to investigate, rather than touching on it, for its purpose.

## II. The multiple definitions of terrorism

The ability to define and understand terrorism is a problem that persists regardless of how many definitions are developed, or how wide encompassing they might be. So far, it has not been possible to reach an undisputed definition, either legal or academic, of the term "terrorism" due to major divergences on the legitimacy of the use of violence for political commonly accepted definition.[8] Therefore, the definition of the concept of terrorism is ambiguous and legally undefined and adapts on the national interest.[9] The problem lies in the fact that terrorism represents a very wide area of research that is murky, at best, and which is not of equal importance to every researcher, politician, or expert. According to Schmid,[10] there are four main reasons why this is the case:

> I. Terrorism itself is a problematic concept that causes divergence in opinion between political, legal, social, and public opinion.
> II. The problem of definition is inherently linked to that of de-legitimization and criminalization of terrorism.
> III. There are a number of different iterations of terrorism, all purporting to different forms, methods, ideologies, and underlying causes.
> IV. The term itself has been defined in at least a hundred different ways over the last two centuries, whilst still missing a universally acceptable definition.

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[7] Isaac Taylor, "Counter-Terrorism, Ethics of," in *Routledge Encyclopedia of Philosophy Online*, ed. Tim Crane (Abingdon: Routledge, 2022).

[8] Marco Marsili, "The War on Cyberterrorism," *Democracy and Security* 15, no. 2 (2019): 172.

[9] Ibid.

[10] Alex Schmid, "Terrorism – The Definitional Problem," *Case Western. Reserve Journal of International Law* 36, no. 2 (2004): 375-419.

Even though Schmid is considered as the leading authority in the discussion about the definition of terrorism, other scholars have provided arguments as to the elusiveness of such a definition. The definition of terrorism, according to Ganor, is impossible because terrorist organizations by their very nature exist in secret, which makes any objective analysis nearly impossible. Further, the problem of definition is inherently linked to the question of loyalty. Are terrorists working for or against national interests of their homeland; the border between murder, guerrilla warfare, and terrorism; the ability of the state to translate any form of activity into a legitimate show of force; the linkage between terrorism and the question of self-determination; the goals and status of the terrorist acts and terrorists themselves. All these elements draw out inconsistencies in the many definitions. If all terrorism is criminal, then surely the practice of concealing prisoners in overseas "black sites," which was a widespread practice of the U.S. government, can be considered terrorism, much like armed attacks against civilians in Afghanistan and Pakistan which had nothing to do with the War on Terror. Moreover, where is the line between guerilla warfare and terrorism, such as it was in, for example, Ireland in the 20th century, or more recently in the Balkans.[11]

Both Schmid and Ganor recognize the need to create a unified, universally applicable definition of terrorism. There are a number of arguments that support this assertion, linked to a variety of individual aspects of terrorism. As Schmid contends, the ability to create an effective counterterrorism strategy demands agreement on the core elements of the problem which necessarily requires a definition acceptable to all included parties. There is no workable way to combat terrorism effectively if every side has a different definition – which has been exemplified by the chaotic ongoing situation in Syria, where allied forces attacked targets based on individual understanding of terrorism. Moreover, some blatantly terrorist cells were supported by allied forces precisely due to the lacking definition of the term. The crux of the argument is that terrorism invariably arises from political reality and is therefore within the sphere of policy and judicial persecution. Since there are a number of different interpretations of terrorism, what constitutes a crime in the U.S. need not be a crime in Iran, or Pakistan, or Japan.[12]

It should be noted, here, that the author of this paper agrees with these positions, as it was realized that all past and current attempts

[11] Boaz Ganor, "Defining Terrorism: Is One Man's Terrorist another Man's Freedom Fighter?" *Police Practice and Research* 3, no. 4 (2002): 287-304.

[12] Schmid, "Terrorism – The Definitional Problem," 399-402.

to properly define terrorism ended up in a swath of incompatible definitions that just muddy the waters and make congruent and efficient international action against terrorism completely unfeasible – as evidenced by the over 25 year struggle that does not seem to yield anything other than more terrorist groups.

On the other side of the argument are those who consider current definitions of terrorism sufficient, and terrorism itself sufficiently recognizable to be fought successfully. According to Hoffman[13] terrorism is a political concept that needs only recognition in terms of specific goals, motivations, and purposes. Moreover, it is necessary to differentiate terrorism from other forms of violence. To Hoffman, this is not problematic, and therefore does not require a universally acceptable definition.[14] To this point, Wilkinson[15] states that the public is aware and able to recognize terrorist activities. This implies that Wilkinson sees conceptual and empirical distinction between terrorism and other forms of political violence as the crux of the problem rather than the existence of a universal definition. However, in both instances it became apparent, especially over the last several years, that terrorist activity is ambiguous in its nature, and that individuals within the public cannot correctly differentiate (in all cases) between political violence and terrorism – for instance the 2016/2017 riots in the U.S. have frequently been labeled as terrorist activity, whereas they should have been labeled as politically motivated violence instead.

According to Nacos,[16] individuals can intuitively recognize terrorist activities and differentiate them from other forms of violence, and he supports this assertion by arguing that terrorism is in many ways like pornography, one can recognize it when one sees it, but cannot place it within a well-defined category. This argument is characteristic for political actors who often have no interest in reaching a consensual solution, since the existence of a goal, universal definition would place many of the illegal activities of state actors into the light, and potentially lead to judicial culpability of governments or individual agencies. To further this point, it is indicative to note the words of the UK permanent representative to the United Nations, Jeremy Greenstock, who said that the problematization of the definition of terrorism avails no

[13] Bruce Hoffman, *Inside Terrorism* (New York: Columbia University Press, 2002), 2.

[14] Ibid., 2-3.

[15] Paul Wilkinson, *Terrorism Versus Democracy: The Liberal State Response* (London: Routledge, 2006), 1.

[16] Brigitte L. Nacos, *Mass-Mediated Terrorism: Mainstream and Digital Media in Terrorism and* Counterterrorism (Lanham: Rowman and Littlefield, 2016), 25.

benefit, what is important is to recognize that terrorism is terrorism.[17] This points to the fact that states, much like non-state actors play a critical role in this problem, which adds credibility to the chosen methodology and line of reasoning in this dissertation. Provided that state actors do engage in acts that can be classified as terrorism, it seems plausible to assert that there is no political will to define and objectively assess terrorism, as that leaves little room for maneuvering via security and intelligence agencies on the global scale.[18]

There exists a third line of reasoning that argues terrorism is an overly subjective concept that can best be described by the claim "one man's terrorist is another man's freedom fighter," and that, under such circumstances, the search for a universal definition of terrorism becomes impossible. As Wardlaw[19] points out, terrorism is a moral issue, which is why it is impossible to define objectively. This position is quite common in individuals who themselves were a part of terrorist organizations – such as Yasser Arafat, who said such in front of the UN general assembly. To them, the difference between a terrorist and a freedom fighter lies solely in the eye of the beholder – who supports a just cause will call oneself a freedom fighter, the other who is on the other side will see terrorism. The most cited example of this dichotomy is the American Revolutionary War, where the U.S. used tactics that some call terrorist activities, while the UK used the regular military to suppress rebellion. Translated in modern terms, this could be used to describe the Palestinian problem, albeit with several other issues. Firstly, modern terrorism includes purposeful acts of aggression against civilians, which was not the case in the past; second, modern terrorism diverges from that of the 20th century in terms of the level of radicalization – suicide bombers, various attacks whose sole aim is to maximize civilian casualties.[20]

The UN, also, does not have a universal position on the definition of terrorism. In 1998, the UN found that there is no plausible method of reaching a universal consensus on the nature of terrorism, or on the specific nature of threats, challenges, and changes in the modalities of

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[17] John M. Collins, "Terrorism," in *Collateral Language: A User's Guide to America's New War*, eds. John M. Collins and Ross Glover, 155-173 (New York: New York University Press, 2002), 167-168.

[18] Alex P. Schmid, *The Routledge Handbook of Terrorism Research* (London: Taylor and Francis, 2011), 39.

[19] Grant Wardlaw, *Political Terrorism: Theory, Tactics and Counter-Measures* (Cambridge: Cambridge University Press, 1989), 4.

[20] Ibid., 4-5.

terrorist violence in the world. Moreover, one of the UN panels pointed out that the absence of a universal definition is subversive for the creation of a normative and moral based stance on the fight against terror and allows individual interpretations to be made.[21]

The argument by Ceci[22] that terrorism is a conceptual anomaly is based on five elements that obstruct the process of forming a definition-emotional burden, heterogeneity, subjectivity and lack of value-neutral explanations, definitions made by those who fight terrorism, and pejorative nature of the term itself. All the problems that surround the definition of terrorism, and the inherent nature of the reality in which terrorism exists, leads to simplification and generalization, which further alienates any semblance of a consensus. The fact that information today is available at an unprecedented level, and that individuals can join terrorist organizations remotely has worsened the problem, as it now includes considerations of domestic regulation, information control, securitization of daily life, and a number of other problems that all further problematize the definition of terrorism. In this context, objective reality of terrorism falls behind to make space for highly subjective, opinionated elements which is another critical element that prompted this article – in lack of objective reality (or at least lacking the ability to objectify a problem), the only recourse is to examine the problem from a different standpoint.

## III. Moral and ethical issues

Terrorism has legal, political, moral, ethical, and even religious implications. Theoretical problems arise about terrorism, such as the definition of the term and the concept of collective responsibility and specific ethical and moral issues in counterterrorism.[23] There is a general and genuine interest on and around such issues stemming from the intersection of terrorism with counterterrorism that pose some of the most significant challenges to governments and people.[24] This enters the terrain of relativism where everything is possible; a land of opportunities, available to those who argue better. It makes me think of Silver Surfer, the fictional superhero created by Jack Kirby for Marvel Comics, who has a very rel-

[21] Schmid, "Terrorism – The Definitional Problem," 396-397.

[22] Giovanni Mario Ceci, "A 'Historical Turn' in Terrorism Studies?" *Journal of Contemporary History* 51, no. 4 (2016): 888-890.

[23] Adam Henschke, Alastair Reed, Scott Robbins, and Seumas Miller, eds., *Counter-Terrorism, Ethics and Technology* (Cham: Springer Nature, 2021).

[24] Ibid.

ative concept of justice – a sound of relativism which deny claims to objectivity asserts that valuations are relative to the perspective of an observer or the context in which they are assessed.[25]

Maria Baghramian[26] identifies sixteen different forms of relativism, all intertwined, among which three are relevant to the scope of this paper. Moral relativism includes the differences in moral judgments among folks and cultures.[27] Epistemic relativism supports the idea that there are no absolute principles on normative belief, justification, or rationality, but relative ones.[28] Alethic relativism (also "factual relativism") holds that there are no absolute truths, i.e., that truth is always relative to some particular frame of reference, such as a language or a culture (so-called "cultural relativism").[29]

If terrorism is presented as an absolute threat, then counterterrorism measures must also be unlimited. Scholars investigate the ethical implications of the participation in counterterrorist operations[30] and what the limits of counterterrorism and which actions are ethical.[31] It all revolves around a critical question: what is right and what is wrong? The right way is one which is proper, appropriate, and suitable while the wrong way is one which not suitable or appropriate. Ethics, or moral philosophy, defends and recommends concepts of right and wrong behavior. We can infer that what is ethically correct is morally just; it serves as a syllogism to justify – or condemn – certain actions or conducts.

The American philosopher Jeff McMahan provides an interesting definition of just war: "the collective exercise of individual rights of self- and other- defense in a coordinated manner against a common threat."[32] Security and justice are two faces of the "common good" or "commonwealth," which can be achieved only through political means. This issue has been addressed by political theorists and moral philosophers since the era of Ancient Greece.[33]

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[25] Maria Baghramian and J. Adam Carter, "Relativism," in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta (2022), https://plato.stanford.edu/archives/spr2022/entries/relativism/.

[26] Maria Baghramian, *Relativism* (London: Routledge, 2004).

[27] Baghramian and Carter, "Relativism."

[28] Ibid.

[29] Ibid.

[30] Magdalena Badde-Revue and Marie-des-Neiges Ruffo de Calabre, eds., *Ethics in Counter-Terrorism* (Leiden: Brill-Nijhoff, 2018).

[31] Michael Kowalski, ed., *Ethics of Counterterrorism* (Amsterdam: Uitgeverij Boom, 2011).

[32] Jeff McMahan, "The Ethics of Killing in War," *Philosophia* 34, no. 1 (2006): 30. See also Jeff McMahan, "War as Self-Defense," *Ethics and International Affairs* 18, no. 1 (2004): 75-80.

[33] Simon Lee, "Common Good," in *Encyclopedia Britannica Online* (Chicago: Encyclopedia

In *The Prince,* Niccolò Machiavelli concludes that common good can be achieved through military or political action.[34] In chapter 17, exploring cruelty versus mercy, the Italian philosopher states very pragmatically that a few exemplary executions would avoid disorder that would give rise to murder and harm the whole community, while an execution ordered by the state harms only a single individual.[35] This requires "inhuman cruelty," which is referred to as a virtue opposed to "excessive mercy." In *Two Treatises of Government*, John Locke speaks about the commonwealth as a government goal (§133, 134, 137).[36] Thomas Hobbes, who addresses the issue of the commonwealth in the second and third part of *Leviathan*, removes from the concept of natural law any notion of the promotion of the common good[37] he believes corresponds to state power.[38]

Immanuel Kant, who was a supporter of the death penalty,[39] thinks that moral law has a universal value, and not a particular one.[40] In the second chapter of the *Critique of Practical Reason*, he asserts that one can only know that something is morally right by intellectually considering whether a certain action that one wishes to commit could be universally performed. The German philosopher calls the idea that one can know what is right or wrong only through abstract reflection of "moral rationalism." His position on the fundamental nature of morality is that moral goodness, which consists of following the rule of the categorical imperative, is more basic to ethics than good consequences, and that it is the right motivations – an obligation to duty – which is criteria in defining a person as good. This rationalism is at the basis

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Britannica, 2013), last modified Oct. 15, 2016, https://www.britannica.com/topic/common-good.

[34] Ibid.

[35] Niccolò Machiavelli, *The Prince*, trans. and ed. Peter Bondanella; intro. Maurizio Viroli (Oxford: Oxford University Press, 2008), original edition, 1532.

[36] John Locke, *Two Treatises of Government* (London: A. Millar et al., 1764), original edition, 1689.

[37] James R. Jr. Stoner, *Common Law and Liberal Theory: Coke, Hobbes, and the Origins of American Constitutionalism* (Lawrence, KS: University Press of Kansas, 1992), 71. See also John Phillip Reid, "In the Taught Tradition: The Meaning of Law in Massachusetts-Bay Two-Hundred Years Ago," *Suffolk University Law Review* 14, no. 4 (1980): 938-940.

[38] Thomas Hobbes, *Leviathan, or the Matter, Forme, and Power of a Common-Wealth Ecclesiasticall and Civill* (London: A. Crooke, 1651), xviii, 119.

[39] Immanuel Kant, *The Metaphysics of Morals*, trans. Mary Gregor (New York: Cambridge University Press, 1996), 6:333.

[40] Immanuel Kant, *Kant's Critique of Practical Reason and Other Works on the Theory of Ethics*, trans. Thomas Kingsmill Abbott (London: Kongmans, Green and Co., 1889), 4:402.

of the determination by which a government feels "morally justified" in using the lethal force on the assumption that its action will be acknowledged as just, and, therefore, legal.

The law of war legalizes the killing of a human being, what is a crime of murder and punished as such in peacetime. Gill and van Sliedregt infer those actions of regular combatants, which should qualify as serious crimes, such as murder, are lawful because they are covered by privilege.[41] War provides opportunity for a different moral compass: in an armed conflict and in conformity with the laws of war, international law confers immunity from culpability under peacetime law.[42]

Walzer finds that the morality of war corresponds to our sense of what is right.[43] McMahan considers that a moral reason for violating a convention should be assessed by individual conscience.[44] Klabbers argues that previous instruments regulating the law and customs of war, such as the Liber Instructions of 1863 and the Brussels Project of 1874, refused to distinguish between just and unjust combatants.[45] Mavrodes concludes that the distinction between combatant and non-combatants is intended to reduce the cycle of violence by limiting the parties' capacity to fight.[46]

How do you decide whether an act is just or unjust? As things are not *mala in se*, and morality is an individual category, it cannot serve as an acceptable justification. The concept of "moral combatant" introduced by Sidgwick in his book *The Elements of Politics*[47] must be rejected, as well as the characterization of "moral innocence" and "oral cul-

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[41] Terry Gill and Elies van Sliedregt, "Guantánamo Bay: A Reflection on the Legal Status and Rights of 'Unlawful Enemy Combatants,'" *Utrecht Law Review* 1, no. 1 (2005): 31. See also: Knut Dörmann, "The Legal Situation of Unlawful/Unprivileged Combatants," *International Review of the Red Cross* 85, no. 849 (2003): 45; Kurt Ipsen, "Combatants and Non-Combatants," in *The Handbook of Humanitarian Law in Armed Conflicts*, ed. Dieter Fleck, 66-67 (New York: Oxford University Press, 1995); Horst Fischer, "Protection of Prisoners of War," in Fleck, 326-327; Yoram Dinstein, "The Distinction between Unlawful Combatants and War Criminals," in *International Law at a Time of Perplexity: Essays in Honour of Shabtai Rosenne*, ed. Yoram Dinstein, 103-106 (Leiden: Martinus Nijhoff, 1989).

[42] See Art. 43 (2) of Protocol I (1977) Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts, 1125 UNTS 3.

[43] Michael Walzer, *Just and Unjust Wars* (New York: Basic Books, 1977), 133.

[44] McMahan, "The Ethics of Killing in War," 40.

[45] Jan Klabbers, "Rebel with a Cause? Terrorists and Humanitarian Law," *European Journal of International Law* 14, no. 2 (2003): 302.

[46] George I. Mavrodes, "Conventions and the Morality of War," *Philosophy and Public Affairs* 4, no. 2 (1975): 117-131.

[47] Henry Sidgwick, *The Elements of Politics* (London: Macmillan, 1891), 254.

pability" presented by McMahan, who finds that the moral position of unjust combatants is indistinguishable from that of just combatants.[48]

In *The Ethics of Killing in War*, McMahan speaks about just combatants taking up arms in a just cause, most commonly defense against unjust aggression,[49] or an unjust war of defense.[50] He argues that the laws of war diverge significantly from the "deep morality" of war.[51] The American philosopher thinks that an act of war by unjust combatants against just combatants is proportionate and permissible.[52] According to McMahan, unjust combatants are justified in fighting according to a "moral assessment,"[53] even if one admits that both just and unjust combatants cannot wage war without doing wrong.[54] McMahan rejects the assumption that unjust combatants are not wrong in fighting if they respect the rules of engagement.[55] Further, McMahan argues that it is general inadmissible for unjust combatants to attack just combatants[56]: while there are no legitimate targets for the former, there are legitimate targets for the latter with some limitations regarding enemy non-combatants.[57] On the contrary, Walzer thinks that one does not lose immunity only by fighting in an unjust war, but by fighting in any war.[58]

While admitting that just combatants are not allowed to kill enemy non-combatants, McMahan affirms that it is permissible to use defensive force against anyone who poses an unjust threat.[59] This assumption supports non-combatant liability, sometimes to a greater degree than any combatant.[60] The theory is based on the "responsibility criterion." McMahan asserts that posing an unjust threat does not make one lose the right not to be attacked if one is no morally

[48] McMahan, "The Ethics of Killing in War," 24.

[49] Ibid., 27.

[50] Ibid., 30.

[51] Ibid., 38-40.

[52] Ibid., 28, 34.

[53] Ibid., 38-40.

[54] Ibid., 28.

[55] Ibid., 26.

[56] Ibid., 36.

[57] Ibid., 30-31.

[58] Michael Walzer, "Five Questions About Terrorism," *Dissent* 49, no. 1 (2002): 5-16. Republished in Michael Walzer, *Arguing About War* (New Haven, CT: Yale University Press, 2004), 6-41.

[59] McMahan, "The Ethics of Killing in War," 31.

[60] Ibid., 36.

responsible for this fact.[61] What makes a human a legitimate target in war is the moral responsibility for an unjust threat.[62] Coady supports the idea that only combatants are legitimate targets, while all others are non-combatants, and enjoy immunity.[63]

McMahan considers that moral responsibility is important to liability, and thus the defense against unjust threats is permitted.[64] Further, posing an unjust threat is neither necessary nor sufficient for moral liability to force or violence that is necessary to eliminate the threat, but then deduces that unjust combatants are almost morally responsible at least to some degree for the unjust threats they pose, and, hence, all unjust combatants are legitimate targets.[65] He acknowledges that just combatants may act wrongly in fighting "by force or violence that is unnecessary, excessive, disproportionate, or indiscriminate,"[66] but he argues that the requirement of proportionality, in its application to unjust combatants, is merely a device that serves the moral purpose of limiting the violence.[67]

Coady, who criticizes Walzer's approach, morally justifies the use of violence, arguing that only "just warriors" participating in a just war have a license to kill enemies without being charged with murder.[68] The Australian philosopher admits self-defense as a just cause for the use of violence only if it is a necessary means, and the best means, for preventing abuse in practice, but refuses to characterize it as an ethical justification. Nielsen argues that terrorism employed in conjunction with guerrilla warfare in a war of liberation may be justified.[69] According to the Canadian philosopher, acts of terrorism are justified if used as a political weapon in the revolutionary struggle, and if they cause less damage than other types of violence. Fotion believes that terrorism targeting government officials is justifiable under certain cir-

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[61] Ibid., 31.

[62] Ibid., 33-37.

[63] Cecil Anthony John Coady, "Terrorism and Innocence," *Journal of Ethics* 8 (2004): 37-58.

[64] McMahan, "The Ethics of Killing in War," 32-33.

[65] Ibid., 32-35.

[66] Ibid., 28.

[67] Ibid., 29.

[68] Cecil Anthony John Coady, *Morality and Political Violence* (Cambridge: Cambridge University Press, 2008), 19.

[69] Kai Nielsen, "Violence and Terrorism: Its Uses and Abuses," in *Values in Conflict*, ed. Burton M. Leiser, 435-449 (New York: Macmillan, 1981), 446.

cumstances, while terrorism targeting innocents is never.[70] Corlett[71] and Young[72] are on the same line of Fotion, while Held,[73] Bauhn,[74] Gewirth[75] and Nathanson[76] find that terrorism targeting non-combatants or common citizens is never justified. Saul suggests that some acts of terrorism, in exceptional cases, can be excused and considered "'illegal but justifiable' (or at least excusable) in stringently limited, objectively verifiable circumstances," maybe as "collective defense of human rights."[77]

Revolutions may serve as touchstones to assess the validity of the theory of just combatants, which seems to rest on week and faulty assumptions. The foundations of the right to revolution, as a fair path to democratic change, lean on morals and ethics, as relies on controversial sources. These sources sanction, but at the same time justify, the use of violence. The concept of just and unjust rests on the same moral categories, which are not sufficient to justify or condemn an act, such as a revolution, as lawful or unlawful. On the other side, a strictly legal approach proves inadequate due to the unlawful nature of revolution. An act can be unjust, but not unlawful, and can be just, although unlawful.[78]

Self-defense is also used by Trotsky to justify the Red Terror during the Russian Civil War (1917-1923) that began with the October Revolution.[79] Also Africa experimented state terror in the 1970s: after taking control of the Derg, the military junta, in 1977, the new head of state, Mènghistu Hailè Mariàm, a Marxist-Leninist army officer, started

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[70] Nicholas Fotion, "The Burdens of Terrorism," in *Values in Conflict*, ed. Burton M. Leiser, 463-740 (New York: Macmillan, 1981).

[71] J. Angelo Corlett, *Terrorism: A Philosophical Analysis* (Dordrecht: Kluwer, 2003).

[72] Robert Young, "Political Terrorism as a Weapon of the Politically Powerless," in *Terrorism: The Philosophical Issues*, ed. Igor Primoratz, 55-64 (New York: Palgrave Macmillan, 2004).

[73] Virginia Held, *How Terrorism Is Wrong: Morality and Political Violence* (Oxford: Oxford University Press, 2008).

[74] Per Bauhn, *Ethical Aspects of Political Terrorism: The Sacrificing of the Innocent* (Lund: Lund University Press, 1989).

[75] Alan Gewirth, "Are There Any Absolute Rights?" *The Philosophical Quarterly* 31, no. 122 (1981): 16.

[76] Stephen Nathanson, *Terrorism and the Ethics of War* (Cambridge: Cambridge University Press, 2010), 191-208.

[77] Ben Saul, *Defining Terrorism in International Law* (Oxford: Oxford University Press, 2006), 69.

[78] Marco Marsili, "The Twilight Zone of Political Transition: Between Revolution and Democratic Change," *Political Reflection* 5, no. 4 (2019): 24-25.

[79] Leon Trotsky, *Dictatorship vs. Democracy (Terrorism and Communism): A Reply to Karl Kautsky* (New York: Workers Party of America, 1922), 62.

a violent political campaign against members of the competing Ethiopian People's Revolutionary Party (EPRP).[80]

Marsavelski states that terrorism and revolution are two sides of the same coin, and that there has never been a revolution without terrorism or war without war crimes.[81] To name just two that succeeded without terror: the Glorious Revolution, also called the Bloodless Revolution which in 1688 overthrew King James II of England (James VII of Scotland) and ushered in the reign of William III and Mary II; the Carnation Revolution, a military coup in Lisbon, Portugal, on 25 April 1974, supported by massive popular participation, which ended the authoritarian regime of the *Estado Novo*.[82] Revolutions gave birth to many of today's Western democracies (see: American Revolution of 1775-1783, French Revolution of 1789, and European revolutions of 1848).[83] An attempt to overthrow state order cannot be considered by default an act of terrorism as Marsavelski infers – it does not mean that revolutionaries do not commit crimes.

Castrén argues that if an insurgency takes on a big size, rebels should not be treated as common criminals.[84] Walzer believes that anti-insurgents fighting against a resistance movement or a violent uprising that enjoys popular support are fighting an unjust war against the guerrilla forces.[85] Meisels doubts that popular, democratic support for an insurgency should automatically render its opposition unjust or confer legitimacy to irregular combatants.[86] The Bolsheviks probably had the consent of a majority of the population when they overthrew the Tsar in 1917 and established a terror regime.

Terror(ism) and revolution constitute a frequent binomial. People have rights until they are able to defend them. Marsavelski encompasses the right of revolution (*ius resistendi*) within the right to self-determination against alien occupation and racist regimes,[87] but acknowledges that it is not an

[80] Jacob Wiebel, "The Ethiopian Red Terror," in *Oxford Research Encyclopedia of African History*, ed. Thomas Spear (Oxford: Oxford University Press, 2017).

[81] Aleksandar Marsavelski, "The Crime of Terrorism and the Right of Revolution in International Law," *Connecticut Journal of International Law* 28, no. 241 (2013): 394.

[82] Marsili, "The Twilight Zone of Political Transition," 21.

[83] Ibid.

[84] Erik Johannes Sakari Castrén, *Civil War* (Helsinki: Suomalainen Tiedeakatemia, 1966), 97-98.

[85] Walzer, *Just and Unjust Wars*, 187.

[86] Tamar Meisels, "Combattants – Lawful and Unlawful," *Law and Philosophy* 26, no. 1 (2007): 42.

[87] Marsavelski, "The Crime of Terrorism and the Right of Revolution," 247.

absolute right and has its limits as a *sui generis* right.[88] Assassination is an ancient method to put an end to tyranny. *Sic semper tyrannis* ("thus always to tyrants"); this phrase, said to have originated with Roman Marcus Junius Brutus during the assassination of Julius Caesar on March 15, 44 BC, was repeated two thousand years later by John Wilkes Booth after shooting to death President Lincoln.[89]

Natural law theory provides the basis for challenging the sovereign power and to establishing positive law and government – and thus legal rights – as a derivation of the social contract. Conversely, opponents invoke natural rights to challenge the legitimacy of these foundations. Grotius, who has a view of international law as natural law, rejects the possibility of justifiable use of force against the sovereign.[90] Hobbes thinks that the sovereign prevails over natural law as the sovereign's decisions need not be grounded in morality. Otherwise, Vattel believes that the legitimate use of revolution, evolved from the natural right of self-defense, is premised under the principle of proportionality, when no other remedy can be applied to the evil.[91] Marsavelski gathers that, under natural law, the recognition of the right to self-defense leads to the recognition of the law of necessity.[92]

Self-defense is allowed under Art. 51 of the UN Charter. Under this provision, preemptive strikes are considered as legitimate self-defensive acts. Marsavelski affirms that under the doctrine of self-defense the assassination of the Syrian president, Bashar al-Assad, could be justified.[93] It is not clear if assassination would be permitted only in self-defense, or in a state of necessity, to prevent the killing of innocent civilians by regime forces.[94] Blum suggests that humanitarian necessity should be narrowly defined to be a justification to exculpate anyone violating the laws of war in the name of a greater humanitarian good.[95]

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[88] Ibid., 290.

[89] Robert G. Eisenhauer, *After Romanticism* (Bern: Peter Lang, 2008), 119.

[90] Hugo Grotius, *The Rights of War and Peace: In Three Books*, Book 1, ed. Jean Barbeyrac (London: W. Innys and R. Manby, J. and P. Knapton, D. Brown, T. Osborn, and E. Wicksteed, 1738) [Original edition, *De jure belli ac pacis libri tres*, 1625].

[91] Emmeric de Vattel, *The Law of Nations; or, Principles of the Law of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns*, ed. Joseph Chitty and Edward D. Ingraham (Philadelphia, PA: T. and J. W. Johnson and C., 1883), 20, 22.

[92] Marsavelski, "The Crime of Terrorism and the Right of Revolution," 285.

[93] Ibid., 286.

[94] Art. 31(d) of the Rome Statute defines necessity: "a threat of imminent death or of continuing or imminent serious bodily harm against that person or another person, and the person acts necessarily and reasonably to avoid this threat, provided that the person does not intend to cause a greater harm than the one sought to be avoided."

[95] Gabriela Blum, "The Laws of War and the 'Lesser Evil,'" *Yale Journal of International Law* 35,

In Book 1 of *The Rights of War and Peace*, Grotius advances his concept of war and natural justice, arguing that there are some circumstances in which war is justifiable. In Book II, Grotius finds three "just causes" for war: self-defense, reparation of injury, and punishment. Although Grotius considers legitimate for a nation to invade foreign soil to overthrow a tyrant, he does not recognize to oppressed people the right to revolt.

Even Locke advocates the right to stand against an oppressive government. In *Two Treatises of Government*, the English philosopher concludes that, according to the theory of social contract, people have the right to overthrow the unjust government, and to change it with one that serves the interests of citizens (§ 222 et seq.). Locke believes that under natural law people have the right to self-defense when their liberty is threatened by the local government or by a foreign nation. Accordingly, the right of revolution is a safeguard against tyranny. His contributions to liberal theory are embodied in the *United States Declaration of Independence* of 1776,[96] which in its preamble proclaims the right of the people to alter or to abolish a government whenever becomes destructive, and to replace it. The U.S. government has always supported the right of revolution,[97] thus making an essential contribution to root it in international law.[98] By applying this right, the U.S. courts uphold the principle of proportionality in the use of revolutionary force, considering violence the ultimate means to overthrow the government.[99]

The right of revolution is incorporated in the preamble of the French Constitution of the Fifth Republic (1958),[100] which recalls the *Declaration of the Rights of Man and of the Citizen* of 1789.[101] Art. 2 of the Declaration of human and civil rights states as imprescriptible the right of man to resist to oppression. Preamble to the Algerian Constitution, issued after the war against France (1954-1962), which led the African country gaining its independence, justifies the Revolution.[102]

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no. 1 (2010): 1-69.

[96] Carl Lotus Becker, *The Declaration of Independence: A Study in the History of Political Ideas* (New York: Harcourt, Brace and Company, 1922), 27.

[97] Green Haywood Hackworth, *Digest of International Law*, vol. 1 (Washington, D.C.: U.S. Government Publishing Office, 1940), 177.

[98] Marsavelski, "The Crime of Terrorism and the Right of Revolution in International Law," 271.

[99] *Dennis v. United States*, 341 U.S. 494 (1951), § 501.

[100] French Constitution of October 4, 1958.

[101] Declaration of the Rights of Man and of the Citizen of August 26, 1789 (Declaration of Human and Civic Rights).

[102] Constitution of the People's Democratic Republic of Algeria of 1989, reinstated on Nov.

In the First Article, the Constitution of Iran glorifies the Islamic Revolution of 1979.[103] The right of the use of force by people to resist, as *ultima ratio*, if no other remedy is available, is enshrined in Art. 20 (4) of the Basic Law for the Federal Republic of Germany.[104]

Preamble to the *Universal Declaration of Human Rights* (UDHR) speaks about the rebellion against tyranny and oppression as a last resort recourse to protect human rights. The right of colonized or oppressed peoples to free themselves in set forth also in Art. 20(2) of the *Charter on Human and Peoples' Rights* and in the preamble to the *Convention on the Prevention and Combating of Terrorism* adopted by the Organisation of African Unity (OAU) in 1999,[105] which reaffirms the legitimate right of peoples for self-determination and independence pursuant to the principles of international law and the provisions of the Charters of the OAU and of the *African Charter on Human and Peoples' Rights* (ACHP), also known as the Banjul Charter.[106] Article 3 of the OAU Convention says that armed struggle against colonialism, occupation, aggression and domination by foreign forces shall not be considered a terrorist act. Section 4(xl) of the *African Model Anti-Terrorism Law*, adopted by the African Union (AU)[107] in 2011, says that none of such behaviors shall be considered as terrorist acts.[108]

The *Cairo Declaration on Human Rights in Islam* (CDHRI), an Islamic response to the UDHR, adopted by the Organization of the Islamic Conference (OIC) in 1990, enshrines the right to the peoples oppressed or suffering from colonialism and of all forms of and occupation have the full right to freedom and self-determination (Art. 11). These principles are recalled also in the preamble to the three Islamic counterterrorism instruments: the *Arab Convention on the Suppression of Terrorism* of 1998, the *OIC Convention for Combating International Terrorism* of 1999, and the *Convention of the Cooperation Council for the Arab States of the Gulf on Combating Terrorism* of 2004, which confirm the legitimacy of the right of peoples to struggle against for-

28, 1996, and modified in 2002 and 2008.

[103] Constitution of the Islamic Republic of Iran, adopted by referendum, on Dec. 2-3, 1979.

[104] Basic Law for the Federal Republic of Germany of May 23, 1949.

[105] Organisation of African Unity, Convention on the Prevention and Combating of Terrorism, adopted by the 35th OAU Summit in Algiers, Algeria, July 1, 1999.

[106] Organisation of African Unity, African Charter on Human and Peoples' Rights, concluded at Nairobi on June 27, 1988. In *United Nations Treaty Series* 520, no. 26363, 218-292.

[107] The AU replaced the OAU in 2002.

[108] African Union, The African Model Anti-Terrorism Law, final draft as endorsed by the 17th Ordinary Session of the AU Assembly in Malabo, on June 30-July 1, 2011.

eign occupation and colonialist and racist regimes by all means, including armed struggle to liberate their territories and attain their rights to self-determination and independence in compliance with their charters and resolutions, and with the purposes and principles of the Charter and the resolutions of the United Nations.

Modern constitutions refer to sovereignty that resides/emanates from the people – this is the core principle of democracy. Marsavelski concludes that the right to revolution is a general principle of law which exists in international customary law, even if is not mentioned in any treaty.[109]

Under legal philosophy, natural rights (*ius naturale)*, among which is placed the right of revolution, intersect natural law theory, which justifies the supremacy of the strongest. According to the natural law theory (*lex naturalis*), some rights are inherent by virtue of human nature endowed by nature, God, or a transcendent source, and are universal.[110] These binding rules of moral behavior originate from nature's or God's creation of reality and humankind. For some philosophers, jurists and scholars the term "natural law" is equivalent to "natural rights," or "natural justice,"[111] while others differentiate between natural law and natural right.[112] In *Leviathan*, Hobbes defines natural law as

> a precept, or general rule, found out by reason, by which a man is forbidden to do that which is destructive of his life, or takes away the means of preserving the same; and to omit that by which one thinks it may best be preserved.[113]

He believes that in the state of nature nothing can be considered just or unjust, and every man must be considered having a right to all things.[114] According to the British philosopher there are nineteen Laws of nature: the first two are expounded in chapter XIV of *Leviathan* "of the first and second natural laws; and of contracts," the others in chapter XV "of other laws of nature." The first law of nature provides states

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[109] Marsavelski, "The Crime of Terrorism and the Right of Revolution," 276, 277.

[110] Leo Strauss, "Natural Law," in *International Encyclopedia of the Social Sciences*, ed. David L. Sills, 80-90 (London: Macmillan, 1968), 2.

[111] Max Solomon Shellens, "Aristotle on Natural Law," *The American Journal of Jurisprudence* 4, no. 1 (1959): 72-100.

[112] Strauss, "Natural Law."

[113] Hobbes, *Leviathan*, 100.

[114] Ibid., XIII.13.

that every man may seek and use all helps and advantages of war.[115] The second law gives a man the right to self-defense.[116] The third law of nature provides the motivation to rebel against the authority:

> When a covenant is made, then to break it is unjust and the definition of injustice is no other than the not performance of covenant. And whatsoever is not unjust, is just.[117]

The Catholic Church holds the concept of natural law introduced by medieval Catholic philosophers such as Albertus Magnus (AKA Saint Albert the Great) and Thomas Aquinas. The Catholic jurisprudence draws the foundations of natural law in the *Bible*.[118]

The connection between ethics, morals and religion is clear in the eternal dualism of Christianity between good and evil, assumed as antithetical principles. Right and wrong – or just and unjust – are dualistic antagonistic opposites deriving from the Manichaean dichotomy "good and evil," in which good should prevail and evil, that is often used to denote profound immorality, should be defeated.[119] In such perspective, terrorism is absolute evil,[120] and Western soldiers are the new crusaders engaged in a just war against it.

In evaluating the moral aspect of "killing the enemy" should be considered texts that lie on morality, and on which rest the values of the Western civilization. "Thou shalt not kill" is a moral imperative enshrined in the Ten Commandments of the Torah,[121] which can be found in Exodus 20:13 and Deuteronomy 5:17. The imperative to not kill is claimed in the context of "unlawful" killing resulting in bloodguilt.[122]

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[115] Ibid., 86 et seq.

[116] Ibid.

[117] Ibid., 97.

[118] The author consulted the *King James Bible* (1769/2017).

[119] Paul Ingram and Frederick John Streng, eds., *Buddhist-Christian Dialogue: Mutual Renewal and Transformation* (Honolulu, HI: University of Hawaii Press, 1986), 148-149.

[120] Antonio Guterres, "Message to Special Meeting of the Security Council Counter-Terrorism Committee on 'Countering the Use of New and Emerging Technologies for Terrorist Purposes,'" Mumbai, October 28, 2022, https://www.un.org/counterterrorism/sites/www.un.org.counterterrorism/files/sg_mumbai_28_october_2022-_sg_video_message_to_special_meeting_of_the_counter-terrorism_committee.pdf.

[121] Exodus 20:1-21; Deuteronomy 5:1-23.

[122] Genesis 4:10; Genesis 9:6; Genesis 42:22; Exodus 22:2-2; Leviticus 17:4; Leviticus 20; Numbers 20; Deuteronomy 19; Deuteronomy 32:43; Joshua 2:19; Judges 9:24; 1 Samuel 25; 2 Samuel 1; 2 Samuel 21; 1 Kings 2; 1 Kings 21:19; 2 Kings 24:4; Psalm 9:12; Psalm 51:14; Psalm 106:38; Proverbs 6:17; Isaiah 1:15; Isaiah 26:21; Jeremiah 22:17; Lamentations 4:13;

The Hebrew *Bible* contains numerous prohibitions against unlawful killing, but also contains prescriptive imperatives for lawful killing in the context of warfare, capital punishment, and self-defense.

According to the Torah (Exodus 22:2-3), justified killing is allowed in some circumstances as self-defense. A home defender who struck and killed an intruder at home is not guilty of bloodshed:

> If a thief is caught breaking in and is struck so that the thief dies, the defender is not guilty of bloodshed; but if it happens after sunrise, one is guilty of bloodshed.

The New Testament agrees that murder is a "grave moral evil,"[123] and supports the Old Testament.[124] Jesus himself repeats the commandment: "Do not murder."[125] The reference to the Christian roots of Western civilization deserves further theological studies, but the purpose here is only to demonstrate the limits and contradictions of a perspective based on ethics and morals.

## IV. Concluding remarks

The distinction between just/unjust war/combatant – that is the dualistic Manichaean dichotomy between antagonistic opposites right/wrong or good/evil – is based on moral and ethical considerations and therefore is weak because it leaves the door open to different and opposing assessments. Morals and ethics can be used to sanction or justify the use of the lethal force, depending on the interpretation of the sources on which they rely. The concept of what is just or unjust rests on the same moral categories that are not sufficient to justify or condemn an act as lawful or unlawful. On the other side, a strictly legal approach proves inadequate, due to the status of unlawful/unprivileged combatants under IHL. An action may be unjust, but not unlawful; it may be just, although unlawful. On a legal point of view, the distinction between lawful and unlawful combatants, lies in the moral evaluation between just and unjust combatants (or right and wrong), with the former that have a "license to

Ezekiel 9:9; Ezekiel 36:18; Hosea 4:2; Joel 3:19; Habakkuk 2:8; Matthew 23:30-35; Matthew 27:4; Luke 11:50-51; Romans 3:15; Revelation 6:10; Revelation 18:24.

[123] Matthew 5:21; Matthew 15:19; Matthew 19:19; Matthew 22:7; Mark 10:19; Luke 18:20; Romans 13:9; 1 Timothy 1:9; James 2:11; Revelation 21:8.

[124] Matthew 23:30-35; Matthew 27:4; Luke 11:50-51; Romans 3:15; Revelation 6:10; Revelation 18:24.

[125] Matthew 5:21; Matthew 19:19; Mark 10:19; Luke 18:20.

kill." In the War on Terror the syllogism "just equals lawful" and "unjust equals unlawful" leaves the door open to the national interest, with all the consequences that this entails. While it would be unrealistic to expect any significant shift in the understanding of terrorism as both state and non-state activity, it is legitimate to contemplate the compliance with *ius cogens* while countering terrorism.

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# Environmental Ethics of War: Jus ad Bellum, Jus in Bello, and the Natural Environment

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**Abstract**

*The conduct of hostilities is very bad for the environment, yet relatively little attention has been focused on environmental military ethics by just war theorists and revisionist philosophers of war. Contemporary ecological concerns pose significant challenges to jus in bello. I begin by briefly surveying existing literature on environmental justice during wartime. While these jus in bello environmental issues have been addressed only sparsely by just war theorists, environmental jus ad bellum has rarely been tackled within JWT or the morality of war. In line with the theme of this special issue, I focus my discussion of war and the natural environment primarily on the jus ad bellum level. I set out with the presumption against the use of force, and its possible exceptions. The principal question raised is whether environmental harm can trigger a new justification for war. Beyond just cause, I consider what might be a proportionate response to "environmental aggression," or negligent harm to nature. The use of force is clearly justified in response to military attacks, against the natural environment or otherwise. Where harm to nature or its inhabitants are not caused by military aggression, just war theory criteria point in favor of responding via measures short of war. Finally, I suggest that responding by means that are not themselves harmful to nature serves to fulfill the further jus ad bellum criterion of "right intention."*

**Keywords:** *just war theory; morality of war; environmental philosophy; military ethics; LOAC*

## I. Introduction

Recent decades have witnessed unprecedented environmental deterioration, with climate change and extreme weather events, such as floods and droughts, posing significant challenges. The scientific consensus points to Mankind as the main culprit, as well as the sole cause capable of moral agency. The unprecedented increase in human population alongside a variety of polluting enterprises – industry, technology, and urban development – harm wilderness areas contributing to extinction of biological species and threatening their present and future generations.

Of all human activities, however, warfare particulalry has a significant and enduring effect on the natural environment, with militaries carrying exceptionally large carbon footprints, both in war and in peacetime.[1] In keeping with limited existing data, "collectively the world's militaries are estimated to be the largest single polluter on Earth, accounting for as much as 20 percent of all global environmental degradation."[2]

Combat itself adversely effects wildlife through use of mines, bombs, and chemicals, often in already bio-sensitive habitats. Training and preparing for war, fighting and recovery from it, all inevitably affect natural systems with largely negative impacts. Maintaining standing armies: exercising and mobilizing forces contribute to carbon emissions. Military industries cause extensive pollution; warfare disrupts ecosystems, harms wilderness areas, and jeopardizes biodiversity. [3]

At the *jus ad bellum level*, as per the focus of this volume, conflict over natural resources (scarce or abundant) are a common cause for civil war – the most prevalent type of warfare since 1945 – and their conduct *in bello*, often within biodiversity hotspots, fairs particularly badly for the environment and its inhabitants.[4] Moreover, studies also

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[1] Gary E. Machlis and Thor Hanson, "Warfare Ecology," *BioScience* 58, no. 8 (2008): 729; Mark Woods, "The Nature of War and Peace: Just War Thinking, Environmental Ethics, and Environmental Justice," in *Rethinking the Just War Tradition*, eds. Michael W. Brough, John W. Lango, and Harry van der Linden, 17-34 (Albany: State University of New York Press, 2007), 19-20, and 29-30.

[2] Woods, 20.

[3] Thor Hanson, "Biodiversity Conservation and Armed Conflict: A Warfare Ecology Perspective," *Annals of the New York Academy of Sciences* 1429, no. 1 (2018): 50, and throughout; Machlis and Hanson, throughout.

[4] Laurent R. Hourcle, "Environmental Law of War," *Vermont Law Review* 25, no. 3 (2001): 653, 661, and 679-680; Adam Roberts, "The Law of War and Environmental Damage," in *The Environmental Consequences of War*, eds. Jay E. Austin and Carl E. Bruch, 47-86 (Cambridge: Cambridge University Press, 2000), 75-77; Machlis and Hanson, 731; Josh Milburn

consider the effects of environmental degradation on the occurrence of armed conflict.[5] Climate change-conflict links have been debated within the academic literature over the past decade, indicating, i.a. that an incresing number of wars are being driven by environmental destruction, by climate change and by resource scarcity.[6] Anthropogenic climate change has been described as a "threat multiplier" for political instability, with the draught and subsequent migration preceding civil war in Syria as a controversial example.[7] As global climate change progresses and areas of the world become uninhabitable, living space and scarce natural resources are likely to increase, placing pressure on the current *jus ad bellum* regime.[8]

In line with the theme of this special issue, I focus on the presumption against the use of force, and its possible exceptions. The principal question raised by my paper is whether environmental harm can form a new justification for war, presumably in the context of war's *prima facie* unjustifiability. My answer is not definitive. The use of force is clearly justified in response to military aggression against the natural

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and Sara Van Goozen, "Counting Animals in War: First Steps Towards an Inclusive Just-War Theory," *Social Theory & Practice* 47, no. 4 (2021): 657-659; Joseph P. Dudley, Joshua R. Ginsberg, Andrew J. Plumptre, John A. Hart, and Liliana C. Campos, "Effects of War and Civil Strife on Wildlife and Wildlife Habitats," *Conservation Biology* 16, no. 2 (2002): 319-329, and 323-324.

[5] Thomas F. Homer-Dixon, "On the Threshold: Environmental Changes as Causes of Acute Conflict," *International Security* 16, no. 2 (1991): 76-116; Thomas F. Homer-Dixon, "Environmental Scarcities and Violent Conflict: Evidence from Cases," *International Security* 19, no. 1 (1994): 5-40; Dudley, Ginsberg, Plumptre, Hart, and Campos, 324.

[6] Vally Koubi, "Climate Change and Conflict," *Annual Review of Political Science* 22 (2019): 343-360; Laurie Johnston, "The Boisi Center Interview: Laurie Johnston," *The Boisi Center Interviews* 120, March 17, 2016, 1.

[7] E.g., Peter H. Gleick, "Water, Drought, Climate Change, and Conflict in Syria," *Weather, Climate, and Society* 6, no. 3 (2014): 331-340; Jan Selby, Omar S. Dahi, Christiane Fröhlich, and Mike Hulme, "Climate Change and the Syrian Civil War Revisited," *Political Geography* 60 (2017): 232-244; Ulker Duygu, Orhan Ergüven, and Cem Gazioğlu, "Socio-economic Impacts in a Changing Climate: Case Study Syria," *International Journal of Environment and Geoinformatics* 5, no. 1 (2018): 84-93; Tobias Ide, "Climate War in the Middle East? Drought, the Syrian Civil War and the State of Climate-conflict Research," *Current Climate Change Reports* 4, no. 4 (2018): 347-354; Bastien Alex and Adrien Estève, "Defense Stakeholders and Climate Change: A Chronicle of a New Strategic Constraint in France and the United States," *Revue Internationale et Strategique* 109, no. 1 (2018): 99; cite Civil wars in Chad and Darfur as further cases in point; Machlis and Hanson, 729; Craig Martin, "Atmospheric Intervention? The Climate Change Crisis and the *jus ad bellum* Regime," *Columbia Journal of Environmental Law* 45, no. 2 (2020): 344-345.

[8] Marcus Hedahl, Scott Clark, and Michael Beggins, "The Changing Nature of the Just War Tradition: How Our Changing Environment Ought to Change the Foundations of Just War Theory," *Public Integrity* 19, no. 5 (2017): 429-443, and 433-435; Martin, throughout.

environment, as with any other armed attack. Where harm to nature or its inhabitants are not caused by military attack, Just War Theory (JWT) criteria point in favor of responding via measures short of war.

Aside from *jus ad bellum* criteria – specifically just cause and *ad bellum* proportionality – contemporary ecological concerns pose significant challenges to *jus in bello*, or military ethics.[9] The following two sections briefly survey existing literature on environmental justice during war. The subsequent sections, four and five, focus on potential ecological justifications for war as well as on the proportionality of any such recourse to arms on behalf of the environment. While the former (*jus in bello*) issues have been addressed only sparsely by just war theorists, the latter (environmental *jus ad bellum*) has rarely been tackled within JWT or the morality of war.

## II. Environmental military ethics

War has always been destructive to its environment, nevertheless, the issue of protecting nature *per se* from the deleterious effects of warfare surfaced only in the late 20th century, due mostly to the unprecedented environmental devastation caused by the Vietnam War and the first Gulf War. Since that time, increasing evidence of environmental damage caused by war has drawn academic attention, much of which remains empirical as well as scattered across distinct disciplines, ranging from political science and IR to ecology, law, and military history.[10]

As opposed to ethics, there is a veritable gold mine of legal literature on environmental regulation during armed conflict and in its aftermath. "International law has not been silent on the environmental effects of military activity,"[11] and neither have legal scholars.[12] The just

[9] Hedahl, Clark, and Beggins, 432-436.

[10] Machlis and Hanson, 729.

[11] Merrit P. Drucker, "The Military Commander's Responsibility for the Environment," *Environmental Ethics* 11, no. 2 (1989): 143.

[12] The list is extensive, e.g.: Carl E. Bruch, "All's Not Fair in (Civil) War: Criminal Liability for Environmental Damage in Internal Armed Conflict," *Vermont Law Review* 25, no. 3 (2001): 695-752; Yoram Dinstein, *The Conduct of Hostilities Under the Law of International Armed Conflict* (Cambridge: Cambridge University Press, 2004), 176-197; Michael D. Deiderich, "Law of War and Ecology – A Proposal for a Workable Approach to Protecting the Environment through the Law of War," *Military Law Review* 136 (1992): 137-160; Judith Gardam, *Necessity, Proportionality, and the Use of Forces by States* (Cambridge: Cambridge University Press, 2004), 132-133, and 177-178; Leslie C. Green, *The Contemporary Law of Armed Conflict* (Manchester: Manchester University Press, 2018), 152-153, 155, 162-163, 183, 221, and 374; Hourcle, 653-693; Peter J. Richards and Michael N. Schmitt, "Mars Meets Mother Nature: Protecting the Environment During Armed Conflict," *Stetson Law Review* 28 (1999): 1047-

war tradition has always been intertwined with legal thinking ("natural law") and the subsequent emergence of international laws of war.[13] In the area of wartime environmental protection, the law appears to precede moral scholarship, and may serve to advance it. As Jeremy Waldron suggests regarding civilian immunity: where law forces normative regulation in the face of practical necessity before deep moral reflection has developed, law is a school for moral philosophy.[14]

The most directly relevant environmental restrictions in wartime, applicable to international armed conflicts, appear in the following legal documents, all of which remain primarily human-centered and utilitarian in their perspective.

- The 1959 Antarctic Treaty bans military tests and nuclear activity in the region, partly for ecological reasons.[15]
- The 1977 Environmental Modification Techniques Convention (ENMOD) bars using the environment itself (i.e., changing or manipulating natural processes) as a weapon.[16]
- Protocol I, addition to the Geneva Convention (GPI) 1977 – Article 35 (3) proscribes methods and means of warfare intended or expected to "cause widespread, long-term, and severe damage to the natural environment." Article 55 (1) repeats this, and adds

1092; Adam Roberts, "Environmental Issues in International Armed Conflict: The Experience of the 1991 Gulf War," *International Law Studies* 69 (1996): 222-227; Roberts, "The Law of War and Environmental Damage," 47-86; Michael N. Schmitt, "Green War: An Assessment of the Environmental Law of International Armed Conflict," *Yale Journal of International Law* 22 (1997): 1-109; Michael N. Schmitt, "The Environmental Law of War: An Invitation to Critical Reexamination," *USAFA Journal of Legal Studies* 6 (1996): 237-271; Aaron Schwabach, "Environmental Damage Resulting from the NATO Military Action against Yugoslavia," *Columbia Journal of Environmental Law* 25 (2000): 117-140; Aaron Schwabach, "Ecocide and Genocide in Iraq: International Law, the Marsh Arabs and Environmental Damage in Non-international Conflicts," *TJSL Public Law Research Paper* 03-08 (2003): 1-37.

[13] Gregory M. Reichberg and Henrik Syse, "Protecting the Natural Environment in Wartime: Ethical Considerations from the Just War Tradition," *Journal of Peace Research* 37, no 4. (2000): 450; Jeremy Waldron, *Torture, Terror, and Trade-Offs: Philosophy for the White House* (Oxford: Oxford University Press, 2010), 88.

[14] Waldron, 87: "[...] Law often colonizes an area of normative inquiry first, before serious moral inquiry, as we know it begins. Often, we learn how to moralize by learning how to ask and answer legalistic questions: I strongly believe that law is a school of moral philosophy. Historically, this has been particularly true of the laws and customs of armed conflict."

[15] Antarctic Treaty (4 October 1991). *Protocol on Environmental Protection*. Articles 2 and 3. Entry into Force: 14 January 1998.

[16] Environmental Modification Convention (18 May 1977). *Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques*. Entry into Force: 5 October 1978.

a further prohibition against damages to the natural environment that "prejudice the health or survival of the [human] population."[17]

- 1980 Protocol III to the UN Convention, Article 2 (4) prohibits targeting forests and other plant cover with incendiary weapons, except when such natural elements are used to hide or camouflage combatants or are themselves otherwise military targets.[18]
- Finally, the Rome Statute of the International Criminal Court, following the language of protocol I, brands as a war crime: "widespread, long-term, and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated."[19]

Moreover, leading militaries and international organizations now pay at least cursory attention to environmental issues in their military handbooks and directives.[20]

By stark contrast to the legal and empirical literature, the voluminous writing on JWT in the last few decades has taken less notice of environmental military ethics. Falling far behind their legal counterparts, moral-philosophical attention to environmental ramifications of military activity has been scant, rendering "environmental considerations... peripheral in analyses of the ethics of war."[21] We have yet to hear from leading contemporary philosophers in the ethics/morality of war – either traditionalist or revisionists – on the environmental aspect of war. Notable philosophical exceptions are few-and-far between, and their authors

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[17] Geneva Conventions. *Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts* (Protocol I) (8 June 1977). Articles 35 (3), 55 (1). Entry into Force: 7 December 1978.

[18] Conventions on Prohibitions or Restrictions on the Use of Certain Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects (Protocol III) (10 October 1980). Article 2(4). Entry into Force: 2 December 1983. [Less directly relevant, Protocol II to the same convention prohibits/restricts the use of landmines, booby-traps and some other explosive devices.] See also Bruch, 710-711, on applicability to NIAC.

[19] *Rome Statute of the International Criminal Court* (19 July 1998). Article 8 (2) (b) (iv). Entry into Force: 1 July 2002.

[20] James A. Burger, "Environmental Aspects of Non-International Conflicts: The Experience in Former-Yugoslavia," *International Law Studies* 69 (1996): 333-345 [Special Issue: Protection of the Environment During Armed Conflict, eds. Richard J. Grunawalt, John E. King, and Ronald S. McClain] *in passim*, re the U.S., the UN, and NATO; Theodor Meron, "Comment: Protection of the Environment During Non-International Armed Conflict," *International Law Studies* 69 (1996): 353-358 [Special Issue: Protection of the Environment During Armed Conflict, eds. Richard J. Grunawalt, John E. King, and Ronald S. McClain], 357-358; on environmental directives in military manuals see also Schmitt, 243-244.

[21] Hedahl, Clark, and Beggins, 431.

may-well-be regarded as pioneers in their field.[22] Some of these contributions take a highly specific approach, others offer a more general analysis.

Merrit Drucker (1989), for example, discusses the perspective of a military commander's professional responsibility for the natural environment in both peace and wartime, arguing from environmental ethics that *military necessity* cannot justify any extent of environmental devastation. Most interestingly, Drucker aspires to attribute non-combatant status to the environment itself and its non-human natural inhabitants.[23] Focusing on environmental protection, such as immunity for nature in wartime, however, risks losing sight of humanitarian concerns for the lives of soldiers and civilians.[24]

Drawing on Drucker's analysis, Gregory Reichberg and Henrik Syse (2000) are the first contemporary just war theorists to explicitly suggest incorporating environmental considerations into the moral assessment of war and its conduct. Focusing specifically on Thomas Aquinas' formulation of the just war requirements and natural law, alongside Aquinas' view of human-nature relationship in terms of responsibility and stewardship, authors suggest that the just war tradition "provides an ethical vocabulary for assessing the impact of war on our natural environment," from within this influential Thomist framework.[25]

Combining some of these previous insights, Mark Woods (2007) recommends introducing environmental ethics into the just war tradition and considers how this might be done.[26] Like Drucker, Woods denies that military necessity always trumps environmental considerations and poses a vital practical ethics question: to what extent, if any, can we require armies and military commanders to risk their mission and men, in order to avoid environmental harm[27] Rejecting traditional *jus ad bellum-jus in bello* independence, Woods' environmental standards suggest that a war likely to involve significant attacks on nature would be *ipso facto* unjust,

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[22] Drucker; Hedahl, Clark, and Beggins; Milburn and Van Goozen; Reichberg and Syse; Woods; Laurie Johnston, "Just War and Environmental Destruction," in *Can War be Just in the 21st Century? Ethicists Engage the Tradition*, eds. Tobias Winright and Laurie Johnston (Maryknoll, NY: Orbis Books), Chapter 7; Adrien Estève, "Reflecting on the Protection of the Natural Environment in Times of War: The Contribution of the Just War Tradition," *Raisons politiques* 77, no. 1 (2020): 55-65.

[23] Drucker, 146-147.

[24] Richards and Schmitt, 1088-1091, especially 1090; Roberts, "The Law of War," 268; Roberts, "Environmental Issues," 81; Deiderich, 156-157.

[25] Reichberg and Syse, 449, 457-458, and 466.

[26] Woods.

[27] Ibid., 17-18, and 25.

regardless of cause, and would necessarily fail *ad bellum* criteria such as proportionality and competent authority.[28]

Marcus Hedahl, Scott Clark, and Michael Beggins (2017) of the US Navy, argue that environmental change must affect the theoretical framework of the just war tradition at its very core, explicating this at both its *ad bellum* and *in bello* levels, as well as *post* and *para bellum*.[29] (I return to their discussion of *jus ad bellum* in the following section). Meanwhile, in theology, Laurie Johnston (2015) offers a religious account, based on the Christian virtues of humility and solidarity.[30] Reflecting on the classics, Adrien Estève (2020) points to consequentialist-utilitarian arguments within the just war tradition for protecting the natural environment in times of war, complementing them with reasoning from virtue ethics.[31] Most recently, Josh Milburn and Sara Van Goozen (2021) focus exclusively on animal rights in connection with the wartime requirements of necessity and proportionality, arguing plausibly that we ought to consider wartime harm to individual animals when assessing the justice of military action.[32]

This invaluable collection of original analyses constitutes the state-of-the-art in the ethical-philosophical discussion about war and the environment, leaving room for further thought on environmental *jus in bello*, from both a Walzarian and Revisionist accounts of justice in war.[33] One very basic example of this is the fundamental question of establishing the moral and legal status of the natural environment *in bello*.

## III. Environmental noncombatant immunity

Drucker's early suggestion of extending noncombatant immunity to the environment rests on nature's unquestionably great value, inherently and/or for the well-being of humankind, establishing a moral reason to preserve it. Consequently, Drucker argues, the same arguments that support wartime civilian immunity and the protection of cultural artifacts apply to the environment, to wit: nature is non-threatening (echoing

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[28] Woods, 26-29; cf. Reichberg and Syse.

[29] Hedahl, Clark, and Beggins.

[30] Johnston, "Just War Theory and Environmental Destruction."

[31] Estève.

[32] Milburn and Van Goozen, 657, and throughout with reference on page 660 to Cecile Fabre, *Cosmopolitan War* (Oxford: Oxford University Press, 2012).

[33] I refer here to the well-known split as of the early 2000's of the body of knowledge known as the "Just War Tradition" into two broad camps: Traditional "Just War" Theory vs. Revisionist "morality of war."

Walzer's explanation of civilian immunity), nor is it in the business of war;[34] it did not choose to be involved; moreover, it provides sustenance and nurture, rendering it akin to medical and religious personnel.[35]

Affording full-fledged non-combatant immunity to the environment with all the rights that designation implies is, however, difficult to maintain. One problem with this approach, Michael Deiderich points out, "is that wars are fought largely in the natural environment, and that a commander would not be expected to sacrifice a soldier to save a tree."[36] Another concern raised by Hedahl, Clark, and Beggins is that wartime civilians have absolute rights against direct attack and military use:

> It would appear to strain credulity to believe that the environment has a right against ever being used as a means to an end. One should not be forced to conclude that digging trenches and thereby using the environment as a means would be wrong, even though using a competent adult who is not involved in hostilities in a similar way might well be.[37]

Notwithstanding, Drucker's basic reasoning is compelling because it encompasses all perspectives and attempts to avoid radical conclusions.[38] Although the argument for environmental immunity is fully sustainable only on a deontological morality that attributes inherent worth to the environment, it is, more modestly, analogous to the protection accorded by existing international humanitarian law (IHL) – anthropocentric-utilitarian "humanitarian" law – to works of art and other cultural assets.[39]

Rejecting the analysis of nature as a genuine "noncombatant," Hedahl, Clark, and Beggins point out that the environment is nonetheless not a combatant, thereby retaining a *prima facie* presumption against violent attack.[40] Reminding us that the moral default, even in wartime, is against the use of force, the authors argue more plausibly that military violence against nature should require robust justification. They propose that, "impacts to the environment must be appropriately considered in any double-ef-

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[34] Michael Walzer, *Just and Unjust Wars* (New York: Basic Books, 1977), 144-145.

[35] Drucker, 136-137, and 146-147; see also Woods, 23.

[36] Deiderich, 156-157; see also Woods, 25.

[37] Hedahl, Clark, and Beggins, 437.

[38] Ibid., 151.

[39] Drucker, 139-140, and 149-150.

[40] Hedahl, Clark, and Beggins, 437.

fect calculation," emphasizing their significance in determining proportionality *in bello*.[41]

One advantageous feature of this last proposal to incorporate nature in proportionality calculous is that it represents a moment of union between conflicting perspectives on human-nature relations. There is a well-known debate within environmental ethics over whether to approach the natural environment as having intrinsic value, or merely instrumental value for human beings, though to the extent that we are part of nature, this may be something of a false dichotomy.[42] The environmentally devastating effects of the Russian war in the Ukraine, for example, indicate that much of what is bad for nature is harmful to human beings well. In the case in hand, both a human centered approach (anthropocentrism) as well as various non-anthropocentric approaches to environmental ethics (notably biocentrism and eco-centrism) would endorse attributing weighty consideration to environmental damage within wartime proportionality, but not on the less tenable proposal to equate the status of nature with the absoluteness attaching to civilian human rights. Accommodating a range of ethical perspectives – anthropocentric/non-anthropocentric – identifies points of "overlapping consent" that enable realistically sustainable widely agreed on advances in protecting the environment at war.[43]

The equally familiar traditionalist vs. revisionist divide within the ethics of war suggests similar benefits of value-agnosticism and attaining overlapping consensus on environmental protection between different world views. Drucker argued for environmental immunity because the environment is non-threatening, echoing Walzer's explanation of civilian immunity.[44] Considering the revisionist perspective adds an extra layer of wartime environmental protection to the Walzarian reasoning that regards those who are unthreatening as immune from attack. Revi-

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[41] Ibid.

[42] Johnston, "The Boisi Center Interviews," 3; Reichberg and Syse, 455-456, similarly regard this division as a "false dilemma," 455.

[43] The idea of attaining overlapping consensus on environmental protection in wartime was introduced by Reichberg and Syse, 452-453, in an appeal to reach outside their specifically Thomist based argument. Reichberg and Syse's "value agnosticism" re environmental values, effectively appealing to a wide audience, is explained and adopted by Mark Woods, 24, as it is here. The reference is of course to John Rawls who famously coined the term "overlapping consensus" to denote the ability to generate a widespread agreement among free and equal citizens with contradicting comprehensive doctrines on the principles of justice. This means that similar conclusions can be derived from different, even contrasting, philosophical and moral doctrines, generating wide agreement from vastly different points of view; John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), lecture 5.

[44] Drucker, 146; Walzer, 144-145.

sionist philosophers of war notoriously reject the traditional distinction between threatening combatants and (ostensibly) non-threatening civilians, arguing that the correct criterion of liability to attack in war is not posing a direct threat, but rather moral responsibility for an objectively unjustified, wrongful, threat.[45] Needless to say, nature is not responsible for wartime injustice, any more than it poses a threat, nor is it an agent capable of full moral standing. Incorporating this revised criterion of liability serves once again to strengthen our presumption against aggression towards entities that are not combatants, but not the far-reaching proposition that would grant the environment full non-combatant status and immunities, on a par with human rights.

Moreover, both theories of the Just War are complimented by acknowledging that civilian immunity rests on a basic principle of just combat that proscribes attacking defenseless.[46] This justification for civilian immunity is particularly pertinent to the environment, which is patently defenseless and vulnerable, as are its individual non-human inhabitants.[47] The vulnerability-based justification for protecting sentient beings in wartime crosses animal rights and environmental ethics with both traditional Just War Theory and Revisionism, lending the argument greater credence. Maintaining consensus with anthropocentrism, in both environmental and military ethics, reminds us to weigh the welfare of nature and its non-human inhabitants against military goals and human life, and avoid incredulous wartime conclusions that would result from attributing equality to all life forms, or absolute non-combatant immunity to the environment.

## IV. Jus ad bellum: Just cause

Because International Law of Armed Conflict (ILOAC) focuses primarily on the conduct of hostilities, with ethics of war lagging slowly behind, questions about environmentally just and unjust wars remain relatively neglected by Just War Theory.[48] Legal and moral questions

[45] Jeff McMahan, "The Ethics of Killing in War," *Ethics* 114, no 4 (2004): 722-723; Jeff McMahan, *Killing in War* (Oxford: Oxford University Press, 2009), 32-38, and 204-205.

[46] Henry Shue, "Torture," *Philosophy and Public Affairs* 7, no. 2 (1978): 125, and 129; Henry Shue, "Do We Need a 'Morality of War?'" in *Just and Unjust Warriors*, eds. David Rodin and Henry Shue, 87-111 (New York: Oxford University Press, 2008), 87; Seth Lazar, "Necessity, Vulnerability, and Noncombatant Immunity," unpublished manuscript (2010), cited with permission from the author; Tamar Meisels, "In Defense of the Defenseless: The Morality of the Laws of War," *Political Studies* 60 (2012): 919-935; Tamar Meisels, *Contemporary Just War: Theory and Practice* (London and New York: Routledge, Taylor & Francis Group, 2017), 31-48.

[47] Milburn and Van Goozen.

[48] Some of the previous exceptions discuss *jus ad bellum* criteria as well: Hedahl, Clark, and Beggins, especially 432-435; Reichberg and Syse, 460-462; Woods, 25-30.

arise in connection with various *jus ad bellum* principles. Beginning with just cause, can environmental harm provide a *casus belli*, at what point, under what conditions and on whose authorization?[49] Are there any analogues with humanitarian intervention?[50] How does the environment figure into the proportionality of the war itself (as distinct from the *jus in bello* requirement) to minimize collateral damage.[51] Could preventive or preemptive environmental war be justified (again, in which cases)?[52] For the purposes of this short essay, I confine myself to the primary question of justifying the initial resort to arms on environmental grounds, as well as the proportionality of a forceful response to ecological harm.

To start with, war must have a just cause, typically resisting aggression (national self-defense) and perhaps also humanitarian intervention to avert grave atrocities; traditionally, aggression is "the crime of war."[53] In the post WWII era, the prohibition against the use of force among States as well-as the exceptions to it (self-defense and UN Security Council authorization) are well-established within the UN Charter system.[54] Effectively, contemporary international law and Just War Theory now recognizes only one just cause for waging war unilaterally: self or other defense against aggression understood as the occurrence of an armed attack "(with the possible exception of the prevention of large-scale violations of human rights, such as genocide)."[55] Reichberg, and Syse explain:

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[49] Reichberg and Syse, 460-462; Hedahl, Clark, and Beggins, 433-434, and 435-436; Woods, 26-28; Eckersley, throughout; Martin, throughout.

[50] On military intervention to protect the environment: Robyn Eckersley, "Ecological Intervention: Prospects and Limits," *Ethics and International Affairs* 21, no. 3 (2007): 293-316; and in law, see Martin.

[51] Hedahl, Clark, and Beggins, 434-435 on "proportionality of ends;" Woods, 26-27 on "Macro-Proportionality."

[52] Adam Betz, "Preventive Environmental Wars," *Journal of Military Ethics* 18, no. 3 (2019): 223-247.

[53] Walzer, 21. On humanitarian intervention, 101-108; Thomas Hurka, "Proportionality in the Morality of War," *Philosophy and Public Affairs* 33, no. 1 (2005): 35; Seth Lazar, "Just War Theory: Revisionists Versus Traditionalists," *Annual Review of Political Science* 20 (2017): 41; Hugo Grotius: Wars are criminal when waged without just cause. See Grotius, BK 2, "Defense of Person and Property."

[54] The United Nations Charter, Chapter I Article 2 (4) and Chapter VII, Article 51.

[55] Walzer, 53-54; Jeff McMahan, "Just Cause for War," *Ethics and International Affairs* 19, no. 3 (2005): 1, and 7; For the nuanced differences between national self-defense against aggression as a vehicle of protecting its members basic rights to life and liberty, as well-as their common-life, as opposed to the revisionist-individualist critique, see Lazar, "Just War Theory," 41-42.

> Since war is prima facie an evil, participation in it requires moral and legal justification. Thus, according to the moral logic of "just cause," war-making will be deemed rightful or just solely when it arises as a response to grave wrongdoing committed by the other side.[56]

On a revisionist-individualist version of the Theory, "a just cause for war is a wrong that is of a type that can make those responsible for it morally liable to military attack as a means of preventing or rectifying it."[57] On both versions – revisionists and traditionalists – as well as international law – the ultimate objective is protecting basic human rights, whether via-national self-defense or more reductively to individual self-defense. [58]

Environmental destruction is often part-and-parcel of an ongoing aggressive attack on state sovereignty and its members' basic rights. Russian aggression towards Ukraine supplies ample examples of assaults on the natural environment that also threaten life and liberty.[59] This is aggression simpliciter. Airborne incendiary devices launched from the Gaza Strip into Southern Israel – burning fields and forests, wreaking long-term ecological damage – present far lower intensity cases of contemporary environmental aggression.[60] As no Israelis have been killed or injured in these attacks to date, the level of aggression and appropriate response remain debatable issues. Nonetheless these are military incursions that cross borders and cause widespread environmental harm on Israeli territory, straightforwardly violating sover-

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[56] Reichberg and Syse, 461.

[57] McMahan, "Just Cause for War," abstract.

[58] Lazar, "Just War Theory," 41-42.

[59] See, e.g., among many reports: Deepak Rawtani, Gunjan Gupta, Nitasha Khatri, Piyush K. Rao, and Chaudhery Mustansar Hussain, "Environmental Damages due to War in Ukraine: A Perspective," *Science of The Total Environment* 850 (2022): 157932; I. Avdoshyn, M. Velychko, O. Kyryliuk, and M. Kryvych, "Russian Military Agression Against Ukraine Through the Prism of Hazard of Hostile Military and Anthropogenic Influence on Environment," *One Health and Nutrition Problems of Ukraine* 51, no. 2 (2019): 5-11.

[60] Joanna Zych, "The Use of Weaponised Kites and Balloons in the Israeli-Palestinian Conflict," *Security and Defense Quarterly* 27, no. 5 (2019): 76, and throughout; TOI Staff, "In Worst Blaze to Date, Gaza Fire Kites Destroy Vast Parts of Nature Reserve," *The Times of Israel*, June 2, 2018, https://www.timesofisrael.com/palestinian-fire-kites-destroy-much-of-nature-reserve-along-gaza-border/. In brief: since 2018, arson attacks launched from Gaza to Israel, via airborne incendiary and explosive devices – mainly kites and balloons – have burned fields, forests, nature reserves, destroying beehives, wildlife, and natural habitats, wreaking ecological havoc with long terms environmental ramifications

eignty and individual rights to personal safety and private property.[61] In both cases, attacks against land and property, whatever their degree, fit comfortably within traditional Just War Theory.[62]

Noting the rich history of attributing significance to environmental impacts within just war deliberations, Hedahl, Clark, and Beggins point out that Vitoria included damaging the environment (e.g., by burning vineyards or olive gardens) among the just causes for war.[63] Moreover, Grotius compared the severity of poisoning the land to poisoning a person, both warranting the right to defend, recover and punish, within or between political communities respectively.[64] Attributing care for the natural environment *per se* to Hugo Grotius is a bit of a stretch; nonetheless, as "the father of International law" it is noteworthy that he regarded violence towards land as a *casus belli*.

Setting out with this tradition, it is not unthinkable to argue morally and legally, as does Robyn Eckersley, that major environmental emergencies with transboundary spillover effects that threaten public safety, e.g., "Chernobyl style" threats of nuclear explosion, would justify military action. This is the strongest and most minimalist argument for ecological intervention because "[...] incursions of pollution or hazardous substances into the territory of neighboring states are analogous to an 'armed attack' with chemical, biological, or nuclear weapons; they enter or threaten to enter the territory of the victim state without its consent and with equally grave consequences."[65]

A second case is where severe ecological harm, or "ecocide," accompanies grave human rights violations, on a par with genocide or crimes against humanity. Here, Eckersley continues, justifying military action rides on the back of humanitarian intervention – "eco-humanitarian intervention" – and is subject to all the controversies and challenges surrounding the emerging norm of Responsibility to Protect,

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[61] Pietro Stefanini, "Incendiary Kites and Balloons: Anti-colonial Resistance in Palestine's Great March of Return," *Partecipazione e Conflitto – The Open Journal of Sociopolitical Studies* 14, no. 2 (2021): 664, and 670; Hilly Moodrick-Even Khen, "From Knives to Kites: Developments and Dilemmas around the Use of Force in the Israeli-Palestinian Conflict since 'Protective Edge,'" *Journal of International Humanitarian Legal Studies* 10 (2019): 329.

[62] The crime of aggression is not limited to bodily harm or killing. Walzer, 52, and 62.

[63] Hedahl, Clark, and Beggins, 430, with reference to Vitoria, see Francisco de Vitoria, "On the Law of War," in *Political Writings*, eds. Anthony Pagden and Jeremy Lawrence, 293-328 (Cambridge: Cambridge University Press, 1991), 324, note 49.

[64] Hedahl, Clark, and Beggins, 430; Hugo Grotius, *On the Law of War and Peace* (Cambridge: Cambridge University Press, 2012), BK2.

[65] Robyn Eckersley, "Ecological Intervention: Prospects and Limits," *Ethics and International Affairs* 21, no. 3 (2007): 295-301, and 300.

and then some.[66] Nevertheless, the possibility of "eco-humanitarian intervention" is debatable within existing moral and legal justifications for war, however controversial.

The most interesting question remains whether environmental concerns could ever constitute a wrong that gives rise to "just cause," even if a state's territory has not been invaded and where no basic rights have been directly infringed?

Eckersley considers extending the idea of Responsibility to Protect (R2P) to non-human species and biodiversity, i.e., military intervention to prevent "ecocide" or "crimes against nature" in themselves, even where consequences are confined to the culprit state causing harm to its own environment. If we view human-nature relations in terms of trustor-trustee, or custodianship, it follows that destruction of species and eco-systems is a clear dereliction of duty.[67] Deliberate and willful acts that cause grave environmental damage (e.g., Iraq setting fire to Kuwait's oil fields) or extermination of species (e.g., threat of poachers annihilating Mountain Guerrillas) might then be regarded as war crimes in the first instance, or comparable to conscience-shocking "crimes against humanity" in the second, triggering "just cause" for international military intervention (subject to the remaining just war requirements).[68]

For present purposes, I leave aside the question of justifying military action purely on behalf of other species or nature alone without resorting to human interests. Maintaining impartiality – "value agnosticism" or "overlapping consensus" – with respect to environmental ethics (anthropocentric/non-anthropocentrism, etc.).[69] it seems unnecessary to get bogged down in asking whether ecological damage *in and of itself* – harm to animals, habitats, eco-systems – can constitute just cause for war, irrespective of harm to humans. While military rescue of non-human species and extending R2P to biological diversity is not inconceivable, it is not very likely either. Moreover, in most real-world cases, the extreme type of environmental harm that could even potentially justify war, would most probably be bad for humans as well, at least indirectly.[70]

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[66] Ibid., 301-304.

[67] Reichberg and Syse, 457-458 (following Aquinas) on "stewardship;" Eckersley, 310, attributes this trusteeship approach to contemporary treaty law.

[68] Eckersley, 293, 296, 305, especially 310-311. Re climate change, see also Martin, 378-383 on analogies with humanitarian intervention and R2P.

[69] Cf. Woods, 24, referring to Reichberg and Syse, especially 452-453.

[70] This is not to assume complete harmony of interests between human beings and nature. It is

Discussing world heritage sites that lie within the territorial boundaries of sovereign states, Cecile Fabre supplies a timely example recalling the 2019 fires in the Amazon rainforests:

> These are regular occurrences, which inflict untold damage on homes, animal species, and the planet's ecosystems. Anger at what many regard as the Brazilian authorities' unconscionably reckless approach to deforestation has focused on its environmental impact for present and future generations.[71]

In such cases, Fabre suggests, outsiders have a claim to the preservation, and if necessary restoration, of "humankind's common heritage."[72] Following UNESCO's world heritage list, these include not only universally valuable manmade landmarks, such as Notre Dame de Paris, but also natural landscapes, rivers, mountains, and lakes, like the Smokey Mountains in the US or Lake Baikal in Russia, noting that some landmarks are valuable not only as heritage but also for instrumental reasons.[73]

The Amazon rainforest is (arguably) said to produce twenty percent of the Earth's atmospheric oxygen. Consequently, the fires became something of an international crisis, with Brazil's laxed policy prompting the aforementioned-anger, and fierce response from world leaders (memorably, French President Emmanuel Macron) culminating in a threat by G7 countries to withdraw from trade negotiations with Brazil. In response, President Jair Bolsonaro accused the G7 leaders of intervening in Brazil's internal affairs. Despite repeated pleas from the international community and non-governmental organisations, Brazil

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easy to envision cases of annihilation of species, harm to organisms, natural habitats etc., even "ecocide" that does not affect humans in any considerable way. Given however that "war is hell," as General Sherman asserted, and Walzer (32) reminds us, I do not entertain the possibility of waging war to save "a tree, a forest, or even an ecosystem" (Hedahl, Clark, and Beggins, 431), though I am aware that others might, e.g., Eckersley, "Ecological intervention." I assume there are enough cases of overlapping environmental concerns for humans and the non-human world, to challenge existing JWT conception of just cause, without considering resort to arms for nature's own sake.

[71] Cécile Fabre, "Territorial Sovereignty and Humankind's Common Heritage," *Journal of Social Philosophy* 52, no. 1 (2021): 20.

[72] Ibid., especially 20-21 on the Amazon. By "heritage," she has in mind "[...] that which we inherit from our ancestors, which we value here and now and which we seek to transmit to our successors for reasons which have nothing to do with its extractive value," 17; on common heritage and humankind's common concern, see also Eckersley, 307-310.

[73] Fabre, "Territorial Sovereignty," 19.

refused to revise its environmental policies with possible dire ramifications in terms of deforestation and climate change. This is of course just one example of the international community's persistent failure to guarantee compliance on environmental issues (e.g., climate change mitigation, ecological protection, biodiversity conservation, etc.)[74]

Whether or not one accepts the argument for "Humankind's Common Heritage" in toto, the example of wildfires in the Brazilian Amazon rainforest and resultant deforestation presents a uniquely good case study for reflecting on the permissibility of resorting to force to avert grave ecological destruction, when all else has failed. In the case in hand, Fabre reminds us:

> The Central Amazon Conservation Complex, [...] located in seven states, is protected by the World Heritage at the bar of two of UNESCO's 10 criteria for inclusion: it represents "significant on-going ecological and biological processes in the evolution and development of terrestrial, freshwater, coastal and marine ecosystems and communities of plants and animals" (criterion ix); it contains "the most important and significant natural habitats for in-situ conservation of biological diversity, including those containing threatened species of outstanding universal value from the point of view of science or conservation (criterion x)."[75]

In keeping with the G7 threat, Fabre maintains that the protection of outsiders' interests in such sites of ecological or cultural significance is an *enforceable* duty of justice, suggesting the appropriateness of economic sanctions, expulsion from international organizations, reduction in foreign aid and so on, in cases just like this one.[76] Could extreme dereliction of duty to maintain vital ecological sites also justify force as a last resort?

Not unrelated to the notion of common heritage (albeit in connection with *jus in bello*) Reichberg and Syse allude to the natural law traditional whereby all property is originally and ultimately common to humankind, while private property is fully justified as expedient:

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[74] Martin, on present and predictable failure to mobilize international compliance with climate change obligations *in passim*; especially re deforestation of the Amazon, and President Bolsonaro's behavior: 334 n. 10, 336-337, 346, 365, 370, and 403.

[75] Fabre, "Territorial Sovereignty," 20-21.

[76] Ibid., 22.

> Thus, the destruction of, say, farmland, rain forests, or oil resources constitutes not only a violation of the property rights of those who live in or own that area now; it is also a way of destroying property which in a sense is common to all of mankind, including future generation [...]. This entails a moral prohibition against large-scale devastation of territory, even within one's own national jurisdiction.[77]

Considering the increasing gravity of contemporary environmental concerns, notably climate change, the idea of an ecological just cause arising from such devastation even in one's own territory, or of resisting "environmental aggression," is far from fanciful. In the Amazonian case, and most others, environmental destruction is manifestly bad for human beings, not only nature per-se – at least in the long run – perhaps violating our common property or legacy, as well as harmful to non-human animals and inanimate components of nature.

The threat to be averted notwithstanding, establishing a "green just cause," even from a purely anthropocentric stance would not at present fit easily with any known version of Just War Theory, and would require considerable (perhaps desirable) adjustment of existing tenets on either its traditional or revisionist accounts, as well as international law. Causing environmental damage does not necessarily entail the use of military means of the type that would ordinarily generate just cause for war in response to an armed attack. In the Brazilian example, "just cause" would be distinct from self-defense on both traditionalist and revisionist versions because outsiders' basic rights are not necessarily undermined or impaired by failure to preserve a site such as the Amazon – at least not directly or immediately – nor was any nation-state invaded by an act constituting outright "aggression" in any traditional or legal sense.[78]

At the same time, bearing in mind increasing anthropogenic environmental destruction and climate change, it is not impossible to envision a future transgression that would violate the human right to a safe environment, both individually and communally, hampering another nation's ability to "determine their own levels of environmental quality" as well-as individual health and well-being.[79] This might constitute "aggression" even if no boarder is crossed, potentially justify-

[77] Reichberg and Syse, 463. In connection with the requirement of discrimination.

[78] Fabre, "Territorial Sovereignty," 18.

[79] Cf. Eckersley, 300. Interpretation of "territorial integrity or political independence" in Article 2 (4) of the UN Charter.

ing recourse to force in response if-and-when all else fails. In revisionist terms, grave ecological negligence or harm to the non-human world could constitute a wrong of sufficient severity to render responsible individuals in the perpetrator state liable to defensive attack, if attacking them could correct, or considerably mitigate, the environmental wrong in question.[80]

Optimally perhaps, any military response to environmental wrongdoing would be an international endeavor, rather than a vigilante job, subject to suspicions of ulterior motives. Possibly, as Craig Martin predicts re climate change, combating environmental rogues would begin with claims on the UN Security Council to authorize military action in advance under a widened understanding of its role in maintaining international peace and security before generating new "just causes" for unilateral action, though how likely or desirable any of this is remains extremely questionable.[81] Martin argues persuasively that we ought to resist any such readjustments that would be counter-productive in terms of climate change and international rule of law.[82] Moreover, justifying environmental war where no actual or imminent armed attack is present, is unlikely to fulfil the following *jus ad bellum* principle of proportionality.

## V. Jus ad bellum: Proportionality

Even if "just cause" could be adjusted to accommodate nonmilitary environmental wrongs, the further *ad bellum* criterion of proportionality would still be difficult to satisfy in cases of purely ecological harm. As for armed environmental aggression, no state can tolerate violent attacks on its territory and natural resources, alongside the property and ecological losses that accompany both. In keeping with proportionality what unilateral military measures, if any, might states employ to fend off environmental assaults?

All versions of the just war traditions include an *ad bellum* proportionality condition that applies to the war as a whole, requiring that its destructiveness must not be excessive in relation to the relevant good it will achieve.[83] This was Vitoria's understanding, echoed in countless contemporary discussions of proportionality.[84] Thomas Hurka explains,

[80] Cf. McMahan, "Just Cause."

[81] Martin, 374-378, and 409.

[82] Ibid., 400-417.

[83] Hurka, 35.

[84] Stephen P. Lee, *Ethics and War: An Introduction* (Cambridge: Cambridge University Press,

*ad bellum* proportionality requires balancing the good that the war is designed to bring about, as against the harms it is intended to avert.[85] It involves weighing the costs and benefits of war overall, though how exactly these are to be estimated or compared remains very vague.[86]

What seems clear is that proportionality in *jus ad bellum* is inevitably tied to just cause: an aggressive war cannot have any relevant benefits to balance against the harm it inflicts. Without just cause, there are no sufficient harms that warrant armed resistance. Only a war fought for a good reason, typically wars of self-defense, can pass the *ad bellum* proportionality test.[87] When wars are fought for the right reasons, the benefits side of the proportionality calculus includes their initial just cause – typically resisting aggression.

This invariable link between justice of cause and proportionality comes to the fore when considering new *casus belli*, namely environmental harm. Ecological "just cause" poses a special type of complication for the proportionality calculous. While environmental concerns may broaden the scope of just cause, the inevitable environmental devastation caused by warfare makes proportionality more difficult to satisfy. Irrespective of whether the ecological transgression requiring redress was conveyed via armed attack or not: Warfare undertaken for environmental protection will foreseeably cause further damage to the natural environment that may well outweigh its gains.[88] Moreover,

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2012), 85-86, cites Vitoria's understanding of (in bello*)* proportionality as "the obligation to see that greater evils do not arise out of the war than the war would avert," Vitoria, 303-308; 315; see also, McMahan, *Killing in War*, 18; Asa Kasher, "Operation Cast Lead and the Ethics of Just War," *AZURE* 5769, no. 37 (2009): 53, who describes the balance in very similar terms, referring to it as "Macro-Proportionality," http://www.azure.org.il/article.php?id=502&page=all; David Rodin, *War and Self-Defense* (Oxford: Oxford University Press, 2003), 114.

[85] Hurka, 38 (relevant goods and evils).

[86] Hurka, ibid.; John Forge, "Proportionality, Just War Theory and Weapons Innovation," *Science and Engineering Ethics* 15 (2009): 26, and 28; Lee, 85-93, and especially 214.

[87] Lee, 214; Hurka, 37.

[88] Hedahl, Clark, and Beggins, 429, and 433-435. The authors foresee an increase in resource wars – just and unjust – over water etc. due to overpopulation and climate change. At the same time "the increasing impact to the environment of war will simultaneously make wide proportionality considerations more difficult to meet" (Hedahl, Clark, and Beggins, 432). Their welcome suggestion is to include environmental effects into *wide proportionality/proportionality of ends* (ad bellum) calculations, as well as granting proportionality a more prominent role within *jus ad bellum*; On the potential increases in causes for war due to environmental degradation, see again, Homer-Dixon, "Environmental Scarcities and Violent Conflict," and "On the Threshold;" Betz, "Preventive Environmental Wars," especially 231-233; Fabre, *Cosmopolitan War*, 98; Woods, 28, makes a point similar to Hedahl, Clark, and Beggins: "The main concern of the environmental ethics of war and peace is to regulate military activities to minimize or prevent environmental harms, and it seems problematic to justify further military activities –

full-scale military response to non-military harms, or even armed attacks that are largely non-lethal to humans, would likely be viewed as excessive by both public and legal opinion.

One practical way to meet these challenges is by resorting to more limited belligerent tactics in response to environmental wrongs without incurring the extent of devastation that would outweigh the benefits of military action. This includes force short of war that falls below the breadth and intensity of traditional warfare, *jus ad vim,* such as pinpointed air strikes with drones as well as non-kinetic tactics.[89]

Like most contemporary just war thinking, the discussion of *jus ad vim* begins with Michael Walzer's *Just and Unjust Wars*, specifically with the preface to its 4th edition. There, Walzer distinguishes traditional *jus ad bellum,* governing the resort to actual war (full-scale attacks, invasions) from the just use of force short of war, dubbed *jus ad vim*. As Walzer explains, the measures governed by *jus ad vim* involve the use (or threat) of force – embargos or the enforcement of no-fly zones, limited airstrikes with drones, etc. – and consequently count as acts of war under international law. Nonetheless, "it is common sense to recognize that they are very different from war."[90]

Full scale conflict always involves grave risks and hazards, unpredictable and all-to-often catastrophic consequences, and the full-fledged "hellishness of war" described throughout *Just and Unjust Wars* and enhanced if we count non-human casualties alongside harm to the natural surroundings. Bearing in mind the link between just cause and proportionality as well as the high environmental costs of military action, resorting to full-scale war to fend off ecological hazards, even if they give rise to "just cause," is unlikely to satisfy the *ad bellum* proportionality requirement to cause more benefit than harm.

By contrast, *jus ad vim* measures are limited in their scope and intensity, requiring far lesser force and harm to their surroundings, as well as less risk to their perpetrators. This is certainly the case with em-

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and the mostly negative environmental impacts that come packaged with such activities – to protect the environment."

[89] Walzer, xv-xvii [Preface to the 4th edition]; on non-kinetic tactics, see Michael L. Gross and Tamar Meisels, eds., *Soft War: The Ethics of Unarmed Conflict* (New York: Cambridge University Press, 2017). Betz, especially 238-241, relies on Meisels and Gross' introduction to suggest both *jus ad vim* and *soft war* to combat climate change offenders; however, his only scenario for applying these measures is a highly hypothetical "[...] world of near-universal compliance with abatement obligations and would be directed at the few remaining environmental wrongdoers" (241) rendering these tactics ultimately unjustified in the real world, at least for the time being.

[90] Walzer, ibid., xvi. *jus ad vim.*

bargos and no-fly-zones.[91] As for drones, Laurie Johnston points out, they "[...] have less of a carbon footprint because they are less resource intensive. They use less fuel than manned aircraft."[92] Moreover, echoing McMahan's criterion of liability, Adam Betz points out re targeted killing, "A major advantage of these tactics [...] is the fact that they can be more readily directed at liable parties."[93]

Opposing any relaxation of the prohibition on the use of force to accommodate "atmospheric intervention" against egregious climate change offenders (e.g. Brazil), Martin nonetheless recognizes that the type of force potentially relevant in such cases would be "limited surgical strikes against precisely the infrastructure related to the noncompliant conduct [...] pertinent historical examples would be the Israeli surgical air strikes against the Iraqi nuclear facility at Osirak in 1981, or again its strike against the Syrian nuclear facility in 2007."[94]

One risk of such strikes is that they could deteriorate into international armed conflict.[95] Another pertinent disadvantage of "atmospheric intervention," following Martin, concerns the *jus in bello* and IHL core principle of distinction and civilian immunity:

> It is difficult to conceive of how such an intervention could be launched without violating fundamental principles of the *jus in bello* [...] the entire premise of atmospheric intervention is that the use of force would be targeted at infrastructure or facilities directly related to the contribution of GHGs, it is highly unlikely that such targets could be legitimately characterized as anything other than civilian objects.[96]

Legally, as well as on traditional Just War Theory, airstrikes with drones or any other weapon, may only be deployed against military targets. When dealing with environmental harms, as in the Amazon example, aiming at combatants may not be relevant. A revisionist account, on the other hand, might conceivably justify targeting culpable civilians responsible for grave environmental negligence, if killing them (or de-

[91] Ibid.

[92] Johnston, *Boisi Center Interview* (2016), 2.

[93] Betz, 241.

[94] Martin, 404.

[95] Ibid.

[96] Ibid., 409-410.

stroying related civilian infrastructure) were likely to halt, or seriously diminish, ongoing ecological harm.[97] More palatable to traditionalists and lawyers, alternative measures short of war also include non-kinetic, *Soft War*, tactics (e.g. economic restriction and cyber-attacks) as well as other high-tech options to halt or repel environmental harms without targeting civilians and civilian objects or falling foul of any proportionality requirement.[98]

Tactics covered by *jus ad vim* are, by definition, forceful measures albeit short of war, often involving kinetic force notably the use of drones for targeted killing. Consequently, as Walzer notes, *jus ad vim* acts are clearly governed by international laws of war and appropriate for combatting military targets and objectives. The concept of soft war in contrast, encompasses mostly non-kinetic tactics – e.g., economic and media/information warfare, boycotts, "lawfare," etc. – that do not usually involve a resort to arms and therefore do not count legally as acts of war at all. Consequently, directing these tactics at noncompliant civilians does not violate noncombatant immunity, on any account of JWT or international law.

Limiting countermeasures to the use of force short of war and/or "soft war" tactics, depending on circumstances, should avoid the pitfall of generating more ecological damage that would outweigh the environmental benefits of response. Confronting the incendiary objects from Gaza, for instance, Israel has used a mixture of "smart weapons," such as precision rifles, optical tracking systems and laser blades to detect and deflate airborne balloons, claw and down flammable kites etc., as well as imposing economic sanctions and blockades, with very partial success in halting and preventing attacks.[99] In this case, military measures, such as surgical drone strikes against weapons facilities and targeted killings of responsible militants (i.e. Hamas operatives) may ultimately prove more appropriate and effective against arson attacks, though all this remains controversial.

More generally, resorting to a mixture of *jus ad vim* and/or soft war tactics to combat environmental injustice is probably-our best shot in terms of efficacy and proportionality, from both human and non-human centred ethical perspectives. From a traditional and legal

[97] Cf. McMahan, "Just Cause."

[98] See Gross and Meisels; similarly, recall in connection with the Amazon rainforests, Fabre, 22, notes economic sanctions, expulsion from international organizations, reduction in foreign aid as appropriate responses.

[99] Stefanini, 673; Zych, 80-81; Amos Yadlin "On Deterrence, Equations, Arrangements, and Strategy," *INSS Insight* 1078 (2018): 3.

stance, non-kinetic alternatives and soft power will be more appropriate against civilians and civilian infrastructure, however culpable they may be for the environmental wrongs in question. Moreover, soft war tactics do not run the risk of counter-productiveness in terms of causing further environmental harm. Last resort and proportionality as well as common sense also require exhausting measures such as punitive economic sanctions of increasing severity, ideally authorized by the Security Council, as well as collective diplomatic pressures, before contemplating forceful measures, particularly where no prior belligerent attack has taken place.[100]

When outright environmental aggression is perpetrated by an attacking army (as in the Russian case) or terrorist organizations (as in the case of Hamas), kinetic *jus ad vim* tactics against combatants and other military targets are legitimate, assuming reasonable chance of success, at a low cost to their operatives and to the natural surroundings they purport to protect. For revisionist philosophers of war, this conclusion holds also for targeting civilian culpable aggressors and applicable infrastructure, if attacking them is likely to reduce the injustice they cause while avoiding excessive costs to nature as well as to non-liable combatants and civilians on the just side.

## VI. Concluding remarks

War is very bad for the environment, and modern war is even worse. Despite contemporary awareness of environmental concerns, this aspect of warfare has not received sufficient consideration from philosophers of the just war – traditionalists and revisionists. Several noteworthy exceptions were addressed throughout; more extensive legal attention was noted. In this case, it seems, ethics must follow in the footsteps of the law.

Because most everyone typically believes their war to be just, the law focuses inevitably on rules mitigating the conduct of hostilities, rather than on objective justice of cause. Consequently, within this sub-field – environmental justice of war – pioneered primarily by lawyers, *jus ad bellum* has been explored even less than environmental ethics in war.

Contemplating military action to combat environmental transgressions, just cause and proportionality deserve initial consideration. First, war's *prima facie* evil requires paying critical attention to any newly

[100] Cf. Martin, 376-377, on the precedent of economic sanctions against North Korea and Iran re nuclear proliferation.

alleged causes for war. Nevertheless, ecological harm may sometimes constitute just cause, at the intersection between human and non-human interests even in the absence of bodily harm. The simplest cases of "environmental aggression" that sit comfortably within the just war tradition are those in which borders are crossed and environmental destruction involves territorial invasion and destruction of property.

More controversially, in view of the ongoing environmental crisis, it is conceivable that a future just cause may arise from deliberate or negligent harm to the natural environment, even if no direct violence towards land or people has been perpetrated. This is where the fires in the Amazon rainforest came in. Examples like this one also raise questions of legitimate authority (e.g., the unlikely event of Security Council authorising environmental military action by a coalition of states) that was not discussed here. I am not the first to note that the "The five permanent members of the U.N. Security Council are all among the most responsible for climate change."[101]

As for *ad bellum* proportionality discussed at length: where military response is apt and necessary, countermeasures must not wreak more environmental harm than they purport to combat. In view of this, I argued that both *jus ad vim* and so called "soft war" offer a better alternative for combating environmental wrongs than outright war. Both forceful measures short of war and soft-war tactics are more likely to fulfil the requirement of *ad bellum* proportionality than large scale armed conflict.[102]

Soft tactics would begin with "media warfare" – publicity and information, public pressure – as well as so called "lawfare" – international legal action against perpetrators of environmental harm. It would proceed to political-diplomatic measures and pressures, and possibly "ecological peacekeeping" followed closely by economic restrictions and trade sanctions, "green conditions" attached to loans, aid, and sales, and rising to cyber-attacks.[103] These tactics, within limits, may be employed against civilians as well as combatants on all accounts. Once non-kinetic measures have been exhausted, both environmental and humanitarian concerns re proportionality point in favor of limited force, short of war – *jus ad vim* – against primary military culprits and their infrastructure.[104]

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[101] Martin, 409.

[102] Cf. again Betz, 238-241.

[103] See Gross and Meisels, throughout; on the emerging notion of "ecological peacekeepers," and "green conditionality" see Eckersley, 294, 302, and 312.

[104] Cf. Martin, on limited airstrikes, though he does not argue for them.

Finally, satisfying proportionality in the case of an environmental just cause, also goes towards fulfilling the further *jus ad bellum* criterion of "right intention." Beyond just cause and proportionality, among other things, warfare must be conducted with the right intentions i.e., those embedded in the war's just cause. Environmental war, not unlike humanitarian intervention, runs the risk of being used as a pretext for furthering other interests. In the event of an environmental wrong triggering the just cause requirement, it is incumbent on those combatting it to demonstrate their sincerity by fighting in a way that avoids causing more environmental devastation than prevented. Otherwise, they risk becoming aggressors themselves.[105]

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[105] Cf. Reichberg and Syse, 459. Without "Right Intention:" Victims of unjust aggression can swiftly become aggressors themselves."

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# In Quest of Peace and its Subject

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**Abstract**

*The dynamics of warfare have undergone significant transformations, necessitating a comprehensive reevaluation of the study of wars. It is no longer sufficient to solely focus on analyzing military operations; instead, a broader perspective is required. Postcolonial research has shed light on the changing forms of warfare that emerged after the era of military colonialism. This shift in the nature of conflicts demands the development and application of new research methods to effectively comprehend and address contemporary warfare. Of particular significance is the emergence of informational and hybrid warfare, which blurs the traditional boundaries between states of war and peace. Consequently, the concept of peace, as the desired state of coexistence, warrants closer examination from multidimensional angles. While peace has historically been considered from moral and religious viewpoints, it is imperative to critically evaluate the applicability of these perspectives and explore alternative approaches. This article seeks to unravel the complex nature of peace by integrating insights from diverse disciplines. By adopting a multidisciplinary approach, encompassing moral, religious, and other disciplinary lenses, a more comprehensive understanding of peace can be achieved. Moreover, this interdisciplinary exploration enables a nuanced analysis of the intricate dynamics between war and peace, facilitating the development of effective strategies for conflict resolution. By critically examining the concept of peace and reevaluating the nature of war from this perspective, this article aims to contribute to the existing body of knowledge on conflicts and their potential resolutions. By combining theoretical reflections with empirical evidence, it offers a valuable resource for researchers, policymakers, and practitioners interested in comprehending the complexities of contemporary conflicts and working towards the attainment and sustenance of lasting peace.*

**Keywords:** *peace; war; violence; enemy; history; narrative; subject*

## I. The task of rethinking war and peace

Making peace an object of research reveals a number of difficulties because, unlike war, it is not directly identifiable, it does not exist as an event. For a long time, the methodology of historiography was developed and proposed as the course of wars or military-political events, but a language to speak about mankind in a peaceful state was not formed. Such methodology has its own philosophical justification, the basis of which is that war is an inevitable and even necessary reality arising from the nature of man and society, which can be observed from a number of thinkers, from Heraclitus to Hegel. Heraclitus' famous fragment on war as the father and king became a source of praise for war and shaped the core of history. Naturally, this perspective arises from Greek dialectical thought and it is about the natural struggle that takes place everywhere and the resulting formation of the world order. But it has also been applied to the realm of war itself, especially since Heraclitus' thought continues that war makes some free and some slave.[1] Another famous statement legitimizing war-centered history and culture comes from Clausewitz, who asserts that "war is nothing but the continuation of policy with other means."[2] The idea of the primacy of war, of violence, was strengthened and complemented by the work of another theorist who admired Clausewitz, René Girard, who demonstrated the substantial character of the desire of sacrifice and the permanence of the revenge that ensued, concluding that:

> If men wish to prevent an interminable outbreak of vengeance (just as today we wish to prevent nuclear war), it is not enough to convince their fellows that violence is detestable – for it is precisely because they detest violence that men make a duty of vengeance.[3]

The second author who responded to Clausewitz's formula and was constantly engaged in the transformation of historiography is Michel Foucault. He directly reversed the formula, "'Politics' has been conceived as a continuation, if not exactly and directly of war, at least

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[1] Heraclitus, *Fragments*, trans. Brooks Haxton (London: Penguin Books, 2003): DK B53.

[2] Carl von Clausewitz, *On War*, trans. Michael Howard and Peter Paret (Princeton, NJ: Princeton University Press, 1989), 69.

[3] René Girard, *Violence and the Sacred*, trans. Patrick Gregory (Baltimore, MD, and London: The John Hopkins University Press, 1989), 15.

of the military model as a fundamental means of preventing civil disorder."[4] There is a proclivity to comprehend and explain modernity as modern politics emerged precisely as a means to prevent war or unrest. Foucault tended to deconstruct universal, continuous history and ask questions about interruptions and ruptures. In this case, the main question is why and how a link between war and "peaceful" politics was established. Since modern times, state armies have been formed less for new territorial conquests than for securing civil peace. It is a historical paradox that the army was conceived as a means of preventing war. This means that the line between war and peace is effectively undrawable, and any policy aimed at peace is somehow accompanied by silent war. In this case, however, there is an opportunity to open the historical intervals and bring the so-called "peace" to the center of attention, the problem being to find out the reality associated with it.

Peace studies typically starts with the challenges it faces, which can be divided into several groups. First, peace will be understandable if it is considered in the context of the most comprehensive and complete picture of political geography because many regional factors condition its existence. Second, it is essential to ensure broad coverage of the historical process so that the end of the war is not confused with the end of the battle or a change in the nature of the war. Last but not least, because there is a sizeable behind-the-scenes part of peacebuilding, there is a difficulty in the link between politics and academia that needs to be taken into account. Johan Galtung, one of the founders of peace studies, suggests three important principles to consider when discussing the idea of peace: a) The term 'peace' shall be used for social goals at least verbally agreed to by many, if not necessarily by most; b) These social goals may be complex and difficult, but not impossible, to attain; c) The statement *peace is absence of violence* shall be retained as valid.[5] The third principle is essentially the expansion of the border between war and non-war. The absence of hostilities is still not peace, because there can be open, intentional, or, more importantly, not open, even unintentional violence, instead, which, as a rule, has a structural, systemic nature. In this context, another important question comes to the fore. Is it possible to eliminate all violence, and if so, how? Is there an alternative to using violence against violence, which inevitably leads to a vicious circle? This issue leads to the field of philosophy of law,

[4] Michel Foucault, *Discipline and Punish. The Birth of the Prison*, trans. Alan Sheridan (New York: Vintage Books, 1995), 168.

[5] Johan Galtung, "Violence, Peace, and Peace Research," *Journal of Peace Research* 6, no. 3 (1969): 167.

where the theory of natural law developed by the Enlightenment justifies violence as an inalienable property of nature, which is opposed by legal positivism, asserting the possibility and necessity of establishing the state and peace. In his classic article devoted to violence, Walter Benjamin, referring to the paradoxical nature of violence, states that there is no nonviolent way to resolve conflictual relations, since any agreement, however peaceful, in the end implies at least the use of the right to violence against the party that does not comply with the alliance.[6] If there is order, then there is also a mechanism to control it, which includes the punishment for its transgression. The ontological consideration of peace means going beyond the simple denial of violence and discovering a reality that allows us to methodologically consider violence as the absence of peace. In personal relationships, this is quite possible, but conflicts are not regulated by individuals but by certain systems in which there are laws and rules that imply violence. On the personal level, there are spiritual realities that can overcome violence: Freedom, forgiveness, happiness, etc., which do not exist as such at the social, intergovernmental, and civilizational level, where, however, there can be, and perhaps there is, a will to end violence. In this context, Benjamin puts forward the concept of 'divine violence' as the ultimate and just violence for a peaceful life, citing pedagogical violence as an example.[7] There is an essential and profound part in education that is not regulated by law, it is not only a matter of law but an activity that does not exclude spiritual and psychological violence, aimed at the unconditional good and improvement of the other person.

By analogy, the superpowers reserve the right to invade the territory of states that are underdeveloped by their standards and correct situations by using force. And just as in the field of education, it is impossible to prove in advance the true purpose of the proposed path, so the justification and enforcement of the political system already raise controversial issues involving violence. The eternal problem of the criterion arises, which in the words of Slavoj Žižek sounds like this: "[...] there are no 'objective' criteria enabling us to identify an act of violence as divine."[8] In the human, all too human world, under the conditions of democracy 'divine violence' remains only as an abstract idea, the implementation of which leads to serious conflicts. Moreover, if we take into account the fundamental existence of mimesis in the human

[6] Walter Benjamin, "Critique of Violence," *Selected Writings,* vol. 1 (Cambridge, MA, and London: The Belknap Press of Harvard University Press, 2004): 244-245.

[7] Ibid., 249.

[8] Slavoj Žižek, *Violence* (New York: Picador, 2008), 200.

world, it will be impossible to find the source of violence. The justification for invading a territory often stems from the anticipation of potential threats originating from that region. In this context, it makes no sense to ask the question about the origin of the initial violence, because it always refers to the violence that preceded it, even at the level of threat. It is appropriate to recall an anthropological discovery, dating back to René Girard, according to which there is no aggression in the human world, unlike in the predators. Here the attack is always a reaction, or in other words, the aggression is always a response to another aggression, and so on, and it is not possible to find the beginning. And since violence exists self-sufficiently as the core of war and continues to justify itself, peace can be perceived merely as an opposing form of violence or an abstract narrative, devoid of its own independent essence in contrast to war. Peace becomes a reality when war finds a logical end.

## II. Subjects of peace and world order

The search for the ontological basis of peace implies the determination of the subject of peace: who or what secures peace, to whom is it owed, or how is it produced? War is a performative phenomenon; one can easily identify the subjects who wage it. But peace cannot be summed up in performative judgments, which is evident even at the linguistic level. While one can 'wage war,' one cannot 'manufacture peace.' Peace is not a verb. So, is it possible to decide to make peace and do it? What entity is formed at this time, and what procedure implies the establishment of peace? Doesn't the realization of peace imply the enforcement of one's will through the threat of force? "Unlike warring, peace is not thought to be something we can do,"[9] so the problem of the subject of peace is complicated. Peacekeepers, for example, can be considered direct implementers and subjects of peace, but they are at the center of the war and contain physical violence by the means of war. This is 'negative peace,' which only postpones military operations. The idea of positive peace leads to a certain anthropological concept and from its perspective to the consideration of peace as a reality existing in the human mind. One can think about a peaceful, safe, happy life, dream about it, but is it possible as a fact, as a part of reality? If the tendency to sacrifice and violence is substantial, as Rene Girard has shown, then Oswald Spengler's words questioning peace are logical and under-

[9] J. Gray Cox, *The Ways of Peace: A Philosophy of Peace as Action* (Mahwah, NJ: Paulist Press, 1986), 9.

standable: "If few can stand a long war without deterioration of soul, none can stand a long peace."[10] What activities are curtailed, and at what cost is peace secured? The question gains validity when we recall Woodrow Wilson's comment about the American Civil War creating an unprecedented reality in the country – a national consciousness.[11] Of course, this does not mean at all that civil war is the key to solving national problems, but it does certainly mean that the problem of the relationship between civil peace, or rather the absence of war, and the establishment of the state must be examined.

The first subjects of peace, i.e., the initiators of the process of achieving peace, were the parties to the Peace of Westphalia, who decided in 1648, after the Thirty Years' War, to create a world order and to secure peace through a balance of power. The separation of states from the Church and becoming a subject through the replacement of empires initiated and systematized international relations, the core of which is the establishment of peace. The most important concept associated with peace in this context is "world order," that is, a system based on certain rules, not by moral coercion, but practically called to create conditions for peaceful coexistence at the international level. The Westphalian world order, created by the Treaties of Westphalia (1648) and Utrecht (1713), was the first significant geopolitical step toward turning peace from utopia into reality. As a result, the so-called 'international community' was formed, which was supposed to be the guarantor of peace, that is, the subject. However, this subject has an essential feature, namely, that there is no specific ontological unit corresponding to it, which means that there is no specific responsible unit. The boundaries of the responsible entity end at the boundaries of the state, and there is no supranational sovereignty that would secure the international peace order. Therefore, it is not surprising the words of Henry Kissinger, who became a classic in diplomacy, "No truly 'world order' has ever existed."[12] Each side of the world order claims to be the leading authority and thereby identifies itself with the international community, which in turn gives rise to competition and conflict. The main contender for the title of chief defender of the Westphalian order has almost always been the United States, which continues to advance its vision of peace, according to which the principles of American gov-

[10] Oswald Spengler, *The Hour of Decision,* trans. Charles F. Atkinson (London: Kimble & Bradford, 1934), 16-17.

[11] Samuel Huntington, *Who Are We? The Challenges to America's National Identity* (New York: Simon & Schuster, 2004), 119.

[12] Henry Kissinger, *World Order* (New York: Penguin Press, 2014), 2.

ernance are universal, so that their universal adoption will naturally lead to peace and balance of power, and hostility will be a thing of the past.[13] This viewpoint originated with the founders of the American state, when Thomas Jefferson, for example, declared that "It is impossible not to be sensible that we are acting for all mankind."[14] In this case, the cultural and civilizational differences between states are indeed an obstacle to the establishment of peace, but they are inalienable facts and their forced change usually leads to internal or external rebellions. And the superpower tolerates only those cultural manifestations that fit into its concept. Moreover, a superpower, by definition, aspires to be the most comprehensive and monopolistic, and in the case of the United States, its slight weakening sometimes gives rise to the prediction that it will be the cause of a crisis of peace and stability.[15] It is the logic and inclination of a superpower, but every sovereign state aspires to or dreams of it. Even if a superpower effectively ensures the security and stability of its territory, this is not a guarantee of eternal peace. This is because every culture aspires to sovereignty, striving to emancipate itself from external influences to achieve self-sufficiency and establish an independent existence. If we add to what has been said the imperative of Niccolo Machiavelli, which reads,

> Any one, therefore, who wishes not to conquer, would do well to use [auxiliary] forces, which are much more dangerous than mercenaries, as with them ruin is complete, for they are all united, and owe obedience to others,[16]

the nature of the relationship between the superpower and the subordinate states, surrounded by the danger of conflagration, will be clearly outlined. The peacemaker, pretending to be the subject of peace, intentionally or unintentionally uses violence against the other participants. This is a unique and prominent theme in anti-utopian works, where behind the outwardly peaceful and harmonious order there always manifests some kind of evil that makes everyone "peace-loving" by force. It is more than important to consider this fact today when the world order has become multipolar and complicated, when the question "Who

[13] Ibid., 6.

[14] Robert W. Tucker and David C. Hendrickson, *Empire of Liberty: The Statecraft of Thomas Jefferson* (Oxford: Oxford University Press, 1992), 11.

[15] Immanuel Wallerstein, *The Essential Wallerstein* (New York: The New Press, 2000), 435.

[16] Niccolo Machiavelli, *The Prince*, trans. Luigi Ricci (Letchworth: Oxford University Press, 1921), 54.

rules the world?" is no longer unambiguous but implies multi-layered answers,[17] and when the number of participants in world peace and, consequently, of those who threaten war, has increased. Rebellion is always brewing against the unipolar world, and resistance to the form and norms of peace is forming in the multipolar world. Liberal democracy, which seemed unstoppable to American politicians and theorists, has failed to meet the expectations of certain civilizations, and the American or Russian flag flying in foreign lands is not always associated with prosperity and improvement.

Being a subject of peace requires legitimacy, otherwise calls for peace are perceived as calls for war. Making concessions on some issues and showing good will are not enough for fundamental peace, because politics is very different from interpersonal relations in blind systematics, continuously pursuing goals, up to the final destruction of the enemies. Achieving peace is possible only by becoming a subject of peace, and by recognizing the enemies and striving to maintain a semblance of equilibrium with them.

## III. The concept of enemy in peacebuilding

Peace inevitably overlaps with the idea of the enemy, for the need for it arises precisely in relation to the enemy. The enemy is the Other who disturbs the establishment of one's sovereignty and does not harmonize with one's idea of peace. The *otherness* of the Other is an opportunity for determining one's own limits and thus for self-knowledge, but also a target for the imposition of one's own identity and culture. The Other becomes an enemy when he does not allow self-realization and hinders the realization of spiritual and material possibilities. On the other hand, the emergence of the enemy is a deep reminder of the possibilities and of the urge to exploit them. This is indeed comparable to the existence of the shadow, the dark, lower aspects of the psyche, the awareness of which is the prerequisite for self-knowledge. Just as the acceptance of the shadow is met with fierce resistance,[18] overcoming the emotional barrier can be challenging when it comes to identifying the enemy. Without knowing the enemy, without understanding why it is the enemy, it is not possible to free oneself from its influence. This is what Nietzsche's Zarathustra also proposed: "You should be the kind of men whose eyes always seek an enemy – your enemy [...]. You should

[17] Noam Chomsky, *Who Rules the World?* (New York: Penguin Books, 2017), 258.

[18] Carl Gustav Jung, *Aion: Researches into the Phenomenology of the Self*, trans. Richard Francis Carrington Hull (Princeton, NJ: Princeton University Press, 1975), 8.

seek your enemy, wage your war and for your thoughts!"[19] The one who has discovered the depths of their soul and is looking for ways to bring them up is looking for the enemy. In the opposite case, the enemy appears by himself, and then all that remains is to counter, that is, to submit to the enemy's logic, and in case of success, it is meaningless even to talk about positive, factual peace.

If the image of the enemy can be circumvented after a certain amount of self-conquest in the personal or spiritual sphere, then it may be impossible to avoid it without a crisis in international relations, because the political goals are less directed toward self-satisfaction than toward the promotion of conquering activities, for which the search for the enemy almost never ceases. At the end of the Cold War, the speech of Georgi Arbatov, advisor to the President of the Soviet Union, to the United States is noteworthy: "We are going to do a terrible thing to you; we are going to deprive you of an enemy."[20] The United States without an enemy truly remains alone and seems to lose its sense of identity. When there is no need to protect and nurture culture, it dilutes and dissolves and loses the ability to be a reference point for its bearers. A principle can be formulated: The more a nation becomes alienated from its culture, the more urgent becomes the search for an enemy as a pledge for the awakening of identity. In the absence of the enemy, a state of peace prevails, but it has no ontological basis because there is no entity to sustain and support it. The problem is to find and even create an enemy through whose destruction the promise of peace becomes a reality. This was basically the reason for American interest in the Arab world after the Cold War. The United States declared a large-scale war on terrorism, in which it made Islam its metaphysical enemy,[21] leading to a variety of interpretations: Is this a war against terrorism or just against Islam, which is different from American culture?

The political and anthropological argument for the search for an enemy is the claim that the enemy would otherwise discover an enemy for himself. The chronological factor of searching for the beginning, the reason of the enmity does not work here at all, because there is always the argument of the existence of a hidden enemy, which takes the conversation into the metaphysical sphere and considers the enemy

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[19] Friedrich Nietzsche, *Thus Spoke Zarathustra*, trans. Adrian Del Caro (Cambridge: Cambridge University Press, 2007), 33.

[20] Georgi A. Arbatov, "Preface," in *Mutual Security: A New Approach to Soviet-American Relations*, eds. Richard Smoke and Andrey Kortunov, xiii-xxiii (New York: St. Martin's Press, 1991): xxi.

[21] Hans Köchler, *World Order: Vision and Reality*, ed. David Armstrong (New Dehli: Manak, 2009), 58.

as an idea, or even as a tool. That is the case, if you fail to consider the enemy as a tool, you subject yourself to his will. Lord Palmerston's principle describing identity and peace has become a catchphrase: "We have no eternal allies, and we have no perpetual enemies. Our interests are eternal and perpetual, and those interests it is our duty to follow."[22] The perpetual enemy not only creates practical complications but also imposes a certain kind of identity that raises the problem of being or not being. Moreover, the perpetual enemy is a matter of choice rather than reality, for its justification can be endless. When Carl Schmitt thought about the concept of the political, he linked it closely to the concept of the enemy and tried to free it from the moral burden in every possible way. Referring to the Gospel commandment to "love your enemies," he notes that there are two words in Greek and Latin that express the meaning of 'enemy' – *hostis* (πολέμιος) and *inimacus* (ἐχθρός), the first of which means the political enemy, and the second is a private, personal enemy, not a friend, mentioned in the Gospels.[23] Hostis, that is, a political enemy, cannot be loved, and for that matter, it is not necessary to hate him, because he is an idea, the result of a political decision and position. Hostility is at the level of political tensions that arise from the formulation of goals and the imposition of peace on preferential terms. These political goals can overlap and lead to conflicts that have nothing to do with personal positions: "War is armed combat between organized political entities."[24] From this point of view, war itself is a realistic fact, it is beyond desires and moral attitudes. It can take place even without the will of all involved because it is subject to a political (not personal) logic. There is no such thing as a purely religious, purely economic, or moral war; war is by definition political, the result of choosing an ally and an enemy.[25] The purpose of politics is to divide the environment into allies, neutrals, and enemies, and to manifest the corresponding will. As soon as politics leaves the realm of self-interest and assumes moral dimensions, the concept of war for humanity arises, which is unusually intense because it considers the enemy as a universal monster and makes it its task not only to defeat but also to utterly destroy.[26] If war is a manifestation of this kind of political will directed against the enemy, then peace is

[22] Henry Kissinger, *World Order* (New York: Penguin Press, 2014), 27-30.

[23] Carl Schmitt, *The Concept of the Political*, trans. George Schwab (Chicago, IL, and London: The University of Chicago Press, 2007), 28-29.

[24] Ibid., 32.

[25] Ibid., 36.

[26] Ibid.

the resistance to this will. But how is it possible to have a confrontation that leads both sides to abandon the predetermined image of the enemy and change it?

## IV. Peace as a treaty and as a reality

A state as a subject of international relations is capable of concluding a peace treaty with another state, but this raises a couple of questions: First, what made peace possible, which until then seemed impossible, and second, what processes are presupposed by this document, to what level of social life can peace reach, and what are the reasons for its maintenance? Peace treaties are usually the result of either the realization that the military path leads to a dead end or the complete surrender of one of the parties. The first option springs from self-interest, but remains a narrative that does not completely eliminate the source of possible future wars, especially if there is a possibility of a realignment of forces. Moreover, the generations of victims will perceive the alliance as unjust on the existing terms and, unable to overcome the feeling of enmity, will only postpone war. In such a situation, the absence of war is not a sign of peace, because the mechanisms of mutual restraint only reinforce aggression, which will inevitably express itself in other forms. It is, of course, the royal road to postpone war. In other words,

> A balance of forces does not in itself secure peace, but if thoughtfully assembled and invoked, it can limit the scope and frequency of fundamental challenges and curtail their chance of succeeding when they do occur.[27]

This is reminiscent of the classical Latin phrase – "If you want peace, prepare for war!" The principle of balance of forces does not apply in the case of capitulation. It is clear that the defeated party cannot speak the language of forcing peace. The only option is to engage the international community and invoke human rights norms. However, this is not a purely legal issue, since there is no international police system, so to speak. International law, which is the main guarantee for the signing of a peace treaty, refers not only and not so much to the juridical dimension, but to international relations and politics, and the latter is first and foremost an area of realizing one's own interests and being guided by them. Not only is a moral, peace-loving attitude not enough to win the desired peace, but also showing weakness can give the ene-

[27] Kissinger, 9.

my ideas of war. A consistent pacifist must be prepared to declare war on war, which implies the will and the power to use violence.

Therefore, the attainment of peace cannot be solely reliant on goodwill, as the act of hastily signing a peace treaty at any cost may inadvertently give rise to internal and external tensions. Moreover, the emergence of modern hybrid wars has exacerbated the challenge of distinguishing between the states of war and peace. The conventional peace agreements fail to account for the insidious nature of psychological attacks and cyberattacks, which operate covertly and can permeate all facets of public life. The concept of peace presupposes the presence of a responsible subject who assumes the mantle of safeguarding it. However, the emergence of such a subject also implies an acknowledgment of potential threats emanating from other actors, thereby necessitating efforts to neutralize them. This process is inherently fraught with tensions, and even when a peace treaty is established, underlying considerations persist. Consequently, alliances forged during peacetime can be severed opportunistically at a later stage. The complexities surrounding the pursuit and sustenance of peace call for a more nuanced understanding of its nature and implementation. Achieving lasting peace requires a comprehensive approach that not only addresses visible conflicts but also acknowledges and mitigates the invisible and multidimensional challenges posed by hybrid warfare. Furthermore, a thorough evaluation of the roles and responsibilities of the involved subjects is vital in effectively navigating the complexities of peace processes.

In conclusion, the achievement of peace cannot solely rely on good intentions and hastily-signed treaties. The evolving landscape of hybrid warfare blurs the boundaries between war and peace, necessitating a comprehensive understanding of the multifaceted challenges inherent in peacebuilding. Recognizing the invisible threats and tensions, as well as the complexities of subjectivity and alliances, is crucial for fostering sustainable peace in a rapidly changing global landscape.

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# War: Its Morality and Significance

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**Abstract**

*This brief paper is a general treatment of war – its morality and its political and social effects. Accordingly, we discuss primarily those armed interactions between nations, or, in "civil" wars, those aimed at securing the reins of government. These must, we contend, be inherently immoral on one side – the one which "starts" the war in question – and inherently moral on the other, who after all are defending their lives against the first. To say this requires a moral theory, which we briefly develop. It proceeds on Hobbesian-contractarian lines: if mankind occupies a "state of nature," then we will all be worse off than if we join with each other in adopting the restrictions of morality – fundamentally, and primarily, of nonviolence, of living at peace with each other. This raises a question about the very rationality of war, to be sure. And yet, war we have, in considerable and unfortunate abundance. How can this be? Some tentative answers are suggested.*

**Keywords:** *war; morals; pacifism; war pacifism; Hobbes; social contract*

## I. War

### a. Peace in some places in my time...

I grew up far from war or its threat. This was largely a matter of luck. I was born in the U.S. at the height of the Great Depression (1936). I was much too young to participate in WWII, and in the tiny town I grew up in, the war made little dent. My family moved to a larger town when I was 11 years old, still too young to be, e.g., drafted in the Korean War. (My oldest broth-

er joined the National Guard – I think to escape the draft – and it worked. He did spend one year at a military camp – but he wasn't shipped overseas.) Later I won a "pre-induction" scholarship (to the University of Chicago), which probably made me unlikely to be drafted. Then I went to graduate school, and as such was ineligible for the draft. By the time I would have been eligible because that exemption was lifted, I was married, and that again made me ineligible. Then we had a child – ineligible once again. And then I was too old, as well as moving to Canada where I have been ever since.

So, in all of my life, I have been far removed from involvement in war. But that didn't prevent an interest in it – perhaps just the reverse. Contact with students led me to write my first paper on Pacifism,[1] in which I maintained the rather heady-sounding view that that theory was essentially incoherent. That paper attracted more attention, I think, than any of the others I've published (two hundred or so – I lost count.) I returned to the subject often in my academic career, the last being in 2013 composed which, for a conference on the subject of Pacifism, I presented a more refined view.[2] Why so pacific a person and so protected a life should have been accompanied by a great interest in war – I suppose I own a hundred books on various aspects of the subject, especially histories of the second World Wat – is intriguing. Why, indeed? Well, whatever the personal situation may be, no one can doubt that war is *important* – using up an enormous amount of money and a fair bit of the world's manpower. Nothing else, really is needed by way of justification for yet another book on the subject. I hope that what follows says something novel enough to be food for thought.

## b. War – Definitions

I start with a definition of 'war' for purposes of this paper. I think it captures the most nearly standard use of the term. In general: Wars are Group Violent Conflicts.

Perhaps we should add: between *organized* groups. Or is it just that when fracasess are carried by mobs, their political influence is too small for them to deserve more attention?

Also, that the violence in question can be, and typically often is, lethal. Its potential lethality, of course, is especially what gets makers of war into (moral) trouble – or, more precisely, it is what would raise in most people's minds questions about the morality of war.

A question we must ask, regarding any particular war, regards its purpose – what is the fracas about? After all, some possible purposes might be condemned while others might be approved, even applauded.

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[1] Jan Narveson, "Pacifism: A Philosophical Analysis," *Ethics* 75, no. 4 (1965): 259-271.

[2] Jan Narveson, "Pacifism – Fifty Years Later," *Philosophia* 41 (2013): 925-943.

And structure: Does each army (as we'll call them), have a leadership structure? Does it terminate at a government or would-be government?

Wars are typically political – indeed, if a conflict wasn't so, would we call it a war? That is to say, one of the "sides" wishes to seize the reins of government, and the other to prevent the first from doing so. (Clausewitz famously said, "War is politics carried on by other means.") Even if some are not, we are at any rate especially interested in the ones that are political – are intended to support a given proposed set of persons as *the* government, and are organized toward that end, and equipped, minimally, with potentially lethal weaponry in support of their efforts.

So, war has a technological aspect: what sort of armaments do the different armies command? In cases where one "side" is overwhelmingly superior, it will usually be because of the capability of its armaments. The sheer numbers of fighters can be a factor too, but unless – once again – the superiority of numbers is overwhelming, better training and better armaments will usually be the relevant factors.

Plus? We would next get to psychological factors: how strongly motivated are the two sides? How intensely do they believe in what they are fighting for? Given at least comparable military technology, such factors can make the difference.

### c. War – Rights and wrongs

This sets the stage for our philosophical/moral questions. Almost everyone takes it that killing people is wrong.[3] In wars, the soldiers involved attempt to kill each other, often successfully. That surely makes it sound immoral. Is war, then, always and inherently wrong?

#### i. Pacifism[4]

One view is that the answer is: *yes*. The view that all violence, whosever "side" it's on behalf of, is wrong, is called *pacifism* (with many kinks by supporters and critics). Pacifists, in other words, reject the "usual" an-

[3] That this view is hardly new is suggested by this passage from Cicero: "The only excuse, therefore, for going to war is that we may live in peace unharmed [....]." From Cicero's "On Duties," excerpted in Larry May, Eric Rovie, and Steve Viner, *The Morality of War: Classical and Contemporary Readings* (Upper Saddle River, NJ: Prentice Hall/Pearson, 2006).

[4] Cf. my "Pacifism: A Philosophical Analysis;" also, Jan Narveson, "Is Pacifism Consistent?" *Ethics* 78, no. 2 (1968): 148-150; Jan Narveson, *Moral Matters* (Peterborough, ON: Broadview Press, 1999), especially ch. 5: "War" – *pacifism* in particular is briefly treated on pages 115-122. See also Jan Narveson, "Terrorism and Pacifism: Why We Should Condemn Both," *International Journal of Applied Philosophy* 17, no. 2 (2003): 157-172, and Jan Narveson, "Pacifism: Does It Make Moral Sense?" in *The Routledge Handbook of Pacifism and Nonviolence*, ed. Andrew Fiala, 191-198 (New York: Routledge, 2017).

swer cited above: self-defence. That especially is what makes *pacifism* such a surprising – not to say, uncomfortable – view.

Pacifism is a view typically found in the young and, as we may say, untutored. Why so? Most of us are not pacifists. Why not?

In about half of the cases in wartime, there is a good answer, we think: these guys (the other "side") are trying to kill us! They do this in their effort to "take" our country, to commandeer the choices of our citizenry. Morality says (we think): Hey, you can't do that!

ii. What more do we need?

I say "about half": one of the "sides" typically starts the war. Those they attack, then, are (at least) tying to defend themselves – and, characteristically, they also think of themselves as defending their friends, families, and communities, on up to their nations. And they are at least *prima facie* correct in thinking so. (As it works out, of course, the soldiers on the other side find themselves in the same position! *They* didn't start the war, after all, and yet the soldiers on the other side are trying to shoot *them* too!)[5]

iii. Why do people fight wars?

But why are we being attacked? What, if anything, did we do to "deserve this?" As an essentially perfect example (in my and a lot of people's view), think of the Ukrainians, who were suddenly attacked by Mr. Putin's (Russian) armies. We – most of us (in the West? Well, along with many Russians, at least, and with perhaps most of the world's people) – consider that Putin's armies attacked an innocent populace, people who had done nothing to deserve this – and as such, is just wrong. (The substantial military support that the Ukrainians are getting from the NATO countries perhaps testifies to the widespreadness of this view.)

But now, of course, the question arises: what constitutes a good reason for warfare? Or even a "reason" at all?

(1) One category that no doubt often applied in the distant past is recognizable and, certainly, discussable: where the attackers claim that they will starve if they don't acquire the food resources of the attacked. But whatever may have been the case long ago, and however plausible such disparities may have been as justifications for wars, they simply don't occur anymore. No sizeable group runs a danger of starvation nowadays.

[5] May et al. point out, in their Introduction to the anthology previously noted (p. xii) that both sides might think they are in the right – and then what?

What, none? I'll simply assert: No – None! Those who think otherwise are likely thinking of what most of us, including the author, would regard as *government failure*, or perhaps as social failure, but not resource failure. For whatever reason, governments of countries that could supply the deficiencies aren't in fact doing so. Were it not for them, starvation, nowadays, would never be a problem.

Since it's never true for the time being that any nation can plausibly claim to be in that kind of need from that kind of potential supplier, then what remains as plausible motivations for war – if anything?

Of course, there may be other resources. Goodness knows, the earth's resources are not evenly distributed around the world. There are several points to make about this. For one thing, it is not clear that resources are worth fighting over. Some of the world's wealthy countries have no natural resources, to speak of – the Netherlands, for example. (The Netherlands does have quite a lot of farmland; but then again, much of this was raised from below sea level by that industrious people. For the rest, it's industry, ingenuity, and especially the *free market* that enable the Dutch to be so prosperous.) And for another, let's remember that Nature does not *owe* us anything in particular, and therefore does not owe an equal share of the world's resources. (Besides which, most of those "resources" are considerably or entirely man-made – that's the secret behind the Netherlands' success. And do the hard-working creators of all those resources really owe each of us, equally, a share of them? Most of us think not, as do I.)

(2) At this point Hitler and many more will claim that the group attacked is in some way *errant*: the people such tyrants attack were once, or even still are, under the skin as it were, "members" of the nation doing the attacking. And so, ...well, *so what*? – we must ask. Since when do we have the right to threaten to kill people whom we claim to be "ours," just because they don't want to stay with us? Here, think of China and Taiwan. Quite apart from the shakiness of the empirical premises – such as that way back when, those people were all Chinese (or something like that) – the Chinese simply have no business reclaiming by force their formerly close relatives. *Period*. Case closed! (Yes, the Chinese mainland government has talked many of the world's countries, including the U.S., into agreeing that Taiwan is a "part of" mainland China. But that doesn't keep them from treating Taiwan as if it were an independent country, and indeed, at least in the case of the U.S., of proposing to help defend Taiwan if the mainland government tries to try to take it by military force.) The same applies to the still

shoddier case made out by Mr. Putin re the Ukrainians.[6] One is reminded, if perhaps at some distance, of Mr. Hitler's efforts in *Mein Kampf*.[7]

## II. Moral theory and war

I speak here in the language, as it were, of morals on the street.[8] And I do think there would be widespread acceptance of the moral pronouncements in the preceding. Still, though, as a *philosopher* in reasonably good standing, I should surely have some sort of "classier" case, should I not? Indeed, I should (as not all of my colleagues would agree) – especially since there are evidently some who would differ, insisting, say, that Mr. Putin and Mr. Xi, and many-many others, have the *right* to attack their various chosen enemies. I think this such claims are incredible, and argue for that conclusion below.

So, I agree that we need a more fundamental case if we are to condemn aggressive makers of war for their proposed or actual aggressions. Here, then, it is. (I start with the usual rejections of some predecessors, including my own previous view.)

### a. Utilitarianism

To start with Utilitarianism – I was once a utilitarian, in my younger days.[9] Utilitarianism has, after all, much to be said for it. It affirms one simple principle – "Maximize utility!" – as the supreme fundamental idea of morals. And for impartiality, you can't beat it! (In principle, anyway...) Each is to count for one, none for more than one, and in short, a unit of A's utility is to have the same value as a unit of B's.

But that's the trouble: Utilitarianism is *too* impartial. We humans, though, are just not very impartial: we elevate our children, our spouses, our friends, often ourselves, above people in general. Not that there's anything wrong with "people in general," of course. Indeed, morality may even be regarded as the theory of how to treat people "in general." Nevertheless, your ordinary modern parents, if given a choice between contributing a hundred of their hard-earned dollars to some agency such as Oxfam and buying their much-loved child a new

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[6] See, for example, the recent book by Mikhail Zygar, *War and Punishment: Putin, Zelensky, and the Path to Russia's Invasion of Ukraine* (New York: Scribner, 2023).

[7] Does anyone really think that comparing Putin with Hitler makes Hitler look better?

[8] The characterization by Gaus is recommended and is more or less the same as that adopted here. See Gerald Gaus, *The Order of Public Reason* (New York: Cambridge University Press, 2011), 2-14.

[9] Jan Narveson, *Morality and Utility* (Baltimore, MD: Johns Hopkins Press, 1967).

Nintendo game (or whatever the current example of choice may be) would not hesitate to choose the latter.

And why, after all, should we? There is, I think, a good answer to that, which will shortly be forthcoming. Here the point is that, whatever the right answer may be, it is evidently not the utilitarian one.

### b. Theories of character

Turn next to the theories of character with which the pages of moral treatises abound – such as Aristotle's, to take a check-rated such theory.[10] But the question I would ask Aristotle is the same I would put to any such theory: are we really to say that what makes killing wrong is that *good people just don't do that sort of thing*? Or is it not rather that what *makes* good people good is that they accept and (do their best to) conform to moral requirements, among which perhaps the foremost is – not to kill (innocent) people?

I expect that the question will be seen as answering itself. It doesn't, to be sure. We'll ere long come, though, to what does, at least so far as I and several contemporary philosophers can see.[11]

### c. Deontic theories

There are many theories, or at least sets of terminology, classified as "deontic" by, as I am tempted to say, theorists who should know better. (Kant is regarded as your archetypical deontologist. Happily, I think that can be refuted... but let's not get into Kantian exegesis here...) In truth, the term 'deontic' if intended to depict either a sort of basic theory or a sort of principle or judgment, is a sad mistake. For of all such theories, if earnestly put forward as theories, we can ask: Why on earth should we do that? After all, the point of such theories is to be "stoppers": you aren't supposed to be able to "go beyond" such a consideration – such as the consideration that if we do *X*, we would be killing someone.[12] '*X*' being 'murder,' this would be true by definition,

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[10] Aristotle, *The Basic Woks of Aristotle*, ed. Richard McKeon (New York: Random House/ Modern Library, 2001).

[11] Examples are David Gauthier, author of *Morals by Agreement* (New York: Cambridge University Press, 2011), among others; and *The Order of Public Reason*, by Gerald Gaus. All Libertarians, of course, espouse such views, but they differ among themselves as to the foundations of their view. See, for example, the book *Arguments for Liberty*, eds. Aaron Ross Powell and Grant Babcock (Washington, D.C.: Cato Institute, 2016), with nine chapters by people who appear, at least, to differ among themselves.

[12] My views about Ethics are most fully found in my book, *This is Ethical Theory* (Chicago, IL: Open Court, 2010).

which proves nothing. But if we do – then what? Deontology has then, professionally as it were, run out of gas.

d. Hobbes

If, more modestly, we just press on and ask: Why? – even though we're not supposed to – the feeling will grow that, Dammit!, the theorist owes us an answer – and a decent answer. And authors there be who got very close. Perhaps my favourite such is Hobbes, who asks us, famously, how things would be in the complete absence of morality – human nature being what it is. And his very famous answer is: Awful! "... and the life of Man, Solitary, Mean, Nasty, Brutish, and Short."[13]

An exaggeration? Well, maybe – but maybe not. To get back for a moment to our subject, War, think of the lives of men in the trenches in World War I. Their awful situations are, surely, due to the lack of restraint – especially in the way of killing people – shown by their enemies (of either side). Impartially considered, Rational Man says about this: Aach!

At any rate, Hobbes' general argument is that we humans *need* morality. It's not enough that people be Nice Guys – because they frequently aren't, besides which many of those in the opposite trenches were nice enough, after all – y'know?[14] So, what is needed is an honest-to-goodness moral theory – an identification of the factors which create the need for morals. Now, to be sure, we have persons, such as Mr. Xi (current autocrat of China), who seem to have different ideas about these matters. Or his predecessor Mao, or a snag of theorists such as Nietzsche – who may seem, at first sight, to have different views of the "Human Good," so to say. (Or do they? But once again, we won't get into that.)

Where, then, do we begin? With Man as he or she is – anywhere and at any time, surely. And how is that? Note well: this is not the theory of some tribe's behaviour. It is intended to be the theory of how *everybody should behave in relation to everybody else* – including total strangers. All more particular tribal ethics are, we hold, to conform to this supremely general rule or principle.

Such Hobbes held – and I think he's right – to be his First Law of Nature[15]: "to Seek peace and follow it" and only if we can't get it do

[13] Thomas Hobbes, *Leviathan*, ed. Richard Tuck (Cambridge: Cambridge University Press, 1966), ch. XIII.

[14] Hobbes. For an interesting modern discussion, see Lou Marinoff, *On Human Conflict* (Lanham, MD: Hamilton Books, 2019), 115-160.

[15] Hobbes, ch. XIV.

we resort – and are entitled to use – "all the helps and advantages of war..." Why, then, is Hobbes right, as I think he is?

### e. The contractarian theory[16]

We are possessed of many physical needs, for one thing. And social ones, for another. However, as to specifics, we differ: my Mom was not your Mom – they're very different people! And, as the saying goes, "one man's meat is another man's poison." True enough. True also, though, is that however we may differ, we each can be deprived of *whatever we do have*... ending with life itself.

Different, therefore, doesn't keep us from finding a common point for what we have reason to condemn on the part of our fellows, or ourselves for that matter. If, as we might say, we had to choose, we'd choose that everyone *at least leave everyone else alone*. (We might, of course, like it still more if they'd treat us even better. But we then run the danger of asking too much.)

Well – *do* we "have to choose?" In a sense, *yes*. That is – if our only way to get out of this "state of nature" in which we all have the freedom to do exactly as we please is to join with our fellows in renouncing it then that is what, as rational beings, we should do.

## III. Problems

Simple story? Well, complexities aside, yes. (One such should be cleared up right away: Hobbes need not assume, and in fact is not assuming, that we are all nasty underneath the skin. He only needs to hold that we would all be rationally worried about whatever people there are who *are* like that. Yet this first "Law of Naure," the Law of Non-Harm, as we might call it, is enormously difficult in its detailed requirements.[17] For what we want is for many of us to change our psychologies. And that's not easy to do. Yet it must be done, if we are all to have what we want – peace.

Or is it what we all want? In insisting that the answer should be *yes*, let's admit there are many – such as your typical gangster – who pay only lip service to this First Law of Nature. Mind you, if we knew that this individual walking in apparent innocence down the street was in fact a dangerous gangster, Hobbes' Law would apparently allow us

[16] See several of my papers, such as: "Social Contract: The Only Game in Town," *Dialogue: Canadian Philosophical Review* 55, no. 4 (2016): 695-711.

[17] That is what the proposed book, of which this is a sort of advanced summary, will be considerably devoted to.

to kill him on the spot. In almost every town and country now, there is an easier answer: refer him to the Police.

But of course, we don't know just who among us is one of those (gangsters), and lest any of us be falsely accused, we try to set up not only police forces but also legal systems with lawyers, judges and jails and the like.

And, alas, that in general is why we have wars. Now, it is my view – and I hope everyone's – that when it comes to initiating the rule of violence that is war, at least one party is *necessarily and always in the wrong*, the other party being, relatively at least, a victim.

If this is so, we need to band together, we who are relatively strong, and attempt to induce this guilty party to back off, or if necessary, band together and make hopefully successful war on that party. It often doesn't work, alas – yet if the forces assembled to support the victims are strong enough, that aggressor will indeed back down, especially because he knows he'd lose if a war were started. The example of Ukraine again comes to mind. Notoriously, Mr. Putin is anxious that Ukraine not become a member of NATO, whose cooperating forces would overwhelm the Russian army. We (liberals? But, we hope, more – indeed, every thoughtful person) can hope that there will be enough support for the Ukrainian force to "win" as Ukraine's premiere, Mr. Zelensky, would like.

In recent times, many have taken up the position of "war pacifism," by holding that the idea is only to confine one's resistance, against politically organized enemies, to peaceful means. In my previous writings about *pacifism* as a general theory, I do not claim to have refuted this theory, which obviously requires that the intended enemies are capable of being swayed by such tactics. And are they? Well, not necessarily, one surely must say. Mr. Gandhi was fortunate to have as his "enemy" Great Britain instead of Hitler's Germany. The chances that the Nazis would be impressed by peaceable tactics seem, to many of us, pretty well zero. But still, it is an empirical matter, and we don't want to make a general moral theory rest on such premises.

There is also the question to what extent the advent on the scene, in 1945, of nuclear weapons fundamentally complicates everything. Certainly the West, which is well supplied with such things, has hesitated to use them ever again, as for examples against North Korea, the Russians or the Chinese. The theory of "MAD" (Mutually Assured Destruction), has thus far apparently worked, that being no big surprise. After all, if one's own destruction can be plausibly 'assured' by both parties, that would seem to be an ultimate consideration.

And yet, the known possession of such weapons has had the interesting result of making much lesser wars frequent occurrences in today's globe. Is there a solution to that? That has become one of today's fundamental questions. This article does not purport to offer solutions to it. Can we hope one arises? Who knows – at least, at present?

Here's an example of contemporary reasoning about war, by a contemporary American group, the example being the situation of Taiwan vis-a-vis the U.S., China, and various other global actors:

> The Task Force assesses that although China is developing the military capabilities it would need to annex Taiwan and is determined to subjugate the island, it has not yet decided to pursue a nonpeaceful resolution and deterrence remains possible. Although war is not inevitable, unless the United States moves with urgency to bolster deterrence and shape Chinese leader Xi Jinping's decision-making calculus to raise the costs of aggressive action against Taiwan, the odds of a conflict will increase.[18]

I have no intention of supplying helpful input to discussions such as that – alas! But I hope that having, as I suppose, provided much support for the view that, in this case, the (Communist) "Republic" of China's actions would be thoroughly immoral is perhaps useful to some.

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[18] Council on Foreign Relations, *Report no. 81*: "U.S.-Taiwan Relations in a New Era Responding to a More Assertive China," https://www.cfr.org/task-force-report/us-taiwan-Relations-in-a-new-era.

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# The Nature of War

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**Abstract**

*The traditional definition of war given by classical authors is, that war is a violent conflict between sovereigns. This means that war cannot be outlawed by any higher authority, since the sovereign is the uppermost authority upon the lives of the persons that are subject to them. Only the sovereign has the right and the power to forbid the violent resolution of conflicts among their subjects, and as sovereign they are not subject to any higher worldly power, but only to the power of God. The obligations to God are for the most classical authors not of legal nature but constitute the realm of morality. Thus, the main question for the classical authors on war theory is the clarification of the moral conditions that justify a sovereign to wage war against another sovereign, the so-called theory of just war. Since the classical authors subordinate the concept of war under the concept of justice, the theory of just war includes reflections about the proper means of conducting a war from the point of view of justice. In other words, the theory of just war also formulates criteria for such acts that are considered as war crimes. In this essay I will not challenge the theory of just war itself, but the traditional definition of war in terms of exertion of legitimate violence. My alternative definition will be given in the third section of the essay, and relies on the Platonic concept of peace, and on the Aristotelian concepts of privation and analogy. I think that violence is not a constitutive characteristic of war, but the conceptual, i.e., logical consequence of its definition. In other words, the state of war can be declared and persist without any acts of violence. The use of violence is justified by the manifestation of the state of war.*

**Keywords:** *war; peace; truce; analogy; privation*

## I. Introduction

The traditional definition of war given by Hugo Grotius[1] and other classical authors is, that war is a violent conflict between sovereigns. This means that war cannot be outlawed by any higher authority, since the sovereign is the uppermost authority upon the lives of the persons that are subject to them. Only the sovereign has the right and the power to forbid the violent resolution of conflicts among their subjects and as sovereign they are not subject to any higher worldly power, but only to the power of God. The obligations to God are for the most classical authors not of legal nature[2] but constitute the realm of morality. Thus, the main question for the classical authors on war theory is the clarification of the moral conditions that justify a sovereign to wage war against another sovereign, the so-called *theory of just war*. Since the classical authors subordinate the concept of war under the concept of justice, the *theory of just war* includes reflections about the proper means of conducting a war from the point of view of justice. In other words, the *theory of just war* also formulates criteria for such acts that are considered as *war crimes*.

In this essay I will not challenge the theory of just war itself, but the traditional definition of war in terms of exertion of legitimate violence. My alternative definition definition will be given in the third section of the essay and relies on the Platonic concept of peace, and on the Aristotelian concepts of *privation* and *analogy*. I think that violence is not a constitutive characteristic of war, but the conceptual, i.e., logical consequence of its definition. In other words, the state of war can be declared and persist without any acts of violence. The use of violence is justified by the manifestation of the state of war.

In this essay I will not concern myself with the concrete moral aspects of war. These has been discussed extensively by classical and contemporary authors with respect to the various kinds of real conflicts that resort to acts of violence that are regarded as acts of war.[3] I

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[1] Hugo Grotius, *The Rights of War and Peace* (Indianapolis, IN: Liberty Fund, 2005), 240. Grotius regards as sovereigns not only states, or kings, but also private persons that exist outside any state authority. Since in present times there is no place on Earth that is not subject to state authority, present time wars are waged solely between states.

[2] With the exception of Hobbes, and perhaps of Spinoza in his interpretation of the relationship between the biblical Hebrews and God.

[3] For the contemporary discussion cf. Jovan Babic, "Ethics of War and Ethics in War," *Conatus – Journal of Philosophy* 4, no. 1 (2019): 9-30; Georg Meggle, *Terror und Der Krieg gegen ihn. Öffentliche Reflexionen* (Paderborn: Mentis, 2003); Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic Books, 1977).

will give only a non-theistic or deistic account of the moral aspect that is based on the fact that acts of war are the result of judgments.

## II. Modes of definition

A concept can be defined by listing the features that characterise the objects or the situations that are referred to by it, or by listing its constitutive parts. Thus, for example, the concept of "Scandinavia" can be defined by listing the states that are commonly subsumed under this common name: Iceland, Norway, Sweden, Denmark – and sometimes Finland. The concept of "water" on the other hand, can be defined by listing the characteristic properties of this substance, namely being a colourless, tasteless, and odourless liquid at room temperature and normal pressure, freezing at 0° and boiling at 100° centigrade under normal pressure, having a certain specific density at said normal conditions, as well as some other specific properties like conductivity, dielectric constant, polarity etc.

This mode of definition is commonly called *list* or *extensional* definition. It is grounded on the principle of the ontological primordiality of the single thing or substance that is conceived as a "bundle" of its properties.

A second mode of definition is by stating or describing the crucial feature that distinguishes the object or the situation described by a concept in a unique way from any other object or situation in the universe. This crucial feature is also called the *specific difference*, and this mode of definition also requires the naming of the so-called "next genus" (genus proximum), that is the "family" of related objects, from which the object in question is distinguished in this unique way by the specific difference. This second mode of definition is grounded on the ontological distinction between species that belong to a genus and on the concept of the so-called "Porphyrian tree," i.e., the hierarchical classification of species and genera that begins from the "lowest" species (species infimae) to the "highest" genus (genus supremum) that encompasses the whole classification.

## III. Definitions of war

To define war as a situation of human life, one can, according to the first mode, try to give a list with the characteristic features of a war-like situation. The intuitive understanding of war is a situation where violence prevails. However, this violence is exerted in a structured way between groups of persons that are organized in forms of military or

militia units that have a centralized command structure and obey the orders of their superiors. In the modern understanding of war these units are parts of greater political units that can be states in the narrow understanding of the term, or they can be political organizations that aspire to establish a state in a certain territory, like for example the Palestinian Authority or the Polisario movement. Furthermore, the acts of violence committed during a war observe a certain set of legal rules regarding the declaration and the conduct of belligerent acts, the transgression of which can be legally prosecuted. Thus, the list definition of war would look like this:

| War | Characteristics |
|---|---|
| | Violence<br>Structured<br>Conducted by military or militia units<br>Under the command of civil political leaderships<br>In the service of states or state-like organisations<br>Have inner command and rules of engagement<br>Observation of specific legal rules regarding declaration and conduct<br>Observation of rules regarding the use of weapons<br>Obligation of protection of non-combatants and of citizens and property of neutral parties<br>Respect of the territorial integrity of neutral states<br>... |

This list may appear at first glance as adequate for the definition of war. A closer look, however, reveals some striking shortcomings. First, it appears that the list is neither complete, not that it can be completed in any meaningful way. There is no rule forbidding us to add more features as we see fit, to include specific situations into the scope of the concept of War. Today, for example, resistance groups – even civilians engaged in resistance acts – in occupied territories are regarded as legal combatants that are covered by the international treaties regarding the treatment of prisoners of war. So, acts of insurgency against an occupying power are regarded as acts of war if they are targeted against military or administrative units of the occupying power.

Second, it is not clear if the listed features are merely necessary or sufficient for the definition of war. Acts of violence, for example, may appear as inevitable during a war, but they seem to be rather a sort of contingent symptom of the existence of a state of war between states,

than a necessary part of it. Admittedly, most wars are characterised by fierce acts of violence, but there are war declarations between states that do not even have the possibility of physical interaction because they are situated on different continents, and they lack the means to engage in actual battle. Towards the end of World War II many neutral south American countries declared war against the Axis powers and did not participate in any actions in the Pacific or the European theatres. In other cases, the state of war is maintained between two countries even if they do not engage in any belligerent action and maintain cross-border economic and political relationships. Thus, the most striking and common feature of war, the violence, seems to be neither necessary nor sufficient for its manifestation. On the other hand, the existence of organised military and/or militia units seems to be a necessary condition for the outbreak of a war, but again its mere existence is not sufficient, as experience teaches. Almost every modern state has an effective army, but most states in the world are in a state of peace and a majority cooperates in maintaining this state. It is even so today that the world embracing political organisation of states, the UNO, has at their disposal army contingents of the member states that can be deployed in peacekeeping actions in many parts of the world. The existence of armies entails the existence of organisational structures at the military and the political level, as well as the existence of a legal framework at the national and the international level. Both are then necessary but not sufficient for the outbreak of a war. The same holds for the existence of rules of engagement, rules of conduct and the rules defined in the international treaties regarding the treatment of prisoners of war and non-combatants.

It seems then that the list definition of war is not complete, and that it contains characteristics thar are not necessary and/or not sufficient for the definition of war. The list contains simply all those features that are intuitively regarded as in many aspects relevant for the existence of a warlike situation, but their relevance seems to rely on a more profound understanding of what War is that cannot be comprehended by merely citing the list.

Fortunately, there remains the alternative of determining the specific difference of war that separates it from other forms or species of human life. The first step towards this end is to determine the similarities between war and the other form or forms of life, from which War is separated by its specific difference. I think the fundamental similarity between War and non-War situations the fact that a War can exist only between groups of persons that participate in a *political form of life*.

In other words, a war *cannot break out* between individual persons. Individual persons may be involved in a fight, a fracas, a quarrel, or an argument, but not in a war. The use of the word "war" for describing the fights between criminal gangs is only metaphorical, or, in the cases where it seems appropriate, it indicates that the groups involved have a certain degree of political autonomy. Since nowadays the prevalent form of political life is the life in a *constitutional state*, i.e., a state that is grounded on a basic set of rules, or a constitution, wars can break out only between constitutional states. In past times, when also other forms of politically organised groups existed, e.g., matriarchal, or patriarchal tribes, *gratia dei* kingdoms and empires, or city states, wars could also break out between them, but even then, a fight between individual persons was not regarded as war.

War is then – in the modern understanding – a form of relation between constitutional states that differs from other forms of interstate relations. The most prominent form of non-war relation is the relation of *peace*. It seems then that the specific difference that marks the state of war can be described as: "the absence of peace," and war can be defined as: "a situation of relations between constitutional states (genus proximum) characterised by the absence of peace (specific difference)."

The "absence of peace" may be the desired specific difference, but it is a privative expression that relies on a positive definition of peace. Again, if we try to give a list definition of peace, we encounter similar problems as with the list definition of war. It seems, for example, that the state of peace is to a certain degree compatible with violence, since during peace time there is crime and violence in a state. And it is possible that there are skirmishes between the armed forces of states that are in the relation of peace, when, for example, the exploitation of exclusive economic zones of the seas, or the integrity of the land borders, or the air space is violated for any reason. Listing other characteristics of interstate peace, we see that it is in a similar way to war grounded on legal rules, requires a certain degree of political organization, and the existence of special state authorities commissioned with its protection and maintenance. The list definition of interstate peace would look very similar to the list definition of war, a circumstance that demonstrates that list definitions are not very helpful.

Furthermore, "peace" in the normal understanding of the word denotes more than a relation between constitutional states. The state of peace also describes a situation *within* a constitutional state as well

as a *state of the mind*.[4] So, if the specific difference between war and peace as a relation between constitutional states is the absence of peace in their relation, we must assume that peace as a specific relation between constitutional states is also a species of a more general concept of peace that encompasses peace as a relation between persons and as a state of the mind.

## IV. The analogy of peace

Like most fundamental concepts, the meaning of "peace" is not univocal regarding all aspects of human life, including interstate peace as the positive complement of war. I think that there is a fundamental meaning of "peace" that refers to a state of mind,[5] to which all other meanings of "peace" are related in an analogous manner, in the same way, in which "being" is attributed by analogy to the categories of the accidents of a substance, while the fundamental attribution of "being" is the category of Substance itself.[6]

Regarding peace as a fundamental state of mind means that the term "peace" is a *primitive*, i.e., that it cannot be defined by either of the modes described above. Peace of mind is something that we learn by direct acquaintance, by experiencing it directly as a state of our individual mind. It cannot thus be defined, since there is nothing more general or simple to refer to, but it can be described. The best description of the state of peace of mind is that it is characterized by an order of our thoughts. This order is not imposed by force, but by also knowing the reasons for it. We normally describe this state with expressions like "I understand the situation," or "I know what I must do," or "I came to the conclusion that $p$" or "I decide to $\varphi$." This order does not mean that we do not have conflicting thoughts, but that the conflict between them is settled within the order that characterizes the state of peace of mind. This meaning of "peace" is primordial because it does not require a relationship to another mind to manifest and to maintain itself. It is the ontologically simplest manifestation of Peace.

The primordial meaning of "peace" is then applied by analogy on the situation where persons live in a state of resolved conflicts and mutual

[4] We also use the word in a paronymous way in expressions like "a peaceful landscape," "a peaceful day," or a "peaceful life." For the concept of paronymy cf. Aristotle, *Categories and De interpretatione*, trans. John Lloyd Ackrill (Oxford: Clarendon, 1963), 1a1.

[5] This thesis was first formulated by Plato, *The Republic*, trans. Christopher Rowe (London: Penguin Books, 2007), 496d-496e.

[6] Cf. Mary Hesse, "Aristotle's Logic of Analogy," *The Philosophical Quarterly* 15, no. 61 (1965): 328-340.

respect. These persons live in a state of *social peace* and since every social form of human life has a political aspect, persons living in the state of social peace are also living in the state of *political peace*. It must be stressed that the states of social and political peace do not exclude the existence of conflicts between the involved persons. However, conflicts in a state of social and political peace are resolved in an ordered, rule-guided way, or in case that they cannot be resolved, are not allowed to escalate to acts of violence. Persons living in social and political peace, live under the *rule of law*. The practical consequence of this is that in a politically organised society, e.g., a modern state, the state itself has the monopoly of exerting violence to maintain the social and political peace.

Having defined the internal peace in a constitutional state, we can now proceed to the analogous definition of peace between constitutional states: The situation between states that is characterized by an explicitly accepted order that helps resolve interstate conflicts in a way accepted by all parties involved and encourages constitutional states to set and achieve common goals is what we call "peace between constitutional states" or simply "international peace."[7]

It is then clear that international peace is not just a situation of mere truce,[8] i.e., the temporary refraining of using violence in resolving international conflicts, but a structured and ordered relation between constitutional states that is under the rule of *international law*, and commits the participating parties to cooperation and to a rule-guided procedure in resolving international conflicts.

The analogous meaning of "peace" makes clear that the primordial individual peace of mind that cannot be achieved by stipulation, since it marks the end of a long and complex mental process. In contrast to it, the political peace and the international peace must be stipulated explicitly because they have a contractual nature. This means that the parties involved in both kinds of peace agree explicitly on the terms and the procedures that ensure the peaceful resolution of conflicts between persons and between states.

## V. The nature of war

On the background of the analysis of the analogous meanings of peace given above, we can conclude that war has also a series of analogous

[7] From now on I will use the term "international" synonymously with "between constitutional states."

[8] This is the definition of peace given by Hobbes in *Leviathan*, and by Pufendorf in *On the* Duty *of Man and Citizen According to Natural Law*, ed. James Tully, trans. Michael Silverthorne (Cambridge: Cambridge University Press, 1991).

meanings. However, the primordial meaning of war is correlated with the most analogous and conventional meaning of peace, the international peace, and the most analogous with the peace of mind. Since international peace is by nature explicit, conventional and law guided, war between constitutional states is also by its nature explicit, conventional and law guided. Based on the privative relation between peace and war, the most accurate description of the difference between peace and war in international relations is the *mutual denial of certain legal statuses* between the parties involved in a war. The most fundamental of theses statuses are the right of a state to exert sovereignty over its territory and the right on the integrity of life and property of its citizens and of the foreign residents. This means that when in the state of war, the parties involved obtain *legal licences* to inflict damage on the lives and the properties of the natural and legal persons and on the infrastructure of their opponents. The description of these licenses, the *law of war* (ius in bello), are part of the international law. It is agreed that every destructive action that is not covered by those licenses is regarded as a *war crime* and must be sanctioned either by national or international courts.

It is obvious that this description of the nature of war between states is formal and that the material content of the licences to inflict damage and the sanctions against war crime perpetrators must be defined explicitly in international treaties. However, some aspects of the *ius in bello* are part of the so-called natural law that has historically evolved.

The fact that the primordial nature of war, i.e., of the international war, is legal and conventional has important conceptual, i.e., logical, consequences: First, international wars must be *formally declared* following a certain procedure.[9] Second, the parties involved *must observe the integrity of neutral states* and respect the diplomatic immunity of the missions of such states in the territory of their opponents. Third, the belligerent parties *must observe* the at the time valid rules of the *ius in bello*.

The legal nature of war as the licence to inflict certain kinds of damage on the opponent implies that the belligerent parties are not *legally obliged* to inflict said damages. From this follows the above-mentioned situation that states can be in a state of war without exchanging hostilities. The explicit agreement of refraining from hostilities between states in the state of war is called *truce*.

[9] However, this procedure is not strictly formalised, and may allow for "implied" or "covert" declarations of war. Sometimes declarations of war have the form of retaliations for unprovoked attacks, or are declared as "pre-emptive" measures etc.

The analogous meanings of war are introduced in the opposite direction to the analogous meanings of peace, namely the war among the citizens of a state, the *civil war*, and the absence of the peace of mind or the *mental unrest*. The latter is obviously not a situation of conflict between persons, groups, or states, but a conflict of beliefs, desires, aims, and passions within the mind of a person. Since political and social life has the nature of a *common action*,[10] i.e., of an action that is the result of the interference of various individual actions that are ordered in a certain way. Individual actions are amalgamations of bodily motions and trains of thoughts, i.e., states of the mind.[11] War as a part of the political and the social life of humanity is a species of common action. This means that the manifestation of a war relies on the individual actions of the persons involved in it. Consequently, one of the necessary conditions for the manifestation of a war is the mental unrest of some persons involved, namely of persons that are for political and social reasons in position to start a war.

## VI. The moral aspect of war

The fact that wars do not occur by happenstance or by natural reasons but are the result of concrete decisions based on judgments of individual persons who are responsible for their actions constitutes the *moral aspect* of war. Because the moral dimension of war is grounded on the fact of individual human judgment and action, it determines the material rules that entitle a state to start a war, the so-called *ius ad bellum*, and the material rules that determine the allowed actions during a war, the so-called *ius in bello*. Both the material rules that are grounded on the moral aspect of war and the formal rules that are derived from the legal and conventional nature of international war are part of the international law.

The traditional theories of the just war that have been formulated by Augustinus, Thomas Aquinas, and Grotius are concerned mainly with the moral aspect of war and with the problem of the right to declare a war. Regarding the latter it seems that the traditional theoreticians of war agree unanimously that the right to declare a war lies exclusively with the sovereign.[12] In modern constitutional states the sovereignty stems from the citi-

[10] Cf. Nikos Psarros, "The Constitution of Social Objects by Common Actions," in *Facets of Sociality*, eds. Nikos Psarros and Katinka Schulte-Ostermann, 21-31 (Frankfurt: Ontos Verlag, 2007).

[11] Nikos Psarros, "The Ontology of Time – A Phenomenological Approach," in *Time and Tense: Unifying the Old and the New*, ed. Stamatios Gerogiorgakis, 361-407 (Munich: Philosophia, 2015).

[12] Cf. Aquinas, Grotius, etc.

zens and is exerted by the legislative branch of the government. Therefore, in modern constitutional states wars can be declared only by a legislative act, i.e., a law that gives the executive the necessary mandate to carry out the war.

Regarding the concept of the just war, the situation is not clear. As we have seen above, the declaration of a war relies on the judgment that the war is the appropriate means to achieve some aims in international relations. Based on the definition that war is the absence of peace and according to the idea that the primordial meaning of war leads to the analogous meaning of war as individual mental unrest, one can argue that every judgment leading to the decision to start a war is faulty – "every judgment" refers here to the judgments of all parties involved in a war. However, historical evidence and current experience teach that this is not always the case. In many war situations, at least some involved parties are forced to go to war because they have been attacked.[13] The decision of their leaders to declare war is not the result of an unrest of mind but the manifestation of their duty to defend the independence of their state, the integrity of the country, and the liberty of their people. On the other hand, there are some situations that seem to allow the initiation of a war as a pre-emptive measure, for example to prevent a serious terrorist attack or to impose order on a territory that has drifted into anarchy, or civil war, or is under the reign of an inhuman political regime. Such situations confirm the thesis that war is the result of judgments in a state of unrest of mind.

Despite of the uncertainties regarding the acknowledgment that a declaration of war is "just" in the moral sense, there is the unanimous agreement in the theoretical tradition of war, that international wars must aim at the state structures of the belligerent parties and not at the people. This means that after the cease fire and the capitulation of the defeated state, the victor or the victors may proceed with reconstructing the constitutional order or with the elimination of certain state structures.[14] However, elimination of persons and groups of persons, genocide, or obliteration of the cultural characteristics of the population cannot be the explicit or the implicit aim of war actions or of the war itself. Resorting to such measures by a belligerent party constitutes a war crime. Again, here also a "grey zone" exists since war actions may result in collateral damage of cultural objects and in the loss of non-combatant lives and property. The problem is wors-

[13] The latest example being the efforts of the Ukrainians to regain the territories of the country that came under Russian occupation since the invasion of February 2022.

[14] For example, after the capitulation of Nazi Germany in 1944, the constituent states of the German Reich were dissolved and reconstituted except for the state of Prussia that was abolished with the Control Council Law No. 46 because "from early days [it] has been a bearer of militarism and reaction in Germany."

ened by the fact that modern warfare can affect territories and people that are far away from the actual war theatres, so that it is not easy to define situations of tolerated collateral damage.[15]

Much more difficult to evaluate morally is the situation of a civil war. The parties involved in a civil war claim to act in defence of the constitutional order, or the good of the country, or for the betterment of the society, or similar noble reasons. Furthermore, since the persons involved in a civil war are citizens of the same state, and since they fight for their ideas, it is very difficult to observe the *ius in bello* rule requiring to preserve people and only to dismantle or reconfigure state structures. Civil wars clearly demonstrate the grounding of war on the unrest of mind of the citizens. Their termination can therefore take place only when all parties involved lay down the weapons and submit to the rule of a collectively accepted authority, which in modern states is defined by a constitution.[16]

## VII. Si vis pacem...

To establish and to perpetuate the peace among the citizens in a state, a constitution must treat all persons living in the territory of a state in a just and equal way. This means that the order imposed by a constitution must, at least upon reflection, be acknowledged by any person in the present and in the future as respecting human dignity and the existential needs of the human soul.[17] Such a constitution is a *humanistic constitution* and the state grounded on it is a *humanistic constitutional state*.[18] Such states have a *republican nature*, i.e., their existence and persistence are regarded by their citizens and the non-citizens residing in their territory as a *common cause* (res publica).[19]

Humanistic constitutional states are by their nature best suited to establish a peaceful international order, i.e., the state of international peace. Obviously, this state is not free of conflicts, humanistic con-

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[15] It seems that Thomas Aquinas allows for the unintended sufferance of the civil populace of a city during a siege; cf. Gerhard Beestermöller, *Thomas von Aquin und der gerechte Krieg: Friedensethik im theologischen Kontext der* Summa Theologiae (Köln: Bachem, 1990), 158.

[16] Cf. Thomas Hobbes, *De cive* and *Leviathan*; The constitution, however, must not been laid down in one document.

[17] Cf. Simone Weil, *The Need for Roots: Prelude to a Declaration of Duties Towards Mankind*, trans. Ross Schwartz (London: Penguin, 2023).

[18] A humanistic constitutional state fulfils John Rawl's criteria for justice, and its constitution is a valid answer to the question of the choice of the principles of justice under the "veil of ignorance." Cf. John Rawls, *A Theory of Justice* (Cambridge, MA: Belknap Press, 1999).

[19] Cf. Immanuel Kant, "Zum ewigen Frieden, ein philosophischer Entwurf," in *Philosophische Bibliothek*, ed. Heiner F. Klemme, Bd. 443 (Hamburg: Meiner, 1992).

stitutional republican states are, however, by their nature inclined to resolve such conflicts by peaceful means. Furthermore, humanistic constitutional republican states are also by their nature prone to form an alliance with the aim to preserve and promote the peace and discourage non-humanistic and non-republican states and groups of persons from resorting to war.

## VIII. ...interdice bellum?

The establishing of an international peace order does, however, not mean that war can be formally banned or lawfully forbidden. This is so because of the very nature of war as the absence of peace and of the fact that wars are grounded on the unrest of mind of persons that are in position to pursue their aims by declaring war. The only viable method of preserving international peace is the voluntarily waiver of certain sovereign rights of constitutional states and the delegation of these rights to a supranational authority, in which they participate as equal members. This waiver of rights must render the participating states not only technically and legally incapable of waging wars among themselves but also must provide their citizens with rights that are derived from the legal structure of this supranational authority.[20] In other words, the states participating in such an authority must accept for their citizens a kind of dual citizenship, namely the citizenship of the state and the citizenship of the supranational authority. This means that the supranational authority itself must derive its power from the sovereignty of the people of the participating states, i.e., it must have the form of a humanistic constitutional republican state. Since this authority furnishes the individual citizens of the member states with its own citizenship its institutions reflect the *volonté générale* of the constituted citizenship and so the participating states cannot go to war against each other because this would mean that they would encourage their populations to a civil war.

The supranatural authority with the above-mentioned characteristics is called traditionally a *federation*. A first proposal for such a political entity can be found in Dante Alighieri's *De Monarchia*[21] where

[20] A first attempt to introduce this concept of a "supra-citizenship" was the granting of the rights of roman citizens to all free men and women of the Roman Empire by the so called "Constitutio Antoniniana," issued by Emperor Caracalla in July 212 CE. However, this citizenship was not subsidiary to the citizenships of the nations subdued by the Romans, but in a sense, it meant the dissolution of these nations and their integration into the *Populus Romanus*.

[21] Dante Alighieri, *On World Government*, trans. Herbert W. Schneider (London: MacMillan, 1957).

he describes a "supranational kingdom," to which all Christian kingdoms and republics of his time should be subject. A more mundane and formal entity is proposed by Immanuel Kant in his seminal essay on eternal peace.[22] Both proposals admit that such a superstate would not exert actual political power but would have rather an advisory and admonitory function (Dante) or act as a forum for the arbitration of international disputes (Kant).

The first realization of a modern federal state in the above-mentioned sense are the United States of America, that managed to consolidate several economically and politically diverse British colonies on American soil to what today appears as a homogeneous humanistic constitutional republican state. The example of the USA has been followed by many colonial territories of the superpowers of the 17th and the 18th centuries in the Americas, in Asia,[23] and Australia with various degrees of success in creating humanistic constitutional republican states.

The European Union that was formally established 1993 by the Treaty of Maastricht is in this context an exceptional case, because it did not emerge in the course of a war of independence from a colonial power or an authoritarian empire, but was the result of the explicit aim to render war – at least in Western Europe – impossible by the conscious and deliberate renunciation of national sovereignty to the organs of the Union, and by the contractually waiver of the state of war in resolving conflicts among its member states. The main difference between the EU and a classical federal state like the USA is that the EU does not posses any tactical means for enforcing the observance of the rules of the union by a member state. The integrity of the Union is guaranteed by the overall benefit for its citizens and for the member states, allowing the separation of a member state by a contractually regulated process.[24]

## IX. ...divide mundum?

Another strategy to reduce the probability of a war outbreak has been the division of the world in "spheres of influence." As a first such attempt in modern times can be considered the *Treaty of Tordesillas* between the Spanish and the Portuguese Empires signed on June 7th, 1494. This treaty

[22] Kant.

[23] I think here of the Republic of India.

[24] The fact that the militaries of the majority of the EU member states are integrated in the NATO is another pillar of stability and peace preservation in Europe, but it is not an aspect of the abolition of war between the EU member states. In contrast the explicit waiver of the right to declare war on another member state is one of the necessary conditions for membership.

divided the newly discovered lands outside Europe along a meridian 370 leagues west of the Cabo Verde Islands.[25] Mediated by the Pope the treaty aimed at the creation of separate domains of influence – and exploitation – so that a future military conflict should be avoided. A similar attempt was undertaken with the treaties that became known under the title of the *Peace of Westphalia* of October 1648 that ended the thirty years war between the catholic and the protestant principalities of the Holy Roman Empire and established the freedom of religion in Europe. Both treaties didn't succeed in abolishing war completely, however the introduced modes of international etiquette among states and rituals of diplomatic relation that ensured long periods of military tranquility among the various western European nations. A similar attempt was made after World War II between the three powers that led the fight and defeated Nazi Germany and its allies, namely the British Empire, the USA, and the Soviet Union (USSR), in the famous conferences of Tehran, Yalta and Potsdam. Even though these conferences did not produce any formal treaty, it was tacitly agreed among the three powers to divide the world into a western and a soviet sphere of influence, especially guaranteeing the USSR a zone of buffer states that separated it from the states under western influence. This division shaped the fate of postwar Europe and still exerts a certain influence even after the dissolution of the USSR and the transformation of the majority of the states under its influence into western type democracies that have mostly already joined the EU and the NATO.

This kind of arrangement between major powers has been considered by some authors in international relations[26] as the highest possible level of ensuring "peace." Especially Samuel P. Huntington in his book *Clash of the Civilizations*[27] pursued the idea of an almost "natural" division of the world in spheres of cultural and religious identities that according to his theory would dominate the future conflicts of humanity. Huntington does not propose actively the idea of semi-institutionalized spheres of influence as it was laid down in the conferences of Tehran, Yalta, and Potsdam, however, he seems to assert that the "normal" state of the world affair is a state of dormant war across the

[25] Cf. Francis Gardiner Davenport, *European Treaties Bearing on the History of the United States and its Dependencies to 1648* (Washington, D.C.: Carnegie Institute of Washington, 1917), 84.

[26] A field that is considered by some scholars as a science in its own right. I strongly disagree with this attitude. To my opinion IR cannot be a science because it does not provide true knowledge about the nature of peace but rather utilitarian knowledge about ensuring and maintaining a fragile state of truce.

[27] Samuel. P. Huntington, *The Clash of the Civilizations and the Remaking of the World Order* (New York: Simon and Shuster, 1996).

"fault lines" of the civilizations so that peace can ideally be achieved only within a "civilization." Between the civilizations the best state that can be achieved is a kind of eternal truce.[28]

It seems then that the division of the world did never manage to establish peace but only a temporary ceasefire, a truce, that has been used by the parties involved only as a period to prepare for the next war, or for negotiations for a better position to prepare for a war. The most profound flaw of the concept of the semi-institutionalized spheres of influence is, however, the fact that is completely ignores the will of the people, i.e., the volonté générale, on which the legitimacy of each state power rests. It also ignores the fact that cultural affiliations are at best orientation instances and do not define the nature of a human being. Proposing he establishment of spheres of influence to ensure peace is then not only practically without effect but it also poses serious ethical problems that have not yet been discussed at depth.[29]

## X. ... para bellum?

I argued in this essay that the appropriate definition of war is that it is a state of relations between states characterized by the absence of peace, and by the conventionally grounded right of the belligerent parties to mutually deny certain legal statuses. I also argued that exerting violence is not a constitutive characteristic of war, but the logical consequence of the mutual denial of legal statuses, and that the ontological foundation of war is the mental unrest of the persons that by virtue of the power vested in them by the constitutions of their states are entitled to declare and to conduct a war. War is then a privative mode of human existence, and as such war cannot be outlawed or forbidden, but can only brought to an end by subduing the opponent or by negotiations, or it can be prevented by taking appropriate measures. The best strategy to prevent wars is to render states incapable of declaring and conducting a war by transforming them into humanistic constitutional republics and encouraging them to form alliances and federations.

However, at the time being not every state on earth is a humanistic constitutional republic, and there is no royal road to attain this aim. People are free, and this means that they are also free to accept to live

[28] The Clausewitzian doctrine of "politics by other means" can be regarded as a formulation of a policy of spheres of influence. Cf. Carl von Clausewitz, *On War*, trans. Michael Eliot Howard and Peter Paret (Princeton, NJ: Princeton University Press, 2008).

[29] For the case of the Yalta conference cf. Oleg Konstantinovich Shevchenko, "Question about the Ethics of Yalta Agreements in 1945. Archaeology of Power in Historiographical Discourses," *Conatus – Journal of Philosophy* 4, no. 1 (2019): 99-108.

in a state that does not regard the protection of human dignity as its uppermost goal. On the other hand, even if all states were humanistic constitutional republics there is no guarantee that their governments should not judge that they cannot resolve a conflict with other states without resorting to war.

It is then necessary, even for states that are integrated into a federation or an alliance, to maintain means that discourage other states, federations, or alliances from declaring war than accepting an unresolved conflict within the framework of an international peace order. In other words, because of the specter of war constantly looming over the world, it is necessary to assure every state that going to war is futile, both from a political and from an economic point of view. And it is also necessary to assure every government willing to start a war that it has more to lose than to gain from such an action, including the possibility of the dissolution of its state – as it was the case with Prussia after World War II.

It seems then that the paradox of the necessity of preparing war to ensure peace is an existential truth of humanity. This may be so, but the challenge humanity faces is to render this truth irrelevant by developing other methods that render war futile. Such methods have historically evolved with the appearance of the modern humanistic constitutional republican state that respects the dignity and the rights not only of its citizens but of every person residing in its territory. Thus, citizens of other states can form interests in this state that oblige their respective states to avoid resolving conflicts by war because these interests would be harmed. In other words, the best option of minimizing the danger of war is – ideally – that every person is granted certain rights in every state. These rights, that can be subject to conditions, must include the right of free movement, the right of obtaining property, the right of residence, and the right of entering the labor market. Experience teaches that in every area of the world[30] where such rights have been implemented the number and the duration of wars has decreased significantly.

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[30] The best modern example so far is the European Union. The formation of the USA and of other large federative states in the 19th and the 20th centuries can also be regarded as part of this development.

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# Killer Robots and Inauthenticity: A Heideggerian Response to the Ethical Challenge Posed by Lethal Autonomous Weapons Systems

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**Abstract**

*This paper addresses the ethical challenges raised by the use of lethal autonomous weapons systems. Using aspects of the philosophy of Martin Heidegger, the paper demonstrates that lethal autonomous weapons systems create ethical problems because of the lack of moral agency in an autonomous system, and the inauthentic nature of the deaths caused by such a system. The paper considers potential solutions for these issues before arguing that from a Heideggerian standpoint they cannot be overcome, and thus the development and use of lethal autonomous weapons systems should be resisted and prohibited.*

**Keywords:** *Heidegger; ethics of war; weaponry; artificial intelligence; authenticity; drone warfare; moral status of robots*

Long a topic of science fiction and philosophical contemplation, lethal autonomous weapons systems – weapons systems that select and apply lethal force to targets without human intervention[1] – have moved from the realm of possibility to actuality. The use of these systems remains controversial and deniable.[2] Whether or not

[1] "What You Need to Know About Autonomous Weapons," *International Committee of the Red Cross*, accessed May 1, 2023, https://www.icrc.org/en/document/what-you-need-know-about-autonomous-weapons.

[2] Robert F. Trager, and Laura M. Luca, "Killer Robots Are Here – and We Need to Regulate

lethal autonomous weapons systems have yet been used in combat, the availability of their use necessitates urgent dialogue about the ethical issues raised by the use of these systems, and what steps, if any, can be taken to mitigate the ethical issues raised. The focus throughout this paper will be on these ethical issues, rather than the technical aspects of lethal autonomous weapons systems. In the paper I will argue that the ethical problems I raise are inherent within the concept of lethal autonomous weapons systems, and thus cannot be overcome with a technical solution.

German philosopher Martin Heidegger is often cited as amongst the twentieth century's most important thinkers. His refusal to provide an explicit ethics in his writings, nor – some would argue – to consistently communicate in a manner that is clear and direct, has provided a barrier for Heidegger's work to be applied in a military ethics context. This challenge is multiplied by Heidegger's much debated collaboration with the National Socialist regime which has led to calls to remove the philosopher's works from the philosophical canon (for example in a book by Emmanuel Faye[3]). In this paper I aim to demonstrate that despite his personal moral and political failings, Heidegger's writings on technology can still provide a useful contribution to the discussion connected to lethal autonomous weapons systems, and that this contribution can be used in a way that avoids obscurantism, whilst providing a different approach from recent research taking a similar focus (e.g., Brayford[4]). To do this, I will utilize Heidegger's own writings on technology, and also those of Hubert Dreyfus whose critique of artificial reason is built on Heideggerian foundations.

From an everyday standpoint, the ethical problems connected to the use of lethal autonomous weapons systems are similar to those arising from self-driving vehicles (see Hansson et al. for an overview of these[5]). Despite the potential for automated systems to conduct decision making more accurately in rapid high-stress situations such as car crashes or on a battlefield, the idea of non-human "intelligence" making life and death decisions without direct human input or confirmation

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Them," *Foreign Policy*, May 11, 2022, https://foreignpolicy.com/2022/05/11/killer-robots-lethal-autonomous-weapons-systems-ukraine-libya-regulation/.

[3] Emmanuel Faye, *Heidegger: The Introduction of Nazism into Philosophy in Light of the Unpublished Seminars of 1933-1935* (New Haven, CT: Yale University Press, 2011).

[4] Kieran M. Brayford, "Autonomous Weapons Systems and the Necessity of Interpretation: What Heidegger Can Tell Us About Automated Warfare," *AI and Society* (2022): 1-9.

[5] Sven Ove Hansson, Matts-Åke Belin, and Björn Lundgren, "Self-Driving Vehicles – An Ethical Overview," *Philosophy and Technology* 34, no. 4 (2021): 1383-1408.

feels uncomfortable for many. The use of lethal autonomous weapons systems is troublesome from a Heideggerian standpoint from two positions: firstly, because artificial intelligence – despite appearances – is incapable of reaching the status of moral agency, and secondly, because the kind of warfare conducted with lethal autonomous weapons systems would be inauthentic and thus unethical. In what follows, I aim to explain both these objections before making some suggestions for how we might respond to the ethical dilemmas raised.

Philosophical discomfort with the use of lethal autonomous weapons systems may be connected to the role a lethal automated weapon would play in a *jus in bello* context. Under traditional just war theory, the commanders, soldiers, and other actors are human, with all the psychological, biological, and ethical characteristics that come along with this. One could counter that advances in the area of artificial intelligence might work towards overcoming this obstacle as AI comes closer and closer to mimicking human intelligence. Despite their age, Hubert Dreyfus' writings on artificial reason in works such as *What Computers Can't Do* can help us explore this concern. Dreyfus was originally writing at a time of confidence in AI research that aimed to create a system capable of human-like reasoning. In response to this confidence, Dreyfus insisted that such efforts failed to account for the complexities of our everyday Being-in-the-world (to follow Heidegger's terminology), and what we might call "common sense."

In *Being and Time*, the work responsible for Martin Heidegger's renown, Heidegger outlines a rich and compelling explanation of humans' place in the world.[6] According to Heidegger, the mistake made in much previous philosophizing has been to consider the world in which we dwell as being a collection of external objects that we encounter and interact with, but which are wholly separate from us. For Heidegger, this atomistic vision of the self is an error. The individual person does not, has not, and cannot exist except as part of the world. Not only this, but our Being-in-the-world is essentially a Being-with-in-the-world.[7] By this, Heidegger means that our everyday way of Being – what he calls our "everydayness" – consists of existing in and as part of the world alongside others whose mode of Being is also Being-in-the-world and Being-with-others. According to Dreyfus, the complexity of this everydayness is such, that the creation of artificial intelligence has had to work from the basis of treating the background

[6] Martin Heidegger, *Being and Time*, trans. John Macquarrie and Edward Robinson (Oxford: Blackwell, 1962), 78-90.

[7] Ibid., 149-168.

or context in which the AI is functioning "as an object with its own set of preselected descriptive features."[8] All of which is to say that if Heidegger is right about the nature of human existence, and if Dreyfus is right about the insurmountable nature of replicating the complexities of everyday Being-with-in-the-world, we can assume that even a futuristic perfected lethal autonomous weapons system will not be able to achieve self-awareness, and therefore cannot be considered a moral agent.

Ethics – military ethics included – works from the basis that there are agents involved who can be held responsible for their choices and actions. A lethal autonomous weapon now seems to sit in a grey zone, lacking the personality to have agency and yet seemingly too autonomous or self-directed to be solely a tool. If we accept that even the most advanced lethal autonomous weapon system will not be the self-aware beings we encounter in movies like *Terminator* or *Blade Runner*, it is still worth considering alternative, more reduced, forms of agency. One such approach would be to consider the lethal autonomous weapons system within the context of ethical deliberations as a limited agent akin to an animal or child. Animals and children are not tools, and act in a way that is at least partly self-directed. Yet philosophically and legally, we do not hold animals or children responsible for their acts in the same way we would an adult human. By this we recognize the limitations at play in the reasoning processes that exist in an animal or child. We could perhaps see the reasoning of a futuristic lethal autonomous weapon system in the same way. This however would raise additional issues. For one, is the still-developing reasoning power of children not one of the reasons for our revulsion at the idea of using child soldiers? The AI-child/animal equivalency suffers from other weaknesses. Children and animals are usually accepted to have certain rights (albeit more limited rights in the case of animals), which provide barriers to placing them in situations where they might suffer moral or physical injury. Surely this risk of injury is the reason in the modern era we would defer from using child soldiers and animals in combat situations, even if their other limitations could be overcome. The need to protect children and animals from these is amplified by their lack of ability to understand and consent to the combat situation they are being placed in. The equivalency also still overlooks both the complexity of the decision-making processes at hand, and also the lack of self-directedness a lethal autonomous weapons system would

[8] Hubert Dreyfuss, *What Computers Still Can't Do: A Critique of Artificial Reason* (Cambridge, MA: MIT Press, 2009), 56.

have. Animals and children may be guided at least in part by their instinct or other psychological factors outside of their control, but this cannot be satisfactorily substituted with the role of algorithms in the autonomous lethal weapons system. Ultimately, even in the context of a "self-learning" system, the initial algorithms or instructions programmed into the weapon act as a technological "first cause." This first cause is not biological or theological – at least not directly. It is the action of human agents.

Instead, one might better consider the person or persons who deployed or programmed, or ordered the deployment or programming, of the lethal autonomous weapons system to be the moral agent or agents culpable for breaches of *jus in bello* principles. Though these people do not actively select a particular target and confirm the use of lethal force, it is their earlier decisions and actions which lead to the use of force.

We cannot be confident that even the most advanced lethal autonomous weapons system would be free from error, or even always superior to a human placed in the same position. As Bonnefon highlights in the context of self-driving cars, a car that is "just safer than the average human driver means that it is not as safe as many, many drivers."[9] Similarly, a lethal autonomous weapons system may make fewer mistakes than most humans under pressure, this does not mean that in all situations the system would be better than *all* humans. Yet even if we put this to one side and assume that a perfected lethal autonomous weapons system will be more accurate than even the most skillful human in *all* situations, and only harm those ethically liable to harm under *jus in bello* principles, from a Heideggerian standpoint, this shift from considering the lethal autonomous weapon system to be a limited agent to being a tool would not be sufficient for the death caused by the lethal autonomous weapons system to be considered authentic, and therefore – for our purposes – ethical.

In a chapter addressing the subject, Statman argues that the use of lethal autonomous weapons systems would result in unfair, disrespectful, and riskless warfare.[10] From a Heideggerian perspective it is the inauthenticity of the potential deaths caused by lethal autonomous

[9] Jean-François Bonnefon, "Trusting Self-Driving Cars Is Going to Be a Big Step for People," interview by Jonathan O'Callaghan, *Horizon Magazine*, April 2, 2019, https://ec.europa.eu/research-and-innovation/en/horizon-magazine/trusting-self-driving-cars-going-be-big-step-people.

[10] Daniel Statman, "Drones and Robots: On the Changing Practice of Warfare," in *The Oxford Handbook of Ethics of War*, eds. Seth Lazar and Helen Frowe, 472-487 (Oxford: Oxford University Press, 2020), 475-478.

weapons systems which creates these problems. In order to explain this, we will need to address both the role of death in Heidegger's thought and Heidegger's understanding of technology.

For Heidegger, our entire lives of achieved and missed possibilities are leading up to our deaths after which those possibilities are closed. He characterizes this as our Being-toward-death.[11] Heidegger's approach towards death in *Being and Time* is perhaps the most traditionally existential aspect of this work, finding echoes in the philosophies of Søren Kierkegaard and Jean-Paul Sartre. For Heidegger, by closing off all future possibilities for us, our death offers us the possibility to be whole. We are no longer an incomplete work in progress, but instead have completed our process of self-creation. The question of the authenticity of death is central for Heidegger. Unlike in other aspects of our life in which we can be dissolved into the undifferentiated mass that Heidegger calls "the They," our death is our own. We experience the death of others as being "there alongside"[12] but we have "no way of access to the loss-of-Being"[13] suffered by the one who dies. We will only access this experience in a genuine sense when it is us ourselves who die. All of which is to say that for Heidegger's philosophy, death is a centrally important aspect of our existence. As such, the authenticity of one's death is central to the authenticity of our existence as a whole. We need now to connect this to Heidegger's understanding of technology, which will then be connected back to lethal autonomous weapons systems as an example of a technology which, by design, causes death.

Heidegger's writings on technology, in particular his essay *The Question Concerning Technology*, sets out a skeptical, but not hostile approach to our relationship with technology. In the essay Heidegger argues "the essence of technology is by no means anything technological."[14] By this, he is addressing a tendency to view technological advancement as something inevitable or value neutral. According to Heidegger, there is an inclination to see technology as a means to an end, or a tool[15] to achieve some particular goal. If technology seems to be "threaten[ing] to slip from human control"[16] – a fear that is per-

[11] Heidegger, *Being and Time,* 279-311.

[12] Ibid., 282.

[13] Ibid.

[14] Martin Heidegger, *The Question Concerning Technology and Other Essays*, trans. William Lovitt (New York: Garland, 1977), 4.

[15] Ibid.

[16] Ibid., 5.

haps even more prescient today than when Heidegger was writing – the focus turns to our will to master this technology.[17] All of this, Heidegger argues, is a mistake caused by the faulty premise that technology is merely a means to achieve a particular end. Instead, Heidegger sets out his theory of technological Enframing – this is the argument that technology is a filter through which we encounter and interact with the world. Technological Enframing falsely appears as a neutral state masquerading as bland everydayness – similar to the way in which Zizek[18] and others view the hidden role of capitalist ideology in the modern world. Technological Enframing, according to Heidegger, causes us to encounter the world as a collection of resources to be utilized for technological processes. He uses the example of a hydroelectric plant on the Rhine reducing this great river into "something at our command."[19] As such, for Heidegger, technological Enframing changes our relationship with the world from one of dwelling to one of domination or utilization.

As part of a lecture entitled "The Danger" given in Bremen in 1949, Heidegger obliquely addresses the evils of the Holocaust through criticisms of the use of technological means to commit mass murder in the following, much debated, quotation:

> Hundreds of thousands die in their masses. Do they die? They perish. They are put down. Do they die? They become pieces of inventory of a standing reserve for the fabrication of corpses.[20]

The quotation has understandably been criticized. Firstly, "millions" would have been a much more accurate scale for the desolation than "hundreds of thousands." Secondly, Heidegger's own role in actively supporting the earlier stages of the Nazi regime which led to murder and destruction on an unprecedented scale also goes unsaid and un-apologized for in that text (or indeed elsewhere in his work). Despite this, Heidegger – flawed as he was – sets out an important point about the importance of dignity in death. He adds that "to die [...] means to

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[17] Ibid.

[18] The exploration of John Carpenter's movie *They Live* in Zizek's documentary *The Pervert's Guide to Ideology* probably sets this out the clearest.

[19] Heidegger, *The Question Concerning Technology and Other Essays*, 16.

[20] Martin Heidegger, "The Danger," in *Breman and Freiburg Lectures: Insight Into That Which Is and Basic Principles of Thinking*, trans. Andrew J. Mitchell, 44-63 (Bloomington, IN: Indiana University Press, 2012), 53.

carry out death in its essence. To be able to die means to be capable of carrying this out."[21] Following through Heidegger's philosophy on technology, we can conclude that when people are conceived of as a mere resource, we close off both their possibility of their authentic dwelling-in-the-world, and their possibility of an authentic death.

From a Heideggerian standpoint, the use and proliferation of lethal autonomous weapons systems would reduce the targets of these weapons to a mere resource in the world to be dispensed with. Their existence terminated without even a nod from another human being – even one based in an office on another continent. This discomfort surrounding authentic or honorable deaths is not just a Heideggerian concern, being also present in many traditional warrior codes (see the work done by Shannon French[22]). The use of lethal autonomous weapons systems may protect the indirect user from the moral wound of direct involvement in causing death, but surely this carries the risk of making the causing of death less challenging, and perhaps therefore less avoided. In the context of nuclear deterrence, the previous major technological threat to accepted military ethics, Roger Fisher famously made the following suggestion:

> My suggestion was quite simple: Put [the nuclear] code number in a little capsule, and then implant that capsule right next to the heart of a volunteer. The volunteer would carry with him a big, heavy butcher knife as he accompanied the President. If ever the President wanted to fire nuclear weapons, the only way he could do so would be for him first, with his own hands, to kill one human being. The President says, "George, I'm sorry but tens of millions must die." He has to look at someone and realize what death is – what an innocent death is. Blood on the White House carpet. It's reality brought home. When I suggested this to friends in the Pentagon they said, "My God, that's terrible. Having to kill someone would distort the President's judgment. He might never push the button."[23]

Forty-plus years later, we must again consider if we want the causing of death to be easier or more challenging for those who command it.

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[21] Ibid., 53.

[22] Shannon French, *The Code of the Warrior: Exploring Warrior Values Past and Present* (Lanham, MD: Rowman & Littlefield, 2017).

[23] Roger Fisher, "Preventing Nuclear War," *Bulletin of the Atomic Scientists* 37, no. 3 (1981): 16.

Perhaps a similar safeguard should be considered for political leaders who request the use of lethal autonomous weapons systems today?

There are no easy answers to the questions raised by lethal autonomous weapons systems. Heidegger's response to these challenges is to turn to art – in particular, poetry – as an alternative to technological Enframing.[24] Though this is understandable in the context of his philosophy, a more practical approach may be more effective for us in the short to medium term. The response to these conclusions, if they are correct, must be to act to prohibit the use of lethal autonomous weapons systems and to treat their use in much the same way as we do chemical weapons and other inhuman acts of war. The development, improvement, and use of lethal autonomous weapons systems is not something that is inevitable or value neutral. Whether we are civilian ethicists or military practitioners, our duty therefore is to highlight this lack of inevitability, and to encourage those in the position to think again (whether in universities, ministries of defense, or private laboratories) to reconsider.

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[24] Martin Heidegger, *The Question Concerning Technology and Other Essays*, 34-35.

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# Militarization of Everyday Life: Girls in Armed Conflicts

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**Abstract**

*The purpose of the paper is to highlight the issue of the changed nature of warfare in the last few decades of the 20th and 21st centuries, with a special emphasis on ethical aspects and the problem of using an increasing number of child soldiers. The main thesis of the paper is that the practice of using and recruiting children in armed conflicts around the world is the least recognized and most neglected form of child abuse in modern society, and that it is less a matter of culture and the lack of society's attitude towards the values of the child, and more a matter of pragmatism and generally socioeconomic phenomenon. Several key events on the world scene played a crucial role in recognizing the problem of the existence and recruitment of children in armed conflicts around the world. But what is significant is that even in these cases it is nowhere clear and visible where the girls are in armed conflicts, what is happening to them and what are their rights? By revealing the militarization of girls' everyday lives in armed conflicts and their role, girls must first and foremost become visible. The expected contribution of the paper will therefore move in the direction of highlighting and recognizing the ethical aspects of conflict-related sexual violence, of grave violations against children and ethical aspects of most severe forms of child abuse and the consequences of abuse, such as poor health outcomes and the destruction of their lives, and highlight the possible solutions to the mentioned problem within theoretical but also practical framework.*

**Keywords:** *child soldier; children in armed conflicts; girls in armed conflicts; grave violation; abuse and exploitation of children's rights; conflict-related sexual violence; gender-based violence*

When it becomes the custom and the rule to divulge another person's private life, we are entering a time when the highest stake is the survival or the disappearance of the individual.
Milan Kundera, *Testaments Betrayed*.

## I. Introductory considerations: The gender dimensions of grave violations against children in armed conflict

Armed conflicts have long-term, devastating impacts on children. These effects are compounded further by broader socio-cultural, economic, political, and environmental factors, from health pandemics to the climate crisis. Children's exposure to grave violations is shaped not only by specific forms of victimisation, but also by gender norms and other intersecting identity-based characteristics, including ethnicity, race, religion, caste, ability, economic status, sexual orientation, gender identity, and expression.[1]

In situations of armed conflict, understanding how gender and age influence risk, vulnerability and agency is essential for providing gender-responsive and age-sensitive prevention, protection, humanitarian assistance, and recovery.[2] In 2005, the UN Security Council set another precedent by creating the Monitoring and Reporting Mechanism (MRM) as one of its principal instruments for fostering accountability and compliance with international law and child protection standards and norms.[3]

The MRM has paved the way for advancing the protection of children's rights in armed conflict and engaging parties to conflict in dialogue and action plans to end and prevent violations against children. It generates information to account for violations committed and identifies parties to conflict that commit six grave violations against children: (1) recruitment and use of children by armed forces and groups, (2) killing and maiming, (3) rape and other forms of sexual violence, (4) abductions, (5) attacks against schools and hospitals, and (6) the denial of humanitarian access for children. Under the leadership of the SRSG CAAC, this information is used to engage parties to conflict in dialogue, develop and implement time-bound action plans and other forms of commitment, and programmatic responses involving the UN system

[1] UN Office of the Special Representative of the Secretary-General for Children and Armed Conflict, *The Gender Dimensions of Grave Violations Against Children in Armed Conflict* (United Nations, 2022), 7.

[2] Ibid, 7.

[3] United Nations, "Security Council Resolution 1612 (2005), S/RES/1612," July 26, 2005, https://digitallibrary.un.org/record/554197/files/S_RES_1612%282005%29-AR.pdf?ln=en.

to deliver coordinated protection and support for conflict-affected children.[4]

Strong and recurrent evidence across many contexts demonstrates that boys and girls experience conflict differently. Among other identity factors such as age, ethnicity and race, the gender inequality context and harmful social norms play a determining factor in how children are exposed and subjected to grave violations by parties to conflict.[5] Their vulnerabilities to specific conflict-related violence vary based on socio-cultural gender norms and practices, resulting in distinct impacts for girls and boys, hence requiring distinct protection and prevention responses. However, despite the mounting evidence on the gender dimensions of the impact of armed conflict on children, a systematic gender-sensitive approach in collecting MRM evidence across the board is still lacking.

What is a gender analysis and why it is so important and critical? In *The Gender Dimensions of Grave Violations Against Children in Armed Conflict*, there is a systematically approach and examination using specific research tools and methods to identify and investigate how differences in gender roles, norms, activities, needs, opportunities, access to resources, participation in decision-making, and rights/entitlements have a differentiated impact on men, women, boys, girls and LGBTQI persons in a particular context.[6]

In the MRM context, gender analysis would describe efforts, at the levels of data collection and analysis that shape prevention and response strategies, that aim to highlight the differences in the ways girls and boys are respectively exposed and subjected to conflict-related violations and the differentiated outcome for each. Adopting a gender perspective would mean no longer referring to "children" as a monolith and instead identifying violations affecting specific groups of children concerned, on the basis of sex/gender as well as other identities.[7]

Gender analysis rests on quantitative as well as qualitative data being disaggregated by sex, age, as well as other factors, so that the specific situations of each child, girls and boys, can be visible. The analysis of such data provides a more accurate representation of the distinct ways in which girls and boys are subjected to and affected by

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[4] UN Office of the Special Representative of the Secretary, *The Gender Dimensions*, 9.

[5] Ibid.

[6] Ibid.

[7] Gender analysis places a great emphasis on 'intersectional identities' because the realities and experiences of women, men, girls, boys and LGBTQI+ persons do not solely depend on gender: they intersect with other factors such as an individual's age, class, religion, education, ethnicity, income, etc. This can help identify if a particular group is targeted and why.

violations.[8] We must ask questions that lead us in a way to understand why and how a violation has affected a particular child, and what their coping/support mechanisms are. An understanding of dominant gender norms, potential gaps or discriminatory elements in existing national legislation, harmful practices, notions about masculinity, among others and their impact on the lives of girls and boys, as well as the agendas of various parties to conflict are crucial tools for a gender analysis of violations.[9] But first we must define who is child and who is child soldier in a contex of armed conflicts.

## II. Who is child?

At the heart of current debates lies the question: what is a child? This is not just a matter of semantics but a question increasingly central to practice. James and Prout in their work *Constructing and Reconstructing Childhood: Contemporary Issues in the Sociological Study of Childhood*, highlights that in 1979 the International Year of the Child was launched.

> The television screens and hoardings of affluent western societies depicted sick and starving children. What was new, however, was the gradual emergence of the concept 'the world's children' in the official discourses of international agencies such as UNICEF and WHO. This confronted the West with images of childhood contrasting strongly with those familiar to them. The consequences of famine, war and poverty for children threw the very idea of childhood into stark relief. The 'world's children' united 'our' children and 'their' children only to reveal the vast differences between them.[10]

James and Prout emphasize that childhood as we understand it, construct of the Western middle class, especially white, who believe that the child is vulnerable and in need of our protection.[11] Furthermore, they point out that childhood is a sociological and historical construct, changeable and different, varies through society, gender, cultures, and is dependent

[8] UN Office of the Special Representative of the Secretary, *The Gender Dimensions*, 9-10.

[9] Ibid.

[10] Alison James and Alan Prout, eds., *Constructing and Reconstructing Childhood: Contemporary Issues in the Sociological Study of Childhood* (London: Palmer Press, 1990), 1.

[11] Ibid.

on the social and temporal context. Therefore, the concept of childhood cannot be understood universally:

> Childhood is understood as a social construction. As such it provides an interpretive frame for contextualizing the early years of human life. Childhood, as distinct from biological immaturity, is neither a natural nor universal feature of human groups but appears as a specific structural and cultural component of many societies.[12]

The age perspective can be developed on the opposition age, the child's biological age and the cultural construct of age limits. The social life of children cannot be explained on the basis of the biological facts of life, nor can it be derived from them. This does not ignore the fact that age relations are based on the physical characteristics of youth and adolescence, but only by pointing this out does not mean that they can be derived from the naturalistic fact of life.

In situations such as war and the participation of children in armed conflicts, as we will see in the following exposition, unfortunately that construct, the definition of a portrait or image of a child and childhood that we described as vulnerable, innocent, passive victims of war unfortunately has its own flip side and acquires a different reality and context because it is not and cannot be the dominant explanation and interpretation of childhood. Namely, in war, all the depth and complexity of the problem come to the fore, because children are in a doubly weakened position, as victims and as someone forced to commit violence and accustomed to it. It is not always clear and obvious and things cannot be seen in black and white optics when we come face to face with a child warrior.[13] The paradigm shift, from describing and glorifying child warriors as heroes to interpreting them as either victims or demons, is associated with the development of human rights discourse and humanitarian movements around the world that associated the military with something criminal or deviant. [14]

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[12] Alan Prout and Allison James, "A New Paradigm for the Sociology of Childhood? Provenance, Promise and Problems," in *Constructing and Reconstructing Childhood: Contemporary Issues in the Sociological Study of* Childhood, eds. Allison James and Alan Prout (London: Falmer Press, 1990), 7-34.

[13] Darija Rupčić Kelam, *Bioetički aspekti socijalne i zdravstvene skrbi o djetetu* (PhD diss., University of Zagreb, 2017), 408-422.

[14] David M. Rosen, *Armies of the Young: Child Soldiers in War and Terrorism* (New Brunswick, NJ: Rutgers University Press, 2005), 10-15; 57.

## III. Child soldier

This brings us to the question of who is a child soldier and how to treat children on the battlefield? Adopted in April 1997, in Cape Town, The Cape Town Principles were the result of a symposium organised by UNICEF and the NGO Working Group on the Convention on the Rights of the Child to develop strategies for preventing recruitment of children, demobilising child soldiers and helping them to reintegrate into society.[15]

"Child soldier" in this document means any person under 18 years of age who is part of any kind of regular (government, State) or irregular armed force (non-government groups) in any capacity, including but not limited to cooks, porters, messengers, and those accompanying such groups, other than purely as family members. It includes girls recruited for sexual purposes and forced marriage. It does not, therefore, only refer to a child who is carrying or has carried arms. "Recruitment" encompasses compulsory, forced and voluntary recruitment into any kind of regular or irregular armed force or armed group. "Demobilization" means the formal and controlled discharge of child soldiers from the army or from an armed group.[16]

The term "psycho-social" underlines the close relationship between the psychological and social effects of armed conflict, the one type of effect continually influencing the other. By "psychological effects" is meant those experiences which affect emotions, behaviour, thoughts, memory and learning ability and how a situation may be perceived and understood. By "social effects" is meant how the diverse experiences of war alter people's relationships to each other, in that such experiences change people, but also through death, separation, estrangement and other losses.[17]

In 1998, the *Rome Statute of the International Criminal Court* (ICC), entered into force on July 1, 2002, strongly condemned the recruitment of children under the age of 15, and declared the practice

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[15] See *Global Protection Cluster*, https://www.globalprotectioncluster.org.

[16] Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, adopted by the UN General Assembly, Res. 54/263, 25 May 2000, Annex I, Articles 1 and 4; Statute of the Special Court for Sierra Leone, annexed to the 2002 Agreement on the Special Court for Sierra Leone, Freetown, 16 January 2002, annexed to Letter dated 6 March 2002 from the UN Secretary-General to the President of the UN Security Council, UN Doc. S/2002/246, 8 March 2002, p. 29, Article 4(c).

[17] Jean Claude Legrand, *Capetown Principles and Best Practices on the Prevention of Recruitment of Children in the Armed Forces and Demobilization and Social Reintegration of Child Soldiers in Africa* (New York: UNICEF, 1997).

of child recruitment as a war crime.[18] In the years that followed, *The Optional Protocol to The Convention on the Rights of the Child on the Involvement of Children in Armed Conflict* and *The Convention on the Rights of the Child* defined a child soldier as "any person under the age of 18 who is part of any armed group of any capacity and ability, other than purely as a family member."[19]

In *The Preamble* of ILO conventions on the worst forms of exploitation and abuse of children *C 182 Worst Forms of Child Labour Convention*, 1999,[20] The General Conference of the International Labour Organization, having been considering the need to adopt new instruments for the prohibition and elimination of the worst forms of child labour, as the main priority for national and international action, including international cooperation and assistance. To complement the Convention and the Recommendation concerning Minimum Age for Admission to Employment, 1973,[21] which remain fundamental instruments on child labour, and Considering that the effective elimination of the worst forms of child labour requires immediate and comprehensive action, taking into account the importance of free basic education and the need to remove the children concerned from all such work and to provide for their rehabilitation and social integration while addressing the needs of their families, and recalling the resolution concerning the elimination of child labour adopted by the International Labour Conference in 1996, and recognizing that child labour is to a great extent caused by poverty and that the long-term solution lies in sustained economic growth leading to social progress, in particular poverty alleviation and universal education.

In Artical 3 of mentioned Convention the term *the worst forms of child labour* comprises all forms of worst forms of such labor, and special emphasis is put on forced or compulsory recruitment of children for use in armed conflict and all the work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.[22]

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[18] See International Criminal Court, *Rome Statute of the International Criminal Court* (The Hague: International Criminal Court, 2002).

[19] See United Nations, "Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict," May 25, 2000, https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-rights-child-involvement-children.

[20] International Labor Organization, "C182 – Worst Forms of Child Labour Convention," no. 182, 1999.

[21] Ibid.

[22] Ibid.

The effects of child labor on the well-being of the child as a whole become a problem at the moment when the number and concentration of child workers, who worked under dangerous and extremely difficult conditions, become visible. Consequently, the establishment of the legal framework of governments and civil society defined through responsibilities that include responsibility for the most vulnerable members such as children, raises the issue of child labor as one of the fundamental and key problems. The issue of child labor becomes even more significant and aggravated if we include in that the issue of the worst forms of exploitation and endangerment of children, such as the issue of child recruitment in armed conflicts.

International Labour Organization's *Conventions 138* and *Conventions 182* are related to Child Labour. Convention No. 182 calls for the prohibition and elimination of the worst forms of child labour, which includes slavery, forced labour and trafficking. Before we proceed to further clarification, it is important to note, that not all child work is worst form of work or labor that needs to be eliminated. Namely, only that labor that deprives children of their childhood, their potential and dignity, that prevents them from getting an education and that endangers their physical and mental development bears the label of child (hard and arduous) labor.[23] Child labor is a violation of every child's right to childhood and a violation of all the government's fundamental tasks and duties to protect children. At the global level, every tenth child is a victim of exploitation for the purpose of work.[24]

Using children in armed conflict is the worst form of child labour, a violation of human rights and a war crime. As we mentioned above, *ILO Convention No. 182* defines forced or compulsory recruitment of children for use in armed conflict as a worst form of child labour. *The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict* prohibits all recruitment, voluntary or compulsory, of children under 18 by non-government armed groups and State armed forces. *The Rome Statute of the International Criminal Court* makes it a war crime, leading to individual prosecution, to conscript or enlist children under the age of 15 years or use them to participate actively in hostilities. Efforts to put an end

[23] More about difference between *child work* and *child labor* in Michael Bourdillon, "Children's Work," in *Handbook of Child Well-Being: Theories, Methods and Policies in Global Perspective,* eds. Asher Ben-Arieh, Ferran Casas, Ivar Frones, and Jill E. Korbin, 821-861 (Dordrecht: Springer, 2014), 846.

[24] See International Labor Organization, "C182 – Worst Forms of Child Labour Convention," no. 182, 1999.

to child recruitment and release children from armed forces and groups have intensified in the last decade.[25]

According to a new report by the International Labour Organization (ILO) and UNICEF, which date from 10th June 2021, global progress in the fight against child labor has stagnated since 2016, while the absolute number of children in child labor has increased by more than 8 million, in line with the increase in the global population. In 2020, 11.2% of boys worked (10.7% increase in 2016) and 7.8% of girls worked (drop down for 8.4% in 2016). Therefore, the number of children in child labour has risen to 160 million worldwide, an increase of 8.4 million children in the last four years with millions more at risk due to the impacts of COVID-19.[26]

The Report warns that globaly, nine million additional children are at risk of being pushed into child labour by the end of 2022 as a result of the pandemic. Additional economic shocks and school closures caused by COVID-19 mean that children already in child labour may be working longer hours or under worsening conditions, while many more may be forced into the worst forms of child labour due to job and income losses among vulnerable families.[27]

The girls and boys who are associated with armed forces and groups constitute only a small proportion of a much larger number of children who are trapped in other worst forms of child labour as a result of armed conflict. Conflict has a destructive impact on the socio economic environment and can increase the risk factors associated with child labour. Conflict also increases the potential for children already working to be involved in more dangerous and harmful work. These indirect effects on the worst forms of child labour last after the conflict ends. Armed conflict is one of the major challenges to meeting the target of eliminating all worst forms of child labour by 2016. This has led IPEC, in close collaboration with the ILO International Training Centre, to explore ways of addressing more systematically how conflict and post-conflict settings, including emergency situations, impact on the worst forms of child labour.[28]

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[25] "Child Labour and Armed Conflict," *International Labor Organization*, accessed September 6, 2023, https://www.ilo.org/ipec/areas/Armedconflict/lang--en/index.htm.

[26] "Child Labour Rises to 160 Million – First Increase in Two Decades. The International Labour Organization and UNICEF Warn Nine Million Additional Children at Risk as a Result of COVID-19 Pandemic," *International Labor Organization*, June 10, 2021, https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_800090/lang--en/index.htm.

[27] Ibid.

[28] "Child Labour and Armed Conflict."

## IV. Recruiting children into the armed conflicts: Child soldiers

These frightening data become even more frightening if we highlight the issue of warfare and the recruitment of children into the military ranks. Recruiting children into the military ranks is one of the worst and most obvious, grave violations of human rights norms and children's rights. In May 2000, the UN General Assembly adopted a non-binding protocol to the 1989 Convention on the Rights of the Child, illustrating the growing global sentiment against the use of children for military purposes. What the Protocol aimed at was increasing the minimum age limit for recruitment to 18 years, and in previous conventions, as we mentioned, the minimum age limit was 15 years (110 countries signed this Protocol).[29] However, this long list of conventions and laws is regularly ignored and violated. On the contrary, the practice of recruiting children into the military and armed ranks is proving to be the new standard for waging wars around the world.

This leads us to the basic thesis of the paper that the practice of using and recruiting children in armed conflicts around the world is the world's most unrecognized form of child abuse in modern society, and is less a matter of culture and the lack of society's attitude towards the value of children, and more a matter of pragmatism and a socioeconomic phenomenon.

There are three critical factors that form the causal chain of this terrifying practice. The first factor of this practice is the existence of social disorder and failures caused by globalization, wars and diseases that lead to greater global conflicts and instabilities, but also to generational disconnection within traditional communities, creating a generation gap, misunderstanding and disrespect for older members within traditional societies, creating new sources of potential recruits. The consequences of this are increasing socioeconomic dislocations. Another factor is the technological improvement and simplification of small and easily operable weapons that even children can easily handle, which made these weapons more accessible and more efficient in their use. The third, but no less important factor, is the rise of a new type of conflict (so-called postmodern wars or conflicts) which are far more brutal and criminal, which leads to changes in the modern way of warfare. All of the above resulted in the revival of a new doctrine of warfare, especially in the context of weakened and failed states. (the so-called Shadow state) and the so-called Kalashnikov lifestyle.[30]

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[29] United Nations, "Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict," February 12, 2002, https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-rights-child-involvement-children.

[30] William Reno, "Shadow States and the Political Economy of Civil Wars," in *Greed & Grievance Economic Agendas in Civil Wars*, eds. Mats Berdal and David M. Malone, 43-68 (Boulder, CO: Lynne Rienner Publishers, 2000), 54.

## V. Terrifying data

Special Representative for Children and Armed Conflict was created by the UN General Assembly in December 1996, to strengthen the protection of children affected by armed conflict, raise awareness, promote the collection of information about the plight of children affected by war and foster international cooperation to improve their protection.[31]

According to *The Report of the Special Representative of the Secretary-General for Children and Armed Conflict* to the Human Rights Council, from the June 22, 2021, prepared following consultations and covering the period from January to December 2021, more than 8,500 children were used as soldiers last year in various conflicts across the world and nearly 2,700 others were killed. UN chief Antonio Guterres' annual report to the Security Council on children and armed conflict covers the killing, maiming and sexual abuse of children, abduction or recruitment, denial of aid access and targeting of schools and hospitals. The report verified that violations had been committed against 19,379 children in 21 conflicts. The most violations in 2020 were committed in Somalia, Democratic Republic of the Congo, Afghanistan, Syria and Yemen. It verified that 8,521 children were used as soldiers last year, while another 2,674 children were killed and 5,748 injured in various conflicts.[32]

In 2021, children in armed conflict suffered a high number of grave violations. The United Nations verified 23,982 grave violations, of which 22,645 were committed in 2021 and 1,337 were committed earlier but verified only in 2021. Violations affected 19,165 children (13,633 boys, 5,242 girls, 290 sex unknown) in 21 situations and one regional monitoring arrangement. The highest numbers of violations were the killing (2,515) and maiming (5,555) of 8,070 children, follow

[31] The Special Representative of the Secretary-General for Children and Armed Conflict, *The Mandate of the Special Representative of the Secretary-General for Children and Armed Conflict*, created by the General Assembly (Resolution A/RES/51/77), following the publication, in 1996, of a report by Graça Machel entitled the "Impact of Armed Conflict on Children."

[32] "More than 8,500 Children Were Used as Soldiers in 2020, Says UN," *CNN*, June 22, 2021, https://edition.cnn.com/2021/06/22/world/child-soldiers-un-report-2020-intl/index.html; United Nations General Assembly, "Report of the Special Representative of the Secretary-General for Children and Armed Conflict to the Human Rights Council," January 9, 2023, https://reliefweb.int/report/world/report-special-representative-secretary-general-children-and-armed-conflict-ahrc5260-enar. See also the relevant reports of the Secretary-General on children and armed conflict in specific country situations, in particular in Colombia (S/2021/1022), the Central African Republic (S/2021/882), Yemen (S/2021/761), Afghanistan (S/2021/662), the Syrian Arab Republic (S/2021/398), and the report of the Special Representative of the Secretary-General for Children and Armed Conflict to the Human Rights Council on children and armed conflict (A/HRC/49/58).

by the recruitment and use of 6,310 children and 3,945 incidents of denial of humanitarian access. Children were detained for actual or alleged association with armed groups (2,864), including those designated as terrorist groups by the United Nations, or for national security reasons.[33]

Where possible, violations are attributed to parties to conflict and the annexes to the present report include a list of parties engaging in violations against children, namely the recruitment and use of children, the killing and maiming of children, rape and other forms of sexual violence against children, attacks on schools, hospitals and protected persons in relation to schools and/or hospitals,[34] and the abduction of children.

The present *Report of the Secretary-General UN Conflict-related sexual violence,* from 29 March 2022, which covers the period from January to December 2021, is submitted pursuant to Security Council resolution. According to that Report, whereas 70 per cent of children affected by grave violations are boys, the number of violations affecting boys has decreased, while the number of girls who were casualties of killing and maiming, or subjected to abduction and sexual violence, increased, particularly in the Lake Chad basin. Cases of sexual violence continued to be vastly underreported, owing to stigmatization, the fear of reprisals, harmful social norms, the absence of services, impunity, the lack of humanitarian access and safety concerns.[35] Rising inequality, increased militarization, reduced civic space and the illicit flow of small arms and light weapons also contributed, among other factors, to fueling widespread and systematic conflict-related sexual violence, even in the midst of a global pandemic.[36]

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[33] "More than 8,500 Children Were Used as Soldiers in 2020, Says UN," *CNN*, June 22, 2021, https://edition.cnn.com/2021/06/22/world/child-soldiers-un-report-2020-intl/index.html; United Nations General Assembly, "Report of the Special Representative of the Secretary-General for Children and Armed Conflict to the Human Rights Council."

[34] For the purposes of the present report, the phrase "protected persons in relation to schools and/or hospitals," used in *Security Council Resolutions 1998 (2011), 2143 (2014) and 2427 (2018),* as well as in the statements by the President of the Security Council of 17 June 2013 (S/PRST/2013/8) and 31 October 2017 (S/PRST/2017/21), refers to teachers, doctors, other educational personnel, students and patients; "More than 8,500 Children Were Used as Soldiers in 2020, Says UN," *CNN*, June 22, 2021, https://edition.cnn.com/2021/06/22/world/child-soldiers-un-report-2020-intl/index.html; United Nations General Assembly, "Report of the Special Representative of the Secretary-General for Children and Armed Conflict to the Human Rights Council."

[35] United Nations Secretary-General, "Report Conflict-related Sexual Violence," 29 March, 2022, https://reliefweb.int/attachments/7403a5e7-9e70-3b17-b390-5a7cd6248d92/SG-Report2021for-web.pdf.

[36] Ibid., 1.

The year 2021 saw a deadly mix of conflict escalation, military coups and takeovers, protracted and new conflicts, as well as violations of international law, all of which had a devastating impact on the protection of children around the world. Cross-border conflict and intercommunal violence also impacted the protection of children, especially in the Lake Chad Basin and Central Sahel regions highlights the *Annual Report of the UN Secretary-General on Children and Armed Conflict*.[37]

Girls were increasingly affected by grave violations, comprising up to 30% of all victims. The Lake Chad Basin region showed a significant increase of girls affected by grave violations. "Boys and girls often face different and evolving risks across conflict situations, and *The Gender Dimensions of Grave Violations Against Children in Armed Conflic*t published by my office in May 2022,[38] highlights the importance of better understanding the gender dimensions of child rights violations during armed conflict to inform our prevention and response strategies,"[39] emphasized the Special Representative.

The UN document *The Gender Dimensions of Grave Violations Against Children in Armed Conflic*t highlights that gender analysis can prevent overlooking some aspects of the nature of violations that are underreported, often on the basis of sex/gender – for example, sexual violence against boys or girls, or their recruitment and use by parties to conflict. Disaggregated data can more effectively equip child protection actors with gender-specific prevention and response strategies, so they can develop interventions that are much better tailored to the differentiated protection needs of girls and boys. Gender analysis can also then assist child protection actors in monitoring the effectiveness of these interventions. The incorporation of the gender approach shows that this is a better approach, when we talk about ways of gender-based violations of children's rights.[40]

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[37] For more details and data about grave violation of children see United Nations, "Annual Report of the UN Secretary-General on Children and Armed Conflict," July 11, 2022, https://childrenandarmedconflict.un.org/document-type/annual-reports/; https://reliefweb.int/report/world/children-and-armed-conflict-report-secretary-general-a76871-s2022493-enarruzh.

[38] UN Office of the Special Representative of the Secretary-General for Children and Armed Conflict, *The Gender Dimensions of Grave Violations Against Children in Armed Conflict*.

[39] United Nations, "Statistics Should Never Overshadow the Individual Suffering of Children in Armed Conflict, 'We Must Redouble Efforts to End Grave Violations,'" July 11, 2022, https://childrenandarmedconflict.un.org/2022/07/statistics-should-never-overshadow-the-individual-suffering-of-children-in-armed-conflict-we-must-redouble-efforts.

[40] UN Office of the Special Representative of the Secretary-General for Children and Armed Conflict, *The Gender Dimensions of Grave Violations Against Children in Armed Conflict*, 11.

There are several ways in which gender considerations should be reflected. Information on the violation of children's rights should be disaggregated according to sex (girls and boys) during data collection. Further, certain violations of children's rights may constitute gender-based violence, as the violation is particularly directed against children due to their sex or identity.[41] Everyone who is part of the programs that help those children in recovering and reintegration after being forced or involved in armed conflicts, child protection practitioners or MRM,[42] should be sensitive to the specific needs and coping mechanisms of girls and boys when dealing with the cases of the violations against children. Particular sensitivity must be toward child's sexuality or self-image. We must be aware that girls and boys have different ways of experiencing violations, different coping mechanisms and different needs. MRM staff and all those who works with the children affected by this grave cases of violence need to be sensitive to this, as well as to the responses needed by children.

The information does not represent the full scale of violations against children, as verification depends on many factors, including access. The report presents trends and patterns of violations, and engagement with parties responsible for violations that might lead to behavioural change, including promotion of accountability and inclusion of child protection provisions in peace processes.[43] Statistics should never overshadow the individual suffering of children in armed conflict.

## VI. Causes and consequences of this situation

The biggest burden and the greatest consequences are on the youngest part of the population, the children. One quarter of the world's youth survive on less than a dollar a day, 250 million children live on the streets, 211 million of them have to do hard work in order to survive for themselves and their families, 115 million children have never attended school. One third of children in Africa suffer from severe hunger.

Insecurity, poverty and all of the above contribute to synchronized failures at multiple levels: economic, social, ecological, political,

[41] Ibid., 11.

[42] Monitoring and Reporting Mechanism on Grave Violations against Children in Situations of Armed Conflict. This publication is a tool for field practitioners implementing the Monitoring and Reporting Mechanism (MRM). The MRM was established in 2005 by the Security Council to foster accountability and compliance with international law and child protection standards. Over the years since, the work of child protection practitioners implementing the MRM has yielded real results for children in some of the most difficult and dangerous places on earth.

[43] "More than 8,500 Children Were Used as Soldiers in 2020, Says UN," *CNN*, June 22, 2021, https://edition.cnn.com/2021/06/22/world/child-soldiers-un-report-2020-intl/index.html.

environmental, socioeconomic fragmentation, the dissolution and collapse of values and norms, the weakening of state legitimacy and role, from which violent conflicts and terrible exclusion and distress arise. Among young people there is a lack of perspectives and visions. All of this leads us to lost youth, weakened social structure and relations between members of society, and everything breaks through the most vulnerable, through the children, making them even more vulnerable, insecure and more susceptible to recruitment. This is the so-called a social bomb in which desperate and excluded children represent a large labor pool, making them vulnerable to the illegal economy, organized crime and armed conflicts.

Terrorist groups and transnational criminal networks continued to destabilize some of the most fragile contexts, including through the use of sexual violence as a tactic. In some situations, gender-based hate speech and incitement to violence were evident in public discourse, including on digital platforms. Women peacebuilders and human rights defenders were often specifically targeted, including through sexual violence and harassment as a form of reprisal, in order to exclude them from public life. Activists and advocates working to highlight the plight and defend the rights of survivors of conflict-related sexual violence, and to support their access to justice and services, were also subjected to reprisals and intimidation. Sexual violence further impeded women's livelihood activities, against the backdrop of economic shocks and poverty driven by protracted conflict and pandemic-related restrictions.[44]

These trends emerged at a time when the global public health crisis as a result of the coronavirus disease (COVID-19) had already diminished humanitarian access and diverted resources away from life-saving services to address gender-based violence and deeply affecting survivors, in particular displaced women and girls. Military spending outpaced investment in pandemic-related health care in fragile and conflict-affected countries.[45]

Systematically marginalized, withdrawn from the margins of society, excluded, desperate, easy targets and prey, vulnerable, alienated, angry, become lonely, accustomed to violence and conflicts, living in constant chaos and daily militarization, looking for security and structure, a sense of control and belonging. This type of life and the situation in which these children find themselves, Lorraine Macmillian names *the essential militarization of life and the omnipresence of sol-*

[44] United Nations Secretary-General, "Report Conflict-related Sexual Violence," 1.

[45] Ibid.

*diers around them*.[46] In such a situation of moral vacuum, rebel groups appeal and offer security and a sense of control and power, belonging, a sense of cohesion, security, commitment, purpose and meaning.

> When one has no left on the earth, neither father, nor mother, neither brother nor sister, and when one is small, a little boy in a damned and barbaric country where everyone slashes each other's throats, what does one do? Of course, one becomes a child solider, a small soldier, to get one's fair share of eating and butchering as well. Only that remains.[47]

The issue of the changed nature of warfare in the last few decades of the twentieth and twenty-first centuries, with a special emphasis on the use and increasing mass availability of child soldiers, the implementation of the doctrine of the use of child soldiers, the traditional strategy of conducting war, significantly and radically changes everything. What can be seen is the breakdown of warrior honor and the rules of warfare.

> Once such violence erupts, a new kind of conflict takes place here ancient warrior codes, which once dictated unwritten rules that minimized bloodshed and cruelty, and have been swept away by the onslaught of modern warfare.[48]

Economy, i.e. profit is the main driver and origin of war, money, resources, supremacy and power over territories (eg: Sierra Leone diamond fields, DRC mines of coltan ore needed for motherboards of laptops and cell phones). The classic philosopher of war, stated: "Politics is the womb in which war develops."[49] Another author, Michael Wessels, points out:

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[46] Lorraine Macmillan, "Militarized Children and Sovereign Power," *The Militarization of Childhood: Thinking Beyond the Global South*, ed. J. Marshall Beier, 61-76 (New York: Palgrave Macmillan, 2011).

[47] See Ahmandou Kourouma, *Allah is Not Obliged*, trans. Frank Wynne (New York: Penguin Random House, 2000).

[48] Michael Ignatieff, *The Warrior's Honor: Ethnic War and the Moder Conscience* (New York: Penguin Books, 2006), 109.

[49] See Carl von Clausewitz, *On War*, eds. and trans. Michael Howard and Peter Paret (Princeton, NJ: Princeton University Press, 1989).

> Since the problem of child soldiers is based on the structural violence of poverty and social inequality, the priority is to reduce poverty accompanied by a fairer distribution of resources [...] ecological degradation, failed states and wild militarism, poverty and social injustice constitute the root of most armed conflicts in the world.[50]

The problem of child soldiers goes beyond the boundaries of gender. In isolated cases in the past, when children were used on the battlefield, they were exclusively boys. Today, although most child soldiers are still boys, there are a significant number of girls under the age of 18. About 30% of the world's armed forces that recruit child soldiers include girls. Around the world, it is estimated that girls make up 10% to 30% of children in combat forces.

During armed conflicts, girls are particularly susceptible and subjected to various systematic forms of violence and violations of their rights that have mental, psychological, physical, spiritual, emotional and material consequences. These forms of violence are forced kidnapping, forced imprisonment, human trafficking, various tortures, violence, and other forms of inhumane treatment, amputation and mutilation, forced recruitment, conversion into sex slaves, rape, sexual exploitation, increased exposure to sexually transmitted diseases and HIV infection/ AIDS, forced prostitution, forced marriage and forced pregnancy or forced abortion. Armed conflicts impose unimaginable suffering and consequences on the lives of girls. All this creates the need for even better documentation, monitoring and reporting on this type of violence against girls in order to develop and strengthen policies and programs for the prevention of violence against girls.

Most often, girls are not recognized, invisible and their presence, rights and needs are not recognized in armed conflicts and groups, and even in the post-conflict period, demobilization and social integration, which is the most difficult process of regaining childhood. A possible pregnancy is also a big problem, the question of the fate of the girl and her child if she keeps him, her problematic relationship with the bully who tied her to him in this way. Because of everything, they feel fear, guilt and shame about it.

Often, the real data on the numbers of participation and involvement of girls are kept secret, so that this further complicates the possibility of their rehabilitation and return to the community. For example,

[50] Michael Wessells, "How We Can Prevent Child Soldiering?" *Peace Review* 12, no. 3 (2000): 409.

the governments of Northern Uganda, Mozambique and Sierra Leone conceal, hide, deny and manipulate data on the involvement of girls in their official military ranks, while on the other hand, they highlight their presence in rebel ranks.

## VII. The situation is more difficult for girls

Where are the girls in all this if they are not counted as part of the armed forces? How to help them if they are invisible and do not exist? Who will heal them, help them, how will they return to their communities if they don't exist? Girls are given various names, such as women in captivity, wives of commanders, followers of rebels and sex slaves, and in this way their role is minimized, reduced and made less visible. That is why many NGOs propose the name of the girl in armed conflicts and groups.

Intersecting humanitarian, security and political crises exacerbated the root causes of conflict-related sexual violence, including militarization, the proliferation of arms, impunity, institutional collapse, structural gender-based inequality and harmful social norms. Protection is the bedrock for women's full, equal and meaningful participation in political, social and economic processes. Women and girls must be able to safely participate in all peace and security decision-making processes. [51]

Female soldiers are generally relegated to a footnote in analyses of contemporary warfare. As the topic of women and war is usually considered in terms of female soldiers, little is said of the relationship between women and armed conflict in general. But the analyses of warfare differ significantly from the front-line experiences of war. Women stand as general targets – raped, maimed, and murdered – in the dirty war construction of a *culture of terror*[52] intended to subdue the civilian community into social and political acquiescence.[53]

Therapeutic narratives during psychotherapy revealed that the most girl soldiers shared a common history. Abducted as children, the majority were raped within the first 24 hours, before being 'initiated' involving being forced to perpetrate an extreme act of violence against captured civilians. During the period of captivity, they were repeatedly

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[51] United Nations Secretary-General, "Report Conflict-related Sexual Violence," 5.

[52] Michael Taussig, "Culture of Terror – Space of Death. Roger Casement's Putumayo Report and the Explanation of Torture," *Comparative Studies in Society and History* 26, no. 3 (1984): 467-497.

[53] Carolyn Nordstrom, "Women and War: Observations from The Field," *Pasadena* 10, no. 1 (1991): 1.

raped, forced to adopt the role of 'wives of soldiers' and were forced to continue to commit atrocities and to engage in socially and culturally unacceptable behaviours including eating human flesh. Towards the end of the insurgency many of the girls escaped. These girls return to the village, but the community stigmatizes them, considering them members and supporters of odious rebel groups. They were also stigmatised as a result of the SGBV (sexual and gender-based violence) they had experienced and were labelled 'kisigira' in Swahili, meaning 'worthless.'[54]

In addition, after returning to their communities and homes, their fear of committing violence again and continuing the chain of violence is formidable, as well as they are perceived as being likely to have sexually transmitted infections. These women continued to carry out acts of violence within the community, reinforcing the rejection and exclusion by family and community members.

## VIII. Sexual violence as a tactic of war and terrorism

In the background of ongoing political and security crises, connected by trends of militarization and the proliferation of arms, sexual violence continued to be used as a tactic of war, torture and terrorism.[55] Shrinking civic space, coupled with misogynistic threats, were worrying trends observed in Afghanistan, Libya, Myanmar, the Sudan and Yemen, where sexual violence was perpetrated against political activists, including during demonstrations.[56]

The term "conflict-related sexual violence," as used in the presented *Report of the Secretary-General UN Conflict-related sexual violence*, refers to rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, enforced sterilization, forced marriage, and any other form of sexual violence of comparable gravity perpetrated against women, men, girls or boys that is directly or indirectly linked to a conflict. This link may be evident in the profile of the perpetrator, who is often affiliated with a State or non-State armed group, including those designated as terrorist groups by the United Nations. The profile of the victim, who is frequently an actual or perceived member of a persecuted political, ethnic or religious minority, or targeted on the basis of

[54] Katy Robjant, Anke Koebach, Sabine Schmitt, Amani Chilbashimba, Samuel Carleial, and Thomas Elbert, "The Treatment of Posttraumatic Stress Symptoms and Aggression in Female Former Child Soldiers using Adapted Narrative Exposure Therapy – A RCT in Eastern Democratic Republic of Congo," *Behaviour Research and Therapy* 123 (2019): 2.

[55] United Nations Secretary-General, "Report Conflict-related Sexual Violence," 4.

[56] Ibid.

actual or perceived sexual orientation or gender identity. The term also encompasses trafficking in persons for the purpose of sexual violence and/or exploitation, when committed in situations of conflict.[57]

Conflict-related sexual violence, where family members were forced to witness rape, daily contribute to already eroded family networks. The collapse of protective social networks and prevailing insecurity exposed internally displaced, refugee and migrant survivors to further violence in the Central African Republic, the Democratic Republic of the Congo and elsewhere. In certain contexts, the diversion of resources to military efforts undermined health and social services. Migrant and refugee women and girls in conflict-affected areas, particularly those held in detention facilities, continued to face heightened risks of sexual violence in Libya and Yemen.[58]

Across diverse contexts, women and girls suffered ongoing attacks and threats of sexual violence engaging in daily livelihood activities. In the Central African Republic, women and girls included in agriculture, gathering firewood or returning home to retrieve essential items after displacement, were raped and in some cases abducted and held by armed groups.[59]

Localized armed violence also intensified at the subnational level in contexts such as the Democratic Republic of the Congo and South Sudan. In the Sudan, from July to October 2022, there was an increase in reported incidents of sexual violence corresponding to the farming season, especially along transhumance routes. Economic hardship compounded by political instability and structural gender-based inequality deepened the risk of conflict-related sexual violence. In Afghanistan, the loss of livelihoods, in many cases owing to the Taliban takeover and ensuing inflation, caused many to resort to negative coping strategies, with reports indicating the sale or forced marriage of women and girls, including to Taliban fighters.[60] In almost all settings covered in the present Report, sexual violence impeded women's participation in social, political and economic life, highlighting the importance of addressing the root causes of sexual violence as part of promoting substantive equality in all spheres.

There are vast number incidents of conflict-related sexual violence and discernible trend of sexual violence, exploitation, and ongoing cy-

[57] Ibid., 2.

[58] Ibid., 5.

[59] Ibid.

[60] Ibid.

cles of violence in the context of abduction and trafficking, including by United Nations designated terrorist groups operating in conflict-affected settings in which State presence and the rule of law remain weak. The present Report is limited to incidents of conflict-related sexual violence that were verified by the United Nations. While it conveys the severity and brutality of recorded cases, it does not purport to convey the full scale and prevalence of these crimes.

What are the impacts of war on the participants, and do they vary by gender? Existing theory and evidence are both inconclusive and focused on males. Children are disproportionately affected by conflict, and the impact of conflict on children is inherently gendered.

Gender and age are among the many factors that shape the ways in which children are at risk and what resources are available for their protection, both within the family and the broader community. But gender analysis requires more than sex disaggregated data, as these numbers alone will not increase understanding about the individual, group, or environmental risk factors, or the profile and motivation of the perpetrators.

It is essential to recognize that children, regardless of their gender, are exposed to any type of violation in the context of conflict. Grave violations rarely occur in isolation and are often interlinked with socio-economic circumstances. Therefore, a gender analysis of the grave violations must take these issues into account and entail an understanding of how risks are exacerbated due to gender stereotypes and the complex elements related to each violation.

In *The Gender Dimensions of Grave Violations Against Children in Armed Conflic*t, there are the key elements of the six grave violations against children, that we must take in to account, while conducting a gender analysis. These are: 1) Recruitment and Use; 2) Killing and Maiming; 3) Rape and other forms of Sexual Violence; 4) Attacks against Schools and Hospitals; 5) Abduction; and 6) Denial of Humanitarian Access.[61]

New data and a tragic natural quasi-experiment in Uganda, for example, allow us to estimate the impacts of war on both genders, and assess how war experiences affect reintegration success. As expected, violence drives social and psychological problems, especially among females. Unexpectedly, however, most women returning from armed groups reintegrate socially and are resilient.[62]

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[61] More about six grave violations in UN Office of the Special Representative of the Secretary, *The Gender Dimensions*, 13.

[62] Jeannie Annan, Christopher Blattman, Dyan Mazurana, and Khristopher Carlson, "Civil War,

Girls suffer from severe forms of rights violation and violence against them, especially gender-based violence (sexism, misogyny, extreme forms of violence against girls and their bodies by boys and men). Girls who become pregnant, usually through rape, and their return to communities as well as their children whom they decide to keep, are a particularly big problem and more difficult to integrate. They are often not accepted without any chance of recovery. There is also a huge problem of sexually transmitted diseases, because many of these girls are intentionally infected, especially with the HIV/AIDS virus.

Concerted action and investment are urgently needed to prevent sexual violence in the first instance and to tackle the structural root causes that perpetuate these crimes. Until now, little attention has been paid to prevention in conflict and post-conflict settings, including to preventing the escalation of sexual violence, the revictimization of survivors and the transgenerational transmission of trauma. Despite these gaps, the road map for prevention is clear.[63]

Realizing that girls are important and essential for the recovery of entire communities means realizing that they are not just an escort for soldiers and rebels, they are essential, and their role is crucial in healing. What we need, as we highlighted earlier in this article, is gender-based policy, advocacy, and programs to make girls' presence visible.

## IX. Reasons for joining the armed groups

Although some girls join armed groups voluntarily, many of them are forced, and many claim that it was their only choice to escape the constant violence and terrifying attacks on their villages. Many of them joined armed groups to escape hunger and poverty. Girls often believe that within these groups they will be protected and saved from the climate of fear, terror and insecurity in which they live during frequent attacks, looting and robberies by these armed groups. Sometimes the parents themselves encourage them to join, because they think that having a child in armed group can be good for them as well because it will provide them with protection and security against attacks.[64]

Many of them themselves "choose" to join one of the groups provided, in the hope that they will thus provide themselves with a better

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Reintegration, and Gender in Northern Uganda," *The Journal of Conflict Resolution* 55, no. 6 (2011): 877-908.

[63] UN Office of the Special Representative of the Secretary, *The Gender Dimensions*, 13.

[64] More about reasons see in Suzan Tiefenbrun, "Child Soldiers, Slavery and the Trafficking of Children," *Fordham International Law Journal* 31, no. 2 (2007): 415-486.

chance of survival, actually running away from the violence they suffer in their communities, as a strategy to protect themselves from it and gain better chances to meet their basic needs. Recruited, conscripted, chose to join themselves, many were abducted, as we mentioned, but most of them want to protect themselves due to fear of further violence against them by their community and parents who try to get financial benefit from recruiting girls. This was tempting for desperately poor girls living in a climate of high insecurity.

The significant majority of the girls bitterly regretted their decision to join. Once in the group, they were sexually abused by the very people they thought would protect them. For those whose parents had encouraged them to join, adult betrayal was even more complete. The majority urged to advise other girls of the horrors of life in the bush, in case they were tempted to join.[65]

Another experience that seems to have left lasting psychological scars on many girls was being forced to participate in looting and living off stolen goods. The involvement of these girls in crimes and acts that are absolutely repugnant to them creates a deep sense of shame and guilt in them. Both "volunteer" recruits and abductees "defined some of their most unbearable moments as witnessing violent pillaging, then benefitting from the loot. They spoke of their distress at profiting from these acts of violence."[66]

The girls who had been abducted or had joined an armed group in the hope of a better life, instead of better life that they hoped for, they were physically and emotionally abused and experienced extraordinary violence, loneliness and terror, including daily threats of death. When they finally came home, most were met with suspicion, humiliation and discrimination, if not outright rejection, and were clearly made to feel that they were considered lesser human beings. Girls who had been abducted were blamed and rejected as much as those who had joined "voluntarily."[67]

These girls spoke of many forms of rejection: discrimination, humiliation, insults, blame, bullying by families, friends, neighbours, or teachers. Along with the ensuing isolation, the girls overwhelming-

[65] "What the Girls Say: Improving Practices for the Demobilisation and Reintegration of Girls Associated with Armed Forces and Armed Groups in Democratic Republic of Congo," *Child Soldiers International*, June 19, 2017, https://reliefweb.int/report/democratic-republic-congo/what-girls-say-improving-practices-demobilisation-and-reintegration.

[66] Ibid., 24.

[67] UN Office of the Special Representative of the Secretary, *The Gender Dimensions*, 13.

ly defined this as the source of their deepest emotional suffering.[68] Many of the girls had returned to home. For some, the situation had improved, although one could sense that the wound had not entirely healed, but many were still victimized. Unfortunately, many of the traditional roles assigned to them by society are also imposed on them within the armed groups they belong to (cooking, washing, serving men, cleaning...). Even after reintegration, they are forced to return to these traditional patriarchally imposed roles, which does not increase their chances of recovery and better living conditions.

What is important to emphasize is that girls go through deep personal changes and changes in identity and personality. In their roles within the armed groups, they come to the realization that they can no longer accept traditionally imposed roles and that they cannot return to their previous lives. They were often subjugated and subjected to severe forms of gender-based violence and atrocities with little or no possibility of autonomy. Thus, they constantly relive the experience of second-class persons in the reintegration process, compared to boys (so-called second-class reintegration). What is needed is to reduce the feeling of segregation, marginalization and second-class status in the DDR process (disarmament, demobilisation and reintegration process).

All these frightening statistics and situations of enormous and grave violence against children, especially girls in armed conflicts, pointing out to deep and radical changes in the rules of war and the breakdown of war norms, which are radically changing. Graca Machel, the former first lady of Mozambique and wife of Nelson Mandela, perhaps best described the breakdown of the norms and rules of war.

She points out that the statistics are shocking enough in themselves, but the conclusions that can be drawn from these data are even more frightening. More and more of the world is being drawn into this desolate moral vacuum. It is a space devoid of the most fundamental human values, a place where children are slaughtered, raped, and mutilated, a space where children are exploited as soldiers, a space where children are starved and exposed to extreme brutality. Such unregulated terror and violence speak of liberated victimization. There are still some abysses and depths into which people can sink.[69]

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[68] Ibid.

[69] UNICEF and Office of the Special Representative of the Secretary-General for Children and Armed Conflict United Nations, *Machel Study 10-year Strategic Review Children and Conflict in a Changing World* (New York: UNICEF, 2009).

## X. "Lost value": Returning to home

Some reports reveal cycle of violence and rejection suffered by former girl soldiers in Democratic Republic of Congo and it reveals why some are re-joining armed groups. The majority of girl soldiers interviewed were sexually abused by soldiers. Up to 40% of child soldiers in DRC are girls, but of thousands released by the UN only 7% were girls. Stigmatisation, family rejection at home causing some to re-join armed groups. Girls coming out of armed groups in Eastern DRC are often rejected by their families when they return home, with a number of re-joining groups that abused them as a result, reveals a new report from *Child Soldiers International*. Released on the International Day for the Elimination of Sexual Violence in Conflict, *What the Girls Say*, reveals the girls' experiences in their own words. Most girls interviewed were sexually abused by the armed groups. For many, sexual violence was a daily event. For some, sexual violence in their own homes, was itself the motivation to join the armed groups.

Despite the daily violence of life with the armed groups, many girls reported that returning home to rejection and stigma they faced as survivors of sexual violence was the source of their deepest emotional suffering. Some who are unable to bear rejection from family and friends upon returning even choose to rejoin. Others do not risk attempting to return home at all. [70]

Decades-long conflict in DRC has created thousands of underage soldiers. Girls account for up to 40% of them but between 2009 and 2015, only 7% of thousands released by the UN in DRC were girls.[71] Many others escaped independently. For the girls who did return home, the overriding desire was access to education.

There are no accurate statistics on the number of girls who have been, or still are, associated with armed groups in DRC. What we do know is that, between January 2009 and November 2015, of 8,546 formerly associated children registered by the United Nations Organization Stabilization Mission in DRC (MONUSCO), only 600 (7%) were girls.[72] In contrast, MONUSCO estimates that girls make up a significantly higher percentage – 30 to 40% – of all children associated with

[70] Ibid.

[71] MONUSCO, "Invisible Survivors: Girls in Armed Groups in the Democratic Republic of Congo from 2009 to 2015," November 2015, https://monusco.unmissions.org/sites/default/files/151202%20Girls%20in%20Armed%20Groups%202009-2015_ENGLISH_FINAL.pdf.

[72] Ibid.

armed groups.[73] These figures suggest that demobilisation efforts in DRC fail to reach most girls. The majority of the girls claim that they had not been officially demobilised but had escaped. Most also said they "left many girls behind" when they left the armed group.[74]

How can we explain the lack of attention towards girls in assistance programs? Although it is true that some girls returning from the bush keep a low profile out of shame and therefore do not come forward to seek support, we also found that NGOs and RECOPE members in some areas had made insufficient efforts to proactively identify and reach out to girls. Discussions with RECOPE members seems to suggest that sociocultural perceptions are at play and result in some degree of inattention towards girls. They are often perceived as less threatening than boys, who are assumed to have been fighters and therefore more prone to violence, while girls are categorised as "wives," making it easier to forget their silent suffering.[75] Sandra Olsson, program manager at Child Soldiers International, said:

> Social exclusion and stigmatisation are far more prevalent among girls. It is linked to a perceived 'loss of social value' after having had sexual relations outside marriage. Their suffering is often misunderstood or completely overlooked, and their most basic psychosocial and emotional needs are woefully unaddressed.[76]

An additional aggravating circumstance, as we have already mentioned, is that upon their return, the girls are exposed to further violence by their previous communities that do not accept them, which significantly and further complicates their recovery from the severe physical, psychological, social and spiritual traumas they were exposed to.

We can identify five typical responses to the rejection (or the fear of rejection) these girls faced: anger/rebellion, self-blame, going back, staying, and exile. These reactions and behaviours, however, were not necessarily mutually exclusive.[77] Most of them seemed to have prob-

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[73] Ibid.

[74] "What the Girls Say: Improving Practices for the Demobilisation and Reintegration of Girls Associated with Armed Forces and Armed Groups in Democratic Republic of Congo," *Child Soldiers International*, June 19, 2017, https://reliefweb.int/report/democratic-republic-congo/what-girls-say-improving-practices-demobilisation-and-reintegration.

[75] Ibid., 14.

[76] Ibid., 11.

[77] Ibid.

lems whit anger, shame and with internalized blame and withdrawn from community life, despite longing to be included. Some tried to regain the acceptance of their community, for example by working harder in the fields, taking the blame for others, or avoiding joining in dances or socialising with boys. Yet others could not bear the pain of rejection and decided to rejoin the Boys and girls often face different and evolving risks across conflict situations, talk about and gender dimensions of grave violations against children in armed conflict, highlights the armed group they had originally left.

The rooting of such feelings of mistrust towards the girls in the collective and social consciousness has important implications for programs and strategies which are to support their reintegration. The girls attributed family and community rejection to the belief that, having "known men," they had lost their social "value." The notion of "loss of social value," and understanding how it can be regained, is at the core of reintegration programming.[78] The girls were clear: if they could regain social value, family and community acceptance would automatically follow. Research has shown how stigma prevents psychosocial recovery.[79]

The most important predictor of successful and long-term reintegration for children formerly associated with armed forces and armed groups is acceptance by their families and communities. Acceptance is essential if a child is to adapt, find their place again in the family and community and regain and recover their psychosocial wellbeing.[80]

Unfortunately, due to all of the above, the majority of girls are still excluded from the DDR program (disarmament, demobilization and reintegration). Most often, they return home spontaneously, on their own, and unfortunately their psychological, physical, mental and spiritual health is severely damaged, without any help in healing the trauma.

The positive psychosocial impact when a community fully accepts a child returning from an armed group is "associated with the child's reduced depression at follow up and improved confidence and prosocial

[78] Ibid.; Office of the Special Representative of the Secretary-General for Children in Armed Conflict, *The Gender Dimensions of Grave Violations Against Children in Armed Conflic*t, 13.

[79] Joanne N. Corbin, "Returning Home: Resettlement of Formerly Abducted Children in Northern Uganda," *Disasters* 32, no. 2 (2008): 316-335; UNICEF, "SWAY – The Survey of War Affected Youth, Making Reintegration Work for Youth in Northern Uganda," 2007; Theresa S. Betancourt, Jessica Agnew-Blais, Stephen E. Gilman, David R Williams, and B. Heidi Ellis, "Past Horrors, Present Struggles: The Role of Stigma in the Association Between War Experiences and Psychosocial Adjustment among Former Child Soldiers in Sierra Leone," *Social Science and Medicine* 70, no. 1 (2010): 17-26.

[80] Office of the Special Representative of the Secretary-General for Children in Armed Conflict, *The Gender Dimensions of Grave Violations Against Children in Armed Conflic*t, 13.

attitudes regardless of levels of violence exposure."[81] This is particularly relevant to DDR programming for girls, given that girls are more vulnerable than boys to discrimination, stigmatisation, and rejection upon return.

In discussions with some girls in mentioned Report from Child Soldiers International, published 19 June 2017, released on the International Day for the Elimination of Sexual Violence in Conflict, *What the Girls Say*, Report reveals the girls' experiences in their own words. Most girls interviewed explored the different avenues through which they could recover their "lost social value." One of them are: being "humble and obedient," "working hard," "accepting unjust accusations," and "avoiding boys" were all cited by the girls as ways to keep themselves out of trouble but not necessarily to become accepted. But these were not behaviours which all girls were willing or able to follow.[82] On the other hand, training for income-generating activities was seen by all girls as value-giving. Similar value was attributed to the possession of reliable means for a livelihood such as livestock, farming tools and seeds. Unfortunately, these opportunities had been limited. Finally, most girls asserted that going to school was the best way to regain "lost social value," a place in society and a chance at a normal life, including marriage.[83]

## XI. Towards a conclusion: Ethical perspectives

Recruiting children into the military ranks is one of the worst and most obvious, grave violations of human rights norms and children's rights. Girls were increasingly affected by grave violations, comprising up to 30% of all victims. During armed conflicts, girls are particularly susceptible and subjected to various systematic forms of violence and violations of their rights that have mental, psychological, physical, spiritual, emotional, and material consequences. Most often, girls are not recognized, invisible and their presence, rights and needs are not recognized in armed conflicts and groups, and even in the post-conflict period, demobilization, and social integration, which is the most difficult process of regaining childhood.

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[81] Theresa Stichick Betancourt et al., "Sierra Leone's Former Child Soldiers: A Follow-Up Study of Psychosocial Adjustment and Community Reintegration," *Child Development* 81, no. 4 (2010): 1077-1095.

[82] "What the Girls Say: Improving Practices for the Demobilisation and Reintegration of Girls Associated with Armed Forces and Armed Groups in Democratic Republic of Congo," 11.

[83] Ibid.

There is a significant increase of girls affected by grave violations. Boys and girls often face different and evolving risks across conflict situations, talk about and gender dimensions of grave violations against children in armed conflict, highlights the importance of better understanding the gender dimensions of child rights violations during armed conflict. Gender analysis can prevent overlooking some aspects of the nature of violations that are underreported, often on the basis of sex/gender – for example, sexual violence against boys or girls, or their recruitment and use by parties to conflict. Disaggregated data can more effectively equip child protection actors with gender-specific prevention and response strategies, so they can develop interventions that are much better tailored to the differentiated protection needs of girls and boys. Gender analysis can also then assist child protection actors in monitoring the effectiveness of these interventions. The incorporation of the gender approach shows that this is a better approach, when we talk about ways of gender-based violations of children's rights.

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# Killing and Dying for Public Relations

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**Abstract**

*My starting point is the first major American military action in World War II in Europe, "Operation Torch." The action was controversial because the American military regarded it as militarily useless, if not counterproductive. But the military was overruled by President Roosevelt on the grounds that, while it was not militarily necessary, it was politically justified. This indifference to military necessity seems to violate standard rules about the legitimacy of military force. The larger question it raises is the relation between military concerns and political ones in warfare. Much of this essay explores the relation between these two dimensions in war: the military dimension and the political dimension. I argue that the second dimension is the most important one, as well as the most problematic one for the legitimacy of war. Yet it is ignored by standard just war theories. I then return at the end to consider again the problems raised by "Operation Torch," and especially the question of the harms inflicted on a country's own soldiers – in the name of killing and dying for public relations.*

**Keywords:** *war; soldiers; World War II; harms; just war theory; military necessity*

> Suddenly war again became the business of the people – a people of thirty million, all of whom considered themselves to be citizens. The people became a participant in war; instead of governments and armies as heretofore, the full weight of the nation was thrown into the balance. The resources and efforts now available for use surpassed all conventional limits; nothing now impeded the vigor with which war could be waged, and consequently the opponents of France faced the utmost peril.
> Carl von Clausewitz, *On War*[1]

[1] Carl von Clausewitz, *On War*, eds. and trans. Michael Howard and Peter Paret (Princeton, NJ: Princeton University Press, 1989), 592.

> When the armed forces began to work out the strategy appropriate for total war their views were also shaped by the assumption that high levels of economic mobilization and the maintenance of domestic morale and financial stability were as important as performance on the battlefield.
>
> Richard Overy, *The Oxford History of Modern War*[2]

> We failed to see that the leader in a democracy has to keep the people entertained.
>
> General George C. Marshall[3]

The last of these remarks is from General George C. Marshall. Marshall was United States Army Chief of Staff during World War II, making him the senior military figure in the entire Allied war effort. His reference to "leaders in a democracy" was to President Franklin D. Roosevelt, who, as president, was commander-in-chief of the armed forces hence Marshall's superior. The occasion for Marshall's remark was the first major Allied action of the war in North Africa. Marshall and Roosevelt completely disagreed on the wisdom of the action, which Marshall regarded as conducted solely for "public relations" – or more bluntly, for "entertainment."

I shall say more about the details later. The basic problem was this: "Operation Torch" was the name given to America's November 1942 invasion of French North Africa. It would be the first joint Anglo-American offensive since the French and Indian War. American military leaders starting with Marshall objected to it vigorously on the grounds that it served no military purpose, on the contrary it diverted energy and resources from valid military actions. 107,000 troops were involved, along with 350 warships and 500 transport ships. This was almost *twice* the number of American soldiers involved in the D-Day invasion. Roosevelt did not disagree about its military value but his concern was a political one. Mainly, he needed to send the right message to the American home front to bolster its commitment to the war effort by showing that its military was actually doing something. Sacrifices were already being asked of the citizenry in the form of taxation and conscription. For Roosevelt, *what* the military did was less important than *that* it was doing something – anything.

Others were even more alarmed by the action. General Dwight D. Eisenhower, Supreme Allied Commander in Europe, commented at the time that Torch's inception could go down as the "blackest day in

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[2] In *The Oxford History of Modern War*, ed. Charles Townshend (Oxford: Oxford University Press, 2005), 139.

[3] Jean Edward Smith, *Eisenhower: In War and Peace* (New York: Random House, 2012), 216.

history."[4] American military officers might not be the only ones upset by such an action. For on its face, it would seem contrary to one of the fundamental laws of war, *jus in bello's* "principle of necessity." Thomas Hurka puts that principle thus: "The necessity condition [...] says that killing soldiers and especially civilians is forbidden, if it serves no military purpose; unnecessary force is wrong."[5] This encapsulates the ICRC "principle of military necessity" which

> permits measures which are actually necessary to accomplish a legitimate military purpose and are not otherwise prohibited by international humanitarian law. In the case of an armed conflict the only legitimate military purpose is to *weaken* the military capacity of the other parties to the conflict.[6]

For Roosevelt, the aim of the action was not to "weaken" the enemy's military capacity. Of course, one could inflate the notions of "serving a legitimate military purpose" and "weakening the enemy's military capacity" to argue it did so in the long run. This would be an awfully *ad hoc* response, plus it is one that America's own military leaders would have disputed. A more accurate characterization would be that Roosevelt's concern was not to weaken the military capacity of the enemy, but to bolster political support back home. This is how it was regarded at the time and by historians ever since.

Let's put it thus: Marshall's concern was the *military effort*, while Roosevelt's concern was the *war effort*, which necessarily included a significant political dimension.

There are compelling reasons why one might *want* to set aside the political dimension to focus only on the military side. Talk about *military* necessity lends itself to some precision. You can look at the number of enemy soldiers killed, and of one's own soldiers sacrificed, and of the material expended, and weigh that against the advantages in terms of ground gained, etc. It seems readily quantifiable. But talk about what's "necessary" *politically* seems inherently messy, if not invariably – and endlessly – contestable. This is why Operation Torch re-

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[4] Stephen E. Ambrose, *Eisenhower Vol. 1: Soldier, General of the Army, President-Elect, 1890-1952* (New York: Touchstone, 1985), 73.

[5] Thomas Hurka, "Proportionality in the Morality of War," *Philosophy & Public Affairs* 33, no. 1 (2005): 36.

[6] See International Committee of the Red Cross, "Military Necessity," https://casebook.icrc.org/a_to_z/glossary/military-necessity.

mains hotly contested in ways that other World War II actions are not. Stephen Ambrose writes that "many critics regard it as the greatest strategic blunder of the war."[7] Stressing the political dimension makes war more like a political campaign, and talk about what's "necessary" to win it is more like what's "necessary" to win a political campaign. Indeed, the problem may be worse insofar as what *counts* as "winning" a war may be itself a matter of political rather than military judgment.[8]

My specific concern in this essay is the problem of killing for public relations. Operation Torch is a dramatic example of it, showing that the issue is not just killing enemy soldiers, but sacrificing one's own soldiers – i.e., *dying* for public relations. The slightest acquaintance the modern war suggests it happens all the time. Consider, for example, the defense of the Philippines after the Japanese invasion. The loss of the Philippines was inevitable and ultimately of marginal military importance. Yet, the United States invested significant resources into its futile defense for the political message it sent. As just noted, even the meaning of "victory" can be a political matter. General Eisenhower, who went on to become President of the United States, felt that equating victory with "unconditional surrender" was a serious mistake. He felt that it prolonged the war with Germany in ways that cost needless loss of lives. General Marshall agreed with him. The call for "unconditional surrender" was a political decision in Eisenhower's view, to send a message especially to the home front about the seriousness of the war. Qua political, it also proved vague – as the waffling over its meaning related to Japanese surrendering demonstrated.[9] (The problems are only multiplied when surrender is conditional, as it almost always is, since then its terms become a deeply political affair as they did following World War I.)

My larger concern in this essay is the question of how we think of war generally. Is it a purely *military* matter, as Marshall conceived it? I've referenced Hurka because I think this is how much contemporary

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[7] Ambrose, 79.

[8] I focus on the principle of necessity, but the point obviously bears on the principle of proportionality as well. That principle holds that the harm caused to civilians or civilian property must be proportional or not excessive in relation to the military advantage anticipated. But the harm to civilian/civilian property in Operation Torch involved *no* military advantage, but political benefits.

[9] "Eisenhower Regrets Policy of Total Surrender; Asserts Roosevelt Erred in His World War, II Goal; Says the Fear of U.S. Terms Sparred Nazis to Fight," *New York Times*, December 21, 1964. See Michael Balfour, "The Origin of the Formula: 'Unconditional Surrender' in World War," *Armed Forces & Society* 5, no. 2 (1979): 281-301; Brian L. Villa, "The U. S. Army, Unconditional Surrender, and the Potsdam Proclamation," *The Journal of American History* 63, no. 1 (1976): 66-92.

just war thinking approaches it; *jus in bello* judgments of "necessity," like "proportionality," etc., reference legitimate "military" purposes, just as *jus ad bellum* judgments reference "victory" as if it were a purely "military" matter. But this is a truncated picture of war which, by abstracting from its political dimension, abstracts from what is most distinctive – and messiest – about modern war. To what extent is *all* war a matter of public relations? Significantly, someone who *chastised* the de-politicized picture of war of those who focus on the military dimension alone was Carl von Clausewitz, our greatest theorist of war. He felt that ignoring war's political dimension was the particular vice of those who sought to construct a "war by algebra," much as some of today's just war theorists seek to do.[10]

The first parts of this essay draw on Clausewitz's views to address how we think of war and the importance of recognizing the political dimension. Much of it involves drawing distinctions that are necessary to regarding war as a political endeavor, but which tend to be ignored or blurred by today's just war thinking. I shall comment as I proceed on some of their bearing on today's just war discussions. With this as my framework, I return to the Operation Torch case in the final section to question specifically how we should think of the harms that killing for public relations involves.

The sketchy if not schematic nature of what follows can be explained – if not excused – by its being part of a larger critique of contemporary just war theory, in progress. I argue that its picture of war is a truncated one that abstracts from the political dimension, and in so doing ignores that which is most distinctive, messiest, and most problematic about war generally. I think this explains the concern that some people often have when first encountering just war discussions, that there is something unreal about them. But my point is not to dismiss today's discussions, but to argue for expanding our framework into what I call *critical war theory*.[11]

## I. Just war theory, or just battle theory?

The great theorist of war Carl Clausewitz insisted that any discussion of war must begin by considering what is meant by "war." He maintained that the single greatest error in thinking about war was confusing *war* with *battle*. It was a natural mistake in his view. Battle is the most *spec-*

[10] Clausewitz, 76.

[11] Some of these points are developed further in my forthcoming book, *Pacifism as War Abolitionism* (New York: Routledge, 2024).

*tacular* part of war, the site of the virtues like heroism typically associated with war. Still, battle is only one part of war, and reducing war to battle skewed (in his view) our entire understanding of war.

Clausewitz's concerns were practical. From that perspective, the greatest difference between war and battle was evidenced in the fact that one could win all the battles and still lose the war, or, conversely, one could lose all the battles and still win the war. This was the fate of Napoleon's invasion of Russia: Napoleon won every battle, the invasion was a disaster. Clausewitz foresaw this as a distinctly troublesome feature of "people's war" like that which Napoleon encountered in the Peninsular War, or the United States encountered in the Vietnam War (and more recently in Afghanistan).[12] The United States killed an estimated 1,000,000 Vietnamese soldiers vs. 58,000 of its own soldiers killed. Still, the United States lost the war. Conversely, the Vietnamese lost every battle; most notably, the major battle of the war – the Tet Offensive – was a military disaster for the Vietnamese, in which they suffered at least twice as many casualties. But it was a political victory, leading to the Vietnamese winning the war.

For Clausewitz, this was part of a larger practical point. Reducing war to battle focuses attention on only one aspect of war: what I call war *making*, or that which happens *on* the battlefield. But success and failure in war is ultimately determined by what happens *before* and *beyond* the battlefield, or what I call war *building*. Success in any given battle may reflect particular decisions, the contingencies of circumstance, etc. But over time, success in battles reflects the resources brought to the battlefield. This was a point on which Stalin and Eisenhower agreed. Stalin said World War II would be won by which side "could produce the most tractors," Eisenhower put it more generally as which side could produce the most "stuff." But mobilization on the home front rests on the *motivation* of the home front, starting with its willingness to continue sending its members to war. America lost the Vietnam War because its citizenry was no longer willing to do this, regardless of how many battlefield successes its military was chalking up.

So significant was the error of reducing war to battle that Clausewitz claimed it blinded us to what he regarded as the very "essence" of war. By "essence" he meant what is *distinctive* about war, specifically what is distinctive about the *violence* employed in war. His special concern was what is distinctive about *modern* war, i.e., the kind of war initiated by Napoleon that came to prominence in the 19th century. Sir

[12] Clausewitz, chapter 26: "The People in Arms."

Michael Howard has termed this "*nationalized war*," the type of war that culminated in the 20th century's two World Wars.[13]

To equate war with battle is to think of it as "nothing but a duel on an extensive scale," consisting of a "countless number of duels" between soldiers on the battlefield.[14] Let us call this war-as-battle model the *Duel Model*.

Now this is certainly what war *involves*: soldiers killing soldiers. Here too, it is important to be realistic about the matter. Romanticized pictures of war have consistently likened battle to a medieval joust or knightly combat. This is what "war" movies invariably do – note that "war" movies are really "battle" movies! This romanticized picture is presented to young men to convince them to become soldiers by convincing them that war is "exciting," an occasion for "heroism," etc. In reality, modern battles have been mainly a matter of artillery, i.e., lobbing explosive ordinance at soldiers far away where you have no idea who is on the receiving end. The upshot is that in many battles you were more likely to be killed by the flying body parts of your fellow soldiers than by being shot by the enemy.

But battle is not what war is most fundamentally *about*. To understand this, Clausewitz held that we should think of war as a wrestling match, in which each adversary "strives by physical force to compel the other to submit to his will."[15] This is not the clearest analogy in the world. But it points to what Clausewitz takes to be the "essence" of war – which is its *political* character. All politics is about "impacting the will of others," it is an assertion of *power* in that regard. Thus, Clausewitz claimed that war is the "continuation of politics by other means."

This claim of Clausewitz's is a familiar one. Indeed, it may be *too* familiar. So, one thing I want to do is unpack it further. And one of my interests in doing so is its bearing on contemporary just war theory.

I am prompted to do this by Clausewitz's remarks on the Duel Model. When I first encountered his objection to this picture of war, it seemed to me that this model actually captured the framework in which much just war discussions have been conducted. The "moral reality of war," in Walzer's words, is one of soldiers encountering soldiers in combat, in which each presents a "threat" to the other, and the appraisal of their actions begins with that fact. Walzer claims that there is a "moral equality of soldiers," meaning that soldiers are morally entitled to kill each other in virtue of the threat presented to them, regardless of whether the

[13] Michael Howard, "War and the Nation-State," *Daedalus* 108, no. 4 (1979): 101-110.

[14] Clausewitz, 75.

[15] Ibid., 75.

larger cause for which they fight is just or unjust. This explains the moral distinction between combatants and noncombatants, since the latter present no threat, hence are not liable to be killed as enemy soldiers are. Revisionists have proceeded to critique Walzer's specific claims, but they have continued to do so within something like the Duel Model. One reason for doing so, to which I'll return, is it implies that a soldier's act of killing can be usefully approached as akin to an act of self-defense in ordinary life. Plus, I think that the sheer amount of ink expended on this problem can only be explained by the fact that Revisionists if not just war theorists generally have assumed that the picture of war that Clausewitz critiques – that war is fundamentally ("reducible to," "derivable from," etc.) the ensemble of individual encounters between soldiers.

Again, Clausewitz is not denying that war involves this. War-as-*battle* may be usefully approached on the Duel Model. Nor does he deny the obvious attractions of this. Duels are simple and straightforward things, it is obvious who shoots who, who wins the duel, who is not part of the duel, etc. So, thinking of war this way carries with it a promise of precision. It is attractive, as noted, to those who would construct a "war by algebra." But it is only part of the story, and not the most important part for Clausewitz.

We might summarize the point as saying that those who think of war on the Duel Model are not really providing a just *war* theory. They are providing a just *battle* theory. And doing so is not entirely innocent, for, in abstracting from the political dimension of war, it may blind us to what is most deeply problematic about war. How it does this is something we shall now explore further.

## II. War: Its military and political dimensions

The problem with reducing war to battle is that it ignores the *twofold* character of war. Modern war has *two* dimensions: a *military* dimension, and a *political* dimension. Each must be understood on its own terms, as must the relation between them. Ironically, then, Clausewitz's claim amounts to saying that standard approaches to war emphasize the military element *too much*, it is too military-centric, for it is the political element that is primary. Let me unpack this by considering first the military dimension, or what war involves, then the political dimension, or what war is about.

For those familiar with Marx, this parallel might be useful. Clausewitz himself at one point likens battle in war, or what I term war making, to the sphere of *exchange* in capitalism. War building may be likened to the sphere of *production*. Just as Clausewitz chastises

other thinkers for focusing too much on battle, Marx chastised other political economists for focusing too much on the sphere of exchange and ignoring the sphere of production – which in Marx's view was the "deeper" sphere and the "determining" factor of relations in exchange. Focusing on exchange provides for a simpler picture; indeed, it allows for us to intelligibly discuss what is just and unjust in exchange. By the same token, focusing on battle allows us to discuss what is just and unjust in battle. But for Marx, the appraisal of *capitalism* was something else entirely; the parallel claim would be that the appraisal of *war* is something else entirely. I have elsewhere suggested that the matter can be understood in this way. Marx claimed that the deepest problem of capitalism was not its injustice but its inhumanity, by which he meant that the capitalist system took on a life of its own that was indifferent to human agency. The parallel claim is that the deepest problem of war is not its injustice but is inhumanity, that the war system acquires a life of its own such that war is no longer an instrument of human purposes, instead human beings become an instrument of war's purposes.[16]

a. The military effort, or what war involves

The differences between the two dimensions begin with who the *agents* of war are. In its military dimension, the agents of war are (as its name suggests) *militaries*. They are the ones that fight the battles, hence are the heart of the military effort. It is natural to think of war as "what soldiers do," but soldiers do what they do only as members of militaries. By the same token, professors do what they do only as members of universities. The difference is that the organization of militaries is such that membership in the military makes soldiers *instruments* of the military, whereas professors are not the "instruments" of the academies for which they teach. Soldiers were not always "instruments" of their militaries, either. Once they were more like independent contractors who came and went as they pleased, and often acted as they pleased. The transformation of soldiers into instruments of the military (and of militaries into instruments of the state) occurred largely in the 18th century, led by the innovations of Prussia and Frederick the Great in practices like drill – that transformed soldiers into fungible parts of a larger whole. Maybe this will happen to professors one day, in which case we will speak of the militarization of their institutions. What do militaries *do* in war?

[16] See Ryan, *Pacifism as War Abolitionism*, chapter four.

Let us distinguish the *general goal* of militaries in war from their *particular aims* in pursuit of that goal. The general goal of militaries in war is to degrade the forces of the enemy military through the infliction of violence. This is the goal of the military effort. "Degrading" is a broad term. It can mean destroying, depleting, demobilizing, or otherwise impairing enemy forces. *How* they pursue this goal is a matter of their particular aims in war. We might speak of this as the goal *in* the military effort. Scholars of war have explored how different countries have different "ways of war" that are reflected in the strategies they typically adopt. In World War I, the general goal of British forces was to degrade the forces of the Central Powers. This led to straightforward battles, like the ill-fated invasion of Gallipoli. But the principal way the British pursued this goal was through a naval blockade, which scholars have identified with the typical "British way of war" as distinct from straightforward battle typical of Prussia or France.[17]

What is the *harm* that militaries inflict or threaten to inflict in war? Let us term it *destructive harm,* for the purpose of *demobilizing* enemy forces. Militaries destroy other human beings, but they destroy lots of other things such as the enemy's physical resources. The question of *responsibility* for such harm has a twofold answer depending on the *type* of responsibility concerned. On the one hand, there is the question of who *contributes* to the harm. Or, since "contributes" is rather vague, let us understand this as who *partakes* in the harming. Presumably everyone in the military partakes in the harming. On the other hand, there is a question of who *authorizes* the harm, where this includes who defines its particular aims. The answer to this varies depending on institutional facts. It is generally true that such authorization comes from military leaders insofar as they give the orders. But decisions about which actions are authorized are often made in consultation with civilian authorities. Winston Churchill was heavily involved in the British decision to invade Gallipoli in World War I though he was not a member of the military, but First Lord of the Admiralty. In the United States, decisions about which actions are authorized are made by military leaders, but that is because the authority is delegated to them by civilian authority. This is why President Roosevelt could overrule Marshall's decisions about these matters in World War II.

[17] See Basil Henry Liddell Hart, *The British Way in Warfare* (London: Faber and Faber, 1932); Andrew Lambert, *The British Way of War: Julian Corbett and the Battle for a National Strategy* (New Haven, CT: Yale University Press, 2021). The argument of Torch partly reflected differences between the British and American "ways of war."

The impulse to focus on the first kind of responsibility, contributing/partaking responsibility, may reflect the fact that there is a general answer to this – soldiers. There is no general answer to the question of who bears authorizing responsibility. It will depend on the particular institutional facts. As noted, military leaders may give the orders, but the power to do so may be delegated to them; how this is done can vary from case to case.

War in its military dimension is about inflicting violence. What is distinctive about war, thus construed, is *how* the violence is inflicted. Most importantly, it is done in an organized manner. This is what most distinguishes a "war" from, say, a spontaneous violent melee. It is this picture, I think, that inspires people to think of war as a "multitude of duels" since duels too are about inflicting violence but unlike melees they abide by a certain organization – indeed, an organization that we take to be informed by a certain code of ethics.

b. The war effort, or what war is about

Who are the agents of war in its *political* dimension? The simplest answer is *states*. But this is *too* simple, though I shall tend to speak of it this way. In its military dimension, war is a conflict between militaries; in its political dimension war is a conflict between *political communities*. This is part of what Clausewitz meant by speaking of war as a "political" matter: it is a conflict between "*polises*," or polities. And polities can take different forms, of which "states" (as we know them) are only one of them. Plus, there are different *kinds* of states, reflecting the kind of *sovereignty* that they involve. Today's just war discussions abstract from these differences: they equate the polities that wage war with states, and states with a particular kind of state, specifically that which has predominated since World War II. Such simplifications are valid for the purposes of discussion, as long as they recognize that they are simplistic in conceiving of war in a very institutionally/historically limited manner.

Soldiers are instruments of militaries, and generally speaking militaries are instruments of states. A problem is that the boundary line between militaries and states can be blurred. In many 17th-18th century European states the distinction was almost nonexistent: most of what states did was fight wars, their budgets were overwhelmingly devoted to wars, and political leaders were also military leaders. Historians now call states of this sort "fiscal military states."[18] Starting the 19th

[18] John Brewer, *The Sinews of Power: War, Money and the English State, 1688-1783* (Cam-

century, the formal distinction between the state generally and its military in particular sharpened, though war remained the principal activity of states to the point that military leaders could become the effective heads of state, as they did for example in the later part of World War I in Germany.

What do states *do* in war? The first thing to note is that the answer is more complicated than might be imagined. Specifically, it is more complicated than one imagines if one pictures war as solely what militaries do.

Once again, we can distinguish the general goal of states in war from their particular aims in pursuit of that goal. The general goal of states is to bend the will of the enemy state. The phrase "bend the will" is Clausewitz's, he also speaks in terms of "breaking the will," etc. The key element here is *compulsion*, which is another reason why Clausewitz speaks of war as "political": all politics is about compelling the will of others, it is about power in that regard; war is about asserting power through violence – put bluntly, it is killing for the sake of compelling. Note, then, that this provides a quite different picture of what is *distinctive* about war. What is distinctive is the *purpose* for which violence is inflicted or threatened: compelling others to acquiesce to your will. War is *political killing*, in this sense. Thus conceived, war is not like a duel at all. Duels are not about bending the will of the other person. The parties do not inflict violence on each other for the purpose of bending their wills, or bending someone else's will. The closest analogy to war is *torture*, where violence is inflicted on someone so that they will acquiesce to your will. But even this analogy is not quite right, since the violence inflicted on soldiers aims to bend the will of the political community that sent them there.

But this is only half the story. "Bending the will" of another state is the goal of war making. But the *ability* to do this is a reflection of war *building* – of mobilizing the human and material resources for the purposes of war making. This too is a political matter, but it is not about how a state asserts its power against another state but how a state exercises power over its own populace. Modern states have done this in two ways. They have constructed *institutions* of war building like taxation and conscription to generate the money to pay for war and the soldiers to fight them. Hobbes suggested that the state itself was an institution of war building. If war making is about killing for the sake

bridge, MA: Harvard University Press, 1990); Richard Bonney, *The Rise of the Fiscal State in Europe, 1200-1815* (Oxford: Oxford University Press, 1999).

of compelling, one might think of these institutions as compelling for the sake of killing. Modern states have also constructed *ideologies* of war building that have been central to the effectiveness and perceived legitimacy of these institutions. Far and away, the most important ideology has been *nationalism*.

There are really *two* things, then, that states do in war. One involves *bending* the will of the adversary on the battlefront, the other involves *bolstering* the will of the community on the home front. I shall discuss shortly how this is the issue raised in the Marshall versus Roosevelt/North African invasion dispute. Note, again, that it has no parallel on the Duel Model. When parties square off in a duel, there is no question of bolstering their support back home. It also marks a crucial distinction between war and domestic law enforcement. Police institutions must be mindful of their political support, and certainly some police activities have a strong public relations dimension. But a police effort conducted solely for bolstering political support, and otherwise wasteful of human lives and resources, would be condemned out of hand. By contrast, such activities are taken to be an essential part of war because so much rests on support back home. The Vietnam War has already been mentioned as one that ended when support for it collapsed on the home front. In World War I, Germany sought an armistice when support for the war on the home front collapsed to the point that German leaders feared a revolution like that which had occurred in Russia – and brought about Russia's withdrawal from the war.

As its general goal is compelling, let us speak of the harm that states inflict or threaten to inflict in war as *persuasive harm*. It too has two dimensions. One dimension is persuading the enemy. Note that when you kill an enemy soldier you are inflicting several types of harm on them beyond the personal one. Militarily, the goal of killing them is to degrade enemy forces. Politically, the goal of killing them is to persuade the enemy state to surrender, or negotiate, etc. The other dimension is what I have termed bolstering the will back home, which I also claim can be the goal of persuasive harm. I shall defend this way of speaking about it shortly in considering the North Africa case.

Where does responsibility lie for war's persuasive harm? Again, we distinguish two questions: who contributes/partakes in that harm, and who authorizes it. Let me address the second issue. Most generally, the authors of war are the states that wage them, but what this means differs from state to state. Just war theorists often speak of the decision to go to war, including the aims to be achieved, as vested in "political

leaders;" Walzer often refers to "statesmen" as well.[19] To begin with, not every constitutional order vests this power in "political leaders" alone. The United States of America doesn't, for example. The decision to wage war is vested in Congress, *not* the President, and the citizenry retains some of that authority in its willingness to serve in wars or not. All of this was cast aside by 20th century American politics and its "Imperial Presidency," but that is just to say that American practice no longer coincides with American principle. Clausewitz approached it in terms of the internal organization of states. He held that the "states" that waged war actually consisted of a "trinity" of factors: the government, the military, and the people. They were together responsible for war, but their relation to one another was one of ongoing conflict as well as negotiation; it too was "political," in that sense. The upshot was a picture of war's "author" as a kind of postmodern conflicted/fractured/"decentered" subject. This made talk of its "aims" in war deeply problematic, except as something themselves conflicted, contradictory, and constantly changing. At one point Clausewitz suggested that the whole idea of a unitary "state" conducting war was itself an *illusion* generated by the notion of "war aims."[20]

c. Soldiers, self-defense, threats, responsibility

Before returning to North Africa, let me venture a few more comments on the Duel Model. The Duel Model invites us to think of war as soldiers encountering soldiers in which each seeks to defend themselves against the other. Let us speak of this as the *Self-Defense Model*: war is about soldiers killing each other in personal self-defense; they may not kill noncombatants because they are not threatened by them. This may put things rather simplistically, but the common equation of war and individual self-defense is evidenced in the fact that when pacifists say they are opposed to war, they are immediately confronted with the question: "Don't you believe in individual self-defense?"

The absurdity of this framework rests in the fact that war is the only social practice in which individuals, i.e., soldiers, can be compelled to *alienate* their right to individual self-defense, as when they are ordered into actions that mean certain death. This is something that the first theorists of individual rights worried about, and my own view is

[19] Michael Walzer, *Just and Unjust Wars* (New York: Basic Books, 1977), 112, 116, 122.

[20] See Mary Kaldor's discussion of this in "Inconclusive Wars: Is Clausewitz Still Relevant in these Global Times?" *Global Policy* 1, no. 3 (2010): 271-281. Kaldor cites Hew Strachan's "Clausewitz and the Dialectics of War," in *Clausewitz and the Twenty First Century*, eds. Hew Strachan and Andreas Herberg-Rothe (Oxford: Oxford University Press, 2007), 14–44.

that their worries have never been adequately addressed. Saying that soldiers "consent" to alienate their right to individual self-defense is not just questionable sociologically, it presumes that the right to self-defense is something that one *can* alienate.[21]

Still, aren't many of a soldier's actions ones of self-defense? Here, it is useful to introduce some distinctions in the "threat" presented by soldiers that are suggested by the preceding discussion. Soldiers may *pose* a threat to each other as persons, in the same way that individuals on a street corner may pose such a threat. Hence, when they defend themselves, they are defending their lives. But *qua* soldiers, they *embody* a threat; this is implicit in their status as "instruments." And that threat is *twofold*: as members of the military, they embody the threat to degrade enemy forces; as members of a military, they embody the threat to dominate the enemy's will. It is this that most distinguishes soldiers from noncombatants. A noncombatant may pose a threat to an enemy soldier's person, in which case that soldier may defend himself. But a noncombatant does not *embody* a threat to an enemy soldier, hence whether or not they constitute a threat is a matter of what they *do*, whereas a soldier constitutes a threat by what they *are*.

Accordingly, the question of soldiers' "responsibility" is a complex one. One question is what they do as a person, another question is what they do as a soldier. The latter begins with their responsibility for what they *are* as a soldier – as embodiers of threats. And this raises several issues: To what extent are they responsible for the *fact* that they embody a threat? To what extent are they responsible for the *particular* threat that they embody: i.e., the particular military threat that they embody, and the particular political threat that they embody? Finally, to what extent may the *different* threats that soldiers pose/embody conflict with each other, in which case which one are they responsible for abiding by? My main point here is that the Duel Model abstracts from such complexities in ways that render the status of soldiering much less problematic than it really is.

What, then, is the place of individual self-defense in all this? The question here is what soldiers are doing when they "defend themselves." What I have characterized as a soldier's embodying threat is invoked by Walzer's talk of their being instruments in virtue of their lives being "nationalized."[22] I think this is more accurately put as their

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[21] Cheyney Ryan, "The State and War Making," in *For and Against the State: New Philosophical Readings*, eds. John Sanders and Jan Narveson, 217-234 (Lanham, MD: Rowman & Littlefield, 1996).

[22] Walzer, 35. Walzer does not explore the different ways that nation states nationalize lives;

lives being *militarized*; in war, every citizen's life is nationalized in so far as they are liable to be enlisted in the war effort. Soldiers are those who have been enlisted in the military. In so far as they have been enlisted and their lives made instruments of the military, the question is whether, when a soldier defends his life, the life that he defends is truly "his" life anymore, or whether it is the state's life that he is obliged to defend as part of defending the state. The fact that it is not "his" life anymore would seem to follow from the fact that he can be obliged to sacrifice it, i.e., lose it, if the threat that he embodies so requires it.

At the very least, there would seem to be a tension between a soldier's concern with *surviving*, as a person, and *serving*, as a soldier. Walzer actually gestures towards the problematic status of individual self-defense at one point. He writes,

> States exist to defend the rights of their members, but it is a difficulty in the theory of war that the collective defense of rights renders them individually problematic. The immediate problem is that the soldiers who do the fighting, though they can rarely be said to have chosen to fight, lose the rights they are supposedly defending [...]. 'Soldiers are made to be killed,' as Napoleon once said; that is why war is hell.[23]

"Difficulty," indeed. If the "hell" of war consists in the fact that becoming a soldier means you not only lose the rights that individuals normally possess, you lose the very rights that you are "supposedly defending" – the question is: why would anyone *become* a soldier?

Walzer says a great deal about what people *do* as soldiers, but says little about why people *become* soldiers. What he says is ambivalent: on the one hand, he speaks of soldiering as a kind of "servitude," suggesting that individuals have zero choice in the matter; on the other hand, he speaks of it as something that individuals "allow" to happen to them, i.e., that they *acquiesce* to it in ways that presume some agency in the matter, hence some responsibility.[24] The subsequent quarrels

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I have suggested that liberal nation states do it via a kind of war bargain. See Cheyney Ryan, "War, Hostilities, Terrorism: A Pacifist Perspective," in *Pacifism's Appeal Ethos, History, Politics,* eds. J. Kustermans, T. Sauer, D. Lootens, and B. Segaert, 11-40 (London: Palgrave MacMillan, 2019).

[23] Walzer, 136. I cannot resist noting that Walzer's claim that "States exist to defend the rights of their members" is patently absurd. In the 20th century, you were as likely to be killed by your own state as by an "enemy" state.

[24] Walzer, 35 ("servitude"); 145 ('allow').

with Revisionists have involved how *much* agency hence responsibility individuals have for being soldiers, or how much they have for *remaining* soldiers – insofar as Revisionists insist soldiers should refuse to serve in actions that are blatantly immoral. These are really quite different questions: when I faced the question of fighting in the Vietnam War, the worst that could have happened to me if I had refused to enter the military was five years in federal prison; if I had refused *after* entering the military, the worst that could have happened to me was being executed for insubordination/desertion. Anyway, in modern war the question of what in fact motivates citizens to serve in the military and motivate soldiers to fight in war begins with the question of *nationalism,* which, as I have noted, is the principal ideology of war building. Yet the word "nationalism" does not appear in the index the Walzer's Just *and Unjust Wars*, or in that of McMahan's *Killing in War*. It is as if, in the era of religious wars, one talked about the problems they raised without mentioning religion. This is part and parcel of the more general problem addressed in this essay of ignoring war building for war making.[25]

## III. Operation Torch and persuasive harming

Let me return now to the North Africa case.[26] The United States entered World War II with the 1942 bombing of Pearl Harbor. Its entry into the European portion of the war resulted from Hitler's declaration of war on the United States which immediately followed that bombing. Not only did the United States declare war on Germany, it made the defeat of Germany its number one priority. The first question was how that effort should proceed. This immediately led to a heated argument that Marshall termed a "staggering crisis" around the question of war strategy.

Prime Minister Winston Churchill was adamant that the first Allied action should be in North Africa against the mainly Italian (albeit German-led) forces fighting there. Churchill's plan would be named "Operation Torch." General Marshall regarded Churchill's plan as absurd, as did the entire American military leadership. General Stanley Embick,

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[25] See Cheyney Ryan, "'Wretched Nurseries of Unceasing Discord': Nationalism, War, and the Project of Peace," *Theoretical Inquiries in Law* 21, no. 2 (2020): 207-228.

[26] The sources for this section are Robert Payne, *The Marshall Story, A Biography of General George C. Marshall* (New York: Brick Tower Press, 1951); Norman Gelb, *Ike and Monty: Generals at War* (Leicester: Sharpe, 2018); Ambrose; Andrew Roberts, *The Storm of War: A New History of the Second World War* (New York: Harper, 2012); Ian Kershaw, *The End: The Defiance and Destruction of Hitler's Germany, 1944-1945* (New York: Penguin, 2011).

one of the War Department's most respected strategists, dismissed it as "fantastic," U.S. Secretary of War Stimson called it a "half-baked" idea reminiscent of the British military fiasco at Gallipoli. General Dwight Eisenhower later deemed it "a most peculiar venture of armed forces into the field of international politics; we were invading a neutral country to create a friend."

> Why go chasing nearly a thousand miles south of London to find an enemy to fight, in a neutral country, when there were plenty of Wehrmacht troops stationed less than twenty-five miles from Dover?[27]

It was ultimately counterproductive militarily. 8,500 Germans died in Operation Torch, against around 10,000 Americans and 17,000 British killed, wounded and missing. Plus, even when they cleared North Africa and successfully invaded Italy, the immense barrier of the Alpes still stood between them and Germany. Diplomatically, Eisenhower came to regard it as a disaster when he became president. By delaying Americas entrance into the European conflict, he felt it allowed Soviet Union to occupy Eastern Europe. Marshall, Eisenhower, and the American military maintained that efforts should be entirely devoted to an invasion of Europe of the type that only came two years later at D-Day. The *failure* to do this was taken as an afront by the Soviet Union which was bearing almost the entire burden of fighting Germany and was insistently calling for the opening of the second front in Europe. The Soviets regarded Churchill's preoccupation with North Africa as driven by his concern to shore up the British Empire there. President Eisenhower later attributed the Soviet Union's deep suspicion of Allied aims to the diversion into North Africa. Moreover, Eisenhower held that if the Allies had gotten involved in the European war sooner, they could have checked Soviet advancements into Europe that became solidified in the Cold War.

President Roosevelt overruled his military leaders in approving Operation Torch. It was one of just two occasions during the war when he directly overruled them. Marshall said bluntly that Operation Torch was a "public relations stunt." Churchill felt it had some military logic to it, but he basically agreed with Marshall's appraisal: "As I see this operation, it is primarily political in its foundations." Marshall's principal objection involved the needless sacrifice of his own troops. Marshall's biographer writes that he "hated to see his men die under any

[27] Ambrose, 181.

circumstances, most of all the transparently political, and that is how he looked upon Torch."

We have no record of the direct discussions between Roosevelt and Marshall. Having lived through World War I, Roosevelt was mindful of how the fate of wars could hinge on support from the home front. Before the war began, he had increased taxes and introduced conscription, despite their unpopularity, to send a message of how important such support was. It was all to send the message, "We are in this together." Even after Pearl Harbor, support for the war was problematic. Military leaders called for a strength of three hundred divisions, Congress froze the ceiling at ninety divisions. Getting American "boots on the ground" was essential to the war building effort, even if it had no value as an act of war making. It was not irrelevant that the 1942 election would be happening soon, where support for the war would be an issue.

So, in response to Marshall protest, we can imagine Roosevelt saying: "General Marshall, you protest that Operation Torch is just a public relations stunt. I admit that sounds bad, so I will probably fudge the whole issue of what we are doing North Africa and hope that later generations forget this dispute. But what do you think politics is, and what do you think *war* is – if not political? This is the whole *point* of Clausewitz's classic text, *On War*. Much of what happens in modern war is for psychological effect rather than any military value. Take the Battle of Stalingrad, which later generations may come to see as the turning point of the entire war. The city itself was of marginal military importance; Hitler could have just gone around it. But he wanted to capture it for its symbolic value that it was named after Stalin. The upshot was that his entire 6th Army was trapped and destroyed and the German war effort never recovered." One might imagine Roosevelt's address to the American people, if he had been candid about the operation: "Today, American forces landed on the shores of northern Africa. This action has no particular military purpose. Rather, young Americans will be fighting and dying to ensure that those who are listening to this broadcast will continue to support the war effort."

Qua political, the harms inflicted in Operation Torch were instances of *persuasive harm,* where the persuasion was directed entirely at the home front. The victims of that harm obviously included enemy Italian and German soldiers; these also included soldiers from Vichy France. I think the disturbing question is whether American soldiers were subject to such harm as well. The principle that sacrifices should only be incurred that weaken the enemy's military capacity would seem to im-

ply that sacrificing one's own soldiers to bolster the will on the home front is a needless one. But note that an upshot of my discussion is that this sort of act is an inevitable, if not essential, part of modern war – that countries send their own soldiers to kill and die for public relations. It will be responded that soldiers consent to being treated this way, as part of consenting to being "instruments" of their state in war. But what is the status of that consent, if in fact the logic of such political sacrifice is obscured if not denied by the dominant models of war? The question I want to conclude with involves the fate of those in the home front, those that are meant to be persuaded by the sacrifice of their loved ones. Here is a remark by the great historian John Keegan from his book on the American Civil War. It begins with a reference to American poet Walt Whitman, then proceeds to a remark about the logic of modern war that raises questions about the centrality of something like torture to it – the emphases are mine. He writes,

> Whitman was a great poet of the Civil War, because he understood the purpose and nature of the war, which was to inflict suffering on the American imagination. The suffering was equally distributed between the two sides, and was felt particularly by those not present. *The whole point of the war was to hold mothers, fathers, sisters, and wives in a state of tortured apprehension*, waiting for the terrible letter from hospital that spoke of wounds and which all too often presaged the death of a dear son, husband, or father. It was a particular cruelty of the Civil War that because neither side had targets of strategic value to be attacked – not, at least, targets that could be reached by the armies in the field (until Sherman took the war to the Southern people by marching into their homeland) – its effect had to be directed principally, indeed for years exclusively, at the man in the field and at the emotions of those who waited at home. Torturing the apprehensions of the non-combatants was a new development in warfare, produced by the rise of an efficient postal service. Before the days of rapid and reasonably certain postal communication, soldiers could be banished to the mind's recesses after they marched away, because the nearest and dearest knew that they would receive no news of their fate until the war was over, if indeed then. The only certain news of a soldier on campaign came by default, when he did not return. Whit-

> man caught at the truth in an entry in one of his notebooks. "The expression of American personality through this war is not to be looked for in the great campaign and the battle-fights. It is to be looked for [...] in the hospitals, among the wounded."[28]

I have spoken of war's general goal as "bending the will of the opponent," but this puts the point rather impersonally and antiseptically. Privileging the military dimension alone suggests that the harm to noncombatants is entirely the physical harm of treating them as soldiers. The suggestion here is that, in Keegan's words, the "whole point" of modern war is "torturing the apprehensions" of the citizenry, placing them in a position of permanent anxiety via the prospect that their loved ones will be harmed for that very purpose. More generally, the attention to harms – including the *kind* of harms – inflicted by war seems to focus inordinately on the harms in battle, as questions of who is, and who is not, included in the battle. The suggestion here is not just that the purpose of those harms is to impact the home front, or war building. It is also that the harms experienced by the home front have their own distinct character, as typically experienced by groups like wives and family members, that escape our military-centric thinking about war.

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[28] John Keegan, *The America Civil War* (New York: Random House, 2009), 455-456.

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# The Problem of the Legitimacy of War in the Context of Ethical Concepts: The Example of the 44-day War

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**Abstract**

*The article analyzes the issues of the legitimacy of war, the relationship between war and morality in the context of different ethical concepts. It is shown that the somewhat 'fashionable' notion of the ethics of war is actually problematic and does not clearly express the peculiarities of the relationship between war and morality. Analyzing the main conceptual discourses about war, it is argued that in some of them the acceptance of the legitimacy of war does not make sense with the logic of the watershed between war and morality. Analyzing the 44-day War separately for the first time in the context of the principles of the conception of just wars, it is argued that Azerbaijan's military aggression against Artsakh was actually accompanied by a gross violation of many of these principles, despite the propaganda efforts of the Azerbaijani side to claim the opposite.*

**Keywords:** *ethics of war; legitimacy of war; pacifism; just war; jus ad bellum; jus in bello; Artsakh; Azerbaijan*

## I. Introduction

Wars have almost always been at the center of attention of various research initiatives. For the majority, they were of interest from the point of view of the tactical and strategic techniques used in military operations, and for some, from the point of view of the effects they left on political, economic, socio-cultural developments, etc. There is no doubt that wars can be studied from different points of view, can be of interest to different branches of science or scientific disciplines, but among the variety of research 'views'

the ethical perspective of the meaning of war has a unique importance and relevance. The above mentioned will become more impartial if we take into consideration that wars, being legitimate or illegitimate, just or unjust, moral or immoral, acceptable or unacceptable, are often derived from specific philosophical, ethical, anthropological concepts or systems. That is, texts about war or the so-called *text*[1] are often the basis for relating to reality in one way or another or creating a new reality.

In the context of the above-mentioned subject, the 44-day War unleashed by Azerbaijan against Artsakh in September of 2020 is of certain interest, which has not yet been thoroughly studied in the context of ethical doctrines about war, as well as the conception of just wars. A fact that makes it urgent to make analyses in this direction, which will provide an opportunity to somewhat overcome the existing research gap in the matter in question, as well as the speculations related to the 'moralization' of that war.

## II. Ethics of war or war and ethics?

Although, in recent years the notion of ethics of war[2] has become popular in the analytical literature. Nevertheless, in this article, the notion of 'ethical concepts about war' has not been used randomly. The latter is due to the fact that the notion of 'ethics of war' seems to record the subjectivity of war, its competence or ability to define moral or ethical content. A reality that is not at all justified, because it is not war that defines the scope of the moral, but the relevant ethical concepts or doctrines about war that determine the specifics of the relationship between war and the moral. In other words, war does not 'create' or mask the moral in its possible variety, but it is masked or, more precisely, determined in the context of morality and its imperatives. Perhaps it is for this reason that the term *ethics of war*, which has become some-

[1] Armen Sargsyan, "War and Peace as 'Text' (About Problems Related to Reading)," [in Armenian: "Paterazmy yev khaghaghut'yuny vorpes «tek'st» (ynt'erts'man khndirneri shurj)"] *History and Culture* 18, no. 2 (2022): 8-17.

[2] See indicatively: Anthony Coates, *Ethics of War* (Manchester: Manchester University Press, 2016); Jovan Babić, "Ethics of War and Ethics in War," *Conatus – Journal of Philosophy* 4, no. 1 (2019): 9-30; Anastasiya Konyukhova, "The Ethics of War and the Ethics of Peace: A Comparative Analysis of Classical and Modern Concepts," [in Russian: *Etika voyny i etika mira: sravnitel'nyy analiz klassicheskikh i sovremennykh kontseptsiy*] *Bulletin of Krasnoyarsk State Pedagogical University Named after V. P. Astafyev* 19, no. 1 (2012): 5-16; Boris N. Kashnikov, ed., *Ethics of War and Peace: History and Perspectives of Research* [in Russian: *Etika voyny i mira: istoriya i perspektivy issledovaniya: Kollektivnaya monografiya Nauchno-uchebnoy gruppy po izucheniyu filosofii voyny*] (Sankt-Peterburg: Alatheya, 2016), etc.

what 'fashionable,' is used in this article in quotation marks, that is, in the context of the specific author's views or speeches related to them.

The foregoing does not mean at all that the notion of 'ethics of war' has become generally recognized in professional literature, since the titles and content of many articles and monographs are intended to state that, although their authors agree on the issue of the connection between war and morality, but they are not being inspired by the 'fashion' of the notion of the 'ethics of war.'

## III. War in the world of moral-philosophical 'mirrors'

It is not new that wars have received and receive ambiguous treatment in theoretical thought. Their violence, brutality, and human, economic, social, cultural and other losses have often been the basis for the formation and spread of approaches that consider wars demoralizing, demonizing, and absolutely unacceptable. However, along with the anti-war theses of extreme pacifism, approaches legitimizing the permissibility of war or waging war are still spreading today. The latter, however, does not always conform to the logic of consistently advocating war. Even today, in scientific, quasi-scientific, anti-scientific and other discourses we can fix approaches, which *a: absolutely reject war*, *b: consider it somewhat permissible*, *c: advocate war*.

It is noteworthy that the moral 'trial' of wars has occupied a special place in the religious-philosophical mind.[3] In particular, in the works of Russian religious thinkers (N. Berdyaev, L. Tolstoy, I. Ilyin, V. Solvyov, etc.), the meaning of war in the context of Christianity has been of particular importance. Which is natural, since, for example, the Christian 'Thou shalt not kill' seems originally supposed to rule out any tolerance for violent and deadly wars? From this point of view, L. Tolstoy's pacifist[4] and anti-war beliefs should be considered understandable and somewhat legitimate. Tolstoy, also referring to the Sermon on the Mount, was sure that Christ's commandment 'Love your enemy' was meant to exclude any violence and war. Meanwhile, as a result of mutual agreement between the state and the church, according to him, the deviation from that commandment was legitimized. I. Ilyin, who considered the absolute rejection of war unaccept-

[3] Aleksey Skvortsov, "Ethical Problems of War in Russian Religious Philosophy of the 20th Century," *Ethical Thought* [in Russian: "Eticheskiye problemy voyny v russkoy religioznoy filosofii XX v.," *Eticheskaya mysl'*] 2 (2001): 216-230.

[4] It is noteworthy that Tolstoy was excommunicated from the Russian Orthodox Church and anathematized because his views were in conflict with Christian doctrine, or more precisely, the Orthodox understanding of it.

able, came from the position of combative anti-Tolstoyism.[5] He was sure that courage, heroism, and other virtues occupy a special place not only in the secular and military but also in the value system of Orthodoxy. Not considering it a coincidence that many Christian saints were warriors, Ilyin – unlike Tolstoy – not only did not de-Christianize fighting, resisting evil by force, but also in a sense considered it an alternative. Tolstoy's adamant rejection of war was also opposed by N. Berdyaev, who criticized Tolstoy's version of the fight against evil and its effectiveness. Moreover, he believed that Tolstoy's and the ideas of his adherents about war were of a marginal nature. It does not follow from his criticism of Tolstoy that Berdyaev fully agrees with Ilyin. In his analysis of Ilyin's work "Resisting Evil by Force," Berdyaev describes above-mentioned work as terrifying and excruciating. Moreover, he is sure that if in the case of Tolstoy, we are dealing with strangulation with kindness, then in Ilyin's case we are dealing with war.[6]

Not having a problem with the detailed analysis of the views of the above-mentioned Russian thinkers, as well as the differences between all the existing discourses on the war, let us only state that the latter can be classified into three conventionally separated groups:

a. War is absolutely unacceptable and impermissible

It is accompanied by violence, brutality, murder, etc., and their inadmissibility makes it imperative to refrain from fighting or, more precisely, from waging war. In other words, getting involved in even just, self-defense wars is unacceptable in the extreme pacifist discourses. Of course, what has been said does not mean that they encourage passion, servitude, absolute compliance with the reality imposed by the enemy/adversary. The point is that in some pacifist discourses (M. Gandhi, M. L. King Jr, etc.) the will to fight by non-violent means is welcomed and emphasized in the context of peace-loving speeches, diplomatic negotiations, various socio-political initiatives that imply a certain spirituality, etc. Although the moral limitations or prohibition of war may be convincing and impressive at first glance, the question of their effectiveness in today's world remains questionable. Being born in a certain socio-political, historical, and cultural context, they may have proven their effectiveness to a certain extent, but they have not proven their viability in all possible

[5] Ivan Ilyin, *Collected Works in 10 Volumes*, Volume 5: *About Resistance to Evil by Force* [in Russian: *Sobraniye sochineniy v 10-i tomakh.* T. 5. *O soprotivlenii zlu siloyu*] (Moscow: Russkaya kniga, 1996).

[6] Nikolay Berdyaev, "Nightmare of Evil Good" [in Russian: "Koshmar zlogo dobra"], *Hrono*, accessed May 18, 2023, http://www.hrono.ru/libris/lib_b/berdiaev_iljin_zlo.html.

conditions. We would like to note that the results of a limited experiment cannot be generalized. If Gandhi, being the leader of the Indian independence movement from Britain, was able to achieve serious results through the use of non-violent tools, it does not mean that those same tools would have been equally effective under all possible conditions. Deeply impressed by Tolstoy's pacifist ideas, Gandhi proposed the principle of *satyagraha* in the context of the struggle against the British, which entailed firmness and steadfastness towards the truth. According to him the cleverness and sanity of the enemy can be influenced by non-violent methods. His organized strikes, acts of civil disobedience, and the famous Indian winch symbolized the nation's refusal to buy British goods and its determination to settle for inferior Indian goods. Yes, M. Gandhi's[7] struggle was somewhat successful, but many questions remain open. For example, could the tools of non-violent struggle be effective during the years of the Armenian Genocide, when the Armenians in some places did not resort to existential self-defense, but simply rejected the perpetrator's actions with spirituality and loyalty to their identity? It can be assumed that in that case the genocide committer would have achieved his goal much more easily, and those analyzing what happened in the future would only praise the spirituality of the genocide committer. Would the issue of the Artsakh conflict in the context of the anti-Armenian state policy[8] of Azerbaijan really be settled or would regional peace become a reality if the Armenian side, for example, inspired by the ideas of Tolstoy or Gandhi, fulfilled its demands before the 2020 44-day War unleashed by Azerbaijan? Would the conflict have been resolved if the Armenian side had agreed to Azerbaijan's extreme demands during the 44-day War? The problem is that, if the given collective or state is observed as a 'neutralizing ethnic obstacle' in the way of realizing the enemy's national interests (leaving aside Azerbaijan's 'humanist' propaganda claims about the protection of the rights of Artsakh Armenians, etc.), then the probability of peacemaking becomes significantly lower. And this is especially the case when the collective or the state, which is an obstacle, ignores the need for independence and approaches the policy of responding to existential threats only with pacifist speeches or initiatives. Therefore, it is no coincidence that after the signing of the agreement on November

[7] It is noteworthy that Gandhi, who said no to violence, leaved this world as a victim of violence. His ideologue M. L. King Jr also suffered the same fate.

[8] Armen Sargsyan, *Armenophobia in Azerbaijan: At the Intersection of Ressentiment and Authoritarianism* [in Armenian: *Hayatyats'ut'yuny Adrbejanum. rresentimenti yev avtoritarizmi khach'merukum*] (Yerevan: Hanrayin kaperi yev teghekatvutyan kentron, 2013); Armine Adibekyan and Angela Elibegova, *Armenophobia in Azerbaijan* [in Russian: *Armyanofobiya v Azerbaydzhane*] (Yerevan: Hanrayin kaperi yev teghekatvutyan kentron, 2013).

9, 2020, the initiatives to create an 'era of peace' are also accompanied by the loss of the sovereign territories of the Republic of Armenia, and the submission of new territorial and other demands by Azerbaijan.

b. Wars are not only permissible, but inevitable

Wars should not be understood in moral terms, in a dual system of 'good and evil.' They are in a sense beyond good and evil. Violence is inevitable; it has its roots in human nature and in order to secure one's place 'under the common sun for all,' one must have the power to counter violence with violence and, why not, to be the first to attack. In the conditions of the struggle for existence (also according to the logic of social-Darwinism), advocacy of peace as an end in itself does not exclude war but makes its negative outcome more realistic for the standard-bearer of peace. In the world of real politics, peace seems to be a 'rustling voice' devoid of ontological foundations, often a propaganda 'drug' meant to soothe people's spirits or renew their will before the start of another active phase of war. In other words, *peace* is a word describing a state of war characterized by inactive military operations; it is just a name, a nomina, which has no ontological basis in reality. Therefore, being constantly ready for war, creating a balance of power against potential enemy ambitions is not only necessary but can also have a beneficial effect in preventing or delaying the start of active military operations. The danger of such talks is that they seem to reject *anthropological optimism* from the threshold, that people, nations or collective humanity can ensure its moral step forward, can gradually reduce the probability of wars by developing morally. In other words, they seem to proceed from the premise 'man is a wolf to man,' in the context of which consistent efforts aimed at the 'humanization' of man and creation of a tolerant profile become meaningless. According to this approach, war is not an evil in itself, it is an insurmountable necessity from which people cannot avoid but can benefit. They can, for example, have a beneficial effect in maintaining the moral health of people or nations, keeping them free from decay (Hegel).[9]

c. Wars are permissible to a certain extent, but they are not principally unalternative

Approaches based on the logic of this provision are among the most popular. They were developed by the representatives of different phil-

[9] See Tarik Kochi, "Considering Hegel's Account of War," *Griffith Law Review* 15, no. 1 (2006): 49-73.

osophical, ideological and moral systems. The latter, conventionally speaking, were mainly guided by the logic of 'not ignoring reality but not giving up the desire for a new reality.' In this sense, it can be said that the permissibility of wars is a certain concession to the imperatives of reality, while the acceptance of their fundamental alternativeness is the evidence of faith in the possibility of creating a new reality. This is the reality that should be presented as less warlike through the gradual moral development and improvement of people, peoples or collectivities. For example, V. Meyers was sure that we should try our best to reduce violence, but we cannot give it up completely, because the ideal of anti-violence, the perfect type, is unattainable.[10]

The thinkers, who consider war as an evil, but considering it somewhat permissible, mainly tried to present or outline the limits of its permissibility, to determine the scope of legitimacy. The already cited Ilyin and Berdyaev also advocated a partial rejection of war but it would be a mistake to think that they consistently advocated this phenomenon. Berdyaev stated that war is a dire necessity. It is evil, but not an 'indulgence' for abstract pacifism, for war can sometimes appear as the lesser evil (especially self-defensive war) by being just and holy.[11]

At first glance, the above-mentioned approach may not be problematic, but the reality is that, depending on the notions of justice, almost any war can – in principle – be legitimized, can be 'packaged' with the justification of self-defense or neutralizing imminent threats. For example, one can demonize the image of a potential victim, portray him as a barbarian, usurper of other people's achievements, an enemy of human rights and democracy, the greatest threat to international or regional peace and, accordingly, justify war and violence against him. The 2nd Artsakh War unleashed by Azerbaijan in 2020 is one of the eloquent testimonies of what has been said, which Azerbaijan arbitrarily declared as inevitable and just. Carrying out anti-Armenian state policy at various levels for decades, generating the demonic image of the Armenian and the thesis that the Republic of Armenia is an aggressor, presenting the sovereign territory of the Republic of Armenia as a historical Azerbaijani land, the Azerbaijani authorities created their own myth of a *just war*, which they put into practice during the 44-day War. It was not by chance that Azerbaijan presented the war

[10] William Meyers, "Nonviolence and its Violent Consequences," *III Publishing*, accessed May 5, 2023, https://www.iiipublishing.com/nonv.htm.

[11] Nikolay Berdyaev, "Existential Dialectic of the Divine and the Human," [in Russian: "Ekzistentsialnaya dialektika bozhestvennogo i chelovecheskogo"] *Phantastike*, accessed May 16, 2023, https://www.phantastike.com/philosophy/existential_dialectic/html/?page=53.

waged with the active support of Turkey, Pakistan and other states as an irreplaceable 'just' operation aimed at establishing historical justice, restoring its 'territorial integrity,' preventing Armenian 'separatists' or 'incitement actions by illegal Armenian armed groups,' etc. Meanwhile, that war was legitimately self-defense for Artsakh, which aimed to prevent the depatriation and possible genocide of Artsakh Armenians, and the realization of the internationally recognized right of nations to self-determination, ensuring their own security, etc. In other words, that existential and self-defense war for Artsakh Armenians was just and sacred. And if that self-defense war was also an evil, then it was less evil, because it was, as Berdyaev would say in such cases, meant to liberate from a greater evil. Moreover, if Nazi Germany also considered the unleashing of the Second World War justified by its provisions regarding living spaces, the states fighting against it considered their right to self-defense by violent means to be righteous and sacred.

It is noteworthy that the critical references to the approaches documenting the permissibility of wars are often characterized by speculations. Modern days 'Tolstoyism,' self-proclaimedly claiming the status of the most advanced and humanitarian ideological phenomenon, considers even the steps to prepare for self-defensive wars as an anti-peace initiative, as an attempt at militarization bordering on tyranny. And the paradox of the problem is that the participants of the ideological 'crusade' against wars and violence, with the zeal of Spartacus who rebelled against Crassus, seem ready to stick to their commitment to the exclusion of violence, and with a stoic attitude, to put up with the war and violence unleashed by the enemy (in this context, it is perhaps not accidental that according to Berdyaev, Tolstoy could inspire disgust for the good). However, the real struggle against violence and the real advocacy of peace cannot be 'indifferent' to the successes of the potential abuser. Otherwise, the fight against all violence will paradoxically turn into the unwitting encouragement of external violence. In other words, the adherents of Tolstoy, for some reason, are sure that they will build the 'earthly kingdom of peace' with peace sermons and peace-loving 'generosity.' And that belief, unfortunately, becomes questionable especially when the walls of the kingdom of peace are destroyed by the "not peaceful" blows of an external conqueror. Adherents of Tolstoy seem not to want to admit that the many calls to be prepared for the evil called war are not intended to abort a possible peace, but to establish it. It is no coincidence that the birth of the weakness of the spirit in wars, which are the result not of the power of the spirit, but of faith in the spirit of power, Berdyaev still recorded

the existence of a sinful, but all-powerful, spirituality. "Guilt," writes Berdyaev not by chance,

> is morally higher than purity. This is a moral paradox that should be seriously considered. The exclusive pursuit of one's own purity, the preservation of one's white clothes, is not the highest moral state. It is morally higher to assume responsibility for one's neighbors by accepting collective guilt.[12]

Taking into consideration the diversity of ideas about just wars and the danger of artificially legitimizing any war accordingly, it is appropriate to specifically refer to the conception of 'just wars.' It will provide an opportunity to analyze and make sense of the 2nd Artsakh War from certain theoretical and methodological positions, to raise a number of issues related to it.

## IV. The 44-day War in the context of the conception of just wars

### a. Jus ad bellum principles and the 44-day War

It has already been hinted that if in the context of pacifism, wars are demoralized, and in the context of militaristic approaches, they are considered to be supra-moral or, conventionally speaking, 'beyond good and evil' realities, then they are ambiguously evaluated within the framework of the conception or theory of just wars. The point is that according to that conception, some wars are immoral, unjust, and some are morally justified.

There are many studies devoted to just wars in the professional literature. In this row, the approaches to just wars in ancient Greek (Plato, Aristotle, etc.), ancient Indian (*Laws of Manu*), ancient Chinese (Mo Tzu, Meng Tzu), as well as medieval, Renaissance, and other eras have been presented and analyzed.

Nowadays interest in the moral 'judgment' of wars is not at all accidental because wars occupying a unique place in the history of mankind are still accompanied by on the one hand manifestations of the humanly noble and heroic, and on the other hand vileness and misanthropy. This paradoxical duplicity of wars is becoming more worrying these days, because the modern world, which claims to be identified with the value 'brands' of tolerance, human rights protection, and hu-

[12] Nikolay Berdyaev, *The Fate of Russia* [in Russian: *Sud'ba Rossii*] (Moscow: Filosofskoe Obshestvo SSSR, 1990), 182.

manity, is often proudly satisfied with the low-quality patents of these brands. That is, at the ideological level, it declares its commitment to be guided by the algorithm of standardization of high values, but in the context of realism and satisfaction of interests, it often demonstrates its determination to be satisfied with their 'shadows.' This is not an exception in the case of military aggression or war unleashed by Azerbaijan against Artsakh in 2020, which was also accompanied by serious deviations from the logic of the concept of a just war.

Before analyzing that war in the context of the conception of just wars, it is necessary to present certain clarifications regarding the noted conception. Of course, the discourse on just wars is diverse, the views of different authors on the matter in question may be divided, but some principles are distinguished in the professional literature, which determine the conceptual approaches of just wars.

Based on the approaches of many theorists of just wars, N. Faushin, B. Koppiters, and R. Apresyan distinguish *jus ad bellum* and *jus in bello* principles. The first of these refers to the right to wage war, the justification of war, and the second to the rules of conducting war. In short, *jus ad bellum* (if we do not express it in the language of international law) refers to the legal and moral justification of engaging in war and waging war and *jus in bello* refers to the moral assessment of the ways, methods, and means by which the war is conducted.

The above-mentioned authors state that there are generally six principles related to *jus ad bellum*, and two in the case of *jus in bello*.[13] The first is the principle of 'just cause' or 'serious grounds,' according to which the use of military force by a given state is just and morally justified if a state has resorted to aggression against itself or an allied state, etc. Of course, the 'serious grounds' are not limited to those mentioned, but if we refer to the second Artsakh War in the context of those mentioned, then it is no coincidence that before resorting to large-scale aggression, the Azerbaijani propaganda machine tried to legally and morally justify the military operations sanctioned by the authorities by circulating the thesis of 'provocations by the Armenian side.' This applies both to the large-scale attack launched by Azerbaijan on September 27, 2020, as well as to cases of border tension in the face of subversive infiltrations and other actions in different periods. Meanwhile, the Armenian side, taking into consideration the large-scale aggression that began on September 27, had all the moral

[13] Bruno Koppiters, Nik Foushin, and Ruben G. Apressyan, eds., *Moral Restrictions of War: Problems and Examples* [in Russian: *Nravstvennyye ogranicheniya voyny: problemy i primery*] (Moscow: Gardariki, 2002).

grounds to conduct a self-defense war. And it is not accidental that in the Armenian and Artsakh media, the talk about being just and waging a holy war gained some popularity.

It should be noted that in the conception of just wars, the existence of 'serious grounds' is considered a necessary but not sufficient condition for the realization of the right to war, the moral justification of war.[14] It becomes necessary and sufficient when the other 5 principles of jus ad bellum are also taken into consideration:

1. legitimacy of the government,
2. good intentions,
3. the probability of a successful outcome,
4. symmetry,
5. last resort.[15]

The requirement of the principle of the legitimacy of the government is that the subject of the decision to get involved in the war or to withdraw from it may not be private individuals or organizations, the military or intellectuals, but depending on the form of government of the state, high-ranking officials, relevant institutions (president, prime minister, legislative body). Sometimes, international structures (UN Security Council).

From the point of view of the 44-day War, the principle of good intentions is of great interest. The latter, as shown by the course of the war and post-war developments, was best ignored by Azerbaijan. If, sinning against the truth, we even accept strictly conditionally that by unleashing aggression against Artsakh, Azerbaijan 'did not violate' the 1st principle of the conception of just wars, the principle of "serious grounds," did not contribute to the torpedoing of the negotiation process for the peaceful settlement of the Artsakh conflict. For decades it has not carried out anti-Armenian state policy, did not glorify R. Safarov, who axed an Armenian officer in Hungary, did not kill civilians with the help of his military, did not commit war crimes aimed to restore its 'territorial integrity;' then even in that case it is difficult not to notice the violation of principle of 'good intentions.' According to that principle states and their soldiers: a. should not enter into war with hatred in

[14] Ibid.

[15] This principle implies resorting to war only when all possible means of avoiding it or not resorting to it (negotiations, political maneuvering) are exhausted or pointless. In fact, the principle of last resort is also problematic, because it is very difficult to demonstrate exhaustively and convincingly that all possible measures have been discussed and their non-viability has been proven. Theoretically, one can always assume the existence of another possible means.

their hearts; b. should fight exclusively for their righteous cause, which means that the party responding to the aggression must stop the aggression and possibly punish the aggressor. But the victory should not be considered as an opportune factor for the conquest of the territory of the opponent or the enemy, which has been a cherished dream of for a long time.[16]

It should be noted that due to the anti-Armenian state policy implemented at the state level for decades, which also included the education system, Azerbaijan has done almost everything possible to form generations filled with hatred for Armenians.[17] It is clear that after the defeat in the first Artsakh War unleashed by itself, Azerbaijan would need to generate or deepen the image of the enemy due to revanchist reasons, but what is remarkable is that this enemy did not have so much an institutional as an ethnic profile. It is no coincidence that in one of his official speeches I. Aliyev declared all Armenians as the enemy of Azerbaijan,[18] making a clear transition from institutional xenophobia to ethnocentric xenophobia. It is also not a coincidence that many of the young people whose mentality was shaped within the educational system of Azerbaijan (where you can find many facts of presenting Armenians as the disaster of the century, with dirty blood, thief and other labels) and then many of the young people who went to military service during that same 44-day War had hatred in their hearts for the Armenian military and proudly filmed that process, brutally killed old people, etc.[19] We are also dealing with an obvious violation of the principle of 'good intentions' in the post-war period. If, as we have already mentioned, we conditionally accept that Azerbaijan's case was just, that their struggle was for the 'restoration of territorial integrity' against the 'aggressor' Republic of Armenia and 'separatists,' then the post-war developments prove that Azerbaijan consistently and with certain efficiency uses the victory created or given to

[16] Ibid.

[17] Armen Sargsyan, "Armenophobia in the Educational System of Azerbaijan," [in Armenian: "Hayatyats'ut'yuny Adrbejani krt'akan hamakargum"] in *Armenian Identity Issues: Collection of Scientific articles of Yerevan State University*, Volume 2 [in Armenian: *Hayots' ink'nut'yan harts'er,* Prak 2], ed. Seyran Zakaryan, 58-81 (Yerevan: Limoush, 2014).

[18] "Ilham Aliyev Declared all Armenians of the World 'Enemies' of Azerbaijan," [in Russian: "Il'kham Aliyev obyavil vsekh armyan mira 'vragami' Azerbaydzhana"] *Regnum*, accessed April 04, 2023, https://regnum.ru/news/1504750.

[19] Read the following reports of the RA human rights defender: The Human Rights Defender of the Republic of Armenia, *Ad Hoc Public Report – Responsibility of Azerbaijan for Torture and Inhuman Treatment of Armenian Captives: Evidence-Based Analysis – The 2020 Nagorno Karabakh War* (Yerevan, 2021); The Human Rights Defender of the Republic of Armenia, *Ad Hoc Public Report – A Park of Killed Armenian Soldiers and Chained Prisoners of War Opened in Baku: A Museum of Human Sufferings and Promotion of Racism* (Yerevan, 2021).

him for the gradual conquest of the sovereign territories of the Republic of Armenia. From this point of view, it is no coincidence that in the post-war period, Aliyev repeatedly put into active circulation the previously frequently voiced propaganda statement that a part of the territory of Armenia (Zangezur, Yerevan, Lake Sevan, etc.) is historical Azerbaijani land with the consequences arising from it.[20] It is clear that with the 'Azerbaijanization' of the sovereign territories of Armenia, Azerbaijan is trying to formulate and legitimize a new 'just cause or the most serious basis,' making future possible military aggression as justified.

As for the principles of the probability of a successful outcome and the principles of proportionality, then they are interrelated, because in both cases we are dealing with the consequences of the decisions made. The proportionality principle is problematic. It assumes that war losses should not exceed the received/expected benefits. According to the above-mentioned authors, it is not clear, for example, how to accurately assess the ratio of benefits and losses of engaging in a war to deter an aggressor, whether it is possible to accurately predict the duration of a war and, accordingly, find out the proportionality of possible benefits and losses. Despite the problematic moments, the principle of proportionality still implies not getting involved in war if it is obvious that the possible losses will seriously overshadow the gains. According to S. Lazar:

> Achieving your just cause, is not enough. The aftermath of the war must also be sufficiently tolerable if the war is to be proportionate, all things considered. It is an open question how far into the future we have to look to assess the morally relevant consequences of conflict.[21]

According to the principle of the probability of a successful outcome, a state should not be involved in a war if the latter has bad consequences or does not 'predict' good consequences. And this is especially so if the opponent or enemy is significantly superior in terms of military power. In the context of this principle, the second Artsakh war gives reason to think. Leaving aside the justified or unfounded political assessments that the RA authorities' way of conducting negotiations 'from zero or their

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[20] "The President of Azerbaijan called 'the Return of Yerevan' the Goal," [in Russian: "Prezident Azerbaydzhana nazval tsel'yu 'vozvrashcheniye Yerevana'"] *RBC*, accessed May 22, 2023, https://www.rbc.ru/politics/08/02/2018/5a7c806c9a7947e74c640063.

[21] Seth Lazar, "War," *The Stanford Encyclopedia of Philosophy* (Spring 2020 Edition), ed. Edward N. Zalta, https://plato.stanford.edu/archives/spr2020/entries/war.

own point' and other factors (according to the assessment of various experts, improper attention to the violation of the military balance since the summer of 2020, etc.) became the reason for Azerbaijan's predictable military for aggression, we can only state that, if the Armenian side did not ignore the principle of the probability of a successful outcome, then it should have done the maximum possible to abort or at least postpone the war. Even if we are guided by the assumption that 'the authorities of the Republic of Armenia strive for and believe in the best or successful outcome,' then the combination of the victorious events in Tavush in the summer of 2020, the regular military exercises conducted by Azerbaijan and Turkey, the 'accumulation' of Turkish Bayraktar drones in Azerbaijan and other factors should have become for them an appropriate impulse to initiate actions. Moreover, if the outcome of the war was not predetermined for the RA authorities and Artsakh, there was a reasonable probability of a successful outcome in stopping the possible military aggression of Azerbaijan, then the readiness to be involved in the war becomes somewhat understandable. And if the possible negative outcome was predictable, then it was necessary to do everything possible to stop the war, delay it as much as possible or stop it as soon as possible. That maximum refers to the activation of the negotiation process, as well as to the implementation of works aimed at overcoming the broken military balance, etc. However, the problem is that the various post-war Armenian speeches and different theses seemed to justify the following: successful outcome was unlikely. This is evidenced, for example, by not stopping the war at an opportune moment under the pretext of not being accused of treason and by the propaganda provisions according to which the army has been mercilessly looted for decades, due to which we did not have the necessary and sufficient weapons to face the enemy (and this is when Aliyev surprisingly and proudly mentioned the destruction of Armenian weapons worth more than 5 billion dollars) etc. Having no problem analyzing the outcome of the war causally (let us leave that task to the relevant experts), let us just state that we seem to be in a very strange situation when it comes to the principle of the probability of a successful outcome. If we initially accepted the possibility of that outcome, then why did we consistently try to justify its improbability (remember the speeches begging the army to loot), and if we considered a successful outcome unrealistic from the beginning, why did our actions make an unsuccessful outcome probable?

It is obvious from the above that the unleashing of the 44-day War by Azerbaijan did not at all follow the principles of *jus ad bellum*, did not meet the requirements for starting or initiating a just war. It is dif-

ficult to say exactly what were the reasons behind starting the war in September 2020 and violating the principles of just wars. This question can be the subject of a separate scientific study because a systemic approach is needed to reveal the etiology of the war, in the context of which geopolitical, economic, socio-cultural, and other factors will be taken into consideration. However, it can be noted that these violations were mainly due to the imperative to ensure the possible desired result, as well as the fact that in the case of overlapping interests of different states or entities in the world of real-politic, sometimes a double standard of political expediency is applied in case of violating the principles of just wars. In other words, the feeling of possible impunity and the conviction of the international community's insufficiently harsh response also contributed to Azerbaijan's actions.

b. Jus in bello principles and the 44-day War

As for *jus in bello*, the latter, as we have already mentioned, mostly refers to the instruments of war, the rules of conduct. If the principles of *jus ad bellum* are 'pre-war,' those of *jus in bello* operate after the outbreak of war. Two principles of *jus in bello* are distinguished in the professional literature: *proportionality* and *difference*. The first, in contrast to the *jus ad bellum* principle of *proportionality*, refers to the ratio of benefits to gains during specific military operations. If the corresponding military operation is accompanied by heavy losses on both sides and does not have a very high significance, then it should be avoided and guided by a more rational plan.[22] The principle of difference requires distinguishing between civilians and military personnel, not targeting the former, especially when they do not, for example, work in military-industrial enterprises engaged in the production of weapons and various armaments. This principle is also consistent with the Geneva Convention, which defines the regulations required for the conduct of war, the treatment of captured soldiers, etc. It is noteworthy that during the 44-day War, the principle of difference was repeatedly grossly violated by the Azerbaijani side, whose eloquent testimonies include violence against captured Armenian soldiers, numerous documented cases of beheading and torturing them, murders of elderly civilians, etc. It is clear that inhuman atrocities during war operations are not excluded, but the problem is how the warring parties react to the actions of their own: do they legitimize or demoralize these atrocities and criminal violence?

[22] Koppiters, Foushin, and Apresyan, 37.

From above-mentioned point of view, Azerbaijan not only did not shy away from violating the principle of difference, but also took the position of legitimizing it. Aliyev's awarding of an Azerbaijani soldier who beheaded an Armenian soldier in the 44-day War, favorable attitude towards those who committed war crimes, etc. are proofs of this. In this context, it is noteworthy that Nzhdeh, described by the Azerbaijani propaganda machine as a 'Nazi and a war criminal,' who more than 100 years ago took over the leadership of the armed struggle against the annexation of Syunik to Azerbaijan with the psychology of a determined alone, did not give up the idea of subjecting the war to moral restrictions. We would like to mention that G. Nzhdeh had told his soldiers to remain faithful to the imperative of nobility and humanity during the war several decades before this concept was set in the 1950 Geneva Convention. Nzhdeh has written the following:

> There is no more divinely magnanimous and beautiful deed than to bandage the enemy's wounds inflicted on him by our swords and bullets, just as there is no more barbaric action than to wound the wounded again.[23]

Moreover, reminding his soldiers of the brutal killing of Armenian women and children by the Turks in the not-too-distant past, Nzhdeh demands the following: "Remember that and be merciless towards those who resist you, *be a knight and a man towards women, children and the elderly*."[24] In other words, even war atrocities were not able to damage the soul of the Armenian thinker, statesman, and mask his inner world with xenophobia. From this point of view, it can be said that Nzhdeh would have agreed with the following thought of Berdyaev: "Humanity must be established even in the terrible conditions of war."[25]

Thus, although there is no unequivocal approach to the relationship between war and morality, the necessity of moral limitation of war is still on the agenda of many discussions nowadays. In the context of the modern conception of just wars, the analysis of the 44-day War made it possible to highlight and outline the problems and violations related to the justice or moral justification of wars, as well as the principles of justice in wars. Violations from which Azerbaijan, despite its efforts to

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[23] Garegin Nzhdeh, *Selected Works* [in Armenian: *Hatyntir*] (Yerevan: Amaras, 2006), 137. The emphasis is mine.

[24] Ibid., 420. The emphasis is mine.

[25] Nikolay Berdyaev, *About the Appointment of a Human* [in Russian: *O naznachenii cheloveka*] (Moscow: Respublika, 1993), 310.

falsify the contrary, not only did not avoid, but sometimes consistently continued.

## V. Conclusion

The theoretical interest towards war in the 21st century is quite logical. Along with the initiatives carried out in the direction of the protection of human rights and the dissemination of humanitarian values, wars continue to accompany humanity today. Of course, wars can happen for geopolitical, religious, economic, and other reasons but one of the most profound reasons is how war is thought about in general, how the 'text' called war is created and read. And this means that

> Emerging challenges surrounding war deserve to be carefully and diligently analyzed, not just from the standpoint of Just War Theory, but also from other perspectives, including the ECO one.[26]

Analyzing the discourses about war (philosophical, moral, religious, etc.), the article identifies and clarifies the main conceptual approaches, which are conventionally presented in the following formulas:

a. war is absolutely unacceptable and impermissible,
b. wars are not only permissible, but inevitable,
c. wars are permissible to a certain extent, but they are not principally unalternative.

In the article, for the first time, 44-day Artsakh War in 2020 is separately discussed in the framework of the concept of just wars. Analyzing the 44-day War in the context of the fundamental principles of *Jus ad bellum* and *Jus in bello* known in specialized literature, it is justified that the military aggression carried out by Azerbaijan against Artsakh was actually accompanied by violation of the fundamental principles of *jus ad bellum* ('serious grounds,' good intentions, the probability of a successful outcome, symmetry, last resort etc.) and *jus in bello* (proportionality, difference). It means that attempts to legitimize and morally justify that war are false and do not meet the requirements for just wars. Although the article did not specifically discuss the various reasons underlying the

[26] Dragan Stanar, "War Machines and Orthodoxy Unmanned Combat Vehicles and Autonomous Weapons Systems in Eastern Christian-Orthodox Understanding of War," *Journal for the Study of Religions and Ideologies* 21, no. 63 (2022): 76.

violation of these principles (it can become a separate and noteworthy research topic), it should be noted that these violations were mainly determined by the imperative to ensure the possible desired result. Otherwise, if the principles of just wars were to be adhered to, the war could not have started because the grounds for it were missing.

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# Stoic Consolations

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**Abstract**

*In this paper I explore the Stoic view on attachment to external goods, or what the Stoics call "indifferents." Attachment is problematic, on the Stoic view, because it exposes us to loss and exacerbates the fragility that comes with needing others and things. The Stoics argue that we can build resilience through a robust reeducation of ordinary emotions and routine practice in psychological risk management techniques. Through a focus on selected writings of Seneca as well as Cicero's* Tusculan Disputations *and Marcus Aurelius's* Meditations*, I nonetheless ask whether Stoicism leaves any room for grief and distress. I argue that it does, and that consolation comes not from a retreat to some inner citadel, but from the support and sustenance of social connections.*

**Keywords:** *resilience; Stoicism; Marcus Aurelius; Seneca; Cicero; Epictetus; PTSD*

## I. A fiery apocalypse and street philosophy of the day

A sober historical event that involved massive destruction of stuff was the Great Fire of 64, the fire that devastated Rome. Whether or not Nero "fiddled while Rome burned," let us assume arson was the act of some internal enemy. What is critical is the result: a fiery apocalypse that destroyed much of Rome, leaving half of its population homeless, without shops and businesses to sustain the population, and with public and cultural heritage sites turned into rubble.[1]

[1] Miriam Griffin, *Nero: The End of a Dynasty* (London: Routledge, 1984), 141, and Edward Champlin, *Nero* (Cambridge, MA: Harvard University Press, 2003), 178-209, esp. 191, who

The burning of Rome forces a question that must have been on the minds of those who witnessed the conflagration and who practiced and preached the street philosophy of the day: How do you react as a Stoic? Seneca, after all, was the young Nero's rhetoric tutor and then court minister *par excellence*. Does Stoic philosophy force us to rethink our attachment to objects and our valuation of them as central to flourishing? Does it help us to loosen our grip in some way?[2] Can we flourish without attachment to objects and persons we love?

The Greek founders of Stoicism – Zeno of Citium, Cleanthes, and Chrysippus, and later Stoics, both Greek and Roman, such as Epictetus, Seneca, and Marcus Aurelius, hold a view of flourishing or happiness inspired by Socrates – that virtue alone is sufficient for flourishing. External goods, all those outer goods that are not themselves part of our inner goodness – health, wealth, and material objects and edifices, however much integral to sustenance or subsistence, homeland, history, culture, or security, are renamed by the Stoics and dubbed "indifferents." They are to be preferred rather than dispreferred, but are never themselves the kinds of things that can make or break our happiness. Rome may burn as Nero watches or wanders to the outer wilds of his empire; houses, shops, public baths and communal ovens, tombs, and monuments may go up in smoke; the glories of ancient Greek cities may be demolished by battle. All these are disasters; however, the task of Stoicism as a practical philosophy is to teach us to endure the loss

take the view that Nero was responsible for the fire. For the view that the Christians may have been the arsons, see John Pollini, "Burning Rome, Burning Christians," in *The Cambridge Companion to the Age of Nero*, eds. Shadi Bartsch, Kirk Freudenburg, and Cedric Littlewood (Cambridge: Cambridge University Press, 2017), 212-236. Our ancient sources are Tacitus, *The Annals*, in *The Complete Works of Tacitus*, eds. Alfred Joh Church and William Jackson Brodribb (New York: Perseus, 1942), http://data.perseus.org/citations/urn:cts:latinLit:phi1351.phi005.perseus-eng,1:15.38, who wrote in the early 2nd Century, and later authors Suetonius, *The Lives of the Twelve Caesars: The Life of Nero* (Cambridge, MA, and London: Loeb Classical Library, 1914), http://penelope.uchicago.edu/Thayer/E/Roman/Texts/Suetonius/12Caesars/Nero*.html, 38, and Cassius Dio, *Roman History*, vol. 8 (Cambridge, MA, and London: Loeb Classical Library, 1925), 62.16-18. The latter two point the finger at Nero. Tacitus cautiously says: "A disaster followed, whether accidental or treacherously contrived by the emperor, is uncertain, as authors have given both accounts" (15.38).

[2] This paper draws on earlier considerations of some of these issues in Nancy Sherman, "Stoics on Stuff: Consolations on the Destruction of Cultural Heritage in War," in *Heritage and War: Ethical Issues*, eds. William Bülow, Helen Frowe, Derek Matravers, and Joshua Lewis Thomas, 195-212 (Oxford: Oxford University Press, 2023) and Nancy Sherman, *Stoic Wisdom: Ancient Lessons for Modern Resilience* (New York: Oxford University Press, 2021). An abbreviated version was also presented as the keynote address at the EuroIsme (European International Society for Military Ethics) conference in Athens, May 2023. My book, *Stoic Wisdom,* aims to construct a credible Stoic account of how we invest in things outside our control in a way that doesn't fully unhinge us.

and manage risk. If Socrates in the *Phaedo* dubs philosophy as the practice of dying, then the Stoics double down on the claim and pronounce philosophy as the practice of prerehearsing loss.

This Stoic perspective may strike some as the harsh austerity of an ancient philosophy gone awry. We may rehearse evils or what the Stoics call "prerehearse the bads" in order to practice loss.[3] But to claim that the exercise is not just protective, but that there are no real losses, is to give too much credence to Stoicism's strange recalibration of values that dubs all goods that are not excellences of character false goods.

Still, the Stoic view gives us space to wonder if we do not at times fetishize material stuff and underestimate our resilience in the face of loss. The Stoics argue that if we want to go on valuing things that are outside the kind of control we generally have over our characters, then we should downgrade their value somehow and develop new kinds of attitudes toward them. In addition, we should learn techniques that mitigate risk.

Given the practical bent of ancient Greco-Roman Stoicism, especially as elaborated by later Stoics such as Epictetus, Seneca, and Marcus Aurelius, it's not surprising that in our own time, "Modern Stoicism" has become a wildly popular street philosophy.[4] It competes with Buddhism as a practiced philosophy. For some it is nothing short of a secular religion – with no building funds or tithings attached! It becomes an alternative, yet familiar "chosen" religion. Given that ancient Greco-Roman Stoicism flourished around the turn of the first millennium, with many Judeo-Christian thinkers (such as Philo of Alexandria – Philo Judaeus – and Augustine) picking up bits and pieces of its view, it's not surprising that many looking for a new religion find familiar shards in Stoic writing.

But on my view the best way to cast the project of ancient Stoicism is as a response to Aristotle and his fudging at the end of the first book of the *Nicomachean Ethics* about how much weight to give to external goods and how they are to be regulated by virtue in a good life.

## II. The indifferents

Aristotle is commodious in what he will include in the good or flourishing life. And this, itself, is a response to Plato. At the end of Book I of the *Republic*, Plato moves virtue (or justice) to a state of the soul or

[3] See, for example, Seneca, *Letters on Ethics to Lucilius*, trans. Margaret Graver and A. A. Long (Chicago and London: University of Chicago Press, 2015), 76.34.

[4] See https://modernstoicism.com/ for a group that helped launch the movement.

psyche. His concern was never how people practice that virtue. Rather, his worry was that the virtues cannot just be a list of conventional behaviors, as his teacher Socrates had imagined them to be when he buttonholed his interlocutors in the *agora* and asked his famous question *τί ἐστί* (what is it) – what is temperance, what is justice, what is piety? However, any move to virtue or a state of character is itself inadequate, insists Aristotle. A virtuous life spent fully asleep or tortured on the rack is no flourishing life.[5] Still, Aristotle never works out how to structure a composite notion of happiness that mixes external goods and persons and fortune with the internal good of the virtues. To many readers, happiness seems to become a messy ragbag of different kinds of goods. How to achieve happiness, given our dependence on external goods, is never made fully clear. Happiness seems unstable, at best. The Stoics are intent to find a more stable conception of happiness, and to do so by drawing brighter stripes and by indulging in neologisms. They dub external goods "indifferents." Indifferents are never constitutive of happiness or even real kinds of goods to be chosen as part of our happiness. In the case of indifferents that are preferred, they are supportive conditions that in most instances (in a way, never fully worked out) are selected because they are "in accord with nature."

Whatever the substantive axiological difference, the practical take home point for the Stoics is that preferring and dispreferring (selecting and disselecting) involves not indifference, but a rational approach and avoidance attitude that steers clear of both sticky acquisitiveness and panicky aversion. They argue that we need to learn behaviorally and not just intellectually new ways of wanting and rejecting that introduce a certain lightness to our touch. As Epictetus puts it, "use [...] impulse and aversion lightly and with reservation and in a relaxed way."[6] How this attitude packs in enough investment to make life worth living, and not just a constant hedged bet, is a concern that drives many common critiques of Stoicism.

## III. Stoic moral psychology: Three layers of emotions

Consider key foundational elements in Stoic moral psychology. Critically, the Stoics hold that the locus of control is our assent to impres-

[5] Aristotle, *Nicomachean Ethics* I.5, 1095b32-1096a4, in *The Complete Works of Aristotle*, ed. Jonathan Barnes, Vol. 2 (Princeton, NJ: Princeton University Press, 1984).

[6] Epictetus, *How to Be Free: An Ancient Guide to Stoic Life. Encheiridion and Selections from Discourses,* trans. A. A. Long (Princeton, NJ: Princeton University Press, 2018), using emended translation from Tad Brennan, "Reservation in Stoic Ethics," *Archiv für Geschichte der Philosophie* 82 (2000): 151.

sions, and in particular, impressions that are affectively charged, or umphy, (*hormetikai*). Seneca explains:

> Anger is undoubtedly set in motion by an impression received of a wrong. But does it follow immediately on the impression and break out without any involvement of the mind? Or, is some assent by the mind required for it to be set in motion? Our view is that it undertakes nothing on its own, but only with the mind's approval.[7]

Emotion, is thus, a kind of voluntary action, something we will.[8] Through assent we implicitly frame and grasp the world propositionally and act on the resulting opinions or judgments. The view borrows heavily from Aristotle's cognitivist account in the *Rhetoric* II. But it is both more thoroughgoingly cognitivist than anything Aristotle would sign off on, and more volitional.

The robust volitional moment emerges in the Stoic's novel idea that we can insert pauses before we approve or disapprove of the impressions that trigger emotional reactions. As I write in *Stoic Wisdom*, you can slow down or stem initial responses, think not just fast, but slow, as Daniel Kahneman might put it. What we are approving or disapproving of is a cognition, as in the case of anger, that we were unjustly wronged or offended. The Stoic view is that all mental activity, whether to do with emotions or the most theoretical study, is cognitive. The Stoic psyche just is made of reason in manifold manifestations.

That said, the Stoics hold that there are three distinct layers of emotional experience, with differing levels of cognitive engagement. The first layer is made of sub-threshold emotional arousals – starts and startles. These are impressions we process in a near automatic way, as in autonomic responses that at times are adaptive (such as flight-fight-freeze responses) but at other times, maladaptive or rooted in implicit bias or unhinged fear.[9] Says Seneca, they can "come unbidden and depart unbidden." But we may also deliberately "bid" them adieu before they derail us.

> If anyone thinks that pallor, falling tears, sexual excitement or deep sighing, a sudden glint in the eyes or something

[7] Seneca, "On Anger," *Moral and Political Essays*, trans. John M. Cooper and J.F. Procope (New York: Cambridge University Press, 1995), 2.3-4.

[8] Seneca, "On Anger," 2.4.

[9] We can think, too, of neurobiologist Joe LeDoux's low road emotions.

> similar are indications of an emotion [...] he is wrong; he fails to see that these are just bodily agitations. Thus, it is that even the bravest man often turns pale as he puts on his armour, that the knees of even the fiercest soldier tremble a little as the signal is given for battle,[10] that a great general's heart is in his mouth before the lines have charged against one another, that the most eloquent orator goes numb in his fingers as he prepares to speak.[11]

In positing this subthreshold layer of emotional experience, the Stoics leave room for quasi-emotional phenomena that may catch even the calm and cool sage off guard. Blanching in a ship wreck, knees knocking at the sound of the clarion call, a passing frisson or erection, (or to take an example from Philo of Alexandria, Sarah's nervous laughter when she is told she will give birth at 100) will not impugn the sage (or near-sage matriarch) because these arousals are not full-blown emotions that grab hold in lingering ways.[12] There is not yet an assent to the impression. The Stoics hold that there is time to nip a full-blown emotion in the bud before there are unwanted consequences of the emotional arousal.

This takes us to the second layer of emotional experience. The Stoics classify all full-blown or ordinary emotions as subspecies of four basic emotions: desire/fear/pleasure/distress.[13] These ordinary emotions represent our customary, Stoic-untrained ways of affectively engaging wholeheartedly in the world, animate and inanimate stuff. Each of the emotions, says Cicero following the Greek Stoic patriarch Chrysippus, is itself a two-tiered evaluative judgment that some good or bad is in the offing and that it requires an appropriate or fit behavioral response. So, desire judges some good as worth pursuing – that house is the one I want – and a judgment about how it is appropriate for me to go for it – I'll bid with all my hard-earned savings on it.[14]

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[10] A Ukrainian front line combat doctor, Ivanka Chobanyuk, reported that when she is treating patients, her legs shake, no matter how many times she has performed this kind of work. But the response goes away quickly and she regains control. See https://www.npr.org/2022/04/05/1090992369/a-ukrainian-woman-a-medic-in-the-military-says-the-war-has-changed-her.

[11] Seneca, "On Anger," 2.3.

[12] Philo, *Questions and Answers on Genesis*, trans. R. Marcus (Cambridge, MA, and London: Loeb Classical Library, 1953), 4.16

[13] Again, the Stoics are keen here to tidy up Aristotle's messier non-taxonomic account of emotions in the *Rhetoric*.

[14] Cicero, *Cicero on the Emotions: Tusculan Disputations 3 and 4,* ed. Margaret Graver (Chica-

The problem with these ordinary emotions, according to Stoics, in a move that influenced much modern moral philosophy (including Kant's famous rants against inclinations), is that emotions can be excessive impulses – you're like a runner, says Chrysippus – once in stride you can't easily stop. Seneca embellishes the metaphor: being angry is like standing on the edge of a precipice. Once the descent begins, there is no going back. You're like a body in free fall.[15]

Thus, emotions can be overly intense and hard to rein in. There is, however, a further problem of mis-valuation. Ordinary emotions are perverted cognitions, false evaluations about what is really good and bad in the world. Love and desire, distress and grief, anger and fear, by and large, attach to objects that are not genuine goods and bads. They attach to indifferents. And the proper attitude toward indifferents, on the Stoic view, should be preference or dispreference, a way of approaching or avoiding an object without unbridled emotional investment or aversion. Preference or dispreference (selection or rejection) is not the same as unbridled emotional investment or aversion. When we prefer or disprefer, we make "wise selections," or as moral aspirants, at least, try to do so. In making those selections, we engage in the business of the ordinary world. We are not hovering above it in some Platonic transcendent sphere of Forms. Rather, we are in the world of mud and dirt, brick and mortar, food and shelter, aesthetically beautiful buildings and objects, friends and lovers. We are in the world of sights and sounds (however disparagingly Plato viewed that world in the *Republic*). But as Stoics moving in that concrete world of persons and stuff, we are always trying to loosen ourselves a bit from too tight a clutch or too desperate a need. We need to keep in mind that the Stoics are doctors of the soul keen in helping us find pockets of resourcefulness, pivots, agility that can take root in our emotional repertoire.

This puts us nearer to a third layer of emotional experience that we can approximate only as progressors and not fully wise. This third layer of emotional experience consists in rational or "good/healthy" analogs of ordinary emotion, focused on actions that are virtuous and that avoid vice. These rational attitudes are the affective dimensions that go with wise selecting – in place of desire, there is rational desire (*boulesis*); in place of fear, there is rational cautiousness or wariness (*eulabeia*); and in place of pleasure, there is rational joy (*chara).*[16]

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go, IL: University of Chicago Press, 2002), 3.75-6.

[15] Seneca, "On Anger," 1.7; Seneca, *Letters on Ethics to Lucilius*, trans. Margaret Graver and A. A. Long (Chicago and London: University of Chicago Press, 2015), 3.1.4; also 3.16.2.

[16] Note, there is no rational analog for distress, for the only real cause of distress would be

But what does all this amount to? Do the Stoics leave any room for robust delight in external goods once we dub those externals "indifferents" and purify the emotional attitudes that we invest in them? Presumably, a sage will find joy not only in acts of beneficence, justice, or mercy (i.e., virtuous deeds), but also in human security and friendship. She will find joy in safe dwellings and homes, stable food supplies and health. She will find joy in pleasing objects that uplift whether because they are part of one's cultural heritage or just because they are beautiful and they tickle one's fancy.

That said, there is tension, especially in Seneca's writing, between a life of asceticism and aestheticism. Seneca berates himself: will he go for a thin straw palette or a mattress plush enough to show the imprint of his body? Will he be content with a simple abode or go for marble halls and a retinue of servants that would make Downton Abbey's staff look scant? But clearly, part of the appeal of Stoicism today, in circles of power and wealth, not least of which in Silicon Valley, is that the Stoics of old struggled hard with the pushes and pulls of stuff – especially glittering stuff – its corrupting force and the yearning to be free of its yoke.

One way to try to be free of its yoke is to practice loss. And so the Stoics introduce methods of risk management and preparedness. But how do we imagine the unthinkable, such as loss of home or homeland overnight? How do we manage risk in a way that doesn't pre-traumatize? The Stoics introduce various Stoic meditative techniques which will be the topic of the section which follows.

## IV. Managing risk through pre-rehearsal of the bads

We have already alluded to one technique: prerehearsing future evils or bads. Anticipate the traps that lay ahead. Don't be caught off guard. The exercise goes back to the early Greeks. Cicero, not himself a Stoic but a redactor of Stoic texts, approvingly quotes a fragment from Euripides:

> I learned this from a wise man: over time
> I pondered in my heart the miseries
> to come: a death untimely, or the sad
> escape of exile, or some other weight
> of ill, rehearsing, so that if by chance
> some one of them should happen, I'd not be
> unready, not torn suddenly with pain.[17]

vice and of that the sage is incapable. I return to that point later.

[17] Cicero, *Cicero on the Emotions: Tusculan Disputations 3 and 4*, ed. Margaret Graver (Chica-

Euripides, he says, in turn, takes a lesson from the pre-Socratic Anaxagoras who legend has it said when his son died, "I knew my child was mortal." The Stoics ratify the idea by turning it into a daily exercise: Regularly rehearse potential future evils to mitigate the shock of accident and tragic loss.[18] The Stoics claim that if we do that, we can mute some of the "freshness" of a sudden loss. The Greek term here for "fresh" is telling. *Prosphatos* connotes "rawness," as in freshly slaughtered meat.[19] We need advance exposure if we are to weaken the visceral, raw assault of close-up losses.

Pre-rehearsal is a form of pre-exposure, a desensitization ahead of time. There are contemporary, clinical parallels to the notion of pre-rehearsal. Some may be more familiar with exposure techniques that work on desensitization after the fact. Clinicians have for some time successfully used evidence-based prolonged exposure (PE) therapy after the fact, to reduce posttraumatic stress disorder (PTSD). PE is a form of cognitive behavioral therapy (CBT, itself with roots in Stoicism)[20] during which patients confront (*in vivo* or through imagination) situations or events that are reminders of traumatic situations, though now experienced in safe settings. Through repeated approach, rather than avoidance, the fear response is deconditioned rather than reinforced.

Take the case of military service members exposed to the constant threat of improvised explosive devices. Survival depends on quickly responding to those threats. But the fear response can become overreactive. Hypervigilance is adaptive in a war zone, but not always after war, at home when thunder claps are heard as gunfire, fresh bumps on a pavement read as newly planted bomb sites, a black plastic bag on a lawn a hiding place for an explosive. Re-exposure to stressors

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go, IL: University of Chicago Press, 2002), 3.29.

[18] Ibid., 3.30.

[19] Ibid., 3.52; A. A. Long and D. N. Sedley, *The Hellenistic Philosophers*, 2 vols., vol. 1: Translations of the Principal Sources with Philosophical Commentary (Cambridge: Cambridge University Press, 1987), 65B.

[20] Both Albert Ellis and Aaron Beck, founders of an early version of CBT, acknowledge the debt: Albert Ellis, *Reason and Emotion in Psychotherapy* (Oxford: Lyle Stuart, 1962); Aaroon Beck, *Cognitive Therapy and the Emotional Disorders* (Madison, CT: International Universities Press, 1975). Note, there has been a move within the military community to use the term posttraumatic stress (PTS), dropping the "D" for "disorder" which many find stigmatizing. One argument often made is that servicemembers don't come home from war with "limb disorders," but "limb injuries." Psychological injuries should be viewed with parity. Others argue that in so far as posttraumatic stress is a *normal* response to an *abnormal* situation of overwhelming life threat, the notion of a "disorder" gets the response wrong. I have used "PTSD" in the above discussion for consistency, because the literature I go on to cite on pre-exposure uses the term.

by talking about them, seeing them in virtual settings, revisiting and processing memories in a relationship where there is trust and safety becomes a way of deconditioning both the avoidance response and hyperreaction. The "neutral" garbage bag on a lawn or new bump on the neighborhood road over time loses its associated negative valence.[21]

According to more recent studies, researchers have begun to investigate pre-treatment exposure. "Attention bias" (or to cast the idea in Stoic terms, the patterns in our assent to impressions) is modulated by balancing focus between threat and neutral stimuli. The idea is to learn to shift attention, so that we develop perceptual and cognitive resources for focusing not only on threat, but also on neutral situations. Research suggests that advance training of this sort in shifting focus between threat and unthreatening stimuli reduces anxious hypervigilance characteristic of PTSD.[22] In a related research experiment, Israeli Defense Force combat soldiers in units likely to face potentially traumatic events were exposed to "attention bias modification training" sessions.[23] Through computer programs, they were trained to attend to threats "in an attempt to enhance cognitive processing of potentially traumatic events." The idea is to make the response to stress cues adaptive and agile: elevate the response in acutely threatening situations in combat, but train it to be transient, so that it recedes in safe circumstances.

Again, we can put a Stoic gloss on this: train in advance to withhold inappropriate assent to impressions of threat by retreading alternative patterns of assent to impressions of calm and safety. Of course, Stoic standards of what is and what is not appropriate will not map onto what most of us commonly hold to be appropriate or adaptive. The devil is in the details of how we interpret the doctrine of indifferents and what will count as wise selection. But the formal Stoic notion – of preventive exposure and training in what we focus on in our environment – is prescient.

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[21] Lotte Hendriks et al., "Intensive Prolonged Exposure Therapy for Chronic PTSD Patients Following Multiple Trauma and Multiple Treatment Attempts," *European Journal of Psychotraumatology* 9, no. 1 (2018): 1425574.

[22] Amit Lazarov et al., "Bias-contingent Attention, Bias Modification and Attention Control Training in Treatment of PTSD: A Randomized Control Trial," *Psychological Medicine* 49, no. 14 (2019): 2432-2440; Ilan Wald et al., "Attention to Threats and Combat-related Posttraumatic Stress Symptoms: Prospective Associations and Moderation by the Serotonin Transporter Gene," *JAMA Psychiatry* 70, no. 4 (2013): 401-408; Amy S. Badura-Brack et al., "Effect of Attention Training on Attention Bias Variability and PTSD Symptoms: Randomized Controlled Trials in Israeli and U.S. Combat Veterans," *The American Journal of Psychiatry* 172, no. 12 (2015): 1233-1241.

[23] Ilan Wald et al., "Selective Prevention of Combat-related Post-traumatic Stress Disorder Using Attention Bias Modification Training: A Randomized Controlled Trial," *Psychological Medicine* 46, no. 12 (2016): 2633.

Epictetus develops the idea of pre-rehearsal, suggesting that we can be trained for personal loss, of things or persons, by gradually increasing the stakes: we move incrementally from rehearsing small potential disturbances to great ones: "In the case of everything that attracts you or has its uses or that you are fond of, keep in mind to tell yourself what it is like, starting with the most trivial things." He suggests we start with a jug: "If you are fond of a jug, say: 'I am fond of a jug.' Then, if it is broken, you will not be troubled." Epictetus then widens the sphere of practice. "If you go out to bathe, picture what happens at the bathhouse – the people there who splash you or jostle you or talk rudely or steal your things."[24] (The stakes are small, but this is just a heuristic for how to learn the technique and apply it when the stakes are higher).

Consider a pandemic, ours, or perhaps the Antonine Plague that spread through the Roman Empire (165-180 CE). Imagine what seems unimaginable. And then prepare for the personal and emotional toll. Know the attitudes that travel with disaster – anxiety, dread, massive sorrow and grief, loneliness, dislocation, a sense of an empty future. And know the sources of comfort and support. There is no way we can be immune from psychological distress. Nor would we want to be. Moreover, any armor that claims to fully protect is a scam, a fool's errand. Still, there are Stoic lessons we can learn about possible ways of minimizing and managing distress both on a personal and institutional level. Make hardships that are distant and almost unthinkable real and proximate. And then collectively and responsibly design best resources and responses to meet those cases.

## V. Managing risk through mental reservation

An additional technique the Stoics deploy is "mental reservation." The idea is this: Tag on to your intentions, or as they say, your impulses toward preferred indifferents, a tacit mental reservation: "if nothing happens to prevent it."[25] The thought is: Things may not work out. Think of what you want as tentative. Append an "unless." I'll go sailing, says Seneca, "unless something interferes." Hedge your bets.[26]

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[24] Epictetus, *How to be Free*, 4.

[25] The Greek term is *ὑπεραίρεσις*. Often *exceptio* in Latin. See Brad Inwood, *Ethics and Human Action in Early Stoicism* (Oxford: Oxford University Press, 1985), 119-126. For a contrary view that reservation does not involve conditional impulses and that there may not be evidence for the synergy of Stoic logic and psychology, see Tad Brennan, "Reservation in Stoic Ethics," *Archiv für Geschichte der Philosophie* 82 (2000): 149-177.

[26] I often think of this technique as something Virginia Woolf conjures up in the opening pages of *To the Lighthouse*. Recall little James is dying to go to the lighthouse. "Will we go?" he

Epictetus invokes a similar idea: "Use only impulse and aversion, but lightly and with reservation and in a relaxed way."[27] Again, in going "light" on our impulses, we try to avoid the kind of yearning that leaves you with nothing but chronic emptiness if things don't work out. A late first century BCE Stoic, Arius Didymus, invokes a similar idea from the Old Stoa:

> They also say nothing [...] contrary to his desire or impulse occurs in the case of the worthwhile man, because he does all such things with reservation and nothing adverse befalls him unforeseen.[28]

But is the idea to make your impulses, or selections, fail-proof? If so, then, impulses come, as it were, with built-in cushions, a bit like car airbags that inflate upon impact in an accident. Formulated in the right way, impulses ensure psychological immunity that protects when you need it most. The idea is too good to be true, psychologically, if not logically.[29]

Maybe a better way of thinking about reservation is on the financial trading model: "past performance is no guarantee of future results."[30]

This is actually a useful way of thinking about key Stoic texts on mental reservation. The point of the financial analogy is, rather, that information about the world and our best analyses of it are constantly changing. Impulses should change and be responsive to those updated ways of seeing the world. So, to return to Seneca's example: I'll go on a boat ride. But I'll revise my intention if I notice that a storm is setting in. I plan to campaign for election as a Roman magistrate. But I'll change my plans if my bid for election seems highly unlikely. And so on. In the sage's case, there is always a quick responsiveness to new

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clamors. Mrs. Ramsey, his mother (and likely based on Virginia Woolf's own mother, Julia Duckworth Stephens), says repeatedly: "we will go, if the weather is fine."

[27] Epictetus, *How to be Free,* emended trans. following Brennan, "Reservation in Stoic Ethics," 151.

[28] A. A. Long and D. N. Sedley, *The Hellenistic Philosophers*, 2 vols., vol. 1: Translations of the Principal Sources with Philosophical Commentary (Cambridge: Cambridge University Press, 1987), 65E; Arius Didymus Stobaeus, *Epitome of Stoic Ethics (Eclogae)*, ed. and trans. Arthur Pomeroy (Atlanta, GE: Society of Bibical Literature, 1999), 2.115.5-9; Long and Sedley, *The Hellenistic Philosophers*, vol. 1: Translations of the Principal Sources with Philosophical Commentary, 65W.

[29] For an eloquent and careful elaboration of the critique, see Brennan, "Reservation in Stoic Ethics."

[30] As in https://corporate.vanguard.com/content/corporatesite/us/en/corp/how-we-invest/principles-for-investing-success.html#:~:text=Past%20performance%20is%20no%20guarantee,-invest%20directly%20in%20an%20index.

information. That said, the sage's case is highly idealized: The sage can almost instantly update impulses in light of new, veridical perception. The sage doesn't get stuck on what's wished for or what was. The sage's motives always track cognitive changes. And cognitive agility guarantees keeping up with a changing epistemic landscape.

Seneca goes on to unpack the idea behind mental reservation by capturing the above idealized line of reasoning, but with a few critical additions: "This is why we say that nothing happens to a wise man contrary to his expectations – we release him not from the accidents but from the blunders of humankind [...]. We ought also to make ourselves adaptable, lest we become too fond of the plans we have formed [...]." He accents the last point: "Both the inability to change and the inability to endure" are "foes to tranquility."[31]

The first point to note is that the sage is protected not from "accidents" or misfortune, but from human error. And this is because a sage's knowledge, as we suggested, keeps up with the facts. It is in this sense that things are not "contrary to his expectations." It's not that the sage cushions all impulses against disappointment or failure. Rather, she changes impulses to keep up with what is now the case. We fallible beings are not so lucky: our knowledge is not always one step ahead of accidents. But then Seneca brings the sage down a notch or two to our human level. A sage may suffer by having to abandon plans and desires. So here we have the concession that the sage makes emotional investments that can actually lead to pain. But the suffering (*dolorem)* will be "much lighter," if success is not guaranteed (because of mental reservation), and if there is an overall capacity to be adaptive. That is a tip for all of us, even we who are fallible and who invest with more passion than is often wise.

Overall, this is a powerful set of lessons. If the fundamental point behind mental reservation is cognitive agility, facing facts squarely, trying to keep up with fluid informational landscapes, then the Stoic idea here is less about how to beat frustration than about how to change motivations in ways that align with new and reliably curated information. Beating frustration may be an indirect windfall, but the work in getting there is cognitive. Of course, as we said, the Stoics idealize the model. The sage is an exalted knower, indeed, an infallible one, who doesn't have to worry about assenting to misleading and attractive impressions or clinging to health or clean feet when the inevitability of disease or muddy feet is how nature is unfolding here

[31] Seneca, "On Tranquility of Mind," in *Moral Essays*, Loeb Classical Library (Cambridge, MA, and London: Harvard University Press, 1932), 13.3-14.1.

and now and guiding what we should assent to. And he does not seem to have to worry either about all the unconscious ways we take in impressions without surveillance or with misinformation that distorts our views. But even so, the general idea of being responsive to a changing world aided by exercises in pre-rehearsal, are cautionary lessons for trying to find calm in unnerving times.

## VI. Return to Seneca and attachment and loss

We can now circle back to the beginning of this paper – to attachment to stuff, and to its loss, through fires and massive devastation, whether through arson, war, or nature. And we return with Seneca.

Seneca is a complex and colorful writer who uses his oratorical flourishes to dazzle and at times confuse his readers. He indulges in the excesses of palatial luxury, but then excoriates himself for it. He aspires to ascetic simplicity, but not so secretly revels in an aesthete's taste for patterned marble and statuary. You can see him beating his chest in this passage, but with a wink wink and a nod nod:

> I am not telling you to give yourself airs if you look down on golden couches and bejeweled cups. What's the virtue in scorning superfluities? [Rather] [a]dmire yourself when you look down on necessities.[32]

Don't be fooled by "the glitter and gleam of wealth" or the "false glare of high repute and great power."[33] Learn to see virtue as what's really beautiful, even when coated in dirt and grime[34]:

> Only then will we be in a position to understand what worthless items we admire. We are just like children, who set great store by their playthings and care more about any cheap trinket than they do about a sibling or even a parent. As Aristo says, how are we different from them, except that we with our statues and paintings have a more expensive form of silliness. They delight in smooth pebbles found on the beach with specks of different colors; we delight in patterned marbles imported from the deserts of Egypt or the wilds of Africa, broad columns sup-

[32] Seneca, *Letters on Ethics to Lucilius*, 110.11.

[33] Ibid., 115.7.

[34] Ibid., 115.6.

> porting some hall or dining pavilion large enough for an entire town.[35]

Seneca points here not to our attachment to homes as shelters but to cities and their cultural heritage. At his most breast-beating earnest moments, his point is that all that patterned marble – in imperial columns and arches that fill a forum – caters to a false glory. We need to recast glory so that virtue and its exempla, in a Cato or a Socrates, come to inspire in the way that triumphal pageantry and monuments do.[36] This is a standard Stoic move: to give words new referents. Real glory is what is typically not glorified. But it ought to be.

Still, at times, when pushed to an extreme, it is a harsh asceticism, even if rhetorical. But Seneca lightens his tone when he documents an actual conflagration that wipes out a city's cultural and domestic edifices, and much of its population. The fire he writes about in a letter to his junior Lucilius is not of Rome, but of the Roman colony of Lugdunum (modern Lyon). The conflagration may have taken place shortly after the Great Fire.[37] Seneca's remarks give us a concrete sense of how he thinks about the technique of prerehearsing loss, the place of distress and grief in the Stoic emotional profile, and the importance of friendship:

> Our friend Liberalis is quite upset at news of the fire that has completely consumed the municipality of Lyon. The catastrophe could have shaken anyone, let alone a person deeply devoted to his native land. It has left him searching for the mental toughness with which he had undoubtedly armed himself against what he thought were possible objects of fear. I'm not surprised, though, that he had no advance fears of this disaster, so unforeseen and virtually unimaginable, because it was unprecedented. Fire has troubled many cities, but not to the point of completely annihilating them. Even when buildings have been set alight by enemy action, many places escape destruction [...]. Such a range of splendid structures, any one of them capable of embellishing a city all by itself – and a single night has leveled them all![38]

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[35] Ibid., 115.8.

[36] Robert J. Newman, "In Umbra Virtutis: Gloria in the Thought of Seneca the Philosopher," in *Seneca: Oxford Readings in Classical Studies*, ed. John Fitch (Oxford: Oxford University Press, 2013), 323.

[37] Seneca, *Letters on Ethics to Lucilius*, n. 91.1.

[38] Ibid., 91.1-2.

Seneca is clearly shocked by what happened. And he admits that it is hard to know how one can concretely prepare for what seems unimaginable. And so there always has to be room for grief, distress, sorrow, and pain. Even amongst the noblest. And in the company of friends with whom one can grieve, mourn, rebuild, and repair.

## VII. Is there room for distress?

So, is there room for healthy distress in a philosophy built on eliminating stress and finding calm? In the catalogue of good emotions, I noted earlier that there are three emotions – a good form of desire, a good form of fear, and a good form of joy. But significantly, there is no good form of distress, a good correlate of the fourth ordinary emotion. And that is because, as I mentioned earlier, on the orthodox view, there is no good form of distress. For the only cause of "good" distress is the corruption of virtue, and for the sage, the exemplar of good emotions, vice and shameful conduct is by definition impossible.

However, none of us are sages. And as moral aspirants, we seek and need guidance. The complaint is registered most forcefully by Cicero. He writes from a profoundly personal place. He is grieving deeply for his beloved daughter Tullia, who has died in childbirth in late winter 45 BCE. In his retreat in the Tusculan hills outside Rome, he turns to Stoic tonics for consolation. But he can't find the right comfort in the texts. And that's telling, he thinks, against Stoicism.

> I pass over the method of Cleanthes [the second head of the Greek school of Stoicism], since that is directed at the wise person, who does not need consoling. For if you manage to persuade the bereaved person that nothing is bad but shameful conduct, then you have taken away not his grief, but his unwisdom [...]. [But] this is not the right moment for such a lesson.[39]

In short, a sage's wisdom loosens him from the hold of attachment that clings and the devastation of loss that knows only mourning and grief. But if you are a mortal, in the throes of loss, a Cicero mourning his child, then being taught a sage's wisdom at the moment of bereavement is, at the very least, as therapists would say, bad timing.

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[39] Cicero, *Cicero on the Emotions: Tusculan Disputations 3 and 4*, 3.77.

What if there is room for a Stoic intervention that is gentler? Recall, ordinary emotions are double-tiered, each emotion nesting two evaluative judgments – in the case of mental distress, that a bad has taken place and that a certain behavior is apt. Cicero says he finds Chrysippus's method helpful. For it does not require denying the first judgment, in his case, that a profound loss has occurred, but rather works on changing the second judgment, how we respond to it. But even this behavioral change, he says, is a hard pill to swallow in the throes of loss: "It's a big task to persuade a person that he is grieving by his own judgment and because he thinks he ought to do so."[40] In other words, even behavior modification, comporting yourself in a way that you think is fitting in your role as both father and Roman statesman, who is supposed to be at the forum at that moment (while Caesar is watching and waiting), is a challenge. Robust volition has its limits.

Still, Seneca thinks you can push those limits a bit. If tears flow, watch that they're not just theatrics, and willed and nursed. The natural ones can and should flow, but again, under monitored attention. Your task is to place a pause when the lacrimae are still pre-emotions, and on the verge of becoming full-throated and excessive to the point of now being hard to control.

> These [preliminary] tears are shed [...] involuntarily. There are others, though, to which we give egress when we revisit the memory of those we have lost and find an element of sweetness in our sorrow – when we think of their pleasant conversation, their cheerful company, their devoted service. At that time, the eyes release their tears, just as in joy. These we indulge; the others conquer us. So you need not hold back your tears because another person is standing near, or sitting at your side; nor should you make yourself cry because of them: neither tears nor the lack of tears is ever as shameful as when tears are feigned. Let them come of their own accord.[41]

So, the foe is forced tears, not public tears, as Cicero, ever concerned with Roman duties and decorum, might have thought, or tears brought on by memory or reflection. What's objectionable is nursing the tears, encouraging them to flow.[42] The problem is excess and theatrics.

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[40] Ibid., 3.79.

[41] Seneca, *Letters on Ethics to Lucilius*, 99.18-19.

[42] Ibid., 99.21. For insightful clinical research on persistent distress in prolonged grief reactions, see

Even so, Seneca is aware that tears can overtake one. He is at once the doctor and the patient giving counsel that is always also self-counsel:

> I am writing these things to you – I, who wept for my beloved Annaeus Serenus so unrestrainedly [...]. I understand, now, that the main reason I felt such grief was that I had never thought it possible that his death should precede my own. I kept in mind only that he was younger than I, much younger. As if birth order determined our fate![43]

Again, pre-rehearsal has its limits, especially if you defend against thinking about what you don't want to think about! Freud had a term for that form of defense: denial. And it dampens the putative effectiveness of preparation taken in the calm before the storm.

## VIII. Are you in the storm alone?

Popular modern Stoicism, and indeed the Victorian version epitomized by the British stiff upper lip, often conjures up a picture of go-it-alone grit. To be Stoic is to be self-reliant. You may not retreat to the inner citadel, but you find your strength in your inner resources. Social systems and their support, friendships and alliances, seem to fade into the background in the modern Stoic snapshot. They are often not even in the frame.

But this is not the full legacy of ancient Stoicism. For example, Marcus Aurelius in his *Meditations* is writing to himself, at nightfall, on the battlefield during the Germanic campaigns (172-180 CE). As a military leader, reflecting on the day, he knows intimately that an army's strength depends on the coordinated movements of a cadre and the grit sustained not just by individual will, but by common purpose and mutual support. This view is rooted in his Stoicism: We are parts of a larger whole, a shared humanity in an ordered cosmos that unites humans and the gods. Our fulfilment, as individual selves, depends on that collaboration. We have to work together, he says, in colorful language, "like feet or hands or eyelids, like the rows of upper and lower teeth."[44] We have to strive to be in sync.

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Paul A. Boelen and Lonneke I. M. Lenferink, "Symptoms of Prolonged Grief, Posttraumatic Stress, and Depression in Recently Bereaved People: Symptom Profiles, Predictive Value, and Cognitive Behavioural Correlates," *Social Psychiatry and Psychiatric Epidemiology* 55 (2019): 765-777. He points to the importance of the first six months for early identification and early treatment of those at risk. He notes the prevalence among those at risk to continue to yearn to see the lost one. The yearning and clinging are attitudes that the Stoics pinpoint as unravelling control.

[43] Seneca, *Letters on Ethics to Lucilius*, 63.14.

[44] Marcus Aurelius, *Meditations: The Annotated Edition*, ed. Robin Waterfield (New York: Basic

With the detritus of the battlefield still fresh in his mind, the image of social grit becomes more visceral. Picture a dismembered hand and head lying apart from the rest of the human body. That's what "man makes of himself [...] when he cuts himself off from society."[45] Body parts cannot function cut off from the organic whole to which they belong. So, too, we can't thrive cut off from the political and social whole of which we are a part.

To be "at home" in the world, a stock Stoic phrase, is to be a citizen of the cosmos, not bound by the borders of a *polis*, as Aristotle had argued. We are global citizens, on the Stoic view, *cosmopolitan*s, a term coined by a colorful Stoic predecessor, Diogenes the Cynic. When asked where he was from, Diogenes replied in essence, from everywhere and nowhere, or literally, "a world citizen."

The founder of Stoicism, Zeno of Citium, develops the idea in his *Republic,* of which only fragments remain. But Marcus, no doubt, was telegraphing the notion when he writes we are woven together, "intertwined" by a common bond, "in a loving relationship," with one thing scarcely foreign to another.[46] That bond, on the Stoic view, is our shared reason. The view becomes foundational for later philosophers. Kant is the inheritor of that notion of universal reason as the foundation of the moral imperative.

Social grit and the supports that come from common bonds become the way we endure loss. For preparation, "dwelling in the future," may give us some protection, but it would be nonsense to think it made us bulletproof. And the Stoics have no illusions of such immunity. When Rome burns, when Lyons is devastated, when Kyiv and Khartov are firebombed in indiscriminate acts of war, when the treasures of cultures in Palmyra are destroyed by the Islamic State as a way of blotting out history, do the Stoics really say we acquiesce, retreat, find peace in discourse and meditation that take us out of the world, away from its stuff, its attachments, its loved ones, and all the meaning that that invests? Do they shrug their shoulders and say it's naive to invest energy and care in preserving and protecting the Cathedral of St. Sophia, the 11th century Byzantine structure, with its cupolas and frescoes, a UNESCO World Heritage site in the heart of Kyiv against the massive shelling rained down by Russian bombs?[47]

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Books, 2021), 2.1.

[45] Ibid., 11.

[46] Ibid., 6.38.

[47] See New York Time Magazine, March 29, 2022, https://www.nytimes.com/interactive/2022/03/18/magazine/ukraine-war-kyiv.html, "Citizens of Kyiv" by photographer Al-

I have argued "No." For the Stoics do not practice indifference. At least a credible Stoicism, and the best of Stoicism, does not. Rather, as Stoics, we try to learn ways of managing fears and distress. As a Stoic, we have emotional skin in the game. We remain attached but we try to cultivate the kind of love that knows a measure of prudence and finds ways to be nimble and adaptive when that is what is required. We remain alert and cautious, we know fear, but fear that also knows courage and resistance. We mourn deeply, we wail and cry, but in ways that know being "at home" in the world always requires the support and sustenance, and material assistance, that comes from being connected to others and to things. That is a Stoic consolation.

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# The Ethics of Military Influence Operations

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**Abstract**

*This article articulates a framework for normatively assessing influence operations, undertaken by national security institutions. Section I categorizes the vast field of possible types of influence operations according to the communication's content, its attribution, the rights of the target audience, the communication's purpose, and its secondary effects. Section II populates these categories with historical examples and section III evaluates these cases with a moral framework. I argue that deceptive or manipulative communications directed at non-liable audiences are presumptively immoral and illegitimate for liberal states, as are deceptive operations aimed at an unjust end, or even operations aimed at a just end where secondary effects are forecast to be disproportionate to the proximate end.*

**Keywords:** *just war theory; ethics of war; military ethics; influence operations; propaganda; information warfare; political warfare; deception; lying; manipulation*

Effective counter-insurgency requires the cooperation of civilians in insurgent-affected areas, but civilians' fear of the insurgents will often inhibit this cooperation. A civilian might be more apt to cooperate with counter-insurgent forces, if he felt he had the support of his community. A groundswell of anti-insurgent messages in social media from local addresses, might give him the confidence to join the chorus or refuse cooperation with the insurgents in some more tangible way. Yet, what if those social media messages, apparently

coming from people in his community, are actually ghost-written by the counter-insurgent force's Psyop team, stationed thousands of miles away?

The purpose of this article is to articulate a framework for normatively assessing influence operations, undertaken by national security institutions. I will be using the term "influence operations" as a maximally inclusive term for a family of actions, defined by a US Army field manual as "military actions involving the integrated employment of multiple information forces to affect drivers of behavior."[1] As such, "influence operations" overlaps with, or includes aspects of, what some organizations and publications call information operations, information warfare, cognitive warfare, political warfare, psychological operations, and propaganda.

Very little has been written about the ethics of such operations. There are not even so many descriptive accounts of these usually secret programs. Therefore, in section I of what follows, I aim to categorize the vast field of possible types of influence operations according to the communication's content, its attribution, the rights of the target audience, the communication's purpose, and its secondary effects. Section II populates these categories with historical examples and section III evaluates these cases with a moral framework.

## I.

In an effort to impose some order on the myriad types of influence operations, I will categorize different types of operations according to their content, attribution, target audience, purpose, and secondary effects in section II. In preparation, I will first consider the moral aspects of these categories.

### a. Content

Influence operations may be attractive to policymakers, because they do not directly threaten the lives of the operators or targets, but only involve deception or manipulation. As such, they do not risk breaching international laws regarding the use of force; it is far easier to conceal their attribution; and they are usually much cheaper than military

[1] This phrase is the definition for the US military's current euphemism "operations in the information environment." Joint Chiefs of Staff, *Joint Publication 3-04 Information in Joint Operations* (South Carolina: CreateSpace Independent Publishing Platform, 2022), GL-5. I am reluctant to spend much space parsing the definitions of related terms because militaries have so many, and shifting, terms of art for roughly the same set of capabilities.

operations. Yet, deception and certain kinds of manipulation are not mild infractions against the moral order, but instead, potentially serious affronts against autonomy.

Deception can encompass material falsehoods or communications that mix true and false information in a way that is misleading to the target. Deception seeks to manipulate a person's understanding of the world, potentially compromising his ability to act in his own best interest. Deception trespasses against the right to honest-dealing, treating a person as a mere means, a kind of instrument of another. In a sense, deception is worse than other kinds of rights violations, because while one knows one is being assaulted, robbed, or kidnapped, one does not know he is being deceived. Rather, he believes that he is still acting on accurate information, in his own best interest, even as he uses his own faculties to accomplish the deceiver's aims.

Of course, deception can have more or less grievous effects, based on the content of the deception. Lies about important institutions like the public health system, the criminal justice system, and the elections administration, can undermine trust in institutions that are designed to impartially protect the rights of populations in large numbers and correct for the dangers of a state of nature. Lies about epidemics, food safety, minority groups, and national security threats can lead directly to people failing to protect themselves or to unjustly attacking others. Distrust in the traditional media and in social media undercuts people's abilities to make good decisions and affects their trust in important institutions. Yet, even less grave deceptions undercut the bonds of trust that undergird all social relations, institutions, and political relationships. Knowing that people lie and also knowing that one will not be able to always spot the lie, can lead to a prudent person distrusting all communications and institutions and withdrawing from any social interaction that fails to reaffirm his original presuppositions.[2]

One can also limit another person's autonomy, through manipulation. Manipulation is a class of actions that falls normatively in between rational persuasion and coercion.[3] The persuaded person has

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[2] Immanuel Kant, "Of Ethical Duties Towards Others, and Especially Truthfulness," in *Lectures on Ethics*, eds. Peter Heath and Jerome B. Schneewind (Cambridge: Cambridge University Press, 1997); Eliot Michaelson and Andreas Stokke, eds., *Lying-Language, Knowledge, Ethics, and Politics* (Oxford: Oxford University Press, 2018); Jorg Meibauder, ed., *The Oxford Handbook of Lying* (Oxford: Oxford University Press, 2019); Sissela Bok, *Lying: Moral Choice in Public and Private Life* (New York: Vintage, 1999); Bernard Williams, *Truth and Truthfulness: An Essay in Genealogy* (Princeton, NJ: Princeton University Press, 2002); Hugo Grotius, *On the Law of War and Peace*, trans. Francis W. Kelsey (New York: Bobbs-Merrill, 1925), book 3, chapter 1, XI.

[3] Jennifer Blumenthal-Barby, "Between Reason and Coercion: Ethically Permissible Influence in

reasons presented to him and is free to evaluate them with whatever standards he normally brings to bear in similar situations and choose a course of action. The coerced party knows he is being forced to do something. By contrast, the manipulator tries to shape the target's behavior, by countering or bypassing his deliberative faculties.[4] *Countering* deliberative faculties is accomplished by appealing to social norms, provoking emotional states, and appealing to desires. In short, the manipulator heightens some of the target's native counter-rational tendencies (e.g. the alcoholic's love for alcohol). *Bypassing* deliberative faculties, is accomplished "by exploiting non rational elements of psychological makeup or by influencing choices in a way that is not obvious to the subject"[5] such as framing, setting up defaults, manipulating the environment, and priming with subconscious cues.[6]

Most social interaction involves a mix of cognitive and affective input. An emotion-laden monologue from one person will "make" another feel in a certain way. Yet, this is not necessarily manipulative. Manipulation's deliberateness[7] and limiting effect on the target's autonomy[8] make it similar to deception. Like a deceived person, the manipulated person engages in what feels like his normal decision processes, but they have been subverted by the manipulator.[9] The manipulator consciously seeks to provoke a particular emotion from the target in order to hamper his deliberations and guide him to a particular end.

Manipulation per se is not always invidious. Humans are not purely rational creatures who consistently pursue self-interest based on a dispassionate consideration of facts, so it is not necessarily wrong to use means beside rational persuasion to encourage their positive behavior.[10] Ultimately, one has to look at the purpose of manipulation,

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Healthcare and Health Policy Contexts," *Kennedy Institute of Ethics Journal* 22, no. 4 (2012): 346.

[4] Ibid., 349.

[5] Jennifer Blumenthal-Barby and Hadley Burroughs, "Seeking Better Health Care Outcomes: The Ethics of Using the Nudge," *The American Journal of Bioethics* 12, no. 2 (2012): 5.

[6] Blumenthal-Barby, 349.

[7] Cecile Fabre, *Cosmopolitan War* (Oxford: Oxford University Press, 2012), 152.

[8] Timothy M. Wilkinson, "Nudging and Manipulation," *Political Studies* 61, no. 2 (2013): 347.

[9] Alex Dubov, "Ethical Persuasion: The Rhetoric of Communication in Critical Care," *Journal of Evaluation in Clinical Practice* 21, no. 3 (2015): 497.

[10] Randal Marlin, *Propaganda and the Ethics of Persuasion* (Peterborough: Broadview Press, 2013), 176; Cass Sunstein, *The Ethics of Influence* (Cambridge: Cambridge University Press, 2016), 16, 85, 106; Sarah Conly, *Against Autonomy* (Cambridge: Cambridge University Press, 2012), 242-243.

whether it is in the manipulated person's own interest, own wishes, or his duty. One may have a duty to manipulate someone to do his duty[11] and if he is of diminished capacity, to keep him from harming himself. Manipulation is usually invidious if the end is harmful to the target, a violation of his rights, or contrary to what he would have rationally judged to be in his best interest. Even manipulation directed at a good end is suspect, if it appeals to anti-social emotions like hatred, fear, or resentment since these emotions are hard to control and can lead to unjust actions.

b. Attribution

Deception can also involve deceiving the target about the source of the communication. Such actions are problematic for all the reasons related to disrespect of autonomy articulated above; when the content of the communication is false, the negative impact can be compounded. When speaker A communicates some upsetting information to B, B's anger about the information may in part be directed at the messenger. Deceiving targets about attribution can redirect that anger toward another, potentially innocent, target. For example, an influence operation might cause intercommunal violence, if provocative communications about community A are wrongly believed to come from members of community B. Spoofing attributions can also undermine faith in institutions, if government figures are believed to be the source of outrageous statements. Even accurate information can cause a great deal of damage, for example, if a repressive regime responds to true accounts of governmental corruption, sent from anonymous sources by engaging in a crackdown on the usual suspects.

c. Target

The target's diminished capacity, or liability to deception, or manipulation is important to determining the permissibility of the communication. Liability to x, means that one is not wronged by x. Regarding diminished capacity, it is not necessarily wrong to manipulate a child to protect him – for example, telling him a frightening story about child abduction to impress upon him the need to be careful around strangers – because his rational abilities are not fully formed. Giving him a calm, data-rich talk, complete with statistics and PowerPoint slides might not have the desired effect.[12] Frightening a mentally-normal adult might

[11] Fabre, *Cosmopolitan War*, 154.

[12] On why purely rational persuasion often does not work, see Dubov, 498; Marlin, 176;

be inappropriate though, since he has the mental faculties to make decisions on his own behalf and the right, even to make bad decisions so long as they do not violate others' rights.

Regarding liability, mentally-normal adults can forfeit or waive certain rights, including the right to honest dealing and the right to be treated with respect (a right precluding invidious manipulation). One forfeits these rights by violating others' rights or plotting to do the same. An agent can deceive a deceiver without violating his (forfeited) rights if doing so is necessary to halt or forestall his rights violating behavior.[13] One can waive a right to honest dealing by entering into a permissible adversarial practice, where deception and manipulation are the "rules of the game." This applies literally to some games like poker and figuratively to war or intelligence-gathering actions in which antagonists are trying to trick the other side in the interest of national security.[14]

### d. Purpose

Deceiving or manipulating even a liable party, or party with diminished rational capacities is generally wrong if the agent seeks an unjust outcome like a rights violation, an undeserved harm, a corrupted character and so on. Generally, actions pursuant to national security are just. Absent a just global government, states are tasked with protecting the rights of their inhabitants in a potentially adversarial self-help scheme. The leaders of states are ultimately tasked with deciding what's in the best interest of their states. lf national security institutions require obedience of their employees to lawful orders, in order to function efficiently under civilian oversight, it is not wrong for security professionals to engage in deceptive initiatives, which appear pursuant to national security even if these initiatives are not objectively pursuant to national security.[15] Professional norms are designed to efficiently and effectively guide professionals to securing the joint rights and collective rights their institutions are designed

Thomas Nys and Bart Engelen, "Judging Nudging: Answering the Manipulation Objection," *Political Studies* 65, no. 1 (2017): 206.

[13] Michael Skerker, *An Ethics of Interrogation* (Chicago, IL: The University of Chicago Press, 2010), 104.

[14] Michael Skerker, "The Rights of Foreign Intelligence Targets," in *National Security Intelligence and Ethics*, eds. Seumas Miller, Mitt Regan, and Patrick F. Walsh, 89-106 (London: Routledge, 2022), 93-94.

[15] Michael Skerker, *The Moral Status of Combatants* (London: Routledge, 2020), 181-90.

to protect.[16] They must be action-guiding norms since governmental institutions are vehicles for mass mobilization and they cannot be action-guiding if geared to fact-relative states of affair, e.g. "only perform actions that actually are pursuant to national security or that best realize national security." Thus, institutional actors are permitted to act on their legal orders, stemming ultimately from their political authorities, to engage in those actions that appear best able (most efficiently, effectively, reliably and proportionately) to meet national security aims.[17] Given this fallible, adversarial self-help regime, characterized by high risk, high stakes, and significant uncertainty, there is a legitimately wide range of national security aims that institutions might pursue, excepting patently unjust collective enterprises like genocide, ethnic cleansing, colonialism, and theft of natural resources.

People have duties to respect the rights of all people regardless of nationality and so duties to support the just institutions of foreign states since these institutions protect the rights of inhabitants of those states. So, while state agents may engage in deceptive and manipulative operations to defend their states, they must not subvert other state's fair electoral processes, truthful media institutions, schools, public health systems, and the like.[18] Deceptive stratagems simply aimed at political leaders' aggrandizement, re-election, or enrichment are also not legitimate actions undertaken by national security actors. Their remit is only to take actions to protect the rights of their political community's inhabitants.

### e. Secondary effects

The primary effect of kinetic (i.e. violent) military actions, is usually worse than the secondary effects since the primary effects are death and dismemberment. Yet the secondary effects of deceptive influence operations may well be worse than their primary effects since the secondary effects may undermine confidence in essential institutions and some social relations. Disinformation planted in traditional or social media may have limited effects, like reducing the popularity of a government or forcing a public figure to resign, but may also lead to loss of trust in the media or governmental institutions. Falsely

[16] Seumas Miller, *The Moral Foundations of Social Institutions* (Cambridge: Cambridge University Press, 2010), 80.

[17] Ibid., 129-132, 187.

[18] Ibid., 161-62.

reporting that the blood used to treat soldiers was tainted might cause dissension in the military, but also lead to a loss of the public's trust in the health system. Disinformation targeting an ethnic or religious group can lead to sectarian violence that lasts for generations.

The uncertainty of these secondary effects also speaks to a major, unique risk with influence operations. Military planners know the blast radius of munitions and so can estimate the secondary effects on structures if they drop a bomb in a particular location. They can estimate in broad terms the economic effects of blockading a harbor. Yet, the content created in an influence operation can persist and mutate in the information environment indefinitely, causing unforeseen calamities. For example, in 1903, the tsarist secret police created the forgery *The Protocols of the Elders of Zion*, about a supposed global Jewish plot to control the economy and political order, and the document is still cited by jihadists and neo-Nazis to justify anti-Semitic violence and is taught as fact in schools in some Arab countries.[19] Pointing to both the unforeseen effects of information manipulation and the possibly profound effects on institutions, McCormack and Chatterjee compare propaganda to a WMD.[20]

I am concerned that in some institutions, influence operations may be planned without sufficient understanding of the culture in which the operation will occur, and therefore, without adequate consideration of secondary effects. Just as some militaries neglect to measure civilian casualties after military actions, I am concerned that secondary effects of influence operations will never be officially recorded, removing the possibility of holding operators accountable for them.

## II.

This section will exemplify a typology of influence operations taking into account different variations regarding the normatively important elements of content, attribution, target, and purpose. In the interest of limiting the complexity of the presentation, I will leave off variations in secondary effects, though this category would add another two variations for each entry. Some of the following cases are real and some are notional.

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[19] United States Holocaust Memorial Museum, "Introduction to the Holocaust," *Holocaust Encyclopedia*, https://encyclopedia.ushmm.org/content/en/article/protocols-of-the-elders-of-zion.

[20] Wayne McCormack and Deen Chatterjee, "Technology, Information, and Modern Warfare: Challenges and Prospects in the 21st Century," in *The Ethics of Information* Warfare, eds. Luciano Floridi and Maria R. Taddeo, 61-84 (New York: Springer, 2014), 63.

| content | attribution | target | purpose | example |
|---|---|---|---|---|
| | | | | |
| F | F | NL | U | Devastation |
| F | T | NL | U | Hutu Power |
| T | T | NL | U | Reprisals |
| T | F | NL | U | Neptun |
| F | F | L | U | red on red |
| F | T | L | U | Tokyo Rose |
| T | T | L | U | surrender |
| T | F | L | U | casualty figures |
| F | F | NL | J | comics |
| F | T | NL | J | comics |
| T | T | NL | J | Voice of America |
| T | F | NL | J | LC Cassock |
| F | F | L | J | Mincemeat |
| F | T | L | J | Nuke threat |
| T | T | L | J | surrender |
| T | F | L | J | corrupt officials |

T = True • F = deceptive/manipulative • NL/L = non liable/liable • U/J = unjust/just

*Communications false in content and false in attribution to a non-liable audience for an unjust purpose.*

Operation Devastation: In 1968, a number of Stasi assets working undercover in West German research institutes "defected" to East Germany, claiming that they had become alienated by West German efforts to develop nuclear, chemical, and biological weapons. There were no such programs. The East German government also published forged documents to back up the scientists' claims.[21]

Modern Disinformation: Recent years have seen disinformation spread through both traditional and social media, targeting the democratic processes of European states and the United States.

[21] Thomas Rid, *Active Measures: The Secret History of Disinformation and Political Warfare* (New York: Farrar, Straus, and Giroux, 2020), 198-200.

Russian bots, spoofing British accounts, posted tens of thousands of pro-Brexit tweets – often mendacious in content – ahead of the 2016 referendum.[22] In 2017, Russian media outlets in Europe stoked anti-immigrant sentiment and bolstered support for the anti-EU AfD party in Germany by hyping a fictitious story of a 13-year-old girl who had been raped by an immigrant.[23] Bots in the Czech Republic, Cyprus, and Vietnam spread tweets charging that the 2016 Democratic nominee for president Hillary Clinton and her chief of staff were operating a child sex ring out of a pizza parlor basement in northwest Washington DC.[24]

*Communications false in content, but accurate in attribution to a non-liable audience for an unjust purpose*

Hutu Power: In the early 1990s in Rwanda, the political party Hutu Power disseminated racist anti-Tutsi tracts, publicized false reports of Tutsi massacres of Hutus and created a radio station that promoted a narrative that Tutsis planned to seize political power from Hutus. The radio station repeatedly urged "defensive" massacres of Tutsis. The resulting genocide in spring of 1994 resulted in the murder of hundreds of thousands of Tutsis.

*Communications true in content and accurate in attribution to a non-liable audience for an unjust purpose*

Reprisals: In the face of well-organized Yugoslav partisan attacks, Adolf Hitler issued an order on September 16, 1941 that 100 civilians would be executed for every German soldier killed. Up to 30,000 Yugoslav civilians were executed and many villages razed in reprisals.

*Communications true in content but false in attribution to a non-liable audience for an unjust purpose*

Operation Neptun: One of the most elaborate examples of this category was Operation Neptun, run by the Czechoslovak StB in 1964 with assistance from the KGB. The StB decided to take advantage of a local

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[22] Heather A. Conley et. al., "Countering Russian and Chinese Influence Activities," *Center for Strategic and International Studies*, July 1, 2020, https://www.csis.org/analysis/countering-russian-chinese-influence-activities-0.

[23] Ibid., 8

[24] Eric Jardine, "Beware Fake News: How Influence Operations Challenge Liberal Democratic Governments," in *Centre for International Governance Innovation*, February 12, 2019, https://www.cigionline.org/articles/beware-fake-news/.

television program's plan to film a documentary about the search for rumored Nazi Gold in two Bohemian lakes by leaving Nazi documents for the documentary crew to find. The purpose was to increase anti-German sentiments in North America and Europe; extend the soon-to-expire German statute of limitations for Nazi-era war crimes; and reveal the identity of some of the West German Intelligence service's assets. While waiting on extra documents from Moscow, the StB put Nazi documents from their own archives in pre-corroded *Wehrmacht* chests and sank them in a lake in Czechoslovakia. The film crew found them, publicized the discovery in sensationalist fashion and turned them over to the Interior Ministry (the parent organization of the StB) for analysis. After a few months, the Interior Ministry publicized the Nazi documents, some of which the KGB supplied after the discovery of the chests. The revelations received widespread European coverage and resulted in an extension of the war crimes statute of limitations.[25]

*Communications false in content and false in attribution to a liable audience for an unjust purpose*

Red on red: Militaries sometimes attempt to draw enemy fires unto enemy units by sending them electronic signals suggesting that allied units are in the position, enemy units actually occupy. This might be undertaken for just or unjust purposes.

*Communications false in content with accurate attribution to a liable audience for an unjust purpose*

Tokyo Rose: Various English-speaking female Japanese radio broadcasters disseminated propaganda meant to demoralize US service personnel during WWII in service of the Japanese war effort.

*Communications true in content with accurate attribution to a liable audience for an unjust purpose*

Surrender: In many conflicts, military teams sought to encourage surrender of enemy troops through leaflets or more recently, text message. Importantly, the communications currently attributed themselves to the enemy government. This tactic could be employed in just or unjust wars.

*Communications true in content with false attribution to a liable audience for an unjust purpose*

[25] Rid, chapter 11.

A Psyop team might spoof an enemy government source and use it to issue accurate casualty figures to the enemy military as a way of demoralizing them in service of a just or unjust cause.

*Manipulative content with accurate attribution to a non-liable audience for a just purpose*

In the mid-2000s, a US military task force distributed comic books to children in the Philippines with anti-jihadist storylines in an effort to discourage teens from joining local insurgent groups.[26] This kind of operation could be done with or without correct attribution.

*Communications true in content and accurate in attribution to a non-liable audience for a just purpose*

The Voice of America is a state-owned, but independent US government agency which produces independent news programs in multiple languages for foreign audiences. Per its charter, it is meant to serve as a reliable and authoritative source of news; "present a balanced and comprehensive projection of significant American thought and institutions;" and "present the policies of the United States clearly."[27] During the Cold War, it was seen as a bulwark against Soviet and Warsaw Pact propaganda. At various times, the VOA signal was also blocked by these Warsaw Pact countries and labeled "American propaganda."

*Communications true in content, but false in attribution to a non-liable audience for a just purpose*

LC-Cassock: During the 1960s, the CIA printed and distributed magazines in East Germany that were near exact copies of existing German magazines. CIA authors faithfully reproduced the style and format of the magazines replete with socialist propaganda, but also included accurate information about the West that the real German authorities would want to conceal from their citizens and accurate and unflattering information about East German officials or true information about setbacks in East German government programs.

*Communications false in content and false in attribution to a liable audience for a just purpose*

[26] I was told this anecdote by a US military officer involved with the program.

[27] Voice of America Public Relations, "VOA Charter," *Voice of America*, archived from the original on November 20, 2016, https://www.insidevoa.com/p/5831.html.

Operation Mincemeat: In 1943, the Allies wished to divert German defenses to Greece away from Sicily, the location of the Allied planned invasion of occupied Europe. British intelligence operators dressed a cadaver in Royal Marine clothing and placed faked correspondence in its pocket indicating Allied invasion plans for Greece. The body was released from a British submarine close to a Spanish beach; after the body washed ashore, the Spanish authorities, as expected, shared the fake document with German Intelligence. The Germans subsequently focused their defenses on Greece.[28]

*Communications false in content but true in attribution to liable audience for a just purpose*

On the eve of Operation Desert Storm, the Bush administration warned the Saddam Hussein government that it would respond to the use of chemical weapons on US troops with a nuclear strike on Iraq.[29] Historians speculate that this threat was a bluff.

## III.

In this section, I present an instrument for evaluating potential influence operations conducted by national security institutions. It is meant to be simple enough for junior service members to use. The following conclusions should be understood to be tentative, given the breadth of influence operations, their secretive nature, and uncertain impact. The instrument identifies actions that are presumptively immoral. These are actions that liberal states have strong reasons to avoid. It is a broader discussion than I can have here whether liberal states are ever justified, all things considered, in performing immoral actions.[30]

The instrument has four filtering questions for deceptive and/or manipulative communications and three for non-deceptive and non-manipulative communications. A negative answer to one of the latter three questions indicates a presumptively immoral operation. Affirmative answers to all the questions indicates a permissible influence operation.

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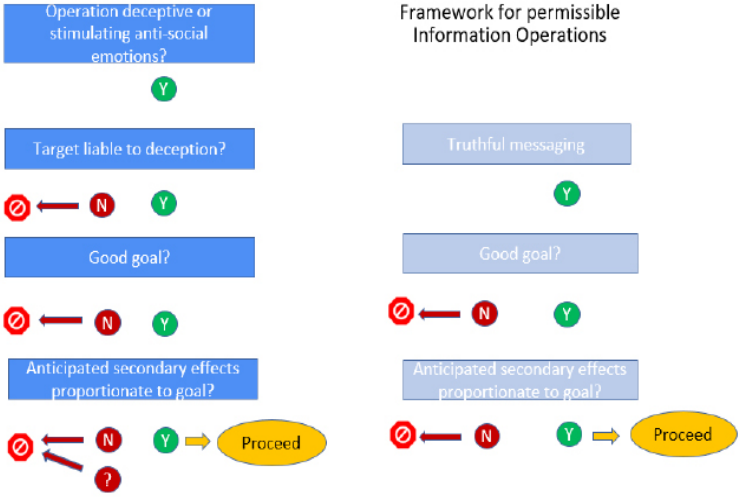
[28] Christopher Andrew, *The Defence of the Realm: The Authorized History of MI5* (New York: Penguin Books, 2019), 286-287.

[29] Timothy McNulty, "Bush Warns Iraq on Chemical Arms," *The Chicago Tribune*, May 10, 1991, https://www.chicagotribune.com/news/ct-xpm-1991-03-10-9101220384-story.html.

[30] See Fabre's discussion of "dirty hands" exceptions to moral demands, chapter 1.




1. Is the content of the communication deceptive and/or liable to generate anti-social emotions?
2. Is the target audience liable to deception or manipulation?
3. Is the purpose just?
4. Are the secondary effects proportionate to the purpose?

*1. Is the content of the communication deceptive and/or liable to generate anti-social emotions?*

Communications that are deceptive or likely to cause anti-social emotions in the target audience are morally problematic and need to be scrutinized by senior officers. It is not unusual, with NATO militaries at least, that in certain combat theaters, certain very destructive weapons can only be used with a senior officer's authorization. My contention is that influence operations are potentially very dangerous and so need significant oversight.

*2. Is the target audience liable to deception or manipulation?*

Deception and manipulation of a liable target or a target with diminished capacity can be permissible if it is the most efficient, effective, reliable, proportionate, and least rights infringing[31] means to an objectively just end. If the target is not liable to deception or manipulation, the action is likely immoral.

Deceptive communications are presumptively wrongful for liberal states since state coercion in such states is justified by the consent of the

[31] Skerker, *The Rights of Foreign Intelligence Targets*, 90-96.

governed and citizens cannot in principle consent without government candor about its actions.[32] Government deception may conceal and facilitate illegal, immoral, incompetent, and corrupt behavior. Still, government deception, be it through omission of pertinent information, refusal of comment,[33] or express falsehoods, can sometimes be justified when they are the necessary, effective, and proportionate[34] means of concealing just covert operations, diplomacy, espionage, and, at the level of unofficial communications by government actors, when employed in espionage and interrogation.[35] The deceptive means used to conceal such actions can be justified if the reasons for keeping these actions secret and doing so with deceptive means can be publicly justified.[36]

*3. Is the purpose just?*

Deceptive or manipulative communications appealing to anti-social emotions are illegitimate if aimed at an unjust purpose involving mass human rights violations like genocide, ethnic cleansing, mass rape, theft of property, or the subversion of just institutions.

*4. Are the secondary effects proportionate to the purpose?*

Non-deceptive and non-manipulative operations with a just purpose, deceptive and/or manipulative operations of liable parties for a just purpose, and (more rarely) deceptive and/or manipulative of non-liable parties for just purposes can be justified. Yet they should not be undertaken if their negative secondary effects are likely to be disproportionate to the just proximate purpose. The uncertainty regarding secondary effects will often be significant. Influence operators would need considerable analytical support to confidently forecast

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[32] Christopher Kutz, "Secret Law and the Value of Publicity," *Ratio Juris* 22, no. 2 (2009): 197-217; Dennis Thompson, "Democratic Secrecy," *Political Science Quarterly* 114, no. 2 (1999): 181-193; David Luban, "The Publicity Principle," in *The Theory of Institutional Design*, ed. Robert E. Goodin, 154-198 (Cambridge: Cambridge University Press, 1996).

[33] Mitt Regan, "Secrecy, Deception, and Covert Action," in *Justice at the Margins of War*: *The Ethics of Espionage and Gray Zone Operations*, ed. Edward Barrett, 68-82 (Annapolis, MD: Naval Institute Press, 2021), 73.

[34] Cecile Fabre, *Spying through a Glass Darkly: The Ethics of Espionage and Counter-intelligence* (Oxford: Oxford University Press, 2022), 3.

[35] Michael Skerker, "A Two Level Account of Executive Authority," in *Sovereignty and the New Executive Authority*, eds. Claire Finkelstein and Michael Skerker, 161-186 (Oxford: Oxford University Press, 2019); Skerker, *An Ethics of Interrogation*, ch. 7.

[36] Luban, 189.

secondary effects. Influence operations should not be undertaken in novel situations if sufficient analytical staffing is not available for operators.

Finally, even accurate communications designed to violate people's rights are immoral. Accurate communications delivered for a just purpose can still be wrong if their secondary effects are disproportionate to the purpose sought.

Let us analyze some of the cases presented above. The Voice of America communications are largely unproblematic. A self-identified quasi-government agency, the VOA broadcasts accurate information throughout the world. One concern is that the VOA broadcasts may present a risk to citizens of repressive countries who choose to listen to the broadcasts on banned radios. In a way, the existence of the forbidden VOA broadcasts in repressive countries could present a temptation to some citizens. Unlike a typical temptation though, the object of the temptation – accurate knowledge – is good, which is only made risky because of the repressive state in which the tempted citizen lives. I think presenting the "temptation" is ultimately permissible because it is not forced on the citizenry of repressive states. Instead, they can weigh the risks and decide for themselves if they want to seek out a radio able to receive the broadcasts. A final note, relevant for what follows: the fact that many of the socialist countries the US government would have liked to have penetrated with broadcasts during the Cold War, blocked the signals because of their American source explains why many influence operators wish to deceive the target about the attribution of the communications.

Depending on the stage of the war, truthful offers of surrender can also, interestingly, be a kind of temptation for soldiers. If their side is hopelessly overmatched or if their leadership is callously ordering suicidal tactics, a sincere offer of surrender is akin to a rescue, assuming that POW privileges will be honored. Otherwise, encouraging surrender can be akin to encouraging treachery, albeit in a mild form since the surrendering soldier's primary motivation, presumably, is saving himself rather than harming his side's war effort. Treachery against an unjust war effort can have good short term effects, though could undermine the relevant state's possible longer term just operations by undermining military discipline. If both sides of the war are permitted to fight, as those supporting the moral equality of combatants allow,[37] then influence operators on both sides of a war are permitted to encourage surrender as a less destructive way of achieving victory.

There are two cases mentioned above involving threats: *nuclear threat* and *reprisal*. Generally, threats are morally problematic as they

[37] E.g., Yitzhak Benbaji and Daniel Statman, *War by Agreement* (Oxford: Oxford University Press, 2019); Uwe Steinhoff, "Rights, Liability, and the Moral Equality of Combatants," *Journal of Ethics* 16, no. 4 (2012): 339-366; Skerker, *The Moral Status of Combatants*.

are attempts to force a person to do what the threatener wants. However, threats can be permissible if the party is liable to coercion. One can threaten someone to force him to do something he has a duty to do if one is also permitted to use violence to force him to do his duty.[38] That said, threats are risky because of their uncertain outcomes. What if the liable party escalates his behavior in the face of a threat or acts in some unpredictable and destructive way? This prudential concern picks up moral content for the agent who is responsible for averting the danger the liable party originally posed.

One may not threaten to do X if one lacks a right to do X. An occupying power may not murder uninvolved civilians to punish insurgents. Even if they are providing non-lethal aid to insurgents, they are not liable to death. So the Nazis were neither permitted to execute civilians in reprisal nor to threaten to do so. If US officials threatened Saddam Hussein with a nuclear attack on populated areas of Iraq, the threatened action was impermissible, as such an attack would be indiscriminate, unnecessary, and disproportionate.[39] The threat would also then be impermissible.

Amongst deceptive operations, those targeting liable persons for just purposes are the most acceptable. In Operation Mincemeat, British authorities deceived a liable target, the German Intelligence agency, the *Abwehr*. *Abwehr* operators waived rights to honest-dealing by engaging in deceptive operations themselves. Deception and concealment are characteristic of the intelligence and counter-intelligence trade; operators are trained both to deceive and be wary of deception. The ruse concerned military maneuvers and was aimed at Britain's military and intelligence opponents, not civilian populations. The targeted recipient of the disinformation would want to keep the document and the nature of its discovery secret, lest it reveal to the British that the Allies' invasion plans had been intercepted. Even if the disinformation leaked into the public, it would not, like disinformation regarding public figures or religious groups, have much effect on people's behavior during the war. It is possible that some Greek civilians would flee, anticipating an invasion. Many would likely not be able to do so, or would linger, anyway, until the future was clear. Anxiety about a possible future invasion would likely be felt with or without a leaked document.

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[38] Fabre, 99.

[39] Paul Ramsey writes extensively about the morality of threatening nuclear attacks in the context of deterrence, *The Just War: Force and Political Responsibility* (New York: Charles Scribner's Sons, 1968), 147, 250-251.

Red on red operations are also permissible. Military actors are liable to deception. In this case, they are deceived about the position of the allied units they are trying to destroy via electronic, means they know are subject to manipulation. Civilians are not at risk of intercepting and acting on the signals, which are on military frequencies. Fires are redirected by the agent to permissible enemy military targets. Ultimately, this kind of operation will pick up moral content from the military/political ends it is serving.

LC-Cassock has curious dimensions. Clearly, the problem the CIA wanted to avoid was exemplified in the VOA's ban in certain Eastern Bloc countries. Citizens of totalitarian states would never get a chance to hear accurate information about the West and their own governments – which they would presumably want to hear – if the CIA was honest about its authorship of the magazines. Deceiving a non-liable audience about attribution is normally wrong, even if it is for a just purpose. With LC-Cassock, CIA forgers were subverting propagandistic publications by publishing accurate information in them. CIA actors had a good purpose in trying to penetrate the pall of socialist propaganda with accurate information about corruption in certain Eastern bloc governments and to counter lies about the West. Subverting honest media is wrong, but subverting deceptive media is not necessarily wrong. I am inclined to say that false attribution for this purpose is justified since deception was used to undo unjust deception. Regarding secondary effects, reduced confidence in a deceitful totalitarian government is good. Still, CIA operators could not forecast with any kind of certainty what long term effects might follow from their operation. How would the East German government respond if some citizens protested after reports of corruption in the Transport Ministry? Would CIA officers protect them from Stasi reprisals?

This issue of the safety of the deceived parties is not relevant to the same degree in cases where accurate and unflattering information about officials or the war effort is presented to enemy troops in the form of spoofed official communications. Service personnel are already in great danger and have the means, perhaps, to protect themselves from commissars. This form of deception is also then probably permissible since it otherwise conforms to the LC-Cassock case of using deception to communicate the truth in an environment deformed by deception.

There are interesting parallels between LC-Cassock and Neptun. The Neptun documents detailing Nazi war crimes and *abwehr* surveillance of Mussolini were genuine; as with the CIA operation, the deception

lay in the presentation of the information. Had the Czechoslovak or Soviet governments made public Nazi documents just before the sunset of the German statute of limitations for war crimes, the move would have been seen as the politically opportunistic maneuver it was and the authenticity of the documents may have been rejected out of hand. Here, the gravity of the deception regards the concealed motive. The Czechoslovak and Soviet were not acting out of genuine outrage over Nazi war crimes, but in an effort to weaken Western opposition to their own totalitarian states. The operation had fairly broad and vague goals: to remind the world of Nazi war crimes in order to generally diminish the reputation of West Germany. The subsidiary concrete goal of extending the war crimes statute of limitations had the same purpose of lowering West German standing in the global community. Influence operators may legitimately engage in deceptive operations against liable targets in order to protect their national security, but not by undermining just foreign institutions. Since the operation had the vague goal of diminishing the international reputation of the West German government, we have to conclude that the operation was unjust, but not as egregious as others involving disinformation meant to undermine democratically elected leaders or sap trust in specific citizen-facing just institutions.

The US military engaged in manipulative content with their comic books, no doubt using evocative images and exciting story lines to dramatize the danger and immorality of jihadist groups. This action is not impermissible since a stark informational pamphlet would likely fail to engage the poorly-educated teens who were at risk of jihadist recruitment.[40] The military operators, along with local authorities and the teens' parents, have a natural duty to prevent children from engaging in extremely risky and morally ruinous behavior, like joining jihadist groups, and the informational content of the comics was presumably true, that the jihadists do immoral things like murder civilians. They may therefore actually have a duty to use evocative means to get their message across. A consideration of secondary effects however, should give us pause about this operation. Would persuasive comic books simply discourage vulnerable teens from seeking out insurgent groups or would they prompt teens to stand up to recruiters in the madrassahs? Would the American or Philippine authorities be there to protect brave teens from insurgent reprisals? Unless influence actors have carefully studied

[40] Richard E. Mayer and Valerie K. Sims, "For Whom Is a Picture Worth a Thousand Words? Extensions of a Dual Coding Theory of Multimedia Learning," *Journal of Educational Psychology* 86, no. 3 (1994): 389-401.

the local situation, they ought not to engage in even wholly accurate, non-manipulative communications, much less manipulative ones.

The other cases noted above involve deception or manipulation of anti-social emotions of non-liable audiences. In Operation Devastation, the Stasi deceived non-liable audiences both as to the motivation of the defecting scientists and the content of their work. The West German public reacted with revulsion not only because of the nature of the supposed WMD program, but the fact that the government had lied about its existence. The purpose of Operation Devastation was to undermine a liberal democratic state for the benefit of an illiberal totalitarian state. The secondary effects of operations of this sort are grave. Government institutions in liberal states are ideally designed to protect the rights of citizens. They depend to a degree on citizens' trust, support, and cooperation. Institutions that relied completely on coercion would not be liberal. So by undermining trust in basically just government institutions, disinformation campaigns like Operation Devastation, weaken the ability of institutions to protect people's rights. Moreover, disinformation campaigns like Devastation are comprehensive: they aim to undermine trust in the government as whole rather than in a particular institution.

The modern disinformation campaigns sought to stir up anti-social emotions and defame politicians in order to create social disruption and bolster political parties whose agenda was congenial to the influence operators' government. The anti-social aim is illegitimate. Influence operators can amplify accurate, unflattering information about politicians, but they will violate their rights if they slander them. Spreading disinformation about politicians weakens trust in the media, creating an environment where people do not know what to believe. Not only may they believe appealing falsehoods about favored politicians but they will discount accurate, unflattering information about them as well.

The Rwandan case is obviously the most despicable of those discussed here. It involved deception and the manipulation of anti-social emotions of a non-liable audience for the purpose of triggering a genocide. The horror of the resultant slaughter makes the discussion of secondary effects otiose, but lies about ethnic groups can persist in an information ecosystem well past the initial purpose of the lies is met. Anti-Tutsi sentiments would likely have lingered after the genocide had the Kagame government not so harshly banned discussion of ethnicity in Rwanda.

## IV. Conclusion

I presented an instrument here for assessing the morality of influence operations for national security purposes. Deceptive communications

and communications triggering anti-social emotions, are fraught and deserve special scrutiny. Such operations usually should not be targeted at non-liable groups. Rare exceptions are where the reasons for engaging in deception can be justified to the target audience. No communication, deceptive or accurate, should be undertaken for unjust purposes. Finally, otherwise permissible communications should likely not be undertaken if the secondary effects are disproportionate to the proximate purpose.

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# A 'Just Cause' or 'Just A Cause': Perils of the Zero-sum Model of Moral Responsibility for War

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**Abstract**

*In this paper the author aims to explain the consequences of the implicit application of the zero-sum game model of distribution of moral responsibility for war, i.e., for causing war, within the context of the dominant perspective of modern-day ethics of war – Just War Theory. The main criterion of the jus ad bellum concept of Just War Theory, "just cause," recognizes the possibility of only one "cause" of war, and every attempt to further analyze and investigate deeper causes of war is automatically perceived through the zero-sum lens, as an attempt to justify or excuse the unjust side in war. No such thing happens when analyzing other, extremely morally troubling and disturbing phenomena as we invest significant effort into attempting to explain evil without this effort ever being understood as a justification attempt. The author demonstrates how the described approach in Just War Theory prevents us from fully understanding war, and thus implicitly from how to normatively prescribe human actions in and regarding war. The author also asserts that this perspective actually represents a presupposition concerning the possibility of justness of war. The author concludes that, in order to fully understand war and properly morally evaluate it, ethics of war must adopt a non-zero-sum model of distribution of moral responsibility and acknowledge the existence of a wide variety of causes of war.*

**Keywords:** *ethics of war; zero-sum game; just war theory; just cause; war; justifiableness of war*

## I. Introduction

In our pursuit to understand, predict, and ultimately control the complex and entropic nature of social reality, to proverbially "bring chaos to order" and minimize unpredictability and uncertainty, we are continuously seeking for static elements in the dynamic fabric of this reality, things that remain present and certain even when everything else changes. We are in dire need of at least some firm and steady fulcrums and points of reference so that we can "anchor" normality and historical continuity of life. History and philosophy have taught us that existence basically consists of constant and perpetual change, that *panta rhei* is the *modus existendi* of nature and society; nevertheless, we as humankind have not given up on our quest to find these static anchors, i.e., certainties of life. In an attempt to identify these few certainties, Benjamin Franklin famously wrote, in a letter to Jean-Baptiste LeRoy in 1879, that "in this world, nothing is certain except death and taxes."[1] Unfortunately, perhaps even tragically, reality compels us to acknowledge and recognize yet another phenomenon that seems to be certain in this world – war. By now, all illusions of historical human societies of "noble savages" which knew no war[2] have been dispersed.[3] While there still are those who argue that war is not in the nature of human beings, very few refuse to accept that it is in the "nature" of human societies. Thus, humanity's present moment unpleasantly and violently reminds our generation of the cataclysmic reality of war, despite all our efforts to avoid it. As for the future, the possibility of war will always remain a part of political reality being "an implication of freedom and a segment of its cost."[4]

It is not just the omnipresence of war upon human civilization that placed this phenomenon in the very focus of interest on basically all scientific disciplines known to man. It is also its unparalleled destructive, cataclysmic, and tragic nature that earned its central place in human thought. One of the most interesting and important perspectives of our study of war is, of course, the ethical one. As Russell famously wrote at the beginning of the XX century, the ethical perspective of war and the question of its moral justification "has been forcing itself

[1] Despite this ingenious thought being traditionally attributed to Franklin, it can be found in at least two previous authors – Christopher Bullock (1716) and Daniel Defoe (1726).

[2] Or at least some form of a "mass" armed conflict between groups.

[3] Radomir Milašinović and Srđan Milašinović, *Osnovi teorije konflikata* [Conflict Theory Groundwork] (Beograd: Fakultet bezbednosti, 2007), 16.

[4] Jovan Babić, *Moral i naše vreme* (Beograd: Službeni glasnik, 2005), 148.

upon the attention of all thoughtful men."[5] Therefore, it is quite unsurprising that contemporary ethics of war represents a field and segment of practical ethics that is very attractive, "lively," and hopefully productive. Despite the fact that there is diversity and certainly a number of different approaches and understandings of modern-day ethics of war, including the opposed positions of pacifism and realism, it is the Just War Theory (JWT) that represents the dominant ethical tradition and the overarching framework of moral analysis of all aspects and segments of war. Contemporary JWT, in its most comprehensive form, includes four elements which correspond to different periods of war – *jus ante bellum, jus ad bellum, jus in bello,* and *jus post bellum.*[6] These are the conceptions we use to morally evaluate the phenomenon of war in all of its immense complexity and intricacy.

## II. *Jus ad bellum* and just cause

Probably the most written about element of the JWT is the *jus ad bellum* conception. *Jus ad bellum* is the oldest segment of JWT. Along with *jus in bello* it belongs to the "classical core"[7] of the theory. It is also the most intuitive one, as it analyzes the very justness of war and basically answers the question; is the war just or not? Regardless of how far back we go – not only to St. Augustin and the very "beginnings" of a coherent JWT, but also to ancient Greek and Roman thinkers – we shall encounter reasoning and argumentation regarding precisely this aspect of war.[8] Discussions and ideas regarding other "phases" and aspects of

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[5] Bertrand Russell, "The Ethics of War," *The International Journal of Ethics* 25, no. 2 (1915): 127.

[6] *Jus ante bellum* relates to "the way a nation goes about preparing itself and its combatants for war;" *jus in bello* deals with "*debitus modus* – the right manner of waging war, the limit not to be exceeded;" *jus post bellum* asks of the "responsibility (of victors) after victory." Given the fact that *jus ante bellum* and *jus post bellum* are still in their theoretical "infancy," many authors still only recognize the "classical" elements of *jus ad bellum* and *jus in bello* as parts of JWT. Richard Schoonhoven, "The Ethics of Military Ethics Education," in *Routledge Handbook of Military Ethics,* ed. George Lucas, 47-53 (London: Routledge Taylor & Francis Group, 2015), 47; Gregory M. Reichberg, "Just War and Regular War: Competing Paradigms," in *Just and Unjust Warriors: The Moral and Legal Status of Soldiers*, eds. David Rodin and Henry Shue, 193-213 (Oxford: Oxford University Press, 2008) 199; Michael Walzer, "The Aftermath of War: Reflections on *Jus Post Bellum*," in *Ethics Beyond War's End*, ed. Eric Patterson, 35-46 (Washington, D.C.: Georgetown University Press, 2012).

[7] *Jus ad bellum* and *jus in bello* make the "classical" core of JWT, while *jus ante bellum* and *jus post bellum* are products of the 20th and 21st centuries, and still in their developmental stages.

[8] Richard Sorabji, "Just War from Ancient Origins to the Conquistadors Debate and its Modern Relevance," in *The Ethics of War,* eds. Richard Sorabji and David Rodin*,* 13-29 (Aldershot: Ashgate, 2006).

war, covered by the other abovementioned JWT elements,[9] were introduced at a much later stage. *Jus ad bellum,* in its contemporary form and volume, prescribes six criteria which must be met in order for a war to be just/justified. These criteria represent the most comprehensive set of conditions (some authors include only four or five) which "must all be fulfilled for a [...] war to be justified: it's all or no justification"[10] – just cause, right intention, proper authority, last resort, probability of success, and proportionality.

Regardless of the "all or nothing" approach which implies that there is no formal hierarchy of *jus ad bellum* criteria, the intuitively "primary" one is, of course, just cause. The remaining criteria are in a way "limitations" of the "primary one," which is the very source of JWT. Naturally, the issue of the cause of war was usually the most interesting and most important topic for all those who contributed to the tradition we today call JWT, and there is no author who disregarded or rejected the condition of just cause. Obviously, pretty much everyone but "Christ and Tolstoy"[11] as Russel famously wrote, throughout the entire tradition of JWT considerate there *can* be just causes for war. From the perspective of today's JWT, there can be several different just causes for war – from the most obvious and most well-argued one, which is self-defense,[12] to those which are still a bit controversial and subjects of philosophical dispute, like preemptive wars and armed humanitarian interventions.[13]

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[9] This applies also to the other "classical" element, *jus in bello,* which "as a coherent body of thought [...] does not predate the sixteenth century." Nicholas Rengger, "The *Jus in Bello* in Historical and Philosophical Perspective," in *War: Essays in Political Philosophy*, ed. Larry May, 30-48 (Cambridge: Cambridge University Press, 2008), 34.

[10] Seth Lazar, "War," *The Stanford Encyclopedia of Philosophy* (Spring 2020 Edition), ed. Edward N. Zalta, https://plato.stanford.edu/entries/war/.

[11] Russell, 138.

[12] Self-defence of a nation is today "the sole *casus belli* explicitly recognized in law as justification for the use of force by states without Security Council authorization." David Rodin, *War and Self-Defense* (Oxford: Clarendon Press, 2004), 107.

[13] McMahan claims that "there are at least two types of offensive or aggressive war that are potentially just: preventive war and humanitarian intervention." Jeff McMahan, *Killing in War* (Oxford: Clarendon Press, 2009), 148. Interestingly, McMahan writes of preventive, not preemptive war, as possibly justifiable (even just!), despite the fact that there is significant and substantial difference between the two, making one possibly justifiable and the other unjustifiable. More on the distinction between prevention and preemption in: Hew Strachan, "Preemption and Prevention in Historical Perspective," in *Preemption: Military Action and Moral Justification,* eds. Henry Shue and David Rodin, 23-39 (Oxford: Oxford University Press, 2007), 35-37; Michael Walzer, *Just and Unjust Wars* (New York: Basic Books, 2006), 74-85; Rodin, *War and Self-Defence*, 112-113.

## III. Just cause and a moral zero-sum game

One of the pillars of modern JWT is the assumption that it is virtually impossible for both (or all) sides to have a just cause for war – it doesn't even "recognize a theoretical possibility"[14] for such a situation. At most, one side can be "just," while it is perfectly possible for wars to "sometimes (be) unjust on both sides"[15] meaning that potentially neither side has a just cause for war; moreover, according to McMahan[16] it is "likely that most soldiers in the history of war have fought in the service of an unjust cause."[17] However, once a just cause for war has been identified for a party, modern JWT usually not only excludes the possibility of the other party to have a just cause as well, it also somehow implicitly and practically *presupposes* a sort of a "zero-sum model" of distribution of moral responsibility for war. In a sense, the issue of moral responsibility for war is observed and understood as a zero-sum game, in which even the slightest attempt to identify and explain any sort of responsibility[18] for war on the just side, or anywhere but the unjust side for that matter, is automatically perceived as an attempt to reduce or decrease moral responsibility for war which surely lies on the unjust side. But does ethics necessarily require a zero-sum game model of distribution of moral responsibility, especially in extraordinarily and supremely complex, intricate, even proverbially cryptic situations such as devastating mass armed conflict between large groups of people, or simply war?

Although game theory is today predominantly seen as a part of economic theory, it is intrinsically tied to understanding all forms of collective conflicts, naturally including war. As Myerson wrote in his introductory chapter to game theory, "'conflict analysis' [...] might be a more descriptively 'accurate name' for the subject than game theory,

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[14] Dragan Stanar, *Pravedan rat – između apologije i obuzdavanja rata* [Just War – Between Apology and Restraint of War] (Beograd: Dobrotoljublje, 2019), 140.

[15] Jeff McMahan, "The Ethics of Killing in War," *Ethics International Journal of Social, Political and Legal Philosophy* 114, no. 4 (2004): 701.

[16] Ibid.

[17] Even if we accept this to be truth, it is undeniable that all sides in war deeply believe that it is precisely them who have a just cause for war, that all belligerent sides, regardless of the nature of war, "will always believe, often sincerely, that their own cause is just." Obviously, if belligerents could somehow agree which side actually has a just cause and "justice on their side, there would not need to have recourse to war. War begins where moral consensus ends." Rodin, *War and Self-Defence*, 164; David Rodin, "The Moral Inequality of Soldiers: Why *jus in bello* Asymmetry is Half Right," in *Just and Unjust Warriors: The Moral and Legal Status of Soldiers*, eds. David Rodin and Henry Shue, 44-68 (Oxford: Oxford University Press, 2008), 59.

[18] Even if it is only implicit, indirect, vicarious, historical, etc.

having in mind that it represents a 'study of mathematical models of conflict.'"[19] Moreover, the fact that the roots of coherent game theory are found in WWII and that it was militant realism which gained the most from it, makes the connection between this theory and conflict clearly present. One of the most important models or "games" studied by game theory is the famous zero-sum game, in which there is a total and finite quantity (sum) of something,[20] meaning that this "something," whatever it is, can only be distributed to parties ("players" in the game) in such a way that "one's gain is always the other's loss."[21] Adding a certain quantity of "something" to one party necessarily means subtracting the same amount from the other; what one gains is quantitatively identical to what the other one loses.

What happens when we apply this model of "conflict analysis" to the dimension of conflict which explores, and studies moral perspectives of war, i.e., when we apply it to the issue of justness of war – more specifically, to the *ad bellum* criterion of just cause? Following the logic of the zero-sum model, every attempt to attribute any type or any quantity of responsibility to one side would necessarily imply that the other side immediately becomes equally "less responsible" for war. If we determine that one side clearly has a just cause for war, every effort to allocate at least some responsibility to that particular side would result in reducing and diminishing moral responsibility for war to the unjust side. Given that the distribution of moral responsibility for war does not follow the logic of the zero-sum model and that moral responsibility can be distributed practically *ad infinitum* without lessening anyone else's responsibility, one must wonder if such a Manichean, dogmatic, and solipsistic approach to ethics of war is plausible, even possible. When it comes to all morally cataclysmic phenomena and activities, and war is possibly "the most ruthlessly amoral of all human activities,"[22] or at least among the most ruthlessly amoral activities,[23] there certainly is plenty of moral responsibility to go around.

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[19] Roger B. Myerson, *Game Theory: Analysis of Conflict* (Cambridge, MA: Harvard University Press, 1997), 1.

[20] Depending on the context, it can be the quantity of money, pain, pleasure, utility, security, risk, etc.

[21] Myerson, 123.

[22] Paul Schulte, "Morality and War," in *The Oxford Handbook of War*, eds. Yves Boyer and Julian Lindley-French, 98-115 (Oxford: Oxford University Press, 2012), 99.

[23] Many argue that there are other phenomena at least as amoral, or possibly even more amoral, than war – colonialism, mass humiliation, exploitation, slavery in peace, mass structural violence, etc. After all, throughout history war arose as a better, more morally preferable option to all of these phenomena.

## IV. Implications of the zero-sum model

### a. (Mis)Understanding war

Intuitively implicit understanding of zero-sum distribution of responsibility for war has many deep and significant implications, one of the most obvious ones definitively being that it is effectively preventing us from actually truly understanding war. Even if we unanimously accept and agree that one side in a war lacks a just cause, it by no means entails that the decision to wage such a war was made without any causality and without any (even rational!) reasons. However, if we insist that there were *no causes* and *no reasons* for a decision to wage an unjust war then such a decision is either a product of complete insanity and madness of an individual(s) who made the decision or simply a miracle. After all, "*only miracles are causeless*, and sometimes also reasonless"[24] and therefore they can never be taken as valid or adequate explanations of phenomena or practices. Facing with these two options, we automatically, almost by default, take the perspective from which the *cause* of the decision to wage war with unjust cause then must be criminal madness, moral insanity, pure evil, or even demonic and diabolical nature of the decision-maker. As the character of war inherently implies collective and mass conflict, such an assumption if then expanded and applied to entire nations, to millions of people who are perceived either as masses deluded by a masterful evil genius of ideological propaganda or even worse, as evil and diabolical themselves.

In our view, considering virtually all known wars in history and especially modern wars, such an approach represents an infantile and extremely naïve understanding of war and reality, an almost bizarre reductionism of extremely complex and multilayered situations generated by countless historical, political, religious, economic, security, cultural, and all other kinds of factors and circumstances.[25] Every attempt to go

[24] Jovan Babić, "Military Ethics and War: What is Changing and What Remains the Same?" in *Military Ethics and the Changing Nature of Warfare*, eds. Jean-François Caron and Marina Miron, 4-18 (Leiden: Brill Nijhoff, 2023).

[25] Even in the case in which there is, or at least we hope there is, absolute and undisputable consensus among morally sane adults – the case of Nazi Germany in WWII – that Hitler had no just cause to start the war, it would simply be a fallacy to claim that the *only* cause of WWII was Hitler's undoubtable evil and moral insanity. Hitler remains equally morally guilty even if we identify hundreds of other non-Hitler and non-German factors which caused the war, to a lesser or greater extent – just because basically all historians today agree that the Treaty of Versailles left Germany in a hopeless position which made a new war almost inevitable implies neither that Germany had a just cause for war nor that Hitler wasn't morally deranged. Additionally, if we allow ourselves to indulge in a bit of a philosophical counterfactual analysis, can we reasonably assert that WWII wouldn't have happened if Hitler was killed instead of just being wounded as a lance corporal at

beyond such a naïve comprehension and try to understand, let alone explain, why a political decision-maker made the decision to wage war without just cause is perceived as an attempt to *justify* or *excuse* that decision, precisely because of the presupposed zero-sum model of distribution of moral responsibility, i.e., the very nature of JWT – as if identification of external causes or any reasons somehow necessarily diminishes moral responsibility of a belligerent. For the sake of clarity, and to avoid any potential misinterpretations of our assertions, it must be highlighted that simple identification of causes and/or reasons for decisions does not suggest justifying or excusing them; it only entails that it is possible to *add* moral responsibility to other agents, *without* subtracting any moral responsibility from the "unjust" side in war. It is necessary and of vital importance to identify and explain as much causes and factors that lead to war as possible, in order to adequately, or at least minimally understand it. Furthermore, minimal understanding of any phenomenon is necessary for its proper moral evaluation – *ergo,* understanding war must precede our moral evaluation of this tragic phenomenon. Thus, applying the zero-sum logic of moral responsibility to war not only directly hinders our attempts to understand it more deeply and profoundly, it also prevents us from properly morally evaluating it. What it does create is a very epistemologically and ethically comfortable position in which *all responsibility* conveniently lies exclusively on one side, and in which efforts to further investigate the genesis of circumstances that led to war are perceived as redundant, unwelcome, or even insulting.[26] But not so long ago, at the beginning of the XX century, it seemed clear to some that war is such a phenomenon that "all parties engaged in it must take an equal share in the blame of its occurrence."[27]

### b. Justness and justifiableness of war

Why do we then implicitly apply the zero-sum logic to the *ad bellum* issue of just cause? Interestingly, we do no such thing in other, also morally very troubling and disturbing situations – we, as a civilization,

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the Battle of the Somme in 1916? If such an assertion wouldn't be reasonable, how can we then exclude moral responsibility for WWII being attributed to many others, not just Hitler?

[26] Dragan Stanar, "Understanding War: Beyond Competing Narratives," *EuroISME Ukraine Blog*, https://www.euroisme.eu/index.php/en/views-on-war-in-ukraine/241-understanding-war-beyond-competing-narratives.

[27] The poet Charles Sorley wrote this to his family in 1915, only months before being killed in battle. Not only was it clear to him that all moral responsibility for war cannot be exclusively attributed to one side, he even thought that the "blame" should be shared equally! Jonathan Glover, *Humanity: A Moral History of the Twentieth Century* (New Haven, CT: Yale University Press, 2000), 3.

are very interested in exploring what causes serial killers to kill random innocent people, what causes child rapists and molesters to violate the purest among us, etc. We do not settle for a minimalistic explanation of causality which would identify the *only* cause of killing and raping by madness or moral corruption, despite them obviously being present. Quite the opposite, we have no trouble recognizing history of family abuse, socio-economic factors, structural oversights and mistakes, institutional neglection and errors, and many more factors which caused deviant and, at times, purely evil behavior, without ever feeling that we are somehow reducing moral responsibility of killers and child rapists in the process. We simply do not apply the zero-sum logic in these cases, as it is pretty obvious that there is plenty of moral responsibility to go around and to be attributed to people and institutions even in decades preceding the heinous act. However, when it comes to immeasurably more intricate and perplexing phenomenon which involves millions of individuals actively part-taking in killing people they never met in their lives we somehow assume that it has a fairly simple and singular cause for which responsibility can only be attributed to few people, understandably on the "wrong" side.

What would happen if we today, like Thucydides once, bravely dared to explore and investigate all the historical decisions and actions which, in synergy, generated the point of no return at which peace could no longer be preserved and at which war erupted? If we went back years, decades, even centuries into history of belligerent nations and discovered a myriad of wrong decisions on both sides (and/or third parties as well!) stemming from irrationality, fear, miscalculations, misjudgments, ideological blindness, often pure arrogance and hubris, which eventually pitted two nations against each other in the bloodiest form of conflict? Could we then simply distribute moral responsibility throughout war to *all* those who made these decisions, hundreds of years ago? Well, not exactly. As ethics teaches us, we cannot be held responsible for unintended, unforeseeable and simply incalculable consequences of our decisions. We actually seldomly *know* all the consequences our decisions will eventually have, as we live in a world of freedom and incalculable uncertainty and countless possible long-term outcomes. Many historical choices not only eventually generated war-circumstances without them reasonably being foreseeable at the moment of decision-making, but were in fact very well-intended at the time they were made. None of us actually know whether the decisions we are making today will perhaps contribute to a generation of causes for some unforeseeable conflict in the next century.

However, what would be necessary for us to do is to acknowledge that at least *some* individuals, outside of the circle of those who we directly and exclusively blame for war, could be held responsible for their decisions and contribution to creating circumstances and conditions in which peace seizes to be sustainable; also, that a plethora of historical events and developments contributed to the eruption of war.[28] And, much more importantly, we would then have to reexamine the very possibility of a just war! Here is where the explained "just cause zero-sum model" comes in very handy – we can call something *just war* only if there truly is exclusive responsibility for such an evil, which would then generate a moral duty to somehow rectify injustice and punish the culprit.[29] But, if this responsibility cannot reasonably be completely and utterly attributed to one single party, one "source of true evil," then war can only be *justified,* but never *just*.[30] Implicit and presupposed zero-sum model of moral responsibility for war, and the Manichean image it inevitably creates, is therefore the necessary prerequisite of the very possibility of justness of war.

There is a significant difference between notions of justness and justifiableness, not only in the context of war, but in general. Justness implies a sort of righteousness, a strong normative necessity which means that we are not only justified in doing the just thing, but that we are also *obliged* to do it, that we have a *duty* to do it. Moreover, it implies that it would be unjust *not* to do the just thing – that, in case of just war, it would be unjust *not* to kill thousands or even millions of "innocent"[31] people, *not* to punish a nation. In the context of our inquiry, the only way we could in fact have a just war is if it is caused by personal or collective evil which needs to be punished, almost at all costs.

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[28] There are almost countless factors and deep roots of war and all forms of mass conflict. More on the study of the manifold and multifarious seeds of historical and modern wars in Stephen Van Evera, *Causes of War: Power and the Roots of Conflict* (Ithaca, New York: Cornel University Press, 1999); Jack S. Levy and William R. Thompson, *Causes of War* (Chichester: Willey-Blackwell, 2010).

[29] Many JWT critics, like Der Derian assert that JWT has even "mutated" just war into a "virtuous war." James Der Derian, *Virtuous War: Mapping the Military- Industrial-Media-Entertainment Network* (New York and London: Routledge Taylor & Francis Group, 2009), 211.

[30] As Babić notes, "war does not have to be just in order to be justified," as wars are always "fought for reasons that certainly could and should be evaluated for their justness." Jovan Babić, "Ethics of War and Ethics in War," *Conatus – Journal of Philosophy* 4, no. 1 (2019): 10.

[31] Innocent both in the sense of innocence for war (combatants) and in the sense of *jus in bello* innocence (non-combatants). While combatants are not personally responsible for war and thus innocent in the ordinary sense of the word, they are *nocentes,* harming, and thus not innocent in the *jus in bello* sense of the word. Elizabeth G. M. Anscombe, *Ethics, Religion, and Politics* (Minneapolis, MN: University of Minnesota Press, 1981), 67.

But, if we move beyond the underlying zero-sum logic of *ad bellum*, we will observe that such an explanation of any war, i.e., that war was exclusively caused by pure, unprovoked, causeless and reasonless evil or moral insanity of individuals, or even entire nations which must be somehow punished, is in fact deeply wrong and even childishly absurd. Of course, reality of war does not necessarily exclude evil and morally corrupt individuals, but it does not limit responsibility to them[32] nor does it allow us to rationally and reasonably identify them as sole causes of war. War is never neither Manichean in its essence nor a product of a singular cause. Therefore, the truly tragic nature of war[33] and the overwhelmingly complex and entangled genesis of circumstances and conditions which cause it, make it impossible for war to be just.

It can, nonetheless, be very justified, as "justifiableness does not imply justness but necessity."[34] We can be justified in doing something when it is necessary and when it represents our best (forced) option, but it does not entail any normative necessity, nor does it negate the tragic nature of a situation, in which we find ourselves. The complex reality of life often articulates situations in which we are justified to do something to someone, without him or her being blameworthy or "guilty" for something – we are justified to do something (even violent!) but it is not necessarily a just thing to do. It is simply a matter of a tragic situation in which we are "trapped" by factual reality, and which we did not necessarily create. In that sense, self-defense of a nation is absolutely justified, but it does not stop us neither from researching, analyzing and attributing responsibility for war to various agents (not just the one(s) who made the decision to attack) nor from finding causes for war in different preceding decisions, actions or events, even in previous decades and centuries, which ultimately prevented us from avoiding war. In a sense, JWT is right when it postulates that war cannot be just for both sides. But, we would argue and add that it indeed *cannot be just* for either side, At best, war can be justified, and it, indeed, often is.

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[32] And, as explained and accentuated before, attribution of additional responsibility to others does not diminish moral responsibility of evil and morally corrupt people, as it is not a zero-sum game!

[33] As a cataclysmic outcome of accumulation of numerous previous historical personal and collective errors, fallacies, naiveness, foolishness, hubris and ultimately our inability to control the fragile order and peace due to insurmountable uncertainty of reality. Many authorities in the study of war, including some of the most famous ones like Clausewitz, Morgenthau, or even Thucydides, understood this tragic nature of war. More in Richard Ned Lebow, *The Tragic Vision of Politics* (Cambridge: Cambridge University Press, 2003), 14-113.

[34] Jovan Babić, "Rat i pravoslavlje: filozofski osvrt" [War and Orthodoxy: A Philosophical Perspective], in *Pravoslavlje i rat* [Orthodoxy and War], ed. Borislav Grozdić, 321-327 (Beograd: MC Odbrana, 2017), 324.

What's more, the "flow" of historical events can even articulate such circumstances and conditions in which war can factually be *justified* for both sides, regardless of how intuitively counterintuitive this claim may seem in the context of the modern JWT-dominated discourse on ethics of war.

## V. Conclusion

Regardless of the position one takes on the spectrum of overall historical optimism/pessimism, civilizational progress/decline, one dreary conclusion seems to inescapably loom over all humanity; that war is here to stay. Even if we accept the today-popular Creveldian vision of war, which is constantly adapting and transforming in its "grammar,"[35] we cannot but admit that its inherent "political logic"[36] and its very essence remain the same. Therefore, as long as there is sovereignty, interest, and politics, nations will proverbially keep "their weapons pointing, and their eyes fixed on one another,"[37] even when there is no visible or foreseeable threat on the field of international relations. Perhaps the present moment in the global political arena perfectly depicts this latent and underlying omnipresence and ever-presence of the *potential* of war, which faithfully shadows human civilization, in all of its stages and phases.

This places a heavy burden of monumental responsibility on the shoulders of all those who dare to study, analyze, and explain the phenomenon of war, including, of course, students of its moral dimensions. Contemporary ethics of war, and JWT as its dominant framework, must therefore prioritize efforts to genuinely understanding war before morally evaluating it. The implicit zero-sum game model of distribution of moral responsibility for war, in the described context of the *ad bellum* just cause criterion, includes not only not contributing to understanding war, but it is hindering it by perceiving every attempt to identify deeper historical and wider political causality of war as an attempt to justify or excuse unjust wars. Perhaps this is one of the reasons why "even the acknowledged experts – the theorists of the just war – disagree among themselves about the justice of virtually every war"[38] as if complete moral responsibility simply *must* be attributed to one side! But such noble intellectual endeavors are in no way, shape, or form necessarily aimed at excusing or justifying unjust wars; nor does

[35] Martin Van Creveld, *The Transformation of War* (New York: The Free Press, 1991).

[36] Carl von Clausewitz, *On War* (Oxford: Oxford University Press, 1976), 252.

[37] Thomas Hobbes, *Leviathan* (Oxford: Oxford University Press, 1996), 85.

[38] McMahan, *Killing in War*, 120.

identification of additional and deeper root causes of war reduce moral responsibility of the unjust side. Why cannot "a just *cause*" be "just *a* cause," one out of many causes of war, when evaluating it morally?

It is worth repeating it again; war is not a case of zero-sum game and there is plenty of moral responsibility in it to be added to different agents without the need to subtract it from anyone. However, if we continue to insist that responsibility for war must almost exclusively be attributed to one side, and that there is a singular *casus bello*[39] by which we "measure" its justness, we will continue to be "shocked" by inexplicable, irrational and unprovoked wars which will surely keep "surprising" us as they will continue to be perceived as events caused by unpredictable and reasonless decisions of evil people, for the sake of evil.[40] In order to fulfil its purpose, JWT must dig much deeper into the genesis of any war before evaluating it morally. It must first take into account the historical, political, cultural and such causes of war so that it could properly identify and distribute moral responsibility among many different agents. History must be to ethics of war what mathematics is to natural and technical sciences – the foundation and "infrastructure" for *understanding* war before all and any moral evaluation! Isn't that the point of ethics of war; to evaluate within the boundaries of what is factually existing instead of prescribing within what is an ideally imagined world? One is a practically useful application of philosophical method to a highly morally complex phenomenon of war, while the other is but an apology of a Manichean-punitive war.

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[39] It is precisely *casus belli* that is exclusively being "judged" by the *ad bellum* criterion of just cause. But, *casus belli*, by definition, refers only to the singular, direct "provocative act" that justifies making or declaring war. Bryan A Garner, *A Dictionary of Modern Legal Usage* (Oxford: Oxford University Press, 1995), 137. As such, it, again by definition, completely ignores the entire historical and political chain of causality which brought two nations to the point of war. It is difficult to understand how such an approach can be legitimately used to evaluate justness of wars, as it excludes all previous events and decisions, the entire causality linked with the moment of *casus belli*.

[40] As French eloquently presents it in his short allegory, humans seem to be "insufficiently demonic," as they are incapable of doing and wanting evil for the sake of evil. Peter French, *War and Moral Dissonance* (Cambridge: Cambridge University Press, 2011), 72-84.

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# Polis, Loimos, Stasis: Thucydides about Disintegration of the Political System

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**Abstract**

*This paper discusses Thucydides' analysis of the disintegration of the political community under the unbearable stress in cases of the plague epidemic in Athens and civil war in Kerkyra. Due attention is paid to Thucydides' methodology: the application of the art of medicine and antilogies. The destruction of the morality, fading away of virtue and neglect of both human and divine laws caused by the enormous fear of plague are presented through contrasting the state of lawlessness to the picture of the ideal order from the famous Pericles' speech in honor of the fallen Athenians. It is being analyzed marked similarity between the state of lawlessness in Athens and the destruction of the political order in stasis in Kerkyra concerning the destruction of the public morality, disappearing of lawfulness, and cancelling of the common good, despite the difference in predominant motivating passions – fear and lust for power, and different ways of corruption of the order in polis – apolitical stance and apathy vs. radical politicization. Finally, it is underlined Thucydides' understanding of repetition of the historical events after the same pattern because of the changelessness of human nature. It is milder in peace and regular ordered state of affairs, so that people are usually sensible and honest, acquire moral stance and embrace lawfulness, whereas when it is exposed to danger and faces the hardest challenges, it loses its considerations and restraints and shows its evil, violent and cruel side.*

**Keywords:** *polis; plague; anomie; stasis; Thucydides*

## I. Boccaccio's description of plague

Since Thucydides' description is the only account of that time of the disastrous effects of the plague epidemic which broke out in Athens in 430 BC, its plausibility and especially Thucydides' basic attitude about repetition of events in due course of history because of the sameness of human nature, can be corroborated with larger quotations from the most suggestive literary accounts of the plague epidemic left by Giovanni Boccaccio. Lethality from the plague was very high. An official of the Pope Clement VI estimated in 1351 that in Christian Europe 23.840.000 persons had died from plague for a couple of years, which is 31% from the total number of inhabitants of about 75 million.[1] For comparison with the ancient Athens, the moral and political effects of this epidemic are much more important. According to the testimony of a chronicler of these times, people were aghast, confused, and terrified.

> Father abandoned son, wife abandoned husband, brother abandoned brother because it looked like that plague struck and destroyed with its breath and look and so they died. And nobody could be found to bury the dead either for money or for the sake of friendship.[2]

People were in enormous fright from this apparently inexplicable pestilence for which there was no medicine. Or as the Florentine humanist Francesco Petrarch wrote: "This lucky posterity which will not experience such immense suffering – so that it will consider our testimony as a fairytale."[3]

In his remarkable work *Decameron*, Boccaccio as immediate eyewitness gave his moving account of the dramatic effects of the plague epidemic in Florence in 1348-1349. Then two thirds of the population (more than 100.000) died, among whom there were Boccaccio's father and stepmother and many dear friends. Against this terrible disease, which was, as he skeptically says, doomed by the stars or was provoked by the just wrath of God because of human sins, did not help either the human common sense or the undertaken measures. These measures were cleaning of the town or prohibition that any ill person enters the town or

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[1] Robert S. Gottfried, *The Black Death. Natural and Human Disaster in Medieval Europe* (New York, London, Toronto, and Sydney: The Free Press, 1983), 94.

[2] Ibid., 7.

[3] Francesco Petrarcha, *Selected Letters*, Volume 2, trans. Elaine Fantham (Cambridge, MA: Harvard University Press, 2017), VIII.

prayers or processions or medical advice or art of medicine. In such desperate circumstances without any hope for rescue, fright and prejudices made people act differently: some would shut in their houses, avoiding any contact with the outer world and not wanting to hear any news about the dead and ill; others indulged in pleasures and fun going from one inn to another day and night drinking immoderately and getting into other people's houses as soon as they would hear that there are things they like and in which they take pleasure. And because everybody, as if driven by death itself, neglected both oneself and one's things, majority of houses became public good, and strangers behaved in them as if they had been their own. However, many steered a middle course without indulging in debaucheries and depriving themselves of food and walks. There were also those who ran away from the town to the country, abandoning their houses and deserting their relatives.[4] Even more fatal effect of the plague in Florence was total lawlessness.

> In this extremity of our city's suffering and tribulation the venerable authority of laws, human and divine, was abased and all but totally dissolved, for lack of those who should have administered and enforced them, most of whom, like the rest of the citizens, were either dead or sick, or so hard bested for servants that they were unable to execute any office; whereby every man was free to do what was right in his own eyes.[5]

And that was the reason why in such state of anomie everything was permitted, including the most loathsome evil. This was conduced first of all by the terror which crept into the hearts of men and women so that brother abandoned brother, uncle abandoned their nephews and sister abandoned brother and wives also often abandoned their husbands. Finally, what was the most terrifying and almost incredible, fathers and mothers abandoned their children, as if they were not theirs, so that they did not even visit them or take care of them. Because of that terrible terror which negated all feelings and erased all considerations, death carried off many people who probably would have survived if somebody had helped them, so that all this produced such a number of those who

[4] Giovanni Boccaccio, "First Day – Introduction," in *The Decameron*, trans. J. M. Rigg (London: 1921), https://www.brown.edu/Departments/Italian_Studies/dweb/texts/DecShowText.php?myID=d01intro&lang=eng.

[5] Ibid.

were dying day after day and night after night.[6] In such inexorable emergency all traditional customs of paying homage to the dead and their burial were abandoned. There were small number of those who were mourned after with pity and there started new custom to laugh, make fun and enjoy. There was almost no deceased whose body was dutifully accompanied to the church, but paid gravediggers took the coffin away to bury it in the first empty grave. Many would die in the streets, and those who would die inside the houses would be carried to the streets in the morning in order to be taken away by the gravediggers. There were also the cases where two or three dead bodies would be put in one coffin together. No one paid homage to the dead either with tears or candles or escort; less care was taken about dying people than about animals nowadays, Boccaccio said. Since sanctified cemeteries were filled, big ditches were being dug and hundreds of the dead were stacked up in them and "piling them up as merchandise is stowed in the hold of a ship." The surrounding country knew no mitigation; for there, in sequestered village, or in the open champaign, by the wayside, on the farm, in the homestead, the poor hapless husbandmen and their families, forlorn of physicians' care or servants' tendance, perished day and night alike, not as men, but rather as beasts. Where, they too, like the citizens, abandoned all rule of life, all habit of industry, all counsel of prudence; nay, one and all, as if expecting each day to be their last, not merely ceased to aid nature to yield her fruit in due season of their beasts and their lands and their past labours, but left no means unused, which ingenuity could devise, to waste their accumulated store. And in the country outside the city, poor peasants would die on the roads, fields and houses, "not like men but like beasts" and

> all, as if they looked for death that very day, studied with all their wit, not to help to maturity the future produce of their cattle and their fields and the fruits of their own past toils.[7]

Inside the walls of Florence – Boccaccio testifies – more than one hundred thousand people had died and many palaces and houses were empty.

The great similarity can be noticed at first sight between Boccaccio's powerful literary account of the plague epidemic in Florence and Thucydides' description of the plague in Athens. In both cases the total breakdown of moral and laws in plague epidemic as well as in *stasis* can

[6] Ibid.

[7] Ibid.

be only explained by the fragility of human nature. It was left without any internal controls and restraints when faced with enormous challenges. This again convincingly denies seemingly acceptable interpretation of Donald Nielsen that Athenian citizens, faced with challenges of the plague, behaved so outrageously because public moral in Athens was already corrupted by the imperial policy, where measure and balance had been already denied and justice had been rejected.[8] Plague epidemic led also to profound lasting moral crisis in medieval Europe. All old corporative cooperation and associations were erased. Instead of them, in many cases emerged strong and selfish individualism. In the decades after the plague this individualism mainly tended to self-elevation, leisure, and pleasure. Collective institutions and old communities – rural as well as urban, so characteristic for 12th and 13th century – were shaken and ruined. And old social, religious, and even family relations were loosened.[9]

## II. Plague in Athens

In his opening words about the terrible sufferings during the Peloponnesian war, which exceeded all previous wars, beside destruction and devastating of the cities, killing in military collisions and innumerable persecutions and killing in citizen's turmoil, Thucydides spoke about natural disasters, too, which accompanied the war itself, disastrous earthquakes, frequent eclipses of the sun, long droughts and as the climax of sufferings in the gradation of sufferings, he mentioned fatal effects of plague.

> Ancient events that were better established in legend than in experience now seemed less incredible, for there were now violent earthquakes spread through much of the world; eclipses of the sun, which now occurred much more frequently than ever before in memory; terrible regional droughts and the famines they caused; and last but not least, the plague, which caused great harm and great loss of life. All of these things were associated with this war.[10]

In the literature it is noticed that the shown gradation of the sufferings in the Peloponnesian war Thucydides concluded with the characteristic

[8] Donald A. Nielsen, "Pericles and the Plague: Civil Religion, Anomie, and Injustice in Thucydides," *Sociology of Religion* 57, no. 4 (1996): 402-404.

[9] Gottfried, 96-97.

[10] Thucydides, *The Peloponnesian War*, trans. Walter Blanco (New York and London: W. W. Norton & Company, 1998), 1.23.

joint pair of *loimos* (plague) and *limos* (famine) and so he took over the familiar motive from the Greek literary tradition. Rachel Bruzzone interprets that Thucydides did not break with the established tradition, as his description of the war as the historical phenomenon is usually understood but, on the contrary, he deliberately pointed to the specific literary motive. Thus, he put war inside the tradition so that he, with reviving of the ancient pattern, could represent the historical pattern of destruction of the whole society.[11] Joint misfortunes (war, plague, famine), each of which can ruin the city, as a rule go together with the natural disasters (earthquakes, floods, eclipses of the sun) in the literary texts. In the *Iliad* Apollo sent the plague to punish the wantonness of the Greek army; in Hesiod gods sent famine and plague as punishment for committed injustice; in Aeschylus chorus was praying that Argos should not be affected with the plague; in Herodotus famine and plague worked havoc in Crete after the return of the army and the Trojan war. So, the pair *loimos-limos* was already widespread topos in the literary tradition.[12] Thucydides links the natural disasters – earthquakes, eclipses of the sun, long droughts, and plague – with human violence and he underlines this by mentioning the oral tradition about the ancient prophecy which had connected war with the outbreak of plague or famine. He especially points out the simultaneity of war violence and natural disasters, plague, devastating of the fields and dying in the city: "As soon as the Peloponnesians got in, the disease started immediately" – Thucydides says – "with people dying inside the walls and the land outside being laid waste."[13] By establishing this triad *polemos-loimos-limos,* Thucydides not only revives the ancient motive of suffering (*pathemata*), but he also completes it in specific, familiar pattern of war suffering.

The decisive factor which instigated the flaring up of the plague epidemic in Athens at the beginning of 430 BC was besiege of the city by the Spartans and their allies. Since the Athenians as the naval power were much more skillful at the sea battles, but much weaker in the collisions of the infantries, where Spartans were peerless, Pericles convinced the Athenians to leave their fields and houses outside the city walls and with wives and children find refuge inside the city walls, what caused the overpopulation in the narrow space of the city.[14] When the refugees gathered in the city, only a few of them had homes of their own or with family of

[11] Rachel Bruzzone, "Polemos, Pathemata, and Plague*:* Thucydides' Narrative and the Tradition of Upheaval," *Greek, Roman, and Byzantine Studies* 57, no. 4 (2017): 884-885.

[12] Ibid., 889-893.

[13] Thucydides, 2.54.

[14] Ibid., 2.14.

friends while most of them found shelter in the unpopulated parts of the city and in all temples of the gods and chapels of the heroes, everywhere except on the acropolis, in the Eleusinium or in some other sanctuary which was securely locked. Because of the unexpected emergency even the Pelasgic was populated, what was prohibited by some Delphic oracle which under the threat of curse ran like this: "[...] better for the Pelasgic wall to be unused."[15]

The Athenians did not know the cause of plague. The majority of Greeks believed that plague came from Apollo who, according to Homer's words in *Iliad*, sent it to punish the Greeks. So, the Athenians, too, started from the general idea that plague came from the gods, especially (although not necessarily) from Apollo. Sophocles, too, claimed that the origin of plague was divine in his *The King Oedipus*.[16] As if Homer's explanation had been appropriate even for the emergence of plague at the beginning of the Peloponnesian war. Thucydides mentions that Spartans sent their envoys to Delphi to get the advice and permission to enter the war and they were answered that they would win if they fought with all their might and that Apollo would help them.[17] Thus, contemporaries believed that a god had sent them the plague from the Delphi in the form of the divine help to the Spartans. This widespread opinion was confirmed by the fact that the Spartans without fear from the lethal disease continued to ravage Attica although the epidemic had been flaring up both in Athens and in the Athenian army. According to Thucydides, it seems that the disease first began in Ethiopia, and then descended into Egypt and Libya and all of a sudden it attacked Athens infecting at first the people of Piraeus.[18]

The plague epidemic in Athens had been occurring through waves. At first the plague emerged in Athenian harbor in Piraeus in summer in 430 BC. In the first moment there was a suspicion that the Peloponnesians had poisoned Athenian cisterns which was what caused the terrible pestilence. Afterwards, the plague epidemic flared up again in 429 BC when Pericles himself died from it, an information that Thucydides did not mention but it was mentioned later by Plutarch in his description of Pericles' life.[19] The third wave happened in the winter in 427/426 BC.[20]

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[15] Ibid., 2.17.

[16] Lisa Kallet, "Thucydides, Apollo, the Plague, and the War," *The American Journal of Philology* 134, no. 3 (2013): 355; 361.

[17] Thucydides, 1.118.

[18] Ibid., 2.48.

[19] Plutarch, *Lives*, Volume 3: *Comparison of Pericles and Fabius Maximus*, trans. Bernadotte Perrin (Cambridge, MA: Harvard University Press; London: William Heinemann 1916), 1.1.

[20] Javier Martinez, "Political Consequences of the Plague of Athens," *Graeco-Latina Brunensia*

Thucydides' words about the symptoms of plague and the course of the disease make such strong impression, so that this paragraph became famous both because of the precision and the detailed description of its clinical picture. Such disease, Thucydides says, was worse than it can be verbally expressed, and it pervaded and tormented the ill totally, that it almost exceeded human powers; even birds and quadruped animals, which bit the dead bodies, would die. Getting over the malign disease and watching the others suffering, he describes the unbearable heat and insatiable thirst which made the ill tear apart their clothing, and many, who were not taken care of, jumped into wells. He precisely writes down other symptoms as well, from the redness and swelling of the eyes, throat and tongue and chest pain to visceral abscessation and visible furuncles over the body. He was equally overwhelmed by the desperation and hopelessness of the diseased who have been deserted by their fellow men out of their fear. Many died because of the lack of care, but others died even though they had been carefully taken care of.[21] Thucydides, admittedly, did not state the total number of dead from the plague, but it certainly was huge. For only forty days during the besiege of Potidaea, four thousand hoplites out of one thousand fifty-one died in just forty days.[22] The Athenians had fallen into this misery and in it they suffered with "people dying inside the walls and the land outside being laid waste."[23] It is estimated that the population of Athens was diminished for about one third, but the exact number is unknown.[24] In such trouble the Athenians recalled a prophecy, too, for which the old people used to say that it was of ancient origin: "A Dorian war will come and with it, plague."[25]

In Thucydides' description of the events inside the city during the epidemic, his account of the moral corruption and depravity is strong. This was especially evident and devastating in respect to the treatment of the dead bodies who should have been buried with dignity according to ancient customs and valid laws. As the pestilence had worked havoc without any order, dead bodies were lying one upon the others and half dead people were wandering on the roads and near all springs thirsty for water.

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22, no. 1 (2017): 136; Thucydides, 2.47-66.

[21] Thucydides, 2.49-50.

[22] Ibid., 2.58.

[23] Ibid., 2.54.

[24] Jennifer T. Roberts, *The Plague of War. Athens, Sparta, and the Struggle for Ancient Greece* (New York: Oxford University Press, 2017), 84.

[25] Thucydides, 2.54.

> The temples, in which they had pitched tents, were full of corpses because they died even there. Not knowing what was to become of them and completely overwhelmed by the illness, people lost respect for the sacred and the secular alike. Besides, all burial customs, that they used to observe, were thrown into confusion, they buried their dead as best they could. Many resorted to sacrilegious burial methods, for want of appropriate ones, because of the many deaths within their families. For example, they got a head start on people who had built funeral pyres by lighting them and piling on their own dead first, or they would throw the corpse they were carrying onto one that was already burning and go away.[26]

It is not impossible that some parts of his *History* Thucydides wrote after these events had happened so that his eloquence and writing skill caused certain suspicion with later writers that he had perhaps exaggerated in presenting the horrors which had happened in Athens during the plague. Recent archeological excavations in Athens have, however, confirmed the plausibility of Thucydides' account. The massive tomb was found on the ancient cemetery Kerameikos in 1994, dated in the time of the plague during the first years of the Peloponnesian war. This tomb is characterized precisely with neglecting the traditional funeral customs by burning, about which the osteological findings testify in the strata which reveal that the dead bodies were simply thrown one upon another at random.[27]

In order to understand the scale and drama of the moral offence which was caused by such neglect of the traditional funeral rites, it has to be mentioned that these rites had been observed with ancient people since time immemorial. They were amongst the most ancient ones and might be the most ancient rites which had to be observed unavoidably and unconditionally by others; and so, it was in Athens, too. When an Athenian died, women, who were more than sixty years old and in very close kinship with the deceased, would wash the body and anoint it. His body would be dressed in robes especially chosen for this occasion, decorated with flowers and ribbons, and put on an elevated bed covered with black fabric and cushions under the head. The family would keep vigil during which laments were sung. The funeral itself was held two days later so that visitors could have expressed their sympathy and that

[26] Ibid., 2.52.

[27] Robin Mitchell-Royask, *Plague and the Athenian Imagination. Drama, History, and the Cult of Asclepius* (New York: Cambridge University Press, 2008), xii; Martinez, 142.

it would be certain that the deceased had really died. Only then the remains would be carried to their final rest.[28]

The contrast between the traditional funeral rites and Thucydides' narration about handling the dead bodies during plague epidemic shows the terrible sacrilege of simply piling the dead bodies upon others without any rites and without paying homage to the deceased. Thucydides himself underlined this sacrilege when he described the official funeral rite in the first year of the Peloponnesian war:

> That same winter, the Athenians observed an ancestral custom and arranged for the funeral, at the public expense, of the first men to die in the war. They always did it in the following way. Two days beforehand, they would build a tent and lay out the bones and ashes of the dead, and everyone would make whatever offerings he wished to his kin. On the day of the funeral procession, wagons brought in cypress coffins, one for each tribe. There was one empty bier spread with a coverlet for the missing, the men who could not be found and carried away. Any man, citizen or stranger, could attend the funeral; women who were related to the dead were also present, mourning the dead right up to the grave. The soldiers were buried in the national cemetery, which is in the most beautiful suburb of the city [....]. When the coffins are covered with earth, a man who has been chosen by the city for his outstanding reputation and exceptional wisdom delivers a fitting eulogy over the dead.[29]

In this case, according to Thucydides, the man chosen was Pericles of Xanthippus. The unconditional necessity of attendance and following the proper and holy funeral rite can be observed in Sophocles' *Antigone*; the heroine violated the unholy decree of the new ruler of Thebes, Creon, in order to bury properly her brother Polynices, and thus saving his deceased body from becoming food for the vultures. Antigone risked her life and eventually she was incarcerated where she committed suicide. And in doing this she referred to unwritten divine laws which were valid from the times immemorial:

> For their life is not of today or yesterday,
> but for all time,
> and no man knows when they were first put forth.[30]

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[28] Roberts, 84-85.

[29] Thucydides, 2.34.

[30] Sophocles, *Antigone,* trans. Richard Jebb (Cambridge: Cambridge University Press, 1891), 456-457.

How strong and long the impression was, which the plague epidemic left on the citizens of Athens, shows its huge influence on the treatment of these characteristic motives in tragedies. Thus, Euripides' *Hippolytus* is interpreted as a drama about the plague, too, and as such it is full of metaphors about disease, rites to prevent the plague and famine and allusions of Asclepius, the god of healers. Sophocles' *The King Oedipus* and *Trachinian Women* were written during or immediately after the epidemic, so that its influence is visible in both dramas. The metaphoric talk about the disease and *stasis* in Athens, which is strongly expressed in Euripides' dramas, was continued in the following decades. Euripides has taken over the picture of the sick city from Sophocles, but whereas Sophocles' Thebes is the sick city because the plague is a realistic threat, Euripides uses this metaphor to depict *stasis*, which is a state of strife and civil war. The influence of Thucydides' work on poetry is doubtless. Although in the paragraph about *stasis* in Kerkyra he still does not designate *stasis* as *nosos* (disease), he characteristically does use the expressions which are connected with the state of disease. Thus, the metaphor of the sick city has been more and more present and stronger in the Athenian literature as the political unity grew weaker. However, the tragedy itself has become a form of healing the sick city, too. Immediately, several years after the plague had decreased approximately one quarter to one third of the city's population, the Athenians erected Aesculapion, the temple of the god the healer, beside the Dionysian theatre.[31]

## III. Thucydides' method

The crucial idea in Thucydides' account of the plague in Athens is the concept of anomie which at the same time denotes the destruction of the legal and political order as well as moral disarray and depravation. They led to outburst of unbridled and selfish individualism, the sickness of the city which is almost identified with the state of *stasis*. But, before we start to clarify extremely important and far-reaching concept, we should say something about Thucydides' method.

To understand Thucydides' method, his introductory remarks are especially important. At first, he said that he had quoted the speeches as it looked like to him that the individuals on such occasions would have said them and that in doing so, he had respected the whole meaning of the real speeches. But, immediately after that, he stressed that he always researched as accurately as possible every single deed in which he had

[31] Mitchell-Royask, 105; 122-128.

taken part in and those he had heard from others. At the same time, he expressed his hope that those people, who wish to explore accurately both the past events and those events which would happen again in the same way or similarly, according to human nature, would be satisfied. Finally, he expressed his judgment about history he had written, too: "My work was composed not as a prizewinning exercise in elocution, to be heard and then forgotten, but as a work of permanent value."[32] And in the so-called second introduction, Thucydides explained that he, after his commandment at Amphipolis, spent twenty years in exile outside his country, and that he was present at events on both sides and so he, now in peace, was all the better able to understand them.[33] The very manner in which Thucydides judged the events which he had described mostly reminds us of the procedure which was applied in medicine, the top science in that time. Exploration of the physical or biological world in the era of the 'Greek enlightenment' in fifth century BC was concentrated on close, minutest observation of nature from which ensued the rational analysis and drawing the conclusions from the observed phenomena. Thucydides used that method when he studied the brute facts from the human history. He especially used that method when he analyzed the destruction of the political order in the plague epidemic and in *stasis*. It was very consistent with the approach in medicine. This also holds true for his discussion of the pathology of the political life together with singling out of the characteristic phenomena as symptoms, ascertaining the essence or important properties of the observed phenomena as this is performed when diagnosing and following up of the course of disease like showing that the clinical course of disease is identical with the manner of writing medical treatises. From an experienced physician from that time, with the complete knowledge of the previously recorded cases, it was expected to tell apart the symptoms of one disease from the other, to recognize the variants of the symptoms of the same disease with various patients as well as the different stages of the progressing disease. A disease which is manifesting on different places and in different times will not be identical in every particular case, so that capable physician can recognize the similarities without paying attention to superficial variants.[34]

While discussing the disastrous effects of the plague epidemic or of a *stasis*, Thucydides, having as a model medical *tehne,* describes the beginning, conditions, and circumstances of the destruction of the political or-

[32] Thucydides, 1.22.

[33] Ibid., 5.26.

[34] Jonathan J. Price, *Thucydides and Internal War* (Cambridge: Cambridge University Press, 2001), 14-15.

der in a similar way and, as the destruction spread and got deeper, he also uses the expressions which the physicians used to describe the progressing of the disease. The misfortunes and suffering caused by the sickness of the city or of *stasis* will be – according to Thucydides – fiercer or milder and they will be different in its form depending on the given circumstances. But the variations in external manifestations of this political and moral disease should not deceive an experienced observer.[35] Thucydides not only successfully applied the adequate to medicine methods on the discussing of the political phenomena in the manner of the medical *techne*, but he also showed that he had appropriate medical knowledge, too. The details of his description of the plague, the pathognomonic symptoms, and also the progressing and especially the whole course of the disease confirm this. He did that, as he stresses, to enable us to recognize it easier even in the future:

> [...] I will say what it was like and how, should the disease ever strike again, someone who gives an examination may have some prior knowledge of it and not fail to recognize it. I give this description having been sick myself and having myself seen others who suffered from the disease.[36]

Thucydides shows the drastic psychological and social effects of the epidemic after the description of the disease. They are very similar to the pathology of the *stasis*, but of course, with some essential differences. But before that, we should show how his method, alongside with the application of the medical *techne,* comprises the discussion of the political phenomena with the antilogies, too, which was the characteristic manner taken over from the treatises of the sophists.

## IV. The contrast between the characters of the Athenians and Spartans – passions and extravagance vs. discipline and moderation

Thucydides identifies as the essentially true cause of the Peloponnesian war the one mentioned last. This is the fact that the Athenians became great power which has intimidated the Spartans and so forced them to wage war.[37] But before giving the description of the starting of the war itself, Thucydides thought that he should show the characteristic traits both of the Athenians and the Spartans.

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[35] Ibid., 15.

[36] Thucydides, 2.48.

[37] Ibid., 1.23.

The Corinthians discussed the true cause for the former on the meeting of the allies in Sparta. According to them, the Athenians are innovators and perspicacious authors of the new ideas which they also put into practice. They are also bold beyond their strength, daring beyond their better judgment and optimistic in the direst straits and they act without any hesitation. They put their bodies into the service of their city and they use their mind to do something for their country. If they fail to achieve their goals, they consider that they have lost what already belonged to them, whereas if they go after it and get it, they treat it like a trifle in comparison with what is to come. They enjoy little of what they have because they are always getting something new and thinking that simply doing their duty is a holiday, and that a quiet idleness is no less a chore than boring work. The advantage of the Athenians was also that their feats made them invent new things, whereas the established legal order is the best only when the state is in peace.[38]

The Athenian envoys, who had already been in Sparta, thought that it would be useful that they address the Spartans, too. According to them, they were constrained to develop their empire into what it is today, i.e., the most powerful, under the influence of fear, desire for respect and finally of gain because it was appropriate to human nature to attain the supreme power by complying with the most important instincts: ambition, fear, and gain. And even more important is that they were not the first who did it, but it is from time immemorial that the strong shall rule the weak. And it is the reason why they think that they deserve to rule, what the Spartans, too, had thought until they started considering their own interests. And now Spartans refer to justice, which no one, who has taken something by force, has ever respected or what kept one, if he was handed the chance to get something by force, from getting more. Finally, the Athenians added that they should be praised, those who succumbed to the drive, which is appropriate for states to strive, to rule over others and who are growing more and more just than their sheer power asks from them.[39]

The Spartan character was described by Archidamus, their king. First of all, he rejected the objection that Spartans were slow and cautious because these properties were proofs of their wise moderation thanks to which they were the only ones who did not become arrogant when they were successful, and they also gave way less in times of misfortune. Besides, they are brave warriors and sensible men precisely because of their moral strictness; their common sense is mostly established by the sense

[38] Ibid., 1.70-71.

[39] Ibid., 1.75-76.

of shame, whereas the spiritual balance ensues from the sense of disgrace. They are sensible because they are brought up to respect the laws always and to be always too much disciplined in order not to submit to them. He concluded his speech with an observation that men are not so much different and that the best man is he who has been trained in the hardest school. And the Spartans are precisely such persons.[40]

Thucydides has stressed the basic opposition of the sides in war in these three speeches, where he has contrasted the character of the Athenians to the character of the Spartans: extravagance vs. moderation and unbridled passions vs. strict discipline. Alongside the speech of Corinthians about the character of the Athenians, Thucydides puts forward his key method, too – that human passions are the strongest motivating drives of historical events. It should be mentioned here that in his account of the *stasis* in Kerkyra, the imbalance would be precisely the characteristic expression.

## V. The contrast between the ideal order and a state of anomie

It is extremely important that Thucydides' detailed account of the state of the complete moral disarray and anomie during the later plague epidemic in Athens ensues immediately after the quotation of the renowned Pericles' speech in praise of the fallen Athenians. In that way he has used the splendid antilogies to contrast the ideal political order with the state of moral depravation and complete lawlessness. In Donald Nilsen's interpretation, the strong contrast between the idealized picture of the Athenian culture, values and virtues from Pericles' speech and the breakdown of moral order in the city during the plague epidemic should show that the plague had only made evident that Pericles' description of the spirit of the constitution and way of life, which had made Athens great, was only an ideal picture from the ancient past of the city; that picture had disappeared long ago along with the vanishing of the characteristics of balance, measure, and harmony due to the imperialism, which was the real cause of the moral depravation, as the famous Melian dialogue has shown. According to him, Thucydides' understanding of the disastrous effect of the plague in Athens remained within the conceptual framework of the understanding of the *miasma*, the moral contamination, which was the true cause of the disastrous pestilence.[41]

In the available historical sources and writings there are no reliable evidence that Pericles really had held that funeral speech. It is plausible, having in mind Pericles' character and political role, that Thucydides him-

[40] Ibid., 1.84.

[41] Nielsen, 397-404.

self wrote it in order to present his political ideal and show at the same time in what Athens was superior and what was the basis of its supremacy in comparison with numerous other city states in Greece.[42] Or, according to the words of Jacqueline de Romilly:

> Therefore, we could accept that after the defeat Thucydides interpolated in his work this long and thought-provoking paragraph which was, without any apparent need, wholly dedicated to the glory of Athens and Pericles and which disclosed completely the supporting of the reliable and vivid ideals, embodied in that great statesman.[43]

With his splendid literary style Thucydides delineated with broad strokes this great political ideal and immediately after that he contrasted it with the absolute moral breakdown and negation of laws in the state of anomie. First of all, he singled out power because Athens was the only one among all those states which "proves stronger than its reputation," so that even its enemies are aware of the justness of their defeat and its subjects of worthiness of its rule. That is why Pericles could say that Athens, offering great proofs and evidences of its power, would be the object of admiration both with present and future generations because its citizens with their bold feats "have forced the earth and all its seas to make way before our daring, establishing an eternal memory everywhere of the vengeance we have taken and the good that we have done," and that such country is worthy of all troubles experienced and all lives sacrificed for it.[44]

Beside the political and military power, Thucydides' Pericles underlines the supremacy of the Athenian spirituality and culture. "We [the Athenians] love nobility without ostentation and we have a virile love of knowledge."[45] Above all, he stresses the wholehearted dedication of its citizens to the common good and those who do not participate in public life are considered as useless. Making decisions about state affairs by themselves, they discuss everything, so that their supremacy comes both from their courage and their deliberation, whereas their understanding

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[42] Kosta Čavoški, *Power and Supremacy: Thucydides' Political Thought* [in Serbian: *Moć i prevlast. Tukididova politička misao*] (Belgrade: Catena Mundi, 2015), 109.

[43] Jacqueline de Romilly, *Thucydides and Athenian Imperialism*, trans. Philip Thody (Oxford: Basil Blackwell, 1963), 147.

[44] Thucydides, 2.41.

[45] Ibid., 2.40.

of virtue is rooted in their conviction that they are free people.[46] The greatness of the city is based in the valid political system and virtue of the citizens, whereas the advantage of the Athenian democracy is in the rule of the majority which embraced the equality before law, respect of merit and uplifting in accordance with worthiness.[47] Precisely, this is the reason why Athens has become "the school of Greece."[48]

The basic political value, which completely vanished in the state of anomie due to the moral breakdown, was behavior in accordance with the valid laws. According to Pericles, the Athenians did not violate the established order mostly from awe and obedience to officials and laws, and especially to those laws which, although they are unwritten, bring the overall censure to those who violate them. The essential value of the Athenian political order was moderation and balance. And to attain them, temperance is of extreme importance because it corrects too big wealth and removes too big poverty, so that all citizens have equal access to public positions which are obtained thanks to abilities and acquired experience.[49] Finally, Thucydides' Pericles, while praising readiness of the citizens to the greatest sacrifice for the common good, whose basis is the free decision which is based in the sense of honor and awareness of duty, once and for all stressed the principle that happiness lies in freedom, and freedom in courage.[50]

Immediately after Pericles' speech, ensues the account of the appearance of the plague in Athens and its terrible effects which sharpens utterly the opposition between ideal and depraved order, rule of law and the state of anomie, i.e., well organized *polis* and *stasis*.

The fundamental motivating force of destruction and fading away of values was the outbreak of profound and unbridled fear. That fear, which totally subjugated the common sense of many citizens, destroyed all checks and controls, firstly the sense of shame. "Either people stayed away from one another out of fear and perished alone (and many households were left empty for want of any one to care for the sick)."[51] Thus, the plague at first loosened all social bonds, from family ties and relations of friendship to basic value of civic belonging on which the society is based. Taken by the fear and indifferent to their personal reputation, they yielded

[46] Ibid.

[47] Ibid., 2.37.

[48] Ibid., 2.41.

[49] Ibid., 2.37.

[50] Čavoški, 110-114.

[51] Thucydides, 2.51.

to excessive pleasures and this yielding to passions and momentary pleasure "wherever it came from, that was now the good and the useful."[52]

With the moral disarray and vanishing of the basic virtue of moderation, the balance disappeared, which was for Pericles the essential political value and the most important property of the spirit of the Athenian constitution. And while the outbreak of the uncontrolled passions erased the sense of honor and negated the awareness of duty, the unbridled egoism destroyed the commitment and dedication to the common good, which is precisely this civic virtue and fundamental trait of the public life on which, as it was underlined in Pericles' speech, the state order was based.

The lawfulness and piety disappeared with the destruction of the morality and fading out of the virtue; Thucydides says that "the plague initiated a more general lawlessness in the city" and people "were becoming more and more indifferent to the laws, both profane and sacred," and all legal determinations and religious norms were "fundamentally shaken." And since people "could not be bridled either by the fear from gods or human laws," the plague epidemic in Athens caused big lawlessness. This is the most fatal situation in state which he will call *anomia*.[53]

## VI. Stasis in Kerkyra

At the very beginning of his *History*, Thucydides gives an inkling that "this war between Athens and Sparta actually was the greatest war there has ever been."[54] The Peloponnesian war, in contrast to the Trojan and Persian wars, had the marked traits not only of external but internal civil war, too, because it was waged mostly among Greeks as the united people who shared, according to Herodotus, the same language, the same blood, the same gods and temples, the same sacrifices and customs.[55] Thanks to his extraordinary spiritual strength, Thucydides was able not only to disclose the nature of this internal political war but also to think and think through the depravation of the political.[56]

*Stasis*, the civil war, was an important subject of literary treatments in tragedies in ancient Greece. So in *Eumenides* Aeschylus presented the

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[52] Ibid., 2.53.

[53] Ibid., 2.52-53.

[54] Ibid., 1.21.

[55] Herodotus, *Histories*: *The Persian Wars,* Volume 4*, Books 8-9*, trans. Alfred Denis Godley (Cambridge, MA: Harvard University Press; London: William Heinemann, 1969), 8.144.

[56] Karl-Heinz Volkmann-Schluck, *Political Philosophy, Thucydides, Kant, Tocqueville* [in Croatian: *Politička filozofija, Tukidid, Kant, Tocqueville*] (Zagreb: Naprijed, 1977), 15.

reason and persuasion as the only proper means for solving the conflicts inside the *polis* and thus the goddess Athena warned the Erinyes not to instigate the wrath of the citizens and push the city into the fratricidal war,[57] so that they themselves express the hope that there will never be upheavals and strives in the city and that there will never be spilt blood of the citizens and then they praise the concord stressing it as a salvation which will overcome all dangers to which the city could be exposed and that only concord may keep the state safe.[58]

Because of its far-reaching importance, *stasis* was the subject of interest not only of the historians and tragic dramatists but also of the most renowned political philosophers. Plato in his *Republic* explains that external war and internal rebellion have two names so that there are two states appropriate with each of these kinds of collision, too. The former is the strife among citizens and fellow tribesmen, and the latter is the conflict between foreigners and various tribes.

> [...] Now the term employed for the hostility of the friendly is faction (*stasis*), and for that of the alien is war (*polemos*) [...]. We shall then say that Greeks fight and wage war with barbarians, and barbarians with Greeks, and are enemies by nature, and that war is the fit name for this enmity and hatred. Greeks, however, we shall say, are still by nature the friends of Greeks when they act in this way, but that Greece is sick in that case and divided by faction, and faction is the name we must give to that enmity.[59]

Aristotle discussed the internal upheavals and strives in the similar way. They are caused by different views about what the constitution (*politeia*) should be like, i.e., the form of the political order. And since the civil wars flared up precisely during the Peloponnesian war, Aristotle explained their causes in this way:

> And constitutions of all forms are broken up some times from movements initiating from within themselves, but sometimes from outside, when there is an opposite form of constitution either near by or a long way off yet possessed

[57] Aeschylus, *Eumenides*, trans. Herbert Weir Smyth (Cambridge, MA: Harvard University Press, 1926), 863-865.

[58] Ibid., 976-980.

[59] Plato, "Republic," in *The Collected Dialogues of Plato*, trans. Paul Shorey, eds. Edith Hamilton and Huntington Cairns (Princeton, NJ: Princeton University Press, 1989), 470b-d.

> of power. This used to happen in the days of the Athenians and the Spartans; the Athenians used to put down oligarchies everywhere and the Spartans democracies.[60]

With great sense not only for chronology, which is inevitable in the historical writings, but also for composition of his History, Thucydides shows first of all the civil war in Kerkyra. He has described it with details and a lot of thorough thinking, having seen in it the prototype of all later civil wars which flared up in many *polises* during the Peloponnesian war, including this one in Athens. That made Finley to make a judgment that *stasis* was an endemic phenomenon in the Hellenic world in those times until the cities were the autonomous political communities.[61] Thucydides' idea was to form the abstract model of *stasis* as a historical phenomenon by discussing the civil war in the example of Kerkyra, in order to make it serve as a diagnostic prototype which would enable the observers to understand the nature of civil war and recognize it in the future. And as the battle at Mantinea represents the pattern of the Greek way of waging war, so Thucydides, too, has understood *stasis* as a phenomenon which will repeat in the same or similar manner in the same or similar form as long as human nature remains the same.[62] That is why Thucydides' analysis of the *stasis* in Kerkyra is "his most complete, most focused and most thorough discussion about the historical truths."[63] For Thucydides it was an opportunity to put forward not only the mere historical facts, military collisions between the opposed sides, violent takeover of power and cruel revenges to the opponents, but also the state of mind in civil war, the nature of strife inside the depraved political community and the phenomenon of the moral breakdown, destruction of legal and political order and dissolution of society.

The occasion for the civil war in Kerkyra was the intention of the conspirators to change the war alliance by takeover the power because the party of the democrats was allied with Athens, while the oligarchic party was for the alliance with Sparta. After the cohort of the oligarchs, armed with swords, had slaughtered the members of the Council, after the bloodthirsty struggles on the city streets and squares, the Democratic party won and the horrible bloodshed ensued, so that no rescue from the revenge was possible, not even in the sanctuaries in the temples.[64]

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[60] Aristotle, *Politics*, trans. H. Rackham (Cambridge, MA: Harvard University Press; London: William Heinemann, 1944), 1307b.

[61] Moses I. Finley, *The Use and Abuse of History* (London: Chatto and Windus, 1975), 129.

[62] Price, 13.

[63] Finley, 129.

[64] Thucydides, 3.70-75.

> One saw every imaginable kind of death, and everything that it is likely to take place in situations like this did, in fact, take place – and even more. For example, fathers killed their sons; people were dragged from the temples and slaughtered in front of them; some were even walled up in the temple of Dionysus and left to die.[65]

Such cruelties and horrors of civil war, Thucydides warns, are done and "always will be for so long as human nature remains the same"[66] which is in different circumstances more cruel or milder.

> In times of peace and prosperity both cities and individuals can have lofty ideals because they have not fallen before the force of overwhelming situation, whereas war is a 'harsh teacher' which provokes in men passions which are adequate for the violent and cruel circumstances.[67]

Thucydides writes down succinctly the phenomena of vanishing of the morality in the public life. In fanatical party conflicts ruthless insolence is more appreciated than common sense, aggressive behavior is met with trust and skill in making plots and intrigues with respect, whereas plotting of misdeeds and instigation to evil are being praised. The close cousin is more alien than the follower from the same party and people do not join the parties to promote the common good but out of love for power. Mutual trust is not inspired by divine law, but it is based on common violation of laws. Solemn oaths are worthless, and revenge is as sweeter as trust is more betrayed.[68] This moral breakdown destroyed the very bases of every society: family ties, mutual trust of the citizens and sense of belonging to the same social community, to the same *polis*.

The cause of this utter moral breakdown, Thucydides concludes, "was power pursued for the sake of greed and personal ambition, which led in turn to the entrenchment of a zealous partisanships," public interest and common good are considered as sheer phrases. Unbridled ambition has scorned legal limits and it was always ready to abuse the judicature and

[65] Ibid., 3.81.

[66] Ibid., 3.82.

[67] Ibid.

[68] Ibid.

did not observe piety.[69] He clearly sums the far-reaching pathology of *stasis*: getting around of all laws, both human and divine, and corruption of judicature which led to negation of lawfulness, disappearing of legal protection, and loss of trust in religious sanction, which are the bases of the legal order of state.

The final effect of all this was the manifestation of the worst properties of human nature, in Kerkyra as well as in the whole Hellenic world because of the series of the civil wars and the outburst of the most abject passions which led "to every sort of depravity imaginable."[70] Thucydides writes down the cruel revenges of those "who had been governed more by caprice than by prudence," the ruthless robberies in order to plunder, but also "implacable savagery" which people show only because they are "overwhelmed by wild passion."[71] His ending of the paragraph about *stasis* is very telling:

> As people's lives kept pace with the tumultuous changes in the city, human nature came to predominate over the laws; human nature, which habitually breaks law anyway, showed itself in its purest form as eager to be above the law, as the enemy of all authority. If it were not, if people were not insane with malice, they would not have placed revenge above piety, and self-interest above justice. In taking revenge on others, people annul the common laws of mankind, which are the hope of everyone who falters and would find safety, leaving nothing behind for the time when they are themselves in danger and have need of them.[72]

All these disastrous effects of civil war led to prevailing of the people with perverted and depraved character who could be easily made to kill bestially and commit abject crimes. That is why Thucydides could say that war changed the way of manifesting of human nature and that it was the teacher of violence (*biaeos didaskalos*), i.e., 'harsh teacher' which made people go to the extreme of their violence and wrath.[73]

That is exactly the difference between *stasis* in Kerkyra and the plague epidemic in Athens. Whereas war was the teacher of violence in Kerkyra,

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[69] Ibid.

[70] Ibid., 3.83.

[71] Ibid.

[72] Ibid., 3.84.

[73] Čavoški, 127-131.

in Athens it was the plague.[74] Nevertheless, there was destruction of public morality, vanishing of virtue and negation of lawfulness. The important similarity is in that, as Robert Connor singled out, "in both cases *logos* was overpowered," implying with *logos* reason which should govern human and divine things. And not only the *logos* was overpowered, but it was also destroyed and turned into a means of violence, too.[75]

## VII. Contrasting *loimos* – *stasis*

The parallel between Thucydides' description of the moral disintegration of society in the plague epidemic and the description of the pathology of *stasis* was pointed out in the literature early.[76]

There is marked similarity in neglecting both human and divine laws and in outburst of lawlessness, which Thucydides, precisely while showing disastrous effects caused by the plague epidemic in Athens, referred to with the concept of *anomia*:

> In addition to this, the plague initiated a more general lawlessness in the city. People dared to indulge more openly in their secret pleasures [...]. No one was willing to persevere in received ideas about 'the good' because they were uncertain whether they would die before achieving it. Fear of the gods? The laws of man? No one held back, concluding that as to the gods, it made no difference whether you worshipped or not since they saw that all alike were dying; and as to breaking the law, no one expected to live long enough to go to court and pay his penalty. The far more terrible verdict that had already been delivered against them was hanging over their heads – so it was only natural to enjoy life a little before it came down [...].[77]

The Athenians have scorned all legal and religious dams which would bridle and restrain them. That has been caused by fear from imminent death from plague which has erased both the sense of shame and fear from legal penalty or divine sanction. The throwing away of all restraints of law and piety in the civil war in Kerkyra was caused, as Thucydides says,

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[74] Price, 29-30.

[75] Robert W. Connor, *Thucydides* (Princeton, NJ: Princeton University Press, 1984), 244-245.

[76] Werner Jaeger, *Paideia: The Ideals of Greek Culture*, Volume 1: *Archaic Greece*, trans. Gilbert Highet (Oxford: Basil Blackwell, 1939), 396-397; Price, 28-29.

[77] Thucydides, 2.53.

by the outbreak of the unbridled passions, greed, ambition, and – above all – enormous lust for power.

Orwin pointed to this difference in prevailing passions which equally led to anomie.[78] According to Thucydides' profound understanding of human nature, in difference from Athens, in which fear had the disastrous impact because of the plague and war troubles, in Kerkyra the rational fear, based on the moral scruples and the sense of shame, would be precisely benevolent. Pericles spoke, encouraging the low-spirited Athenians, that the political life in the polis depended on hope and fear. If our trust in hope is low, although it is the strongest in emergency than fear, based on common sense, can be lifesaving. Precisely based on this skill to restrain people implanting fear in them or supporting hope, the order in Athens – although nominally a democracy – was, in fact, "the domain of its foremost man."[79]

However, there was a marked difference in opposite ways of disintegration of the city, in those extremes between which there is every moderate political order. In *stasis* there is radical politicization of the political life which manifests in fanatical partisan disorganization which breaks the family and social ties, rejects all conventions and moral scruples, and does not stop at crime. But the plague leads to complete apolitical attitude and apathy, which causes the abandoning of the public life and all care is dedicated exclusively to oneself.[80] But for both cases the egoism is characteristic, either it is the personal egotism which in enormous fear from plague makes persons abandon their beloved who are left alone to die, or bare egoism of the exclusive party interest which is greedy for revenge and power. The enemy is invisible in the case of the plague, it is mysterious and unattainable, so the answer is escape into momentary pleasures and apathy; in civil war the enemies are also our own fellow citizens and fellow tribesmen and when the fighting for power starts. The only question is who will be the first to attack and who will suffer the defeat and revenge, which lead to radical politicization in which those, as Thucydides says, who shunned political parties were destroyed by both either because they did not join them or from sheer malice.[81]

Both the personal egotism and party egoism have erased the public interest in its own way, so that both indifferent apolitical stance and fanatical extreme politicization equally led to negation of the common

[78] Clifford Orwin, "Stasis and Plague: Thucydides on the Dissolution of Society," *The Journal of Politics* 50, no. 4 (1986): 841, 843.

[79] Thucydides, 2.62; 2.65.

[80] Orwin, 843-844; Čavoški,133.

[81] Thucydides, 3.82.

good. Both in the plague epidemic in Athens and the civil war in Kerkyra there were corruption and destruction of all social institutions, political, legal, and religious, and the loss of sense of belonging to one *polis* and dedication to common good, which have dissolved the very political community itself, and this was caused by the moral breakdown and vanishing of the lawfulness. Moreover, the shibboleths of the common good were understood cynically as mere words.

In the parallel plague-*stasis* another similarity is very characteristic, too: the changing of the meaning of usual words in public discourse, which manifests the confusion of ethical concepts, what Thucydides clearly noticed and succinctly accounted. He has only alluded to this confusion of the moral concepts in the paragraph about the plague in Athens when he has written down that it was considered as *good and useful* everything which caused the momentary pleasure and offered enjoyment and he further worked out this motive in his account of *stasis* in Kerkyra:

> People even changed the accepted meanings of words as they saw fit. 'Foolish boldness' came to be considered a 'courageous devotion to the cause;' 'watchful waiting' became 'an excuse for cowardice.' 'Prudence' was a 'mask for unmanliness,' and 'a jack of all trades' was 'a master of none.' Being 'beside yourself with rage' was posited as 'part of the human condition,' and 'thinking things over' to 'be on the safe side' was 'a glib excuse for a cop-out.' The lover of violence was 'semper fi,' and the man who challenged him a 'subversive.' If you plotted against someone and got away with it, you were 'smart,' and you were even more 'brilliant' if you saw plots coming. But if you planned ahead so as to have no fear of plots and counterplots, you were a 'traitor to the party' and 'panicked by the opposition.'[82]

Such changes in language and meaning of particular words led to undermining of all social institutions because the language is the lifeline of all communities where people live together, so that its changes ruin all forms of common life. However, this was only external indicator of the things which had been happening in the core of the political and legal order. The real cause of its destruction was the greed to have more at the expense of others (*pleonexia*) and the insatiable ambition (*filotimia*).[83] And while the outburst of these passions in political life caused the evident loss of measure and

[82] Ibid., 3.82.

[83] Price, 59, 64.

balance, distortion of the meanings of words, which was only the reflection of the confusion of ethical concepts, only more and more obscured the difference between virtue and vice and relativized both good and bad.

Thucydides' forcible account of the radical change of the meanings of some words in *stasis* made strong impression on his contemporaries, too. Plato was among them, too, who, it is true, in different context, thus accounted the conversion of one meaning into another which the supporters of democracy do:

> [...] and naming reverence and awe 'folly' thrust it forth, a dishonored fugitive. And temperance they call 'want of manhood' and banish it with contumely, and they teach that moderation and orderly expenditure are 'rusticity' and 'illiberality,' and they combine with a gang of unprofitable and harmful appetites to drive them over the border. [...] and in celebration of their praises they euphemistically denominate insolence 'good breeding,' license 'liberty,' prodigality 'magnificence' and shamelessness 'manly spirit.'[84]

Preoccupied with the mysteries of human nature, Thucydides discloses them precisely in extreme circumstances when, faced with dangers and the hardest challenges, it reveals itself even in its evil aspect, which is usually hidden. Such ordeals were the plague or the abyss of the civil war. He found out that human nature was capable both of good and bad. In peace and safety, it is milder, so that people are usually reasonable, they control their passions with common sense, they reveal themselves as honest and noble people and adopt moral stance. In times of peace and safety it is milder so that as a rule people are sensible, they control their passions with their common sense, they show themselves as honest and noble and they embrace moral stance. In violent and dangerous circumstances, however, it is crueler, because it is completely overwhelmed with passions in emergency, the more so as its position is more hopeless, so that people are capable of the most ferocious and worst misdeeds.[85] He was convinced that it is the truth which holds true for all times because human nature itself is unchangeable in its deepest core. Thus, he could say both that he had written about the things which had happened and which would happen again in the same or similar way in accordance with the human nature.[86]

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[84] Plato, *Republic*, 560d-561b; Čavoški, 136-137.

[85] Thucydides, 3.82, 3.84.

[86] Ibid., 1.22.

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# Discussion on Social Media Aesthetic War: Maurice Blanchot and the Establishment of Ethics

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**Abstract**

*This short discussion paper proposes a non-traditional view to ethics and war, and aims to highlight new perspectives on how we view and understand war. Images, images, images are everywhere in the virtual sphere of the internet, YouTube, ads, and social media. This process of expressing oneself via the virtual image accelerates the fight for the aesthetic virtual beauty when people are trying to create an image of glorified, ideal, and perfect life. This is a mode of fight which aims to narcissistically show off their grandiosity and desire for recognition, admiration, and fascination, fighting for the viewers and followers. Such mode of hedonistic desire seems to shun ethics away from the screen. However, Maurice Blanchot, a 20th century French philosopher, who was prone to denounce the issues of his contemporary time in a rather obscure and distant way, may give us the opportunity to understand this war of aesthetics in social media and ethics.*

**Keywords:** *aesthetics; war; ethics; social media; Maurice Blanchot*

## I. Introduction

We usually understand war as an active and brutal conflict that happens in physical life. Our eyes are now on the world-wide conflicts and wars happening in many parts of the world, focusing on advanced technologies used to destroy the enemy. However, one silent and aesthetic mode of war has been going on for a long period of time, but there is not much attention given to it.

The virtual world of the internet, together with ads, posts, tweets, and social media in general, is another mode of war that we usually pay too much attention to as it seems to us to be a part of our everyday life. Social media, ads, and videos are a form of war for the aesthetic beauty. Social media can be compared to the double effect of glass and the myth of Narcissus, analysed in a unique way by a 20th century French philosopher Maurice Blanchot.

The point of this discussion is to widen our definition of war. Firstly, the article will interpret social media as a form of an aesthetic war stage relating it to Maurice Blanchot's analysis of Narcissus. The goal of this analysis is to understand why the dimension of ethics is gone, and what are the main reasons behind narcissistic motivation of aesthetic war. Secondly, the article will try to bring ethics back into play, by opening the chance of vulnerability and respect for the enemy in social media.

## II. The icon and the narcissist

Benjamin states that montage functions as signs, labels, and other meanings that are used for advertising in the modern world.[1] These montages or pictures constitute a certain image and a very specific meaning. Social media is sprung by icons in various forms. Icon is easily understood to be a representation that helps the audience to follow a certain brand, celebrity, or influencer. This creates a distant desire of fascination to follow a certain icon, because it has something that we wish we had, yet know that it remains unreachable. The icon hides a dark secret of distant attraction, and this is where Maurice Blanchot's Narcissus comes into play. Blanchot stated that:

> But the aspect of the myth which Ovid finally forgets is that Narcissus, bending over the spring, does not recognize himself in the fluid image that the water sends back to him. It is thus not himself, not his perhaps non-existent "I" that he loves or – even in his mystification – desires. And if he does not recognize himself, it is because what he sees is an image, and because the similitude of an image is not likeness to anyone or anything: the image characteristically resembles nothing. Narcissus falls "in love" with the image because the image as such – because every image – is attractive.[2]

[1] Walter Benjamin, *The Arcades Project* (London: The Belknap Press of Harvard University Press, 2002), 213.

[2] Maurice Blanchot, *Writing of the Disaster* (Lincoln, NE, and London: University of Nebraska Press, 1995), 120.

Blanchot's Narcissus is looking directly at the water that is constantly in a flux. Such image is never static, and thus, it can never be fully understood in a non-obscure way. Even if social media icons seem to be static, they often change and fluctuate, depending on the desire of the person who owns the account. However, this icon on social media is not equal to the person who is changing and deciding what kind of icon one will use next, or now will the icon look like. Also, images do not "speak" to us in the same way as language does. Blanchot considered images to be "the living dead" as they seem to be devoid of sentences, contexts, and propositions.[3] What comes here into play is the desire of Narcissus to connect to his silent and lost self, that is in the form of an image, but all he can achieve is fascination.

In the *Space of Literature*, Blanchot states that when one is fascinated, one does not have an active contact or action of touching someone else. Instead, what happens in the process of fascination is that the gaze is absorbed by an immobile movement into the depthless deep,[4] which is precisely the way we look at the screen and the icon. This is a moment of seeing by not seeing because one's look is fixed, stagnating and immobile. Most importantly, we cannot return the look to the icon because there is nothing outside of it. One does not think or feel when one sees the icon, thus distance is needed to create this cold erotic fascination and relationship between the icon and the follower. Intimacy was an impersonal covenant established at the limit when this particular separation is experienced and affirmed in the most radical form.[5] Blanchot warns us about the fate of Narcissus stating that "one must not entrust oneself to the fascination of images which not only deceive (whence the facile commentaries of Plotinus) but render all love mad."[6]

Such fascination is an invisible, unreachable, and obscure object of desire in the form of an image or an icon. For Narcissus, it is enough to love a stranger and to be lured by attraction if one receives a mere, blind return of the gaze, in the form of the image, fixed its sight with avidity on him.[7] Benjamin stated that due to the massive reproduction of products and things the dimension of aura is lost once everything is

[3]Amanda Beech, "Death of Horror," in *Diseases of the Head: Essays on the Horrors of Speculative Philosophy*, ed. Matt Rosen, 71-112 (Goleta, CA: Punctum Books, 2020), 87-88.

[4] Maurice Blanchot, *The Space of Literature* (Lincoln, NE: University of Nebraska Press, 1982), 32.

[5] Joseph D. Kuzma, "The Intimate Blanchot," *Comparative Literature* 68, no. 1 (2016): 18.

[6] Blanchot, *Writing of the* Disaster, 121.

[7] David Appelbaum, *In His Voice: Maurice Blanchot's Affair with the Neuter* (New York: State University of New York Press, 2017), 68.

repeatedly manufactured, everything becomes mundane, regular, material, and "too human." Produced and repeated, this results in changes of medium of contemporary perception and inflicts loss of the aura, which is an authentic dimension of unique phenomenon of distance.[8] This also correlates with Blanchot's concept of the erotic distance which is related to dispossession and loss. One gains the closest intimacy in that of losing something that one deeply desires. As Blanchot stated that seeing presupposes distance, decisiveness which separates, the power to stay out of contact and in contact to avoid confusion.[9] Thus, paradoxically, seeing is a way of distancing from the object which creates intimacy of losing something, unleashing the need to restlessly catch this object of desire, a mad love for speed, not the object. In research for such distance and speed, one loses the ability to be in an ethical contact: "the distance which then is the lifeless deep, an unmanageable, inappreciable remoteness which has become something like the sovereign power behind all things."[10]

However, for the postmodern Narcissus, this loss inflicts a desire of fighting for glorification of the image. Even if Narcissus is forever doomed to be distant from one's image, one still tries to sustain one's image as the best one among others. Such a narcissist is always in competition with others because one is trying to highlight something that is tragically so far away from one. Such distanced glorification of oneself is a common problem narrowing the distance only to the image, inflicting the feelings of inferiority, jealously, and competition in aesthetics.

Blanchot pointed out that the form of organic human life put into the inorganic form (whether that of writing, icons, images, posts, or videos) which is a tragical existential fate. Most of creators view their works as their inorganic extensions of themselves that "live" instead of them. Blanchot didn't hold such views and saw the extension of the artists' life in the inorganic form as arrogance. Blanchot's relationship with his own texts was impersonal because he'd state that the text written by him is not him, and that "he doesn't know this person anymore; he is anonymous to him."[11]

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[8] Walter Benjamin, "The Work of Art in the Age of Mechanical Reproduction," in *Illuminations: Essays and Reflections*, ed. Hannah Arendt, trans. Harry Zohn, 217-253 (New York: Schocken Books, 1969), 222 and 237.

[9] Blanchot, *The Space of Literature*, 32.

[10] Ibid., 261.

[11] Maurice Blanchot, *The Infinite Conversation* (Minneapolis, MN, and London: University of Minnesota Press, 2003), 435.

## III. Social media as glass surface

Glass, just like social media, has a double effect, which can be compared to mirror. Glass functions both as a barrier that prohibits full sensory contact with the world outside and a reflective surface that mirrors an image of the interior.[12] The duality restates the enigmatic nature of glass, a physical substance that is a liquid maintaining itself as a solid. Virtual media seems to be static and non-vibrant, however, it shares the same double effect of the glass. We can look at social media and see images on its screen, which is physical, and at the same time, social media can change and shift because we scroll, switch pages, or change icons. It is liquidity and movement in one place because the form of social media is that of limpidity, flux, and vibrant movement.

In social media, as well as in glass, the viewer can see a faint image of the self that is not really this person, but a phantomization that observes the observer oneself. The darkest aspect of the glass is that

> Wherever there is ambient light, the image, the double, is there, gazing back. With the force of the image looking in, the inward turn is indicated: the turn away from the looked-at object and the detour in the direction of an imaged source, a source of image – point of origination.[13]

Social media users are observed by a passive, inorganic mirror that of the social media and icons themselves. The Narcissus is the one being reflected in the icon and other social media, and this reflection is looking back at them. As Pessoa states:

> I stagnate in my very soul. I suffer a suspension of will, emotion and thought that lasts for days at a time; I can only express myself to others and, through them, express myself to me in the purely vegetative life of the soul, through words, gestures, habits.[14]

And in our postmodern world, such stagnation manifests in expression of icons, images, tweets, posts, and videos with a tragic lack of being obliged never to see directly but look away.[15]

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[12] Appelbaum, 68.

[13] Ibid., 69.

[14] Fernando Pessoa, *The Book of Disquiet* (London: Serpent's Tail, 1991), 68.

[15] Appelbaum, 65.

## IV. War, the obsessive

Since now we know the issue of representation in the case of Narcissus, we can slowly shift our focus on the issue of war. From our analysis, it may seem that Narcissus is a tragic character that experiences love as fascination for a mere image or a random return of the gaze. The deepest issue of Narcissus is his incapability to reach himself or anything that is behind the glorified icon. Narcissus has an unattainable desire and obsession for the unreachable beloved; thus, he loses hold of his actions. He is so obsessed by this icon of himself, that he loses the mastery to make his icon and representation in the virtual world as the best one.

Narcissus creates astounding social media icons, images, videos to fulfil the need of aesthetic desire of other people. Basically, a Narcissus is trying to lure followers into fascination by one's aesthetic imagery portrayed by images, icons, videos, posts, and other virtual fragments. This desire of followers leads to a fight with other possible competitors which creates the need to always show more, more and more outstanding videos, images, or icons to keep the followers engaged and fascinated. A narcissist starts to obsess over one's image in social media and tries to reluctantly change it and improve it.

Obsession of Narcissus can be related to Blanchot's negative definition of obsession. Blanchot defines obsession is two different ways in two different books. In the Space of Literature, obsession is defined as a positive action, a constant come-back to a certain topic that leads to the creation of the new.[16] However, in *The One Who Was Standing Apart from Me*, Blanchot reveals the agony of the main character who is obsessed with writing and is constantly thinking about the idea of writing without being able to start to write.[17] This negative obsession is a suppression of action when the anxious mind cannot actually experience the present moment. Instead, such mind is trapped in the future, reluctantly trying to do more and more and swipe away other competitors in the social media to gain followers for ego boost. Such negative obsession leaves no space for dialogue, ethics, and connection with the other.

The gaze of Narcissus is the gaze of war, obsession, and destruction. Such gaze leaves no space for connection and communication because their role is to obsessively fight for followers and influence with everyone, including themselves. Aesthetic appearance becomes the mode of war in which the Narcissus is trying to sustain the control

[16] Blanchot, *The Space of Literature*, 24.

[17] Maurice Blanchot, *The One Who Was Standing Apart from Me* (Barrytown, NY: Station Hill, 1993), 4.

of the gaze of the followers via fascination, trying to fulfil one's tragic need of the self that is lost and unreachable.

## V. Vulnerability of our sedentary dread

Maurice Blanchot revealed the dark and obscure gaze of the Narcissus which required vulnerability. What he revealed was a personal vulnerability, but the dark scourge of the social media. We are already discussed that virtual space can be compared to the surface of the glass. The grimiest aspect of the glass is that it gives us a resemblance of the face. In the icon, we do not see our own reflection that would be equal to that of a mirror.

Instead, we see an animated, fictional, or modified reflection of our physical selves or any other entity. What we see is a haunting presence that resembles a face that never goes away and is reflected in the dim light. This face always remains in the dark, to be sensed, it's "an intelligence whose motives are beyond the ken and whose radical ambiguity figures a face of terror, '*sedentary dread*.'"[18] This resemblance of a face is the viewer who is static and stagnating. What Maurice Blanchot is exposing here is our dark, invisible, stagnating side of ourselves that we chose to ignore. We do not want to feel, touch, see or talk with others anymore. Instead, we chose sedentary existence staring at the screen, indulging in our own desires, or competing with others in for followers and recognition.

The tragedy of such war is that once the follower sees my icon in social media, I become deprived of being me because the follower sees and comprehends me from a very different perspective. Blanchot also asks whether we can sustain our subjectivity if we are reduced to the thoughts of the follower or are we just crushed to this radical alienation. Blanchot states that we must come back to ourselves and our will, leaving other's perspective behind.[19]

Vulnerability is the ability to show oneself instead of hiding under the icons and images. Such vulnerability establishes the "I" that allows this "I" to connect and speak to others, instead of seeking their attention, gaze, and fascination. In doing so, one must show oneself as one is imperfect, diverse, and emotional instead of hiding under flashy vibrant icons.

Another way to be respectful of the enemy is to talk with them or write about them in social media space. Such talk does not necessary mean talking with them in real life, but that can take a form of respectful

[18] Appelbaum, 70.

[19] Blanchot, *Writing of the Disaster*, 29.

and direct dialogue in the form of posts, images, or any other forms of social media. For Blanchot, writing is a way to highlight the ethical difference beyond dialectical difference which means that writing is a constant process of differing and deferring from itself which constitutes multiple relationships as it is always open to everywhere.[20] Thus, writing, whether it's a form of writing posts or posting videos or images, can function as a possibility for ethics to establish multiple *respectful* relationships.

Such communication is a start to a dialogue or at least a respectful fight with the enemy, without trying to obsessively destroy and dehumanize this particular enemy. Such behaviour shows that both enemies acknowledge each other on the same level, without reducing each other to the level of an object. Vulnerability creates intimacy and connection with the enemy, because the enemy knows about "me" and "my weaknesses," but at the same time, "my aesthetic enemy" is exposed to one's own weakness which may bring a glimpse of a dialogue and respect for both enemies. And finally, the last respectful aspect in aesthetic war is respect for the enemy's need of solitude and silence, and their choice needs to be respected. It is important to note that Blanchot viewed friendship, which could be possible among enemies, as a distance and silence of friendship.[21]

## VI. Conclusions

The purpose of this discussion was to bring the question of aesthetic war in social media, relate it to Maurice Blanchot's analysis of the Narcissus, and provide some possible solutions of Blanchovian ethics to this issue. The Narcissus case shows the alienation with the self that manifests itself in a form of "pre-emptive" war for followers, attention, and likes. Maurice Blanchot was brave enough to dismantle the tragedy of Narcissus, and reveal our darkest, hidden "self" in the form of glass, transformed into the form of the reflected image on the screen. In such aesthetic war, Maurice Blanchot shows that vulnerability – the ability to show one's own weaknesses – to the "enemy" unconceals the ethical dimension by allowing it to work and function again.

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# Robotic Virtue, Military Ethics Education, and the Need for Proper Storytellers

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**Abstract**

*The introduction of artificial intelligence (AI) challenges much of our traditional understanding of military ethics. What virtues and what sort of ethics education are needed as we move into an ever more AI-driven military reality? In this article we suggest and discuss key virtues that are needed, including the virtue of prudence and the accompanying virtue of good and proper storytelling. We also reflect on the ideal of "explainable AI," and philosophize about the role of fear in helping us understand what is actually at stake in a military infused with AI-enabled and AI-driven weapons.*

**Keywords:** *artificial intelligence; virtue; narratives; prudence; fear*

## I. Introduction

In the opening chapter of Alasdair MacIntyre's *After Virtue* from 1981, entitled "A Disquieting Suggestion,"[1] we find an imagined and indeed disquieting future portrayed. In that alternate timeline, the natural sciences have at some point been restricted and in essence

[1] Alasdair MacIntyre, *After Virtue* (Notre Dame, IN: University of Notre Dame Press, 1981), ch. 1.

purged, and their findings and results have been obscured and gradually forgotten. Later, however, they are recovered, but only in bits and pieces. The theoretical connections, the actual scientific experiments, and the underlying knowledge and insights that made the language of the natural sciences meaningful have been all but lost. Thus, the words are used, and scientific activity is seemingly being performed, yet the meaning and context of the endeavors make little sense. It is all essentially gibberish, but people do not know that. And, as MacIntyre notes with a hint of theoretical irony, analytic philosophy has no methods with which to reveal the problem, since all sentences and propositions do make sense within their own, internal framework.

For MacIntyre, this story parallels the way in which modern moral philosophy – in his view, dangerously imbued with emotivism and subjectivism – *uses* the language of virtue inherited from Aristotle but does not understand or appreciate it. We employ the terms, but we have lost the knowledge and the context that once gave them meaning. Hence, morality and its language become increasingly meaningless.

We do not have to agree wholeheartedly with MacIntyre's diagnosis of our time to find the image a vivid one.

If one wishes for a more artistic impression of the same scenario, an episode of the TV series *The Twilight Zone* called "Wordplay" from 1985 will send chills down one's spine.[2] A salesman, Bill Lowery, has accepted a job for a medical supply company, and to do his job, he must learn an advanced vocabulary totally unknown to him from before. In the course of this difficult process, he picks up some strange variations in the ways in which people around him speak, not just in their technical vocabulary, but in everyday language. First, he concludes that his colleagues' jovial expression "Teaching old dogs new trumpets" must simply be part of the jargon. But when he is asked at lunchtime to join them for dinosaur, and the word "lunch" makes no sense to the others, he realizes something more dramatic is going on. Gradually, word by word, the language spoken by those around him becomes unintelligible, until he is totally shut out from the conversation of his fellows, lost in a maze of words that make no sense.

Our claim is that the rapid technological advances of our times create challenges along these lines. "You have forgotten to mute in Teams" is a sentence expressed daily now as we have mastered the intricacies of digital meetings, yet it made no sense before the Covid pandemic. While that is a perfectly innocent example, it arguably re-

[2] Wes Craven, dir., *The Twilight Zone*, season 1, episode 2a, "Wordplay" (Los Angeles: CBS Entertainment Productions, 1985).

minds us of the need to discuss – in the vein of MacIntyre – what happens to our language and understanding, including our *moral* language and understanding, as culture, technology, and language all change at breakneck speed.

We will venture two basic claims in the context of digitalization and so-called Artificial Intelligence (AI), especially as they relate to the ethics of armed conflict: Firstly, we need to study, rethink, and maybe even understand anew several of our traditional moral and intellectual virtues as we face an ever more digitalized world – and ever more digitalized conflict. What role can and do those virtues play as we increasingly work with and delegate tasks to intelligent, self-learning machines? And secondly, we may have to devise *new* virtues – or at least variants of the old ones – to fit with the challenges we face, not least in a military setting, from brain-computer interfaces employed by soldiers to virtual cyberwar and AI-enabled weapons. Are there virtues that we urgently need to formulate and emphasize?

This in turn is closely linked to our understanding and conception of military training and education, since a military force that has not been trained and educated to understand critically the world of artificial intelligence will also be using – and even be put in charge of – incredibly powerful machinery without grasping its implications and ramifications. If a crucial aim of military education is to strengthen those virtues that can guide soldiers to right action and right thinking, in accordance with the standards of just war tradition and international humanitarian law, we must assess how those virtues are to be understood and developed as we increasingly employ an AI-driven armed force.

As we discuss these very real challenges in the following, we will conclude by relating them to the fierce reality of fear and competition, elements that permeate our present-day world and must be taken into account as we discuss ethical ways of conducting armed conflict in light of complex, rapidly developing technologies.

## II. Virtues

Virtues, understood as traits of character that are prerequisites for leading a good life, and which help us become good and well-functioning human beings, have traditionally been understood to be acquired in three ways: by learning, by training and habituation, and by being received as a divine gift. The first are primarily true of what we call the intellectual virtues, the second of the moral virtues, and the third of the theological virtues. Although we do not intend to downplay openness to the gifts of God, we will concentrate on the former two here.

What sorts of virtues do we need to operate and use advanced AI-guided military systems? Most obviously, in order to use, communicate, and act in close cooperation with a machine – indeed, to entrust one's life and the success of one's mission to that machine – we must have sufficient *understanding* of it so that we can trust it. We must understand its possibilities and limits, as well as the tasks to be carried out and the aims to be achieved. What virtues are required for this to be realized?

a. Courage

One of the main fears of critics of an increasingly automated and AI-driven military reality is the loss or denigration of the core value of honor and the accompanying virtue of courage.[3] After all, machines have nothing to fear, but they also have nothing to be proud or ashamed of. Honor, conscience, the willingness to take risks, the courage required to put one's life on the line: all of these may be lost at the altar of technology, or so it is claimed. Arguably, however, that is not true for the humans who develop, deploy, and operate such machines. *They* will still be afraid, feel shame, or experience honor.

In the *Laches*, the Platonic dialogue entirely devoted to the virtue of courage, one of the most promising definitions of that virtue to be arrived at is the following, slightly paraphrased: to be courageous is to know what one ought to fear. (The definition is suggested by the Athenian general Nicias at 194d-196c; we will leave aside here the problems they encounter with the definition). The question to us can be formulated as follows: Do *we* know what we ought to fear as we increasingly deploy AI-driven weapons?

In the military AI literature, the fear of losing meaningful human control, that is, of a slippage when it comes to the room for appropriate moral judgement and guidance, is often listed as *the* foremost challenge. Wrongly programmed machines may not come to be stopped before it is too late, or we will employ sophisticated algorithms without actually knowing and understanding how they will play out. This becomes an ever more real challenge as the complexity of digital machines as well as their interaction with other machines and algorithms rapidly increase. How do we confront these problems?

Formulating worst-case scenarios, defining points of no return, and having constant and readily available access to technical expertise that

[3] See Valerie Morkevicius, "Tin Men: Cybernetics and the Importance of Soul," *Journal of Military Ethics* 13, no. 1 (2015): 3-19, and M. Shane Riza, *Killing Without Heart: Limits on Robotic Warfare in an Age of Persistent Conflict* (Dulles, VA: Potomac, 2013).

can explain the functioning of the machines being used are all essential tasks and qualities that will enable the deployers and users of AI-driven military equipment to have and perform according to the virtue of courage. By courage, we mean here the moral and mental ability and willingness to venture into difficult yet important missions, even when using complex AI technology. Access to fine-tuned knowledge that tells us what to fear and what not to fear makes all the difference. Learning how to identify and tackle that fear and learning how to live with it in a way that leads to prudent decision-making – also about when and when not to use AI-driven systems – thus becomes a core part of military education overall, not least for the operators of such equipment.

b. Moderation

The virtue of moderation is, in the Platonic dialogue *Charmides*, also subject to several definitions (as was courage in the *Laches*), the most important and famous one being self-knowledge and self-control (formulated by Critias and Socrates together; see 164eff.). The truly moderate and balanced human being, possessing *sophrosyne* – soundness of mind, or moderation – is the one who honestly probes and knows his or her own strengths and weaknesses, possibilities, and limits. Socratic wisdom famously consists – most essentially – in knowing and appreciating *what one does not know*. In the context of AI, developing an increased awareness of the limits of not just the advanced machinery itself, which sometimes will seem more limitless than limited, but also of *our* limits in operating and understanding it, and the limits we can impose upon its use, lies at the heart of the virtue of moderation. It is arguably as relevant as ever, and also a core part of the training and education that must accompany AI-driven or AI-enabled weaponry. The feeling of being almost all-powerful when one utilizes such equipment, often accompanied by a sense of being physically safe, puts us in danger of obscuring the virtue of moderation and the key accompanying virtues of self-doubt and self-questioning.

c. Prudence

The virtue of prudence, understood as both an intellectual and a moral virtue – and not least as a *political* virtue – is certainly also made relevant and being challenged by the development of AI. Let us look at some aspects of its importance.

Firstly, the virtue of prudence describes a core quality needed for users of advanced technology such as AI in extreme contexts, namely, the

need to judge and appreciate the right levels of risk and uncertainty. It is a truism that engaging AI systems in a military setting should be done only when one can reasonably assume they will operate properly. But when is that the case? How can one make such a reasonable assumption?

One of the authors of this article has interviewed several commanders of naval vessels equipped with the AEGIS combat system. They express great reluctance about putting it in what they call autonomous mode and would indeed only consider it in the most contested environments. This exemplifies the sense of uncertainty surrounding any advanced system with great destructive power when it is not under human control. Of course, the actual level of uncertainty depends on the exact nature, complexity, and functioning of each individual system. For us, however, the crucial point is not to discuss concrete technologies, but to emphasize the importance of the ability of each commander of such systems to gauge the risk level rightly, based on experience, training, and knowledge of and familiarity with the systems used. This arguably encapsulates a core aspect of the virtue of prudence: the weighing of various forms of experience and evidence to make the right decision about launching weapons or operations with great destructive power.

On September 26, 1983, Soviet Lieutenant Colonel Stanislav Petrov disbelieved electronic warnings of an ongoing US nuclear attack on the Soviet Union, treating it instead as a false alarm. Had he done what he was supposed to do, namely, relay the alerts about a possible US nuclear attack to his superiors, it is likely that a Soviet nuclear counterattack would have commenced. Even though this incident took place at a time of significant tension between the United States and the Soviet Union, Petrov reasoned that the alarm (which, it turns out, was set off by sun being reflected off clouds) was false, not least because a US nuclear attack would have consisted of more rockets. Arguably, it was Petrov's prudence that saved the world from nuclear war.[4] Had his hunch been wrong, the result would have been utter disaster for the Soviet Union. However, by employing his general knowledge of likely nuclear attacks, combined with what we might call his moral courage, he made a prudent decision, resting on his comprehension that even highly advanced electronic systems can be wrong. This is a clear instance of prudence in the handling of advanced technological systems.

Secondly, deep-seated knowledge of what AI systems are and can do will increasingly come to reside with specialists, due to the sheer

[4] Alicia Sanders-Zakre, "The Man Who 'Saved the World' Dies at 77," *Arms Control Association*, https://www.armscontrol.org/act/2017-10/news-briefs/man-saved-world-dies-77.

complexity of AI. But prudence is needed well outside of those circles. Understanding what we are *actually* doing when we, for instance, develop new and ever more powerful forms of AI capabilities in the cyber domain, or decide to deploy and use such systems in battle theaters, is almost impossible if not accompanied by the right pedagogical tools for telling us what such a development entails. Such understanding must be based on know-how, experience, insight, and dialogue. Not without reason, several of the leading teachers of morality – from the Western philosophical and religious traditions, Plato and Jesus of Nazareth obviously come to mind – employ parables and analogies to penetrate to the deepest levels of moral understanding. This is prudence in practice, drawing on what we understand in order to venture into what we do not.

To understand fully and truly what a fast, complex, and ever-developing machine is doing, we thus need prudential, pedagogical work to explain the moral and practical ramifications of its existence and use. This is not done once and for all but must be refined constantly alongside the development of new machinery, programming, hardware, and software. True prudence depends on the ability to create narratives that clarify for all of us – soldiers, politicians, operators, and laymen alike – what is at stake. As Gregory Reichberg has pointed out in his masterful treatment of Thomas Aquinas and military prudence, war belongs within the realm of the constantly changing and the constantly uncertain. Great skill and soundness of mind are required to make decisions that are rightly ordered to the moral end of just warfare, namely, the common good.[5] To hold together the immense complexity and uncertainty of military activities – not least in an age of advanced technology – with the defense of the common good and human dignity requires the kind of practical understanding that the virtue of prudence implies and facilitates. This virtue also requires the careful and wise construction of narratives that help us formulate how each action we perform belongs within a larger moral framework, and how the complex tools we employ may contribute to the societal and ethical ends of one's activity.

### d. Storytelling and translation

This is where we suggest that we venture beyond the nomenclature of the virtues that are traditionally understood as important for the military sphere – and for military ethics – and propose an added virtue,

[5] Gregory Reichberg, *Thomas Aquinas on War and Peace* (Cambridge: Cambridge University Press, 2017), 67-81.

built on what we just said about prudence: that of the skilled narrator, of the good and well-informed storyteller, who constantly, alongside the developers and the entrepreneurs – and in the military setting: the soldiers, commanders, and specialists – helps us translate the technology into understandable concepts and narratives and thereby assists us in grasping what we are doing, and where we may be going.

There is nothing new in this ideal or virtue *per se*; many such storytellers and translators exist, in academia as well as among writers of fiction. From Arthur C. Clarke and Isaac Asimov to Peter Singer and Stuart Russell, they have been among us for some time. But as a basis for political decision-making, for military ethics education, for operating manuals, and for military criminal tribunals in a world of AI, this virtue must be developed further.[6]

We do know this well from an analysis of our everyday lives. Things that affect us all the time, that are constantly deployed and used by us, are things we often do not understand, but which we nonetheless readily accept, even formally and explicitly, such as through repeatedly ticking "I accept" boxes. Let us provide a simple example: Recently, the daughter of one of the authors entered a restaurant with her father, and the latter asked her whether they hadn't been there before, because it looked familiar – it's just that we must have entered from the other side. She told him to look at Google, which rightly told him that he had been there almost exactly a year before. This in itself is trivial, but it does tell us a lot. When the author, at some point in the technically distant past, had ticked a box in Google allowing it to "use my location," he had without much afterthought asked Google to keep track of his whereabouts. No one had told him a narrative, a parable, a story about what that actually meant, or translated his box-ticking into consequences he could readily understand. He had been confronted with many lines of legalese, of course, but very little to tell him what his "yes" signified in practice, and also – and importantly – no real sense of what the alternatives were.

We venture the claim that a primary job for philosophers, as well as for lawyers, social scientists, psychologists, and scholars of literature and religion in an AI-infused military, is to be, or to help identify, knowledgeable storytellers who, in close interaction with the engineers and developers of AI technology, attempt to tell us what the new technology implies, where we are heading, what we are doing, what will now be possible, and not least what the alternatives are. Maybe every

[6] We have decided here more or less to conflate the "storyteller" and the "translator," since the two functions overlap as well as complement each other in our context.

high-technology weapons manufacturer should be obliged to have a CSTO: a chief storytelling officer.

### e. Virtue as a mean

In the tradition of Aristotle, a virtue is always a mean – a mean of excellence – between extremes. So, we need to think through what kind of a mean this just-mentioned quality of storytelling and translation might be.

We believe it is most essentially a mean between on the one hand the mastery of an impressive, yet purely technical language and insight, and on the other fantastical, fictional, often overly optimistic or downright scaremongering storytelling on the other. Both of these – the technical and the purely science-fictional – do have their place, and they are not vices *per se*. But as guides for political and moral prudence, they are sorely deficient, yet remarkably widespread.

In line with this, we would hold that incessant and heated debates between extreme optimists and equally extreme pessimists, even if well-intentioned, stand in danger of muddying the waters and hindering a balanced, morally alert conversation about AI.[7] When the military AI debate becomes a battle between those who are certain this new technology will save the world and those who believe it will destroy it, we will stand in danger of losing sight of the real-life and truly momentous challenges we are facing.

## III. Education and training

We believe that each of the virtues listed above should inform modern military education, and not least ethics education. We have entered a phase where soldiers at all levels will increasingly be expected to use and familiarize themselves with AI, in the form of (more or less) autonomous weapons and tools characterized by machine learning. Many of those tools will be extremely powerful means of warfighting and killing. To use them wisely and rightly will be our paramount task.

In order to accomplish that task, prudent pedagogy and truthful and accurate storytelling again come to the fore. Operating machinery of which one has no real understanding, whether as to its potential, limits, or consequences, is not only dangerous, but potentially destructive to the whole purpose of a common military enterprise. Understanding and

[7] For a good illustration of these dangers, see Adam Lashinsky, "Marc Andreessen's New Manifesto is a Self-serving Cry for Help," *Washington Post*, October 19, 2023, https://www.washingtonpost.com/opinions/2023/10/19/marc-andreessen-manifesto-silicon-valley/.

guiding the most important means of fighting could end up becoming the domain of a few, while the bulk of operators and soldiers would be mere tools in their operation, in a way that eclipses the way in which a bomber pilot is a tool for the operation of a bomber. The bomber pilot will, after all, always have a basic, analogue understanding of the key means at his or her disposal. The user of powerful AI-guided weapons, who does not grasp their workings, their potential, or their limits, will be in a very different situation.

To avoid that scenario, the role of technology specialists as well as the "storytellers" and "translators" imagined above will be crucial, vis-à-vis both users (such as soldiers and other operators), decisionmakers in the war theater, and political decisionmakers. Furthermore, and as a consequence of this, education in military ethics for soldiers must aim to strengthen both the intellectual and moral understanding of what these weapons and systems most deeply represent. That also entails a thorough and broad dialogue between specialists, decisionmakers, and users at all levels.

This does not mean that all levels of a military force will need the same detailed understanding of the tools used. For the enlisted and lower-level officers, basic training so that one knows how to operate the system is required, and also, if there are known dangers in trusting the system, additional training to recognize those limit situations and exercise appropriate caution. Examples of military personnel *not* trusting their systems to good effect are plentiful – such as learning to recognize when a gun is about to misfire, or a flight compass is giving faulty readings. Hence, doing whatever possible to train for when to trust and when to override is critical. At the same time, in very time-critical applications, we do not want to train or educate for excessive caution either, which could obviously be lethal. As with so much of virtuous action, the ideal will consist in a mean between caution and efficiency, between healthy skepticism and well-placed trust. But we emphasize again that we have no illusion that all users of advanced AI-enabled weaponry will or can be fully educated in the technological and ethical aspects of using such weaponry. The basic training they do receive, however, must be of a kind that heeds the lessons of those who truly understand the technology, and makes the user aware of the limits of each particular technology, weapon, and system.

## IV. Explainable AI?

Our vision here of good storytelling, and accompanying training and education, as a key part of making AI practically and ethically employable echoes the ideal of "explainable AI." The underlying idea of this

phrase is that the functioning of the tools we use should be possible to explain in a way that makes it doable to understand, predict, and *post facto* re-trace what the tools actually do.

In its strict sense, it is clearly not a realistic goal. Even everyday digital and digital-enhanced instruments we use and on which we are dependent, from cars to personal computers, are such that it is not possible to explain all their elements to the lay user. Indeed, explainability in the full sense, pertaining to the user, should not be a constraint on AI development. However, we should be able to expect predictable input-output processes, even when – to many or even most users – the contents of the algorithms will remain a black box. In other words, rigorous testing should ensure that we can have high confidence that a given set of inputs will give us the output we can rely on. Proper education, technical as well as ethical, will have as its main task to make commanders awake to the possibility that this might not always be the case, and that outputs must be monitored to ensure that the AI systems are truly working as they should.

For example, using AI for target nomination on the battlefield is clearly a crucial application for such systems. That is, the AI system can identify a tank, an artillery piece, or a command post. Those identifications will not necessarily be extremely time critical, so presumably human targeteers can examine those nominations and agree or disagree. In more time-critical situations, such as defending a ship against high-speed or hypersonic incoming missiles, the human ability to engage fully in every step of the OODA (observe, orient, decide, and act) loop will be limited, and so systems such as the naval AEGIS Combat System in autonomous mode will have to be relied on for lack of a good alternative. However, even here observing input-output reliability will be absolutely crucial, combined with the necessary assurance that the commander deciding to use that system in autonomous mode knows about the system's workings and safety, and can both monitor and *ex post* explain its use.

## V. Concluding reflections

We started out with stories from Alasdair MacIntyre and *The Twilight Zone*, both of them simultaneously insightful, scary, and entertaining. If – ten or twenty or fifty years from now – we still speak of courage and moderation, of proportionality, authority, and intentions, yet our language has little to do with the actual world we inhabit, or the actual moral and political challenges confronting us, we may indeed be in trouble. Equally troublesome would be a world where we use these

traditional words from the history of moral philosophy and just war tradition, yet do not understand what they mean, because we have been overwhelmed by a development that has simply scrambled their meaning.

For this to happen, we do not need AI, of course. Moral degradation, extreme nationalism, or authoritarian ideologies have proven themselves worthy enablers of such dissembling many times before, quite apart from technological prowess. To hear Foreign Minister Sergey Lavrov or President Vladimir Putin of Russia repeatedly tell us that in the invasion of Ukraine, no civilians are being targeted, and that the "Nazi" regime in Kyiv needs to be driven out, is a chilling reminder. The words have no truthful meaning, but they function within their own closed world, what Robert Musil and Eric Voegelin famously called a Second Reality.[8] The world of AI could become such a world. That is what we must avoid.

Therefore, we need a constantly evolving, deep-seated conversation about morality, and we need the human virtues of courage, moderation, prudence, and justice,[9] accompanied by good and informed storytelling – encompassing also interpretation and translation – to guide us. Most likely, the machines themselves will never possess those virtues in any real, conscious sense; that belongs to human beings. It is all the more important that their human developers, enablers, and operators possess them. To possess them, we need to understand the technologically extremely advanced world into which we are moving. Proper, balanced, moderate, and knowledgeable narrators are key to that endeavor.

This vision of storytelling and appropriate virtues must not obscure a realistic assessment of where we find ourselves, namely, in a *de facto* arms race. Several participants in that race may have little interest in constructing a common ethical narrative about AI. The Chinese and (albeit to a less technologically advanced degree) the Russians seem to be plowing ahead with developing these technologies with less worries about constraints than the West currently has. By saying this, we are not claiming that a lacking attention to ethics is a feature of one side only, or that there is no interest in ethical or safety-related constraints

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[8] T. John Jamieson, "Robert Musil and Eric Voegelin: Literature and Spiritual Pathology," *VoegelinView*, May 10, 2012, https://voegelinview.com/robert-musil-and-spiritual-pathology-pt-1/.

[9] We have not dealt with justice in any detail in this article. We do mention it here, though, since it is clearly crucial to any theory of just war, and also since it is considered in the philosophical tradition to be one of the cardinal virtues, alongside moderation, courage, and prudence.

in a country such as China. The point is that in an arms race, the danger of overlooking key ethical or human-rights-related issues, in the name of the nation's (or the party's) interests, is an ever-present danger.

This situation also reminds us, however, that we have a virtue – albeit often portrayed as a vice – that can be our friend, namely, fear, which we also touched on above in our discussion of proper courage. We are dealing with potentially very dangerous technologies, and all rational actors can see that this is the case. For that reason, like with nuclear disarmament, fear may be the best common motive for action. Rational fear, mutually shared, provides a basis for shared interests, which might, in turn, provide a framework for agreed restraint and regulation.

Rational fear requires rational, shared narratives, which can be shared between technologists as well as politicians. There are those who deeply distrust a rules-based order grounded in international law and want to replace it with a much more multipolar world. That could, we fear, lead us to a Hobbes-like state of nature, with powerful technologies set to fuel the fires of international distrust and conflict. The fear of such a world should be a guiding light for us all.

We must not give up hope for a new San Francisco – the founding city of the United Nations – for the 21st century, in which new rules are agreed for effective transnational institutions with viable enforcement mechanisms, not least when it comes to AI. While that may seem unlikely at the current moment, it seems clear that its basis and best friend would be fear of the consequences of what happens if we do not get there, and if wars get completely out of hand and more and more parties do not even pretend to follow the rules (or even program their weapons not to do so). But for that fear to be rationally and factually formulated we, again, need strong narratives, good and rational storytellers, brilliant translators (literally and figuratively), and educated decisionmakers who truly understand the perils of the situation.

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# Machiavelli and Tocqueville on War and Armies

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**Abstract**

*In the Democracy in America's chapters on war and armies in the transition from the aristocratic to the democratic social state (état social), Tocqueville briefly draws on Machiavelli regarding the conquest of a country with or without intermediary powers between political leadership and the people by which he primarily understands the existence of local nobilities. In this reference, Tocqueville is quick to express skepticism about the overstated importance of Machiavelli in the history of political philosophy. In different places of his work though a more mitigated stance is documented. A comparative approach of Machiavelli and Tocqueville on war may seem odd, even inappropriate. In this paper I argue that the "brief encounter," in Melvin Richter's terms, of Tocqueville with Machiavelli can be fruitfully explored in order to make sense of the key importance for modern warfare of the collapse of nobility in Europe. Concomitantly, Machiavelli 's intuitions about conquering an absolutist state without intermediary powers compared to a state endowed with "prince" and "barons" can be further elaborated to better grasp its impact on wars including civil strife. In this paper I first explore Machiavelli's perception of the intermediary powers in conquest and broadly in warfare paying due attention to the importance for the preservation of liberty of latent or open civil discord between social powers or classes; then I turn to Tocqueville's rich analysis of the transformation of modern warfare due to democratic centralization and obsession with private welfare. Democratic armies constantly challenge democratic liberty and they can sometimes successfully albeit perversely integrate democratic ambition and turn it against democracy. I conclude with some reflections on the connection between war and politics regarding latent civil conflicts in democracies.*

**Keywords:** *civil war; democratic theory; Machiavelli; Machiavellianism; Republicanism*

## I. Machiavelli: Conquest, civil discord, and civil war

In *The Prince* IV, entitled "Why the kingdom of Darius, occupied by Alexander, did not rebel against his successors after the death of Alexander,"[1] Machiavelli accounts for the importance of nobility to boost resistance toward a conqueror and the impact of its lack thereof. In this vein, Turkish's despotic absolutism and France's aristocratic monarchy are set as instances of the two opposing paradigms; Machiavelli makes the case that Turkey's sovereign rules without significant lesser powers and therefore he appoints who he wants and deposes him likewise, with no possible popular support or opposition; in other words, there is no popular grounding of intermediary powers whatsoever. The French monarch instead faces significant barriers to his centralized authority; hereditary nobility with local support cannot be easily subdued without backlash. Accordingly, the attacker should realize that Turks are defending themselves under the Sultan's banner "completely united" but once beaten and his family subdued,

> there remains no one to be feared, for the others have no credit with the people. And just as, before the victory, the victor could place no hope in them, so afterwards he should not fear them.[2]

That's why after the defeat of Darius, Alexander's heirs had no difficulty in preserving the conquered kingdom.

Rather, in France, you can always find an opportunity to attract barons who are malcontents or desirous to change. Yet the situation resembles more to a guerrilla fight than to regular army battles. Both the allies and enemies of the conqueror are potential disruptors in a newly conquered country like France; the spectrum of insurrection remains alive on both sides. After recalling Roman's troubles to deal with local insurrections in Greece, Spain and France because of the existing local principalities, Machiavelli concludes that no one should be surprised by the

> ease with which Alexander held on to the region of Asia, or by the problems others encountered in preserving the territory they acquired, such as Pyrrhus and many others. This is

[1] Niccolò Machiavelli, *The Prince*, trans. and ed. Peter Bondanella (Oxford: Oxford University Press, 2005), 16.

[2] Ibid., 17.

> not caused by the greater or lesser virtue of the conqueror, but rather by the different characteristics of the conquered territories.[3]

It is noteworthy that in the *Discourses*,[4] Machiavelli devotes five chapters to the emergence of tribunes and their importance in sustaining Roman republican liberty. In this context the sense of the Machiavellian political realism[5] moves towards a different direction. Accordingly, Machiavelli described the apparent peace between the senate and the people of Rome during the rule of the Tarquins as an interim truce; it is due to senate's fear that the Tarquins will side with the popular demands. Once the Tarquins step out of the picture though, the senate resumes its older habits of outraging and repressing the people who often retaliates; the chaotic situation that ensued led to the creation of the Tribunes endowed with respect but also prerogatives; as a result they "formed a powerful barrier between the Senate and the people which curbed the insolence of the former."[6] At this juncture, the Florentine develops his famous panegyric of political agitation and tumult as means of preserving republican freedom. The populace in Rome when wanted to obtain or avert a law used to march furiously in the streets, abandon the city or refuse to enroll in the army. These "extreme means," he asserts, should not be found offensive; instead, they should be considered as healthy reflexes of a free people.[7] They are generally stem from an existing or apprehended oppression; when the fears are proven to be false, the people can be convinced and yield to the truth when presenting to them by respectful citizens. In the ensuing chapters, he defends the grounding of liberty guardianship in the people and the tribunes as the "the most assured guardians of Roman liberty;"[8] furthermore, he asks the question whether liberty is better preserved if confided to the nobles or the people but also who jeop-

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[3] Ibid., 18.

[4] Niccolo Machiavelli, *The Prince and the Discourses*, ed. Max Lerner (New York: The Modern Library, 1950), 117-134.

[5] For an interesting comparative assessment between Machiavellian realism unilaterally based on the *Prince* and the Chinese Warring States period, Panagiotis Kallinikos, "Political Realism in the Chinese Warring States Period and the European Renaissance: Han Fei and Machiavelli," *Conatus – Journal of Philosophy* 8, no. 1 (2023): 127-166.

[6] Ibid., 118.

[7] John McCormick, "Machiavellian Democracy: Controlling Elites with Ferocious Populism," *The American Political Science Review* 95, no. 2 (2001): 299-300.

[8] Machiavelli, *The Prince and the Discourses*, 120.

ardize liberty more those who wish to acquire more power, that is the nobles or those who desire to acquire more authority to preserve their liberty from oppression, that is the people?

In the remaining chapter, Machiavelli comparatively assesses Rome on the one hand, Sparta and Venice on the other, as instance of two contrasting regimes and institutional settings. Roman republic opts for the creation of an intermediary power, the tribunes, rooted in the popular element while Sparta in ancient times and Venice in modernity anchor their defense of liberty in the nobles and the senate.[9] The great desire to dominate while the people only desires not to be dominated, thus "when the people is entrusted with the care of any privilege of liberty, being less disposed to encroach upon it, they will of necessity take better care of it."[10] He straightforwardly recounts the arguments against popular institutions such as the tribunes; the populace is accused of violently setting claim to more than the one consul they had obtain, also claiming the censure and the Praetoriate. More so, the people is accused of worshipping any potential demagogue who turns against the nobles. Machiavelli dismisses these allegations.

He pauses at length on the dilemma which men are more dangerous for a republic those who wish to acquire more power or those who are afraid of loosing what they already possess. The balance tips towards the people; the new acquisitions of power for the noble and wealthy families render them even more haughty and insolent than they formerly were. Therefore the socio-psychological profile of elite arrogance[11] quite predictably excites popular resentment.[12]

Overall, Machiavelli's idiom of "political conflictualism"[13] deflates the negative connotations of civil conflict and distinguishes between

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[9] McCormick, 298.

[10] Machiavelli, *The Prince and the Discourses*, 122; Marie Gaille, "The *Discourses on Livy*: A 'Commentary' on the Effectual Truth of Civil Conflict," in *Machiavelli's* Discourses on Livy*: New Readings*, eds. Diogo Pires Aurélio and Andre-Santos Campos, 81-98 (Leiden and Boston: Brill, 2021), 93-94.

[11] McCormick, 299.

[12] Machiavelli, *The Prince and the Discourses*, 124; 208: "The cause is that nature has created men so that they are able to desire everything and are unable to attain everything. So, since the desire is always greater than the power of acquiring, the result is discontent with what one possesses and a lack of satisfaction with it. From this arises the variability of their fortune; for since some men desire to have more, and some fear to lose what have been acquired, they come to enmities and to war, from which arise the ruin of one province, and the exaltation of another."

[13] Gabriele Pedullà, *Machiavelli in Tumult:* The Discourses on Livy *and the Origins of Political Conflictualism*, trans. Patricia Gaborik and Richard Nybakken (Cambridge: Cambridge University Press, 2018).

conflict with negative effects and conflict with positive effects on the free becoming of the city. In this context, the term civil war is employed only once; the degree of intensity of the civil discord and the level of violence of the means employed become the decisive factors.[14] Civil war appears to be an escalation of an otherwise acceptable and desirable level of violence among group of citizens with differing humors and passions. Accordingly, the threshold beyond which a degree of violence destroys freedom is hard to define. In other terms, the ongoing civil discord can be transcribed in terms of a latent civil war that prompts worries only when reaches an extreme level of intensity and physical violence.

Finally, Machiavelli examines whether a republic free of internal social conflicts can preserve liberty and be sustainable. He reclaims the comparative assessment between the three models of republican constitutions, Sparta and Venice on the one hand, republican Rome on the other. Exploring thoroughly their respective constitutional history, he comes to the conclusion that to avoid the Roman path of an agitated, feverish republic the legislator had only two options: either not to employ the people in the armies, like the Venetians, or to bar the entry in the city for legal aliens, as in the case of Sparta.

Indeed, Roman republic opted for the exact opposite policies. This was a wise choice according to Machiavelli because in order to preserve a power of expansion, you need to make a people "numerous and warlike" instead of small and unarmed so as to create a great empire.[15] Sparta and Venice being unfamiliar with expansion, both miserably fail when they attempted to proceed in imperial expansion because "without a great number of men, and these well-armed, no republic can ever increase." Indeed, "to found a republic which should endure a long time it would be best to organize her internally like Sparta, or to locate her, like Venice, in some strong place;"[16] in this vein, there are two mo-

[14] Gaille, 88-89: "Although the word 'tumult' is, to some degree, neutral from this standpoint, the expression 'civil war' was applied only once by Machiavelli. It referred to an extreme intensity of civil conflict, as opposed to a more attenuated form which could be described by the term 'dispute,' for example. Similarly, there were differences of degree ranging from 'controversy' to 'scandal,' from 'contention' to 'sedition.' These differences derived from the level of violence in the means employed – the fundamental question being whether the citizens 'took up arms'[venire nelle armi], 'came to blows' [venire alle zuffe], or simply fought with words [venire a parole]. We find the same range of degrees in Machiavelli's description of the actions of the antagonistic persons or groups. These antagonists could simply be the 'partisans' of a leader – for example, the Orsinis and Colonnas who, honoured with many offices and commands, became the partisans of Cesare Borgia – but also the 'factious."

[15] Machiavelli, *The Prince and the Discourses*, 126-127.

[16] Ibid., 128.

tives for making war against a republic: "one the desire to subjugate her; the other, the apprehension of being subjugated by her."[17] As a result, the republic should be made sufficiently powerful to prevent being attacked while not excessively powerful as to inspire awe to its neighbors. However, it is hardly possible to strike such a balance in human affairs and to achieve such a dynamic equilibrium without falling back on one of two extremes. States claims Machiavelli either rise or decline and even if one avoids involvement in wars, internal tranquility will prompt internal enervation and dissensions. Accordingly, he concludes that is necessary to resort to the intermediary power of tribunes of the people endowed with crucial institutional prerogatives such as the faculty of accusation. Most importantly it is necessary to "tolerate the differences that will arise between the Senate and the people as an unavoidable inconvenience in achieving greatness like that of Rome."[18] In other terms, Machiavelli embraces a "politics of porosity;" he conceives no good without evil, no order without disorder, no law without conflict.[19] This porosity should of course be taken with a grain of salt; Machiavelli overlooks the important differences between army and police, between war and police action.[20] He points to an agonistic element deeply embedded in republican freedom that vindicates certain forms of political violence with no clear borderlines.

Despite the technical nature of the work, the *Art of War* marks a significant shift in Machiavelli's approach of a republic's imperial outreach. In this context he condemns war as a full-time profession because it imprints on the individual psyche a set of inhumane character traits such as rapacity, fraud, cruelty and the likes. In the *Discourses* the praise of great individual Roman warriors that have contributed to the republican imperialist grandezza rests on their bravery but also ruthlessness and deceptiveness. In the *Art of War*, there is a clear shift from the ingenious, talented but unscrupulous individual agent to the impersonal, institutional and collective aspects of war.[21]

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[17] Ibid., 129.

[18] Ibid., 130; 195.

[19] Thomas Berns, "Politics of Porosity: War and Freedom in Machiavelli's *Discourses*," in *Machiavelli's* Discourses on Livy*: New Readings*, eds. Diogo Pires Aurélio and Andre-Santos Campos, 249-262 (Leiden and Boston: Brill, 2021), 250; 252.

20 Jovan Babić, "Ethics of War and Ethics in War," *Conatus – Journal of Philosophy* 4, no. 1 (2019): 20.

[21] Mikael Hornqvist, "Machiavelli's Military Project and the Art of War," in *The Cambridge Companion to Machiavelli,* ed. John M. Najemy, 112-127 (Cambridge: Cambridge University Press, 2010), 121-122: "orders, institutions, collectivities, actions and horses [...]."

## II. Tocqueville's Machiavellian moment: Risk lovers, freedom fighters, and freedom killers

Tocqueville famously distinguishes between aristocracies and democracies as "états sociaux" without discarding the political connotations of the terms. He claims that the transition from aristocratic to democratic societies is a gradual transition from conditions of inequality to conditions of equality.[22] By aristocracy he basically means the existence of separate social statuses and the hierarchical mentality that ensues. In fact, he embraces a realist perspective regarding the real social power within a monarchy or a republic. The existence of titled nobility during the feudal and post-feudal Europe marks the aristocratic era while the American and French revolutions put the nail in the coffin of the Old regime social distinctions and their political impact. Thus, the equality of conditions reflects a dynamic situation within which social segregation of feudal society is abolished, individualism and centralization of the state go hand in hand while private life prevails over any sense of public spirit.

In the chapter entitled *Some considerations on the war in democratic societies*, Tocqueville explicitly refers to Machiavelli regarding the shifting manners of war in the democratic modernity.[23] Interestingly, few chapters back, he slightly paraphrases Machiavelli's aversion for mercenary troops in a "rubbish" note that will not be included in the final edition. Paraphrasing Machiavelli's claim that "A republic armed with its own citizens is less likely to come under the rule of one of its citizens than a city armed with foreign soldiers,"[24] Tocqueville states that: "The natural tendency of a democratic people is to have an army of mercenaries."[25] In this sense a democratic army is almost an antinomy.[26] Let us explore the nature of this antinomy starting with the exploration of the love of peace proper in democratic times and the ensuing role of army.

In a post-feudal European context wars become allegedly rarer because democratic crowds fear war and love peace. Commerce and trade

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[22] Gerald Stourzh, *From Vienna to Chicago and Back: Essays on Intellectual History and Political Thought in Europe and America* (Chicago, IL: The University of Chicago Press, 2007), 335-358.

[23] Alexis de Tocqueville, *Democracy in America*, trans. James T. Schleifer, ed. Eduardo Nolla (Indianapolis, IN: Liberty Fund, 2010), 1177-1186.

[24] Machiavelli, *The Prince*, 44.

[25] Tocqueville, 1166.

[26] Jean-Louis Benoît, "Tocqueville: La démocratie au risque de son armée," *The Tocqueville review/La revue Tocqueville* 27, no. 2 (2006): 191-194.

as antidotes to militarism and conducing to peace are ideas that can be traced back to Montesquieu's[27] famous gentle [*doux*] commerce thesis[28]: through commercial exchange and cultural interaction, manners are soften and people resort less often to war and physical violence.[29] Closer to Tocqueville's time, in his renown piece on the liberty of the ancients compared to the liberty of the moderns, Benjamin Constant claims that even a successful war has more negative than positive impact on modern society's economy, culture or morality. According to the early French liberalism, the spirit of conquest is doomed to eclipse in commercial modernity.[30]

The expansion of the love of well-being and the development of commerce and industry conduce to a convergence of tastes and interests; therefore, the interests being intertwined and the opinions and needs similar among different countries, it is hardly possible to make war in isolation.[31] As a result, the principle of equality of conditions spreads simultaneously among neighboring nations. The quasi-total resemblance of democratic peoples among them is a game changer in the manner of making war. The heroic, exceptional warriors of the past such as the Swiss warriors of the Helvetic confederation have lost their comparative advantage; their manners become similar to the nations surrounding them; "One of the results of the democratic revolution

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[27] Charles de Montesquieu, *The Spirit of the Laws*, trans. and eds. Anne M. Cohler, Basia Carolyn Miller, and Harold Samuel Stone (Cambridge: Cambridge University Press, 1989), 337-38: "Commerce is a cure for the most destructive prejudices; for it is almost a general rule, that wherever we find agreeable manners, there commerce flourishes; and that wherever there is commerce, there we meet with agreeable manners. Let us not be astonished, then, if our manners are now less savage than formerly. Commerce has everywhere diffused a knowledge of the manners of all nations: these are compared one with another, and from this comparison arise the greatest advantages."

[28] Albert Hirschmann, *The Passions and The Interests: Political Arguments for Capitalism before Its Triumph* (Princeton, NJ: Princeton University Press, 1977), 56-63; Andreas Hess, "Passions, doux commerce, Interest Properly Understood: From Adam Smith to Tocqueville and Beyond," *Serendipities. Journal for the Sociology and the History of Social Sciences* 1 (2016): 178-187.

[29] Henry Clark, *Commerce, Culture and Liberty: Readings on Capitalism before Adam Smith*, ed. Henry Clark (Indianapolis, IN: Liberty Fund, 2003), 288-307.

[30] Benjamin Constant, "The Spirit of Conquest," in *Constant: Political Writings*, ed. and trans. Biancamaria Fontana, 51-84 (Cambridge: Cambridge University Press, 1988); Benjamin Constant, "The Liberty of the Ancients Compared to that of the Moderns," in *Constant: Political Writings*, ed. and trans. Biancamaria Fontana, 308-328 (Cambridge: Cambridge University Press, 1988); Regina Pozzi, "De la paix et de la guerre dans les sociétés démocratiques: qu'en pensait Tocqueville?" in *Écrire la guerre, écrire la paix. Actes du 136 Congrès national des sociétés historiques et scientifiques*, *"Faire la guerre, faire la paix,"* 104-111 (Paris: Editions du CTHS, 2011), 105, https://www.persee.fr/doc/acths_1764-7355_2013_act_136_9_2507.

[31] Tocqueville, 1178-1179.

in Europe is therefore to make the force of numbers prevail [...] and to compel all the small nations to become incorporated in the large ones [...]."[32] Accordingly, the determining factor for victory in wars is numbers: the most men and troops possible need to move into the battleground. The French aristocrat evokes the recurring topos of the book about the "social power," the collective force that prevails over similar but weak individuals among democratic people: "this means that, in centuries of equality, armies seem to grow as the military spirit fades."[33]

At this juncture, Tocqueville explicitly turns to Machiavelli and devotes a long note on the far-reaching implications of an insightful comparison sketched in the *Prince*:

> Machiavelli says in his book *The Prince* that is much more difficult to subjugate a people who have a prince and barons for leaders than a nation which is led by a prince and slaves. Les us put, in order not to offend anyone, public officials in the place of slave sand we will have a great truth, very applicable to our subject.[34]

In the note, Tocqueville downplays the significance of Machiavelli's importance as political theorists and strategic thinker. The Florentine is deemed superficial, the profound causes passing under the radar screen. Yet at this specific point he touches upon something important, argues Tocqueville; inspired by Machiavelli's distinction, the French theorist of democracy draws a bold analogy between modern centralized democratic government and princely absolutist government; both are deemed liberticide and opposed to liberty promoting monarchy with strong aristocratic intermediary powers; it is well attested that this analogy has strong resemblance with Montesquieu's thèse nobiliaire.[35] To be sure, Tocqueville acknowledges that Montesquieu has been one major source of inspiration.[36] Indeed, Montesquieu warns that the passion for uniformity in French monarchy gradually destroyed the intermediary bodies necessary to moderate monarchy's absolutist tendencies; the lesson to be drawn is the following: the intermediary bodies

[32] Ibid., 1180.

[33] Ibid., 1181.

[34] Ibid., 1182.

[35] Montesquieu, 10-31.

[36] Melvin Richter, "Tocqueville's Brief Encounter with Machiavelli: Notes on the Florentine Histories (1836)," *History of Political Thought* 26, no. 3 (2005): 418.

are necessary to avoid despotism and preserve a modern monarchy respectful of civil liberties;[37] hence Tocqueville's adaptation of Montesquieu's thesis focuses on democracy's crypto-despotic tendencies; the democratic passion for uniformity and equalization if left unchecked destroys any potential intermediary locus of power and liberty between the individual and the State.[38]

Be this as it may, the existence or lack of intermediary bodies influence the art of war and the formation of an army; Tocqueville set out to explain why democratic armies rest on massive military draft. Admittedly mass military mobilization can be hardly achieved within an aristocratic people and big armies cannot be sustained for a long time because of internal dissensions fomented by aristocratic leaders with alternative, legitimate or irrational plans; an aristocratic country is compared to a country with mountains where a guerrilla war can last for long finding natural hideouts. People accustomed to follow and pay tribute to respectful family lineage will easily follow ambitious or disgruntled aristocratic leaders, "a crowd of powerful lords" forming the "head of malcontents;"[39] therefore new centers of resistance will be formed upon any occasion. By contrast, democratic states are hard to conquer because the sovereign can count on almost unanimous support and there are not local leaders strong and prestigious enough to erect resistance strongholds. However once conquered, there is no significant and lasting resistance in a democracy. Democratic states are strong but individual citizens are isolated and weak. Accordingly, once the army defeated, "and the civil power paralyzed by the taking of its capital, the rest forms nothing more than a multitude without rule and without strength [...]."[40]

The private property is protected by the law of Nations in modern wars remarks Tocqueville where the aggressor seizes the political power but only accessorily and incidentally the property of citizens. Besides, the latter is of lesser interest for the nobles who are most attached to their political power. There is an important lesson to be drawn for democracies here. In a democratic country, citizens are independent and

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[37] Sharon R. Krause, "Political Sovereignty in Montesquieu," in *The Cambridge Companion to Montesquieu*, eds. Keegan Callanan and Sharon R. Krause, 162-181 (Cambridge: Cambridge University Press, 2023), 166.

[38] Alexis Keller, "Tocqueville," trans. Philip Stewart, in *A Montesquieu Dictionary*, ed. Catherine Volpilhac-Auger (Lyon: Ens, 2013), http://dictionnaire-montesquieu.ens-lyon.fr/en/article/1377636456/en.

[39] Tocqueville, 1182.

[40] Ibid., 1183.

have private property although not the huge property of land observed in aristocratic eras. Hence the conquest is feared less and the war more in democracies. Tocqueville warns that this is a prelude of loss of liberty if measures are not taken to enhance political rights and strengthen the political spirit. Citizens will not resist but mildly because they lack military spirit and republican vigilance regarding their independence. In this vein, he suggests policies within the state of equality of conditions that upgrade the sense of political participation; citizens should enjoy political empowerment and therefore feel motivated to fight for their independence.[41] Otherwise, civil liberty is seriously undermined.[42] Overall, he asserts: "I imagine nothing better prepared for conquest, in case of reverses, than a democratic people who does not have free institutions."[43]

Tocqueville accounts for the Napoleonian wars in terms of a "state of society" rather than in terms of individual genius. Henceforth, to dominate a democratic state depends on the conquest of the capital in order to undermine any locus of potential resistance. Napoleon has informed his strategy drawing on the collapse of the feudal society and its intermediary powers.[44] Rather perspicuously according to Tocqueville, Napoleon did perceive the concentration of power strongholds in the capitals:

> Napoleon is the first to have travelled to the head of the army the path to all the capitals. But is the ruin of feudal society that had opened the road to him. It is to be believed that, if this extraordinary man had born three centuries ago, he would not have gathered the same fruits of his method, or rather he would have had another method.[45]

In order to better grasp the stakes of this transformation, it is helpful to turn to the first of Tocqueville's chapters on war and armies, that

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[41] Ibid., 1185: "It is necessary that princes and other leaders of democratic nations to remember: only the passion and the habit of liberty can, with advantage, combat the habit and passion of well-being."

[42] This is not totally unrelated with the prospective tyranny of majority famously denounced and castigated as an unreflected consensus with potentially disastrous consequences regarding dissenting voices and their marginalization. See Hess, "Passions," 184. Tocqueville endorses strategies of public spiritedness's enhancement to avoid democratic passivity *and the* unprecedented despotism stemming from herd mentality of democratic masses.

[43] Tocqueville, 1184.

[44] Pozzi, 108-109.

[45] Tocqueville, 1184.

comes right after the long digression on revolutions in democratic era. In Montesquieu's spirit, Tocqueville pursues his comparative assessment of aristocratic and democratic "social states" and correlatively of aristocratic and democratic wars. No doubt, the possibility to wage war emerges in any social state; therefore, the need to form and maintain an army brings about the importance of studying its status in peace and war. The chapter's title evokes a paradox that is more thoroughly formulated a few pages below:

> [...] of all armies, the ones that more ardently desire war are democratic armies and that, among peoples, those who most love peace are democratic peoples; and what really makes the thing more extraordinary is that it is equality which produces these opposite effects simultaneously.[46]

The nature of war depends on the nature of democratic politics, a position that brings Tocqueville closer to Clausewitz.[47]

Democratic citizens, Tocqueville argues, desire their wellbeing, and abhor violence because it disrupts their ordinary tranquility in the pursuit of material pleasure and happiness. The potential increase of wellbeing turns citizens of democracy into commercially minded traders and, as a result, peace seekers. While aristocratic "social state" [état social] recedes, the army loses its traditional appeal to the upper classes, "Under the old French monarchy, officers were only given their title of nobility; Today only their military title."[48] Military honor is not any longer what is used to be. In democratic army during peace, the officer does not enjoy the prestige of the Ancient regime. On the other hand, the citizen-simple soldiers are mostly "proletarians" and broadly of the lower social classes. They often tend to balance the lack of public acclaim and individual consideration with adventurism and opportunism. Their ambition is natural but the advancement from the lower to the higher posts of the military hierarchy is slow and the posts are just few. This "lumpen" mentality stands in sharp contrast with ordinary citizen's mindset. The excessive love of bourgeois tranquility among democratic nations puts them in the mercy of the soldiers who have contracted the "taste for war" and the "love of revolution."[49] Therefore ambitious, restless and turbulent spirit is fomented in democratic armies:

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[46] Ibid., 1157.

[47] Eliot A. Cohen, "Tocqueville on War," *Social Philosophy and Policy* 3, no. 1 (1985): 204.

[48] Tocqueville, 1155-1156.

[49] Ibid., 1159.

> So you can say in general way that democratic peoples are naturally led toward peace by their interests and their instincts, they are constantly drawn towards revolutions and wars by their armies [....] War would only be a remedy for a [democratic] people who always wanted glory.[50]

Napoleon looms large again. He would have allegedly stop in the middle of his triumph if the "passions of his soldiers" had not become so unbridled and their thirst of conquest endless. Tocqueville explicitly pauses on this danger: "There are two things that a democratic people have a great deal of difficulty doing: beginning a war and ending it." A long war put liberty in jeopardy because it risks to create Cesars and Napoleons that threaten liberty but also to vindicate an extreme concentration of powers in the hand of a civil government having formed a war cabinet. Tocqueville ends this chapter by affirming that: "A great army will always be a great danger for democracies."[51]

Apparently, augmenting the army's size in order to satisfy more ambitious men cannot be a remedy because the already satisfied will soon ask for more while novel forms of ambition will emerge and require satisfaction. The substantial remedy rests on the civil society and it almost echoes Machiavelli's reminder about civil agitation and vigilance as healthy reflexes to protect liberty in republican polity. Democratic army's simple soldiers genuinely reflect democratic mores because they represent civil society in the army; the spirit of independence and the "manly love of order" penetrate the army only insofar as they are deeply embedded into the national character in peace. A constitution of liberty is a dead letter without educated citizens passionately fond of liberty.

> Democratic peoples naturally fear trouble and despotism. It is only a matter of making these instincts into thoughtful, intelligent and stable tastes [...] have enlightened, well-ordered, steady and free citizens and you will have disciplined and obedient citizens.[52]

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[50] Ibid., 1160.

[51] Ibid., 1163, 1165.

[52] Tocqueville, 1163: "When citizens have finally learnt to make peaceful and useful use of liberty and have felt its benefits when they have contracted a manly love of order and have voluntarily yielded to the established rule, these same citizens while entering the career of arms, bring these habits and these mores to the army without knowing and as if despite themselves. The general spirit of the nation, penetrating the particular spirit of the army, tempers the opinion and desires that arise from military stat, or by the omnipotent fore of the public opinion, it suppresses

It has been shrewdly observed that Tocqueville misses an important comparative point to make: the lack of putsches in the Anglo-Saxon countries due to the absolute primacy of liberty over equality and/or security.[53] The recurring fear of excessive militarism makes Tocqueville wonder in chapter xxiii, "Which class in democratic armies, is the most warlike and the most revolutionary." In this context, he contrasts again the status of simple soldiers in democratic and aristocratic armies, showing that as much as the link between soldiers and civil society is severed in aristocracies where soldiers are strangers among their fellow citizens, it is reinforced in democracies when republican spirit prevails:

> It is through the soldier above all that you can hope to make the love of liberty the respect for rights, which you knew how to inspire among the people themselves, penetrate into a democratic army.[54]

Indeed, a more egalitarian army often demonstrates a more efficient and well interiorized military discipline, far from rituals and empty formalities that sometimes plague aristocratic army. Greek and Roman republican armies have conquered the world with the soldiers addressing officers and generals on an equal footing.[55] In modern democracies officers are totally disconnected from the body politic and their interests are distinct from the rest of his country. Officer's country is the army and social visibility is only minimal except special occasions. Thus, the officer is looking forward to wars and revolutions.

At the same time though, Tocqueville complicates his narrative. No doubt, the officer evolves through the ranks of military hierarchy. The progress is slow but steady; thus, he fears of compromising any advancement in the military career that has already been secured. In view of what may be lost, a "cooling of ambition" prevails over excessive risk-taking. By contrast the non-commissioned officer is far more unpredictable. He is the most isolated from civil society and least secure about his rank in the army, constantly threaten of loosing everything

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them. Have enlightened, well-ordered, steady and free citizens, and you will have disciplined and obedient soldiers." On alternative forms of patriotism's enhancement such as civil religion, see Spyridon Tegos, "Civility and Civil Religion before and after the French Revolution. Religious and Secular Rituals in Hume and Tocqueville," *Genealogy* 4, no. 2 (2020): 48-62.

[53] Benoît, 198.

[54] Tocqueville, 1166.

[55] Ibid., 1177.

conquered while he is enjoying very little due to his low status. He is in limbo, obsessed to become an officer but until then, his existence is profoundly precarious. He is the connecting link between the soldier and the officer but a greatly unstable one. Therefore, non-commissioned officer wants wars and is ready to engage in revolutions. He is not ideologically driven though: "in the midst of these revolutions he hopes, by means of confusion and political passions, to expel his officer and takes his place [...]."[56] Regardless of the accuracy of generalization[57] Tocqueville suggests a psychological pattern, an emotional profile that operates through the cracks of democratic polity unveiling its dark sides. Paradoxically there is a "hidden connection between military mores and democratic mores that war exposes."[58]

As noted above, a democratic people have a great deal of difficulty to begin and to end a war. Long periods of peace undermine army's readiness while officers and generals turn old and rusty and recently enrolled soldiers remain young and inexperienced. Given the love of tranquility and well-being of democratic people, and the subsequent obsession of gain and lucrative enterprising, begin a war is always difficult. Besides the military service is compulsory and non-professional soldiers are eager to return to their civilian lives. War in its beginnings is hard to cope with but a war in progress operates a gradual conversion:

> War after destroying all industries becomes itself the great and sole industry, and then the ardent and ambitious desires given birth by equality are directed from all sides towards it alone [...]. Death constantly opens ranks, empties places, closed and open careers.[59]

The risk loving nature of modern democracies takes advantages of war but exposes them to self-destruction. This mentality is apparently deeply intertwined with democratic souls:

> No greatness is more satisfying to the imagination of a democratic people than military greatness, a brilliant and open greatness that is obtained without work, by risking only your

[56] Ibid., 1169.

[57] Raymond Aron, *Main Currents in Sociological Thought*, Volume 1, eds. Richard Howard and Helen Weaver (New York: Penguin Books, 1965), 229.

[58] Tocqueville, 1175.

[59] Ibid.

> life. The competitiveness of market apparently nurtures a culture of risk that thrives in wars. Thus, while interest and taste moves the citizens of a democracy away form war, the habits of their soul prepare them to wage war well.[60]

This transformation of ambitious economic risk lovers to warlike, ruthless amateurs explains why modern wars are relatively rare but "when they arise, they are on a field more vast;"[61] one can convincingly argues that 20th century total wars are anticipated with extreme accuracy.[62]

Put together, the above-mentioned threads shed a different light on the endemic threat of civil wars in democracies. Administrative centralization and majority rule prompt surprise wars in case of revolutions; the need of sudden conquest of the capital, the center of power is more than obvious. Correlatively civil wars can be bloody but not very long, "civil wars will become much rarer and shorter." Taking over the machine of the government by surprise attack instead of long war is the only successful option. Otherwise "when a war is official, the party which represents the State is almost always sure to win."[63] Conflicting parties can wage war in an intense and destructive way, yet the stake lies in the capture of the power of the State. Henceforth in modern civil wars no intermediary power or body can be a potential game changer.[64]

Tocqueville develops a deflated conception of civil war; ideology or concerns about extreme violence move to the backstage while the importance of seizing the government's center becomes a priority. The conquest of state apparatus runs the show, according to Tocqueville, instead of personal charisma or party loyalty. The impersonal status of the state and the subsequent problem of deference to impersonal authority are addressed by the emergence of novel forms of leadership based on State worship in some of 20th century totalitarian ideologies.

Be this as it may I deem worthwhile to return to a form of latent [civil] war spotted by Tocqueville. In a brief eccentric moment, Tocqueville de-

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[60] Ibid.

[61] Ibid., 1179.

[62] Aron, 230.

[63] Tocqueville, 1185.

[64] Ibid., 1185-1186: "The only case in which a civil war could arise would be the one to which, the army being divided, one portion raised the banner of revolt and the other remained faithful. An army forms a very tightly bound and very hardy small society which is able to be self-sufficient for a while. The war could be bloody, but it would not be long; for either the army in revolt would draw the government to its side just by showing its strength or by its first victory, and the war would be over; or the battle would begin, and the portion of the army not supported by the organized power of the State would soon disperse of its own or be destroyed."

scribes democratic mentality as an aristocracy of money.[65] The occasion for this odd observation is a "hidden war" among modern Englishmen. He set out to account for the secret uneasiness that is often observed between Englishmen, their coolness and famous British composure: "[...] they turn away from each other or, if they greet each other, they take care to speak only with a restrained and distracted air. And say things of little importance."[66] The rationale of this behavior unveils a hidden war waged between individuals devoid of public-spiritedness; this agonistic activity does not take place among groups of citizens of different social status but among individuals exercising one-upmanship. This constant in-fight permeates upward and downward social mobility; it does not rest though on a passion of liberty and independence and stirs no agitation and vigilance but is based on a passion for social distinction; hence a banal albeit stressful ordinary passion of ridiculing those who socially move up and approach our status while subverting the snobbish ridicule of our superiors. This social strife deadens citizen's urge for independence. This hidden [civil] war resonates with democratic army's opportunism and eventually opens the path to a certain kind of crypto-despotism in democracies[67]: envious citizens are too preoccupied to contest the State allegedly being above the battle;[68] citizens indulging in democratic restlessness[69] cannot be jealous but of their potential challengers of social status and let the administration growing unmonitored.

## III. Concluding remarks

Amidst a bitter conflict with the French doctrinaires, mainly Guizot, about the degree to which franchise should be extended beyond a nar-

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[65] Seymour Drescher, *Tocqueville and England* (Cambridge, MA: Harvard University Press, 1964), 54-74.

[66] Tocqueville, 996.

[67] Ibid.: "When aristocracies of money follows aristocracy of birth, it is no longer the same. The privilege of a few are still very great, but the possibility of acquiring them is open to all; from that it follows that those who possess them are constantly preoccupied by the fear of losing them or of seeing them shared; and those who do not have them want at any rate to possess them, or, if they cannot succeed in that, to appear to possess them, which is not impossible. As the social value of men is not fixed by blood in a clear and permanent manner and varies infinitely depending on wealth, ranks always exist, but you no longer see clearly and at first glance those who occupy those ranks. A hidden war is immediately established among all citizens; some try hard, by a thousand artifices, to join in reality or in appearance those who are above them; others fight constantly to repulse these men usurping their rights, or rather the same men does both things, and, while he is trying to get into the upper sphere, he struggles without respite against the effort that comes from below."

[68] Ibid., 1203-1204.

[69] Dana Jalbert Stauffer, "'The Most Common Sickness of our Time': Tocqueville on Democratic Restlessness," *The Review of Politics* 80, no. 3 (2018): 450-453.

row census, Tocqueville, in his notes (1836) on the Machiavelli's *Florentines Histories,* sets the stakes: "What matters to me is to learn whether Florentine democracy can be used as an argument for or against democracy in our times."[70] Overall Tocqueville thinks that Florentine extremely violent civil discord among the great and the people remains inherent to the aristocratic structure of ancient and medieval republics; by contrast class struggle in his contemporary England, although produces novel huge inequalities and compels him to revise the conception of inequality, still belongs to a post-feudal, post-aristocratic paradigm; even Britain that seemingly contains industrial mass poverty is divided for him between urban, industrial cities and the rest of the country, less stricken by industrial pauperization. For Tocqueville, Machiavelli's "great show of wickedness," the logic of a-moralism and opportunism is self-defeating: it is almost impossible to deceive and fraud to such an extent and pass unnoticed.[71] Nonetheless he partly endorses the Florentine's praise of civil discord as inherent to free institutions creating wealth, prosperity and creativity.[72] As noted above, Machiavelli conceives civil discord in a dynamic way; civil wars are only pushing too far healthy agitation, co-substantial to political liberty; potential conquerors challenge a state's independence that cannot be preserved unless is endowed with warlike, agitated and vigilant citizens familiar with civil discord. This Machiavellian insight can be set next to Tocqueville's endorsement of Machiavelli's distinction between absolutist state without intermediary powers and monarchical rule endowed with nobility that mitigates absolutism. The former can be conquered with difficulty but once submitted, it can be easily ruled. The latter can be conquered more swiftly but will never be totally submitted. The resistance will be constantly kindled by locally implanted leaders.

Tocqueville extends these Machiavellian insights in his reflections over democratic army's challenge for democratic freedom. In democratic social state, ambition liberated from aristocratic social immobility turns toward wealth-getting and private glory; yet war presents an excellent occasion for the transfiguration of private ambition into monstrous military ambition of rapid conquest of power and rapid social ascent. Simultaneously the state's concentrated power, representing a potential liberticide threat in peace time, gets even worse during war. Therefore, Tocqueville repeatedly suggests remedies that

[70] Richter, 428.

[71] Ibid., 433.

[72] Ibid., 432.

reinforce public spirit, civic engagement and empowerment against democracy's apathetic citizenry; he reclaims to some extent Machiavelli's emphasis on agitation and vigilance while downplays Machiavelli's agonistic element of class conflict. Despite qualifications, Machiavelli's involvement in Tocqueville reflection on democratic war and armies may be profitably read as a Machiavellian moment in Tocqueville.

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# Machiavelli's Ethics on Expansion and Empire

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**Abstract**

*Machiavelli believes that the expansion of a state is inevitable. Human affairs are characterized by constant movement and change, and expansion is the necessary stage of a state moving towards its prosperity. But there are historical examples of states that tried to stand stable for centuries and resist movement and expansion, but ultimately failed, because they were not prepared to grow by themselves or to deal with the growth of their enemies. This article tries to interpret the Machiavellian arguments that support the thesis that the expansion of a state is inevitable and argue that its entrenchment within its borders is something contrary not only to the nature of human affairs but also to the proper constitution of the state. Also, the crucial question is whether Machiavelli's positions have ethical foundations rooted either in human natural right or in the modes or means of expansion. From this point of view, the terms hegemony and empire acquire a different meaning and a different moral dimension.*

**Keywords:** *Machiavelli; natural right; hegemony; empire; expansion; ethics; political philosophy; dominion; greed*

## I. The human nature

> But above all the Prince must keep his hands off the material goods of his subjects. Men forget much more quickly the killing of their father than the loss of their patrimony.
> *The Prince*, XVII

Machiavelli considers that the human condition is inherent in the greedful expansion over others. Humans are driven by a natural necessity to constantly increase the material goods in their possession and nothing can stop this expansive natural 'storm.'

Although Machiavellian political thought has no systematic form, there exists a greedful individualism with a materialistic orientation as a structural characteristic of human nature, which impels humans to action. Humans forget the death of their father more easily than the loss of their father's wealth,[1] because the loss of material goods works inversely to the greedful addition of new goods. When one adds material goods, regardless of whether they are useful to him or not, he feels happy, while when he loses material goods, he must feel unhappy. By the same logic, the ruler must be very sparing in granting material privileges to his subjects, which makes them happy, not so much because he or the state lacks them, but because men consider you extremely hateful, if you contemplate, due to some need, taking away from them what you have granted them. Later, Hobbes, inheriting the pessimistic Machiavellian anthropology, would agree that happiness is nothing more than the continuous progress from one pleasant material good to another, a progress interrupted only by death.[2]

Human nature cannot be fixed in a state of blissful autarky, this inner tendency to acquire more goods will always push it into movement and change, away from happiness. If men succeed in reaching a state of happiness and autarky they will immediately feel satiated and fall into a state of unhappiness. In the same way, when there is a shortage of material goods, men feel deprived and their tendency of greed drives them to acquire more. We could say that this natural tendency creates movement and change in human activity either for the better or for the worse, but it can rarely be organized in an orderly manner.[3] This tendency towards movement characterizes human pathology, with passions being the cause of change and acting in opposition to order and stability. Machiavelli also represents the wheel of fortune in the same way; the good or bad fortune of people cannot remain constant, because men are dominated by powerful passions, which inevitably cause movement and lead them sometimes to the top and sometimes to the bottom of the wheel of fortune. In this perspective the passion-filled human nature is identified with the factor of fortune, while nature is identified with fortune; this keeps man captive to imperfection and, therefore, to unhappiness.

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[1] Niccolò Machiavelli, *The Prince*, in *Machiavelli: The Chief Works and Others, Vol. I*, ed. and trans. Allan Gilbert (Durham, NC: Duke University Press, 1989), XVII: 63.

[2] Thomas Hobbes, *Leviathan*, ed. John C. A. Gaskin (Oxford: Oxford University Press, 1998), XI: 65-66.

[3] Markus Fischer, "Machiavelli's Political Psychology," *The Review of Politics* 59, no. 4 (1997): 789-829.

Men, therefore, have a natural tendency towards greed, towards increasing the material goods they own at the expense of others. Whoever can expand on other men is essentially the winner of the political game. Expansion is equated with power; there can be no individual power without expansive imposition on others. To have political power without extending it to the other political parties lacks substance, as power is validated through imposition on others and the transformation of subjectivity into objectivity. Political domination means that one can impose and extend his subjectivity as objectivity to the rest of the political parties.[4] The state is the highest expression of this power, as it surpasses in terms of power every individual and can manage the material goods of the subjects.

Subjective expansion and enforcement are not only done in the material realm, but also in the spiritual through ideological propaganda. The most successful expansion is not through weapons, but through ideology.[5] Jesus is an unarmed prophet, yet he is much more successful than the armed prophets, as he has succeeded in convincing people to willingly embrace the ideological propaganda of the Christian religion. If any state came to the level of functioning like ecclesiastical hegemonies, its level of enforcement would be greatly increased,[6] because the subjects would willingly acquiesce to the ideology of the state, which is reproduced through institutions. Political science must no longer follow the classics, Plato or Aristotle, who vainly attempted to perfect the human condition through state's institutions, but the ideological dominance of the Christian religion, wherein the state ideologically controls men and keeps them loyal to the subjective expediency of state's institutions.

Therefore, in the human condition, the act of extending dominion over others in any way is not reprehensible, or at the very least, if it is not praised because of the cruelty or treachery of the means used, it does not invite censure. The non-reprehensibility of expansion at the expense of others rests on the fact that greed is a structural feature of human nature. Yes, domineering expansion and grabbing material goods from others may not be praiseworthy, it may be repulsive, but still eminently human. Human nature goes hand in hand with greed and we cannot get rid of it. Machiavelli bases the justification of man's greedful expansion on a de facto moral consequence. This ethics is not

[4] Maurizio Viroli, "Machiavelli's Realism," *Constellations* 14, no. 4 (2007): 466-482.

[5] Santra B. Drury, "The Hidden Meaning of Strauss's *Thoughts on Machiavelli*," *History of Political Thought* 6, no. 3 (1985): 575-590.

[6] Machiavelli, *The Prince*, XI: 44.

in question because it derives from human natural right that inclines towards greed. At this point, conventional morality collapses in the face of human nature, i.e. natural ethics.[7] When one has so much power that one is not condemned by conventional law or international agreements, then greed over others is something completely human, and therefore something completely justified.

## II. Expansion due to necessity

> It is indeed a very natural and common thing the desire to acquire; and always, when men can effect it, they will be praised, or at least not censured; but when, however, they cannot, and want to effect it by all means, herein lies the fault, and the accusations arise.
> *The Prince*, III

Machiavelli turns his attention on two historical paradigms[8] to show how necessity drives to expansion in the historical field. Aeneas and Moses, recognizing the necessity of the historical times, leave their territory and look for a new place to expand their power. This move is not easy, as they encounter many obstacles to establishing a new political order, but it is dictated by necessity. These two rulers are included by Machiavelli among the founders of cities, because they manage to establish new states and impose their own modes of rule and their own institutions, which have survived for a long time. In both cases the future looked bleak, irreversible annihilation was at hand, and yet they managed at the last moment to activate their virtue and impose their will on history. In contrast to this gloomy historical condition, which was transformed by virtù into greatness, the situation in Florence never reached such extreme events. Perhaps this breeds Florentine indolence and prevents the appearance of virtù.

Machiavelli considers that man is always in interaction with necessity, either of his nature or of circumstances, and it is up to him to make the right decisions to create his own subjective construction. Human reason is called to create while being captive to the material of construction; the relationship of the subject with the material of creation and the correct arrangement will lead to virtù. Human choices are free; they can be directed either to success or to destruction. The question is whether free will is properly adapted to the necessity of the circumstances. Many times, adverse circumstances push a unique path of creation and only human determination is needed, so that the material takes a magnificent form, as happened in the cases of Moses

[7] Faisal Baluch, "Machiavelli as Philosopher," *The Review of Politics* 80, no. 2 (2018): 289-300.

[8] Machiavelli, *The Prince*, VI: 25-26; Machiavelli, *Discourses*, II, 8: 345.

or Aeneas. Other times the necessity is limited and there are many paths to successfully format the material, but the human subject is either lazy or chooses the wrong directions. The correctness of the choice lies in the rational analysis of the empirical data but also in the decisive formatting of the historical-political material.

Expansion, therefore, is dictated either by the inherent greed of human nature or by the necessity of times. In both cases we are dealing with an unavoidable necessity. Both nature and historical-political facts impose their dire necessity on man, who is called upon to manage them through his right choices. Human nature and circumstances equal to chance, to the unstable factor of fortune. When one invokes fortune to justify his failure or disaster, he is actually confessing his inability to read and control necessity. How could he accuse Aeneas or Moses of doing wrong in choosing to expand to other places when necessity prompted them to do so? In fact, they did nothing more than perceive correctly the particularities of the historical material and through correct choices proceed with their virtù in a decisive creation. Instead, a certain Byzantine emperor, by avoiding taking matters into his own hands in order to expand his power, brought the Turks to the Balkan peninsula and they extended their rule to their advantage.[9] Everything is a matter of right choices and decisive application of those choices.

## III. Expansion due to autarky

> That which does not belong to you or to your subjects, you may give generously, as Cyrus, Caesar, and Alexander did; when you spend other states' goods, your reputation is not damaged, on the contrary, it is increased; when you waste your own goods, that is what harms you.
> *The Prince,* XVI

In chapter XVI of *The Prince* Machiavelli refers to the liberality of the state or political ruler. Liberality in the provision of material goods gives to the subjects a sense of pleasure and satisfaction because it expands their private wealth. Individuals experience a continuous enjoyment of greed and increase in their material possessions, and the ruler or state gains a good reputation in the sense that conditions of material prosperity are created, which most people equate with human happiness. The liberality of the state goes hand in hand with the tendency of human nature for expansion and greed.

However, such a generous policy is destined to fail, first because men, while they experience the greatest happiness when they increase their wealth of material goods if for some reason the state has to

[9] Machiavelli, *The Prince*, XIII: 52.

take them away, then they experience the greatest unhappiness. Therefore, the generous provision of goods is a risky action, because the satisfaction of human greed also breeds human unhappiness, since the more men acquire the unhappier they become if they lose it.

Furthermore, while human greed and expansion are inexhaustible, the state's reserves are not. So, it is inevitable that, if the liberality to the subjects continues, at some point the material resources of the state will be significantly limited, and harsh measures, such as high taxation, will be the only option for the state. This is detrimental to the sovereign power because its good reputation is destroyed in the eyes of the subjects, who now regard it with utter suspicion, as a factor that diminishes their prosperity and opposes their individualistic expansion. It is better, then, for a ruler to be parsimonious from the start and not provide material rewards to his subjects, so that he does not have to face the insatiable tendency of human nature and the bad reputation that will accompany him if he is forced to draw resources from the goods of the body politic.

There is, however, a case where the liberality of the state and the material well-being of the subjects do not cancel each other out. This is the perspective of imperial expansion against other states. For a state to be generous it must provide goods either from its own stock, or from that of its subjects through levies and taxes, or by seizing them from other state entities, which will then become vassals.[10] Caesar at the beginning of his political career spent his own money, in order to become popular and rise to office, but once he achieved this, he became completely parsimonious and was generous only through utilizing the goods of the vassal states within the Roman empire. With those that do not belong to the state itself and to its subjects the ruler can be extremely generous and beneficent, ensuring both his excellent reputation and the material well-being of the people of his territory. But the main cause of this prosperity is the satisfaction of the tendency of greed of human nature which equates material expansion with happiness. Imperial expansion ensures individualistic expansion within the civil society and paves the way for the prosperity of the subjects. In this perspective the only prospect of satisfying human nature within the political community is empire, that is, expansion against other political entities and the usurpation of their material resources. Machiavelli uses, to support this argument, the examples of Alexander and Cyrus, who acquired the reputation of being generous

[10] Mikael Hörnqvist, *Machiavelli and Empire* (Cambridge: Cambridge University Press, 2004), 38-75.

by spending the goods of other states, which they conquered. Here we have yet another moral justification for imperialist expansion, based on human nature's tendency to expand, but also on the conception of happiness as held by many. One might say that at this point the Machiavellian analysis considers imperialist expansion inevitable when a state attempts to establish a material well-being on a social-political and individual level, albeit with certain aspirations. Autarky within the state is a consequence of external expansion.

## IV. Expansion or non-expansion? The paradigms of Sparta and Rome

> Nonetheless (as I have said another time when discussing the difference that existed between being organized for conquest and being organized for preservation) it is impossible that a Republic succeeds in remaining stable and enjoying its liberty and its limited confines; for even if it does not molest others, it will be molested: and from being molested there will arise the will and desire for conquest: and even if it should not have any outside enemies, it would find some at home, as it appears necessary to occur to all great Cities.
> *Discourses*, II, 19

In the *Discourses* (I, 6) Machiavelli examines the issue of the stability of the constitutions in relation to the expansion of the state.[11] Sparta is the basic paradigm to his analysis for two reasons, firstly because it managed to keep its constitution stable for an extremely long time and secondly because it remained quiescent in its territory without expanding until it was forced to do so during the Peloponnesian War, which marked the beginning of its decline. It is noteworthy, in regard to the first reason, that the stability of the Spartan constitution is not based on institutional or economic factors, but on the restraint of human nature's tendency to greed and expansion. Spartan institutions kept both the rulers and the nobles, and of course the common people, poor, that is, without the possibility of acquiring material goods so that no political party could release the destructive urge to acquire more. Two other factors played a decisive role in this restriction, the small number of the inhabitants of Sparta which made it easy to enforce laws and governance, but also the exclusion of their interaction with other people and other cities, which prevented the corruption of their political morals. The genius of the lawgiver Lycurgus, then, lies not in establishing effective or functional laws, but in relating his laws to a pessimistic view of human nature. Spartan laws, and by extension, its constitution were based on the notion that human nature is insatiable and tends to desire more than it really needs, but also that it wishes

[11] Maurizio Viroli, *The Quotable Machiavelli* (Princeton, NJ: Princeton University Press, 2016), 157-159.

to extend its greed to others. Greed becomes real if one acquires more relative to the others if one increases his material possessions while others do not. The oligarchy of the Spartans is identified with the limitation of the expansion of human nature; this is for Machiavelli the real essence of the constitution of Sparta and the real reason for the non-expansion at the level of international relations. Limiting the individual expansion of subjects within the state also prevents imperial expansion outside of it. In the case of Sparta there is an absolute identification of the individual with the public and this creates an amazing political unity.

Machiavelli, extending his reasoning from the inside to the outside, notes that, in order to keep a state away from the tendency of expansion, in addition to the control of human nature by institutions, one must take care of two other parameters that existed in the Spartan case. Non-expansion presupposes a fortified location which, combined with a ready for war and well exercised army, will prevent any expansionist thought by any would-be conqueror. If these are carried out, no one will attempt the conquest of this state, because its location and its military readiness will prevent anyone from acting hostilely.[12] Also, due to its being isolated, along with its institutions that keep its subjects poor and devoid of expansionist ambitions, this small state will not pose a threat to rival states. These facts can keep a state away from its own expansion against other state entities, but also prevent other states from moving expansively towards it, because imperial expansion occurs when conquest is easy or when a state develops so much power that it worries the rest, that will want to restrain it for fear of losing their material resources to it or, worse, coming under its expansive control. Sparta remained stable and unscathed because it disabled the two causes of war against it, a) its location and military preparedness constituted a maximum deterrent force, while b) its historical non-expansionist tendency did not mobilize the fear of other states nor the need to stop its movement. Her deterrent power and belief in the doctrine of quiescence or immobility did not motivate her opponents to include her in their expansive field.

However, in the end, expansion can be limited[13] but not completely prevented, because human affairs are in constant motion and nothing can be completely fixed; the absolute political tranquility of Sparta,

[12] Catherine H. Zuckert, *Machiavelli's Politics* (Chicago, IL: University of Chicago Press, 2017), 129-130.

[13] Filippo Del Lucchese, *The Political Philosophy of Niccolò Machiavelli* (Edinburgh: Edinburgh University Press, 2015), 55-59.

though admirable, cannot easily become a perpetual reality. Sparta, concerned about the excessive growth of Athenian power which would perhaps result in its own shrinking, was driven by the historical necessity to expand and, thus, began a long war of expansion in which it eventually emerged as a triumphant power as it extended its hegemony over the entire Greek territory. But then, according to Machiavelli, its inadequacy was seen in terms of maintaining its possessions, because the small number of its armed citizens was not sufficient to maintain this hegemony. Sparta was made by its institutions not to expand, and, as soon as she was forced to it by the times, she collapsed at the first serious rebellion against it. Expansion is the deadly poison to states which are made in such a way as not to expand themselves or raise expansionist movements against them, and the necessity of human nature will force them to 'taste' it at some point, that moment may be hundreds of years late, as in the case of Sparta, yet it will inevitably come someday.

Machiavelli no doubt admired Sparta's non-expansion state structure and its stability that prevented individualistic expansion within the city and imperial expansion abroad. He considers the Spartan balance between individual and foreign expansion to be a true political activity and a vindication of the Spartan doctrine of tranquility in domestic and foreign policy. However, being pessimistic about the constancy of human affairs and the improvement of human nature he holds up the imperial expansion of Rome as exemplary.[14] The institutions of Rome allowed it to be glorified and transform from a simple city into an empire. The people of Rome were numerous and well-armed, forming its legions. Also, within this state there has always been a great disparity in material possessions among the people and the Senate, the people being poor and the senators wealthy, which created a continuing harmful enmity between these two classes,[15] based on the human tendency for greed. The nobles have an advantage over the people in terms of material goods and thus feel happy, while the people feeling unhappy want to seize the material goods of the nobles. But for Machiavelli this internal disharmony and its destructive effects throughout the ages are inevitable when a state that wants to glorify itself through imperial expansion. Rome followed the greedful tendency of human nature and expanded as an empire while dealing

[14] James Hankins, "Machiavelli, Civic Humanism, and the Humanist Politics of Virtue," *Italian Culture* 32, no. 2 (2014): 98-109.

[15] Pasquale Pasquino, "Machiavelli and Aristotle: The Anatomies of the City," *History of European Ideas* 35 (2009): 397-407.

with internal turmoil. Its success lies in the acceptance of human nature that tends towards expansion at the expense of others, but also in its large and well-armed population, the experience of which was the main reason for the preservation of its imperial acquisitions.

Strauss notes that imperialist expansion is one of Machiavelli's primary objectives for any integrated state:

1. freedom from foreign domination and from despotic rule,
2. stability or rule of law,
3. prosperity (security of life, of property and of honor of every citizen, the continuous increase of wealth and power of the state),
4. glory or power (i.e., empire).[16]

Power or glory equals expansion and empire.[17] Regardless of the subjective ideology reproduced by each state's institutions, expansion is inevitably linked to the realization of its power and prosperity. Power without extension is not power but weakness or indolence. Rome was born on an immoral act, on a fratricide, its institutions were the product of an immoral subjectivity that its founders tried to impose as moral objectivity. The subjective purpose of each state expressed by the state's ideology requires the compliance of each political part with it, and institutions serve this goal.[18] The direction of the positive law of each state entity is governed by the subjective direction of the sovereign power.[19] However, imperial expansion as a goal of the state is something objective regardless of the subjective ideology that its institutions serve. Whether we speak e.g., for a capitalist state or a socialist state, imperial expansion is inevitable if we are to believe that this state fulfills the basic parameters of its development and maintenance. Thus, the Machiavellian example of imperialist and expansionist Rome finds its expression in every state of every form or era.

Expansionary war, therefore, is a continuation and completion of domestic politics; without expansion the state is doomed to annihilation because necessity will at some point push it to compete in

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[16] Elias Vavouras, "The Machiavellian Reality of Leo Strauss," *Dia-noesis: A Journal of Philosophy* 12 (2022): 265-273; Leo Strauss, *Thoughts on Machiavelli* (Chicago, IL: The University of Chicago Press, 1958), 256; Leo Strauss, "What is Political Philosophy?" in Leo Strauss, *An Introduction to Political Philosophy: Ten Essays*, ed. Hilail Gildin (Detroit, MI: Wayne State University Press, 1989), 41.

[17] Viroli, *The Quotable Machiavelli*, 154-156.

[18] Harvey C. Jr. Mansfield, "Strauss's Machiavelli," *Political Theory* 3, no. 4 (1975): 372-384.

[19] Rasoul Namazi, "Leo Strauss on Machiavelli's *The Prince* and the *Discourses:* A Recently Discovered Lecture," *Interpretation* 43, no. 3 (2017): 431-460.

the international arena with other states for its existence. So, expansion is in this sense a form of preventive war or treatment. First, it nurtures the unsatisfied human nature that constantly wants more material goods, and these goods are better spent from the spoils of expansion than from the state's own resources, and this imparts a calmness and a sense of autarky to domestic politics. When all are under a constant pleasure of greed, they do not want to usurp each other's goods, and thus internal conflicts are lessened. Second, a state that knows how to expand and maintain its possessions is much less at risk than another that passively awaits the expansionist vortex of other state formations. The Machiavellian state echoes the insatiability of the human process toward individualism and materialism, and its goal is to extend this subjective perception of happiness upon others in order to maintain its own perspective of well-being.

## V. Hegemony or empire?

> But because human affairs are in constant motion, and can never remain stable, it happens that states either grow or decline: and necessity leads you to do many things which reason will never lead you to do. Thus, having created a state capable of maintaining itself without expanding, if necessity compelled it to expand, its foundations would collapse completely and its destruction would be rapid.
> *Discourses*, I. VI

But what is Rome's mode of expansion that significantly differentiates it from Sparta? One would expect Machiavelli to place Athens as Sparta's formidable rival. Instead, he places it between Venice and Rome. Venice differs from Sparta in the means of expansion; Sparta's power lies in its well-organized army made up of native inhabitants, while Venice prevails through its economic power. Although the polity of these two states is remarkably similar and has long remained stable preventing internal unrest, their means of expansion differ. However, both of these states fail to maintain the hegemony they achieved in different ways because their constitutions were not structured to favor expansion. Athens, however, on the other hand has a constitution different from Sparta and has used both modes of expansion, both the powerful army on land and sea and the financial means by controlling the coffers of the Delian League. For Machiavelli, a similarity of Athens to Sparta in the mode of expansion is enough to classify it in a different group of states from Rome. Athens, Sparta and Venice tried to impose a kind of expansionist hegemony on their subject states[20] and this differentiates them from Rome, which

[20] Machiavelli, *Discourses*, II, 4: 336.

expanded as an empire. Here Machiavelli, to separate Rome's ways of expansion from the rest of the expansionist examples, introduces the distinction between *hegemony* (*dominio*) and *empire* (*imperio*).[21] Hegemony is a relationship of servitude between a sovereign and his subjects where the force of arms determines the relations of justice. On the contrary, empire constitutes the voluntary accession of a state to the sovereignty of another, where it may also have some role, equal or unequal, of co-government. The difference between hegemony and empire consists in the voluntary or involuntary imposition of sovereignty by one state on others, but also in the extent to which the subject states participate in determining governmental decisions.[22]

Erica Benner provides a detailed exposition of the Machiavellian arguments[23] regarding the modes of expansion. For Machiavelli there are three ways[24] of expansion:

a. *Equal expansion through state coalitions or federations* (*compagni, equal partnership*), where a state can increase its power through an equal relationship with other states at the level of an international alliance or co-government. The historical example mentioned in this case is the Tuscan League,[25] where twelve cities managed power equally and significantly expanded their sovereignty. In fact, the states that were part of the expansion of the alliance were not enslaved to it, but became equal members of the federation. Analogous historical examples of this way of expansion are the Leagues of the Achaeans and Aetolians in ancient Greece, but also of the Swiss in the days of Machiavelli. In Machiavelli's view, a coalition of states can participate on equal terms in governance, but also, a powerful state can be authorized by the rest of the states to play the role of a sovereign representative and acquire, with the consent of the rest, a leadership character in the exercise of power. Federated states have the advantage of avoiding internal and external conflicts, but also easily hold their possessions through equality between partners. Their disadvantage is that due to their fragmented form, they are unable to make immediate decisions and thus become passive; being satisfied with the prosperity enjoyed by each of them they avoid further collective expansion. Thus, according to Machiavelli, a federation of equal states

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[21] Erica Benner, *Machiavelli's Ethics* (Princeton, NJ: Princeton University Press, 2009), 454.

[22] Machiavelli, *Discourses*, II, 4: 335-339.

[23] Benner, 454-464; Machiavelli, *Discourses*, II, 21, III, 19; Machiavelli, *Florentine Histories*, I, 29, IV, 3.

[24] Machiavelli, *Discourses*, II, 4: 335-339.

[25] Zuckert, 186-187.

can hardly, if at all, become an all-powerful empire, the lack of central government being a major disadvantage.
b. *Hegemony or absolute submission to one's state power* (subbietti/ sudditi, subjection to one), where a state forcibly imposes its sovereignty and its will on other subject states. In this case, there is no political cooperation or equality, but there are relations of absolute dominance and submission. Machiavelli associates this mode of domination with the unbridled tendency of human nature to acquire more, that is, with a pessimistic view of man. It is a tendency dominated by irrational passions and uncritical ambition and equates prosperity with greed and the imposition of subjective power on history by any means.[26] Also, this mode of expansion is also associated with the outbreak of riots and conflicts, because there is an involuntary coercion of subordinate parties to go along with the will of the more powerful. In this category of expansion belong Sparta and Athens, which managed to become hegemonies but failed to maintain their conquests because, on the one hand, their population was not sufficient to maintain the large military force that such a purpose imposes - for this, as said, their constitution is also responsible for not foreseeing the possibility of expansion - on the other hand, absolute sovereignty is in itself a very difficult task, especially in a case where a state does not have equal allies, since the sovereign must be constantly on the lookout for subjects who do not willingly accept his rule and constantly yearn for the freedom[27] from a past circumstance. Allies, too, who will come to assist in war operations, will demand some of the hegemonic sovereignty, which a unilateral hegemony refuses to acknowledge and progressively isolates.
c. *The middle way* (*making subjects or partners*) with Rome as a dominant example, where the dominant power exhausts every other means in order to make other states allies, but, when it fails to do so, resorts to the last solution of forced, violent submission of them. Rome had a constitution that was compatible with the prospect of expansion, as it exploited the population of the state to man its army and allowed for oppositional relationships between plebeians and nobles in the exercise of power.[28] Also, in terms of foreign policy, at first, he made beneficial alliances on equal terms with the states of Italy and then replicated

[26] Manfred J. Holler, "Niccolò Machiavelli on Power," in *Niccolò Machiavelli: History, Power, and Virtue*, ed. Leonidas Donskis, 27-48 (New York: Rodopi B.V., 2011).

[27] Quentin Skinner, "Machiavelli on the Maintenance of Liberty," *Australian Journal of Political Science* 18, no. 2 (1983): 3-15.

[28] John P. McCormick, "Of Tribunes and Tyrants: Machiavelli's Legal and Extra-Legal Modes for Controlling Elites," *Ratio Juris* 28, no. 2 (2015): 252-66.

this tactic abroad with the difference being that there the states that participated in the Roman empire either willingly or forcibly recognized Rome as dominant power regardless of their own role in the empire. The Romans made allies and granted them powers or consultative power, but the seat of the empire and the sovereign government remained indisputably in Rome. When the Italian states became aware of the Roman foreign policy of expansion they tried to react, but by then it was too late, as Rome from a simple state had become an all-powerful empire. The Roman mode of expansion is double, initially using soft power to secure allies willing to join the empire, but then not hesitating to turn those allies into vassals under the use of hard power when the necessity arises. The middle way of Rome combines the other two modes of expansion, namely consensual alliance and violent hegemony not always in a clean way, as the allies do not realize the deception of the empire; they are deceived into thinking that they will have an equal role, but in the end they end up subjugated under the rule of Roman power. Consent, coercion, and deception are the main features of the Roman mode of expansion; a mixture of federation with hegemony gives us the Machiavellian conception of empire, but rather the element of sovereignty has the final and main say,[29] since the primacy and sovereignty of Rome is something non-negotiable.[30]

## VI. Soft and hard power

> That for the city to increase its inhabitants, to make associations for themselves and not subjects, to send colonies to guard the acquired countries, to make capital of the plunder, to subdue the enemy by incursions and engagements, and by sieges, to keep the public rich, the private citizen poor, to maintain military exercises with the greatest zeal, these are the ways to make a Republic great and to acquire Empire. And if these means of expanding did not please them, they would consider that acquisitions by any other means are the ruin of a Republic.
> *Discourses*, II, 19

But what is the essential difference of Rome's middle path of expansion, since it ultimately uses violent coercion against its former allies? Machiavelli is sure to be favorably disposed to the way of extending of the federation, because the consent of the allied states and their equal participation in the exercise of power creates an admirable order and limits conflicts to the utmost. However, his positive

[29] Steven Forde, "Varieties of Realism: Thucydides and Machiavelli," *The Journal of Politics* 54, no. 2 (1992): 372-393.

[30] John G. A. Pocock, "Machiavelli and Rome: The Republic as Ideal and as History," in *The Cambridge Companion to Machiavelli*, ed. John M. Najemy, 144-166 (Cambridge: Cambridge University Press, 2010).

intention does not lead him to turn a blind eye. These kinds of state associations, although they may be quite enduring in historical time, cannot in practice embody the concept of empire. Expansion in this case is doomed from the start, as in the version of Sparta, where its truly admirable and time-resistant constitution is incompatible with the concepts of expansion and empire. But human affairs, especially in the historical-political field, are constantly in motion and nothing can stop their upward or downward course, their tragic existence is directed by the passions of human nature. A state cannot sustain its presence in history, it must harmonize with the movement of human things and its maximum development is equivalent to empire. To provide examples of states that reject maximum expansion means that we reject the idea of the maximum human movement, which is the empire.[31] It is the passions that dominate men and not reason. Greed, i.e., to constantly acquire more in relation to others, is part of the human natural movement that emanates from human nature. Empire, i.e., maximum expansion, is consistent with the human passion of greed but also with maximum movement, while immobility is opposed to human nature as well as to historical-political movement. To be able to construct a feasible political science we must accept man as he is and not as he should be. The idea of empire is at the level of the possible, while immobility tries to get out of human pessimistic reality, and that is why it fails and will fail.

The Roman mode of expansion accepts the continuous mobility of human affairs both internally, i.e., in the constitution of the state, and abroad, i.e., in international relations, and that is why it is more correct than the other expansive modes. But Rome also knows how to apply soft power perfectly against the other states, so that it gets what it needs without wasting its own resources. This is the main characteristic of successful political action according to Machiavelli. In *The Prince* (VIII) Agathocles succeeds from being a simple individual to become the tyrant of Syracuse using mostly hard power, he murders all the prominent citizens in one day in the theater of the city and thus consolidates his rule.[32] According to the Machiavellian concept that the end justifies the means, Agathocles can be judged as successful, since he managed to decisively achieve his goal and give shape to the

[31] John G. A. Pocock, "Niccolo Machiavelli and the Imperial Republic," in *Barbarism and Religion: The First Decline and Fall*, ed. John G. A. Pocock, 203-235 (Cambridge: Cambridge University Press, 2003), 203-235.

[32] Cecil A. J. Coady, "Dirty Hands," in *Reading Political Philosophy Machiavelli to Mill*, eds. Nigel Warburton, Jon Pike, and Derek Matravers (New York: Routledge, 2000), 59-66.

historical material. However, although Machiavelli does not doubt his virtù and the successful outcome of his actions, he expresses his concern about hard power that he uses. This kind of power must be used when all the means of soft power have disappeared, because on the one hand it paints a negative image of the person or the state that uses such burdensome methods of enforcement, on the other hand it is a short-term means of enforcement, since the true face of the sovereign power is revealed, the ideology served and reproduced by the institutions collapses and the state is faced with its challenge by the political parties. Rome, in terms of foreign policy, exhausts all means of soft power, tries to elicit the consent of others for her rule through her power and greatness, deceives its allies, or rather lets them deceive themselves as to its real intentions, has established an extensive network of institutions and positive law throughout the empire creating a feeling of stability and security in her vassal states and subjects and, if all these fail, is ready to impose hard power by revealing the true face of its dominance. The difference between empire and hegemony is essentially the consequence of using soft power before the inevitable imposition of hard power.[33] The Romans incorporate expansion in the way of federation, to persuade their enemies to become their allies, but in the end make them their vassals.[34] The use of soft and of hard power, of consent and of violence, gives them the true title of empire over the insufficient federation and tyrannical hegemony. This is the Roman middle mode of expansion that earns Machiavelli's emphatic preference.

## VII. Conclusions

So, what can we conclude about the Machiavellian theory of expansion? Is there any base of ethics that justify the expansion of states and the prospect of empire, or are they all relative and justified by the subjective imposition of power in the historical-political field?

a. Expansion is justified by the existence of a natural right in human things.[35] Human nature undoubtedly tends to acquire more goods whether they really need them or not. This strong natural urge, this invincible passion, pushes people to action; the more they acquire

[33] Joseph S. Nye Jr., *The Powers to Lead* (Oxford: Oxford University Press, 2008), 29-32, 38-44.

[34] Machiavelli, *Discourses*, II, 1: 324-327, 3: 334-335.

[35] Elias Vavouras, "Natural Right and Historicism: From Thucydides to Marx," *Cogito* 8, no. 1 (2021): 7-20.

material goods, the more satisfied and yet unsatisfied they feel. So, in order for a state to continuously satisfy its subjects and provide them with material goods, it must necessarily expand to increase its resources. Expansion is morally justified under the power of human natural right.[36]

b. Yes, but some states, such as Sparta, have managed to limit human greed and impose a kind of self-restraint on their subjects and also on the expansive aspirations of the state; this in philosophical terminology is called *prudence*. In fact, the notion represented by these cases is that human natural right dictates that the rationality dominates the passions, and thus the human propensity for greed can and should be rationally controlled. Laws and institutions constitute the rational self-control of these civil societies. Machiavelli answers here that this is a great misunderstanding; passions mostly characterize man and not rationality, therefore man's natural right derives from passions and not from reason. Therefore, such states may have existed[37] but their design is flawed because the passion of greed of the humans will push that state to expansion and if it does not do this the state itself will be forced to do it by the greedful expansion of other states, which will want to harm it by violating its vital space. Sparta, moreover, being politically stable and defensively entrenched in its naturally inaccessible territory for hundreds of years, was forced to expand under the threat of the growing Athenian power. Therefore, a state must be politically structured so as to foresee and not exclude the possibility of expansion, because, when necessity leads it to grow, it will be destroyed by being unprepared for this possibility. These findings strengthen the moral justification of a state's expansion against the harmful practice of maintenance.

c. Human things are characterized by a constant movement either towards their prosperity or their decline. Fortune is likened to a constantly moving wheel that drives the man or the state sometimes high and sometimes low. The expansion is consistent with the tragic conception of human motion. A state, in order to move from the bottom to the top, must expand, make a movement in the historical space and thus conquer its prosperity. Expansion is a forward movement, a movement towards human political well-being. The constant movement of human affairs morally justifies the policy of expansion, while on the contrary the policy of tranquility and immobility constitutes a manifest irrationality. To strive to remain still while everything is in motion is

[36] Elias Vavouras, "Machiavelli: Natural Right and Historicism," *Polis* 9, no. 3 (2021): 5-24.

[37] Miguel E. Vatter, *Between Form and Event: Machiavelli's Theory of Political Freedom* (Dordrecht: Springer, 2000), 51-58.

not a prudent trait, especially when the driving force of human affairs are the invincible human passions. Every human political enterprise must go hand in hand with movement and not with tranquility.[38]

d. Also, the expansion of a state as a move towards its prosperity, must be done as an empire and not as a hegemony, or an otherwise hard power. Empire is different from hegemony because it uses soft power by exhausting every means of its application before being forced to resort to hard power, and that is what gives it duration over time, not the avoidance of expansion or of the expansion through hard power. This shows that the state moving towards the realization of empire does not simply fulfill the human passion of greed, but knowing the tendency of greed of human nature and the constant movement of everything succeeds in creating the maximum possible prosperity. Empire is not simply a submission to the human passion of desiring more material goods, but a rational evaluation of all historical material, i.e., human natural right, human imperfection, the constant movement of things, the beneficial imitation of historical paradigms, and the right shaping of the destiny of a civil society. The empire is the maximum possible development of a state through the knowledge and right arrangement of all human and historical parameters. The empire morally justifies expansion, while hegemony does not. The middle way of Roman expansion utilizes the mode of federation through alliances - which falls far short of becoming an empire - but also deception or the hard power of hegemony when the need arises. The state must not act subservient to human passion, but rationally evaluate human passions as a necessity that it cannot avoid. The state must see human passions as an inescapable necessity in the material of creation and shaping of history.

e. In the Machiavellian design of the empire there is no teleological motive of development, it does not mean that human nature, or human natural right, includes the human ultimate purpose or the purpose of the state. The state acts entirely subjectively in shaping history or man, it takes into account knowledge of human nature and historical parameters, yet its institutions reproduce the dominant state ideology. Machiavelli does not claim, as, for example, does Plato or the classical tradition in general, that the integrated state must fulfill the perfection of man under the objective inscribed in its essence, he simply says that there can be no movement towards the well-being of a state without state expansion at the level of empire. The Machiavellian interpretation tries to justify the means of expansion and the expansion itself as a movement of the

[38] Hörnqvist, 76-112.

civil society in history,[39] not to tell us that, since human nature is of this substance, the objective of the state is always the same and there is no other way of perfection. Machiavelli instead claims that there can be no perfection because man is an imperfect being plagued by vulgar passions and the state's expansion is a means of dealing with human passions. The purpose is to expand and maintain the state through the movement towards the empire regardless of the ideological parameters that characterize that empire. Machiavelli suggests a methodology for the right use of the means of domination as an empire, the right application of this methodology reveals his peculiar 'ethics.'

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[39] Alissa M. Ardito, *Machiavelli and the Modern State: The Prince, the Discourses on Livy, and the Extended Territorial Republic* (Cambridge: Cambridge University Press, 2015): 76-82.

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# Autonomy, Enlightenment, Justice, Peace – and the Precarities of Reasoning Publically

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**Abstract**

*The First World War was supposed to end all wars, though soon followed WWII. Since 1945 wars continued to abound; now we confront a real prospect of a third world war. Many armed struggles and wars arise in attempts to end repressive government; still more are fomented by repressive governments, few of which acknowledge their repressive character. It is historically and culturally naive to suppose that peace is normal, and war an aberration; war, preparations for war and threats of war belong to 'normal' human life. Our tolerance, acceptance or fostering of such repeated injustices and atrocities indicate pervasive failures to understand fundamentals of justice, and what we owe morally to ourselves and to all others, together with our responsibilities to preserve the biosphere, not merely our own store(s) of reserves. As matters both of justice and prudence we must re-orient ourselves, individually and collectively, to promote justice, peace and ecological responsibilities by identifying and instituting just forms of social cooperation, domestically and internationally. All of these are our problems, whether we recognize them or continue our pervasive negligence. We urgently require cogent understanding of the social dimensions of human judgment, rational assessment, right action, and public reason. This requires understanding (inter alia) how Kant's explication of rational judgment and justification is fundamentally social, how these features of rational judgment and justification are constitutive of Kant's account of individual autonomy, and how they are central to Kant's account of proper public use of reason. Reasoning publically remains precarious, not because – as often alleged – the 'Enlightenment project' has failed. It has not failed, it has been thwarted, and in our public responsibilities we have too often failed it.*

**Keywords:** *rational judgment; rational justification; dilemma of the criterion; petitio principii; criteria of justice; legal positivism; moral orientation; negligence*

For Marina Bykova,
in friendship, gratitude and solidarity

## I. Introduction

The First World War was supposed to end all wars, though soon followed WWII. Wars continued to abound since; today we confront a real prospect of a third world war. Some armed struggles and wars arise to end genuinely repressive government; still more are fomented by repressive or imperialistic governments, few of which acknowledge their repressive or imperialist character. It is naive to suppose that peace is normal, and war an aberration; war, preparations for war and threats of war belong to 'normal' life in many societies. Our tolerance, acceptance or fostering of such repeated injustices and aggressions indicate pervasive failures to understand fundamentals of justice, and what we owe morally to ourselves and to all others, together with our responsibilities to preserve the biosphere, not merely 'our' store(s) of reserves. As matters both of justice and prudence we must re-orient ourselves, individually and collectively, to promote justice, peace, and ecological responsibilities by identifying and instituting just forms of social cooperation, domestically and internationally. All of these are *our* problems, whether we recognize or neglect them. We urgently require cogent understanding of the social dimensions of human judgment, rational assessment, right action, and public reason. This requires understanding how Kant's explication of rational judgment and justification is fundamentally social, how these features of rational judgment and justification are constitutive of Kant's account of individual autonomy, and how they are central to Kant's account of proper public use of reason.[1] Reasoning publically remains precarious, not because – as often alleged – the 'Enlightenment project' has failed. It has not failed, it has been thwarted, and in our public responsibilities we have too often failed it.

I begin with fundamental issues regarding identifying and justifying sound moral principles (both ethics and justice), which are required to

[1] Kant is often charged with individualism, formalism or even racism; such contentions are as common as they are erroneous. Kant's actual views about human varieties are examined thoroughly and judiciously by Cinzia Ferrini, *Alle origini del concetto di razza. Kant e la diversità umana nell'unità di specie* (Trieste: EUT Edizioni Università di Trieste, 2022); more concisely by Georg Geismann, "Why Kant Was Not a 'Racist'. Kant's 'Race Theory' Within the Context of Physical Geography and Anthropology – A Philosophical Approach Instead of Ideologically Motivated Ones," *Jahrbuch für Recht und Ethik/Annual Review of Law and Ethics* 30 (2022): 263-357. For detailed historical and systematic analysis, see Chistoph Haar und Matthias Kaufmann, *Gerechter Krieg und Niemandsland. Rechtfertigungsideologien für Kolonisierung und Versklavung durch europäische Mächte c. 1500-1800* (Darmstadt: Wissenschaftliche Buchgesellschaft, 2023).

specify and to monitor the scope and limits of legitimate policy debate (§§II-IV). Some of my remarks are pointed; some observations are hard. In advance I reaffirm my abiding commitment in principle and in practice to optimism, though when examining social history and practices, to unflinching realism. Most of my examples are from the USA (§V), so that none may fault me for besmirching another's nation; similar examples elsewhere are pervasive and obvious, nationally and internationally. I consider European juridical history sufficiently to show that my US examples typify a broad sweep of Enlightenment struggles, including Kant's and Hegel's, for justice against mere legality: The principle of 'rule of law' does not require rule by *just* law; it may curtail arbitrary actions, but cannot curtail arbitrary law. This contrast is Kant's point of departure in his Doctrine of Justice (*Rechtslehre*),[2] and Hegel's in his *Philosophical Outlines of Justice*.[3] The domestic examples considered below have obvious international implications and counterparts, as unjust domestic policies and practices foster their counterparts in international relations.

## II. *Petitio principii* and problems of rational justification

The problems now tearing apart the USA were already manifest during my childhood; their basis and implications have not changed, merely their virulence and brazen irresponsibility are now shamelessly dis-

[2] Immanuel Kant, *Die Metaphysik der Sitten* (1798), *GS* 6:205-493; cited as '*MS*' (introductory materials) or by '§' of its first (*RL*) or second (*TL*) Parts: *Rechtslehre* (Doctrine of Justice) and *Tugendlehre* (Doctrine of Virtue), *GS* 6:229-230. *Kants Gesammelte Schriften*, 29 Bde. Könniglich Preussische Akademie der Wissenschaften. Berlin: Reimer, 1902, is cited as '*GS*' by vol.: p. or by Kant's § numbers; *Kritik der reinen Vernunft*, 1st ed. (1781) *GS* 4:1-386 (to A405), 2nd rev ed. (1786) *GS* 3, is cited as '*KrV*', by pagination of the two editions, 'A' and 'B', respectively; *Die Grundlegung zur Metaphysik der Sitten* (1785), *GS* 4:387-463 is cited as '*GMS*'; "Was heißt: Sich im Denken orientieren? " (1786), *GS* 8:133-147 is cited as 'DO'; "Zum ewigen Frieden. Ein philosophischer Entwurf" (1795), *GS* 8:343-386, is cited as 'ZeF'. Unless otherwise noted, all translations are my own.

[3] Georg Wilhelm Friedrich Hegel, *Die Philosophie des Rechts/Philosophical Outlines of Justice* ('*Philosophy of Right*', 1821; cited as '*Rph*'), *Rph* §3R. *Die Phänomenologie des Geistes* (1807) is cited as '*PhdG*'; *Die Wissenschaft der Logik*, Bk. I, 2. rev. Aufl. (1832)/*The Science of Logic*, Bk. I; cited as '*WdL*'; *Georg Wilhelm Friedrich Hegel's Werke*, 19 Bde. Vollständige Ausgabe durch einen Verein von Freunden des Verewigten (Berlin: Duncker & Humblot, 1832-1845), is cited as '*SW*', by vol.: p. or by Hegel's § numbers; 'R' for Hegel's published remarks, indented in petit font; 'Z' for Zusätze or 'Additions' of lecture materials appended by Hegel's editors; *Gesammelte Werke*, 31 vols, ed. Deutsche Forschungsgemeinschaft (Hamburg: Meiner, 1968-2017) is cited as '*GW*' by vol. p. or by Hegel's § numbers; *Werke in 20 Bänden*, eds. Eva Moldenhauer and Karl Markus Michel (Frankfurt am Main: Suhrkamp, 1970) is cited as 'MM' by vol.: page or by Hegel's § numbers. Abbreviations for Hegel's works follow *The Palgrave Hegel Handbook*, eds. Marina F. Bykova and K. R. Westphal (London: Palgrave/Macmillan, 2020), xxxi–xxxvii.

played in public, even claiming the good name of patriotism. In brief, the USA has never been the *Rechtsstaat* which to an extent may have been envisioned by its Declaration of Independence. Although the Unionists won the civil war, they lost the continuing battle for the supremacy of just federal law, before which all are equal not only in principle but also in practice, as a matter of due course. Legislation in the USA remains contested between individuals and groups competing for maximal benefits for themselves; 'consensus' means nothing outside one's own faction or coalition. Justice, the common weal, and cogent public reasoning routinely lose. Such debates and contests exhibit an ancient problem, classically formulated by Sextus Empiricus.

a. *The dilemma of the criterion*

> [...] in order to decide the dispute which has arisen about the criterion [of truth], we must possess an accepted criterion by which we shall be able to judge the dispute; and in order to possess an accepted criterion, the dispute about the criterion must first be decided. And when the argument thus reduces itself to a form of circular reasoning the discovery of the criterion becomes impracticable, since we do not allow [those who claim to know] to adopt a criterion by assumption, while if they offer to judge the criterion by a criterion we force them to a regress *ad infinitum*. And furthermore, since demonstration requires a demonstrated criterion, while the criterion requires an approved demonstration, they are forced into circular reasoning.[4]

This dilemma is fully general; it concerns rational justification in any and all domains, whether cognitive or moral, whether theoretical or practical. It is widely regarded as insoluble; if solving it requires no less and no more than strict deductive proof, it is insoluble.

b. *Deduction and justification*

If justifying deduction or likewise justifying induction require nothing but strictly *deductive proof*, they too are 'unjustifiable.'[5] Deduction requires

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[4] Sextus Empiricus, *PH* II.4, *cf.* I.116-117. Cited are: *Sexti Empirici Opera*, 5 vols., eds. H. Mutschmann, J. Mau, and K. Janáček (Leipzig: Teubner, 1912, 1954), vol. 1; *Outlines of Pyrrhonism*, in *Works*, 4 vols, trans. R. G. Bury (Cambridge, MA: Harvard University Press, 1933), vol. 1; cited as '*PH*' by Bk. line numbers.

[5] *Cf.* Lewis Carroll, "What the Tortoise Said to Achilles," *Mind* 4, no. 14 (1895): 278-280;

monotonic inferential *links* between premises; as such, deduction cannot assess the accuracy, truth, relevance or cogency of any *premiss* (nor any term or symbol) used in a formally stated argument. Any formal *statement* of a deductive proof contains *no* cognitive justification. Whatever cognitive justification is provided by deductive (or also by inductive) proof is within the understanding of whomever comprehends the proof, by comprehending the accuracy and cogency of the premises, the validity of their inferential links and the sufficiency of supporting evidence (if any). Comprehension involves much more than merely reiterating or 'rehearsing' the proof: It requires assessing one's own understanding and use of the premises and inferential links (and evidence, if any), to distinguish so well as one can between merely apparent cogency and sound proof. In fleeing psychologism, too many philosophers abandoned judgment to focus solely upon propositions, but propositions themselves do no work; we must work with them, and assess *how* and how *well* we work with them, in order to assess, to reason or to know anything by using propositions *properly*.[6]

These elementary points about deductive proof and the ineliminability of critical self-assessment do not solve the Dilemma of the Criterion, yet they point in the right direction. Critical self-assessment can enable us to assess the merits of any principles, premises, terms, inferences, or evidence used in justificatory reasoning, our own as well as others'. Critical self-assessment requires, however, that our principles, premises, evidence and our current or proposed use of them are not exhausted by our occurrent thoughts, beliefs or statements about them; it requires our capacity to assess and as needed to revise and improve our comprehension, formulation or use of our principles, premises or evidence *as* we grapple with the issues or circumstances we seek to understand and assess. Resolving that Dilemma requires rescinding Cartesian self-transparency and the apparent 'transparency' of one's own present thoughts.[7] This may appear stipulative, but is not: One can construct any conceptual structure one likes, but thinking *about* any genuine issue concerns *that issue*: its actual character, context

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Susan Haack, "The Justification of Deduction," *Mind*, New Series 85, no. 337 (1976): 112-119; W. V. O. Quine, "Truth by Convention," in *Philosophical Essays for A. N. Whitehead*, ed. O. H. Lee (New York: Longman's, 1936), 90-124; rpt. in *idem.*, *Ways of Paradox and Other Essays*, 2nd rev. ed. (Cambridge, MA: Harvard University Press, 1976), 77-106. (Quine merely ran into the problem, but failed to understand why and how he had made the problem invincible to his own dogmatically extensionalist views.)

[6] See Catherine Elgin, *Considered Judgment* (Princeton, NJ: Princeton University Press, 1999), and K. R. Westphal, *Kant's Critical Epistemology: Why Epistemology must Consider Judgment First* (London and New York: Routledge, 2021).

[7] K. R. Westphal, *Grounds of Pragmatic Realism: Hegel's Internal Critique and Transformation of Kant's Critical Philosophy* (Leiden and Boston: Brill, 2018), §§65-70.

and implications. Hence what we think, how we think and what we ought best to think must answer to that issue, its actual context, and its actual implications; what we may happen presently to think about these is no ultimate standard. All this is involved in conceptual *explication*, in contrast to (strict) conceptual analysis. Conceptual explication is fundamental to Kant, Hegel and Carnap, all of whom recognize that properly explicating any key concept, principle or term seeks to improve clarity, accuracy, and usage *in its* (or *their*) *proper contexts*.[8] Conceptual explications must and can only be assessed within humanly possible contexts of their actual use; not in merely imaginary contexts of their logically possible use.[9]

On this basis Hegel worked out a subtle, cogent solution to the Dilemma of the Criterion in his Introduction (not Preface) to the *Phenomenology of Spirit* (1807), and used it throughout his book to assess internally the insights and oversights involved in each apparent form of knowing, within his comprehensive, systematic taxonomy and assessment of them, winnowing and integrating the successes of each whilst remedying their inadequacies.[10] Due to highly fractious contemporaneous philosophy, Hegel kept quiet about his sources and many of his findings to forestall mere cavil, and to foster critical assessment and self-assessment. One key if implicit connection is this: Hegel's *Phenomenology* develops in comprehensive detail the topic merely mentioned in Kant's final chapter of the *Critique of Pure Reason*, "The History of Pure Reason."[11]

### c. *Kant's critical lead*

Here it will be most helpful to note core features of Kant's account of rational judgment and justification which (implicitly) feed into Hegel's solution to that Dilemma. Central to Kant's critique of our human powers of rational judgment and justification are five basic points:

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[8] Kant *KrV* B25-8, 108-9, 755-8; Hegel *WdL* I (1832), *GW* 21: 127.7, 157.3; *cf. Enz.* §§10, 84, 280Z, 334R, 464R, 573R; Rudolf Carnap, *Logical Foundations of Probability* (Chicago, IL: University of Chicago Press; London: Routledge & Kegan Paul, 1950), §§1-7.

[9] The contemporary 'semantic' counterpart to Cartesianism is to restrict one's ontology, 'ontological commitments' or one's view of any issue to one's preferred meta-linguistic framework, a fundamental blunder purveyed by Quine; Carnap knew much better from the outset. For concise discussion with further references, see K. R. Westphal, "Carnap *vs.* Quine: Descriptive Semantics *vs.* Semantic Ascent. More Reasons why Paolo [Parrini] Was so very Right!" *Humana Mente – Journal of Philosophical Studies*, S.I.: "La terza via di Paolo Parrini," eds. Roberta Lanfredini and Silvano Zipoli Caiani (2024).

[10] K. R. Westphal, *Hegel's Epistemology: A Study of the Aim and Method of the Phenomenology of Spirit* (Dordrecht: Kluwer, 1989).

[11] *KrV* B880-4; *cf.* K. R. Westphal, "Kant, Hegel and the Historicity of Pure Reason," in *The Palgrave Hegel Handbook*, eds. Marina F. Bykova and Kenneth R. Westphal, 45-64 (Cham: Palgrave McMillan, 2020).

1. Reasoning using rules or principles always requires *judgment* to guide the proper use and application of the rule or principle to the case(s) at hand. Specifying rules of application cannot avoid this, because using rules of application itself requires judgment.[12]

2. Rational judgment is inherently *normative*, insofar as it contrasts to mere response to circumstances by forming or revising beliefs, because judgment involves considering whether, how or to what extent the considerations one now draws together to form and consider a specific judgment (conclusion) are integrated as they *ought best* be integrated to form an accurate, justifiable judgment.[13]

3. Rational judgment is in these same regards inherently *self-critical*: judging some circumstance(s) or consideration(s) involves and requires assessing whether or the extent to which one assesses those circumstances or considerations as they *ought best* be assessed.[14]

4. Rational judgment is inherently *social* and *communicable*,[15] insofar as judging some circumstance(s) or consideration(s) rationally involves acknowledging the distinction in principle between merely convincing oneself that one has judged properly, and actually judging properly by properly assessing the issue(s) and relevant consideration(s) at hand.

5. Recognizing one's own *fallibility*, one's own potentially incomplete information or analysis and one's own theoretical or practical predilections requires that we each check our own judgments, first, by determining as well as we can whether the grounds and considerations integrated in any judgment we pass are such that they *can* be communicated to all others, who *can* assess our grounds and judgment, so as also to find them adequate;[16] second, by actually *communicating* our judgments and considerations to others to seek and consider their assessment of our judgments and considerations.[17]

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[12] *KrV* A130-6/B169-75.

[13] *KrV* A261-3/B317-9, B219; *cf. KU* Einl., 5:182.26–32.

[14] Ibid.

[15] *KU* §40.

[16] *KrV* A829/B857.

[17] Immanuel Kant, "Was heißt: Sich im Denken orientieren?" (1786; *GS* 8: 133-147, 'DO'), 8:145-7.

Kant's stress upon self-assessment and communicability of our judgments, in a phrase: his publicity requirement, serve to distinguish as well as humanly possible, individually and collectively, what merely appears to anyone (or to any group) to be accurate and well-justified, and what *is* accurate and well-justified, to the best of our knowledge of any and all public topics, *i.e.*, features of our natural world, of our social and historical circumstances, and of our beliefs, attitudes and actions regarding any and all of these. Kant's findings about rational judgment, justification and publicity directly inform the universalizability tests of the Categorical Imperative and the Universal Principle of Justice.[18] To corroborate and augment these findings, Hegel argues cogently that our mutual recognition of one another *as* rationally competent, sufficiently informed, yet finite and fallible cognizant agents is *constitutive* of our *being* rationally competent, sufficiently informed, though finite and fallible cognizant agents.[19]

## III. Natural law constructivism

Securing peace requires securing justice, so that each and all are secure in their just acquisitions and actions, which requires our security against others' infringement or invasion of our legitimate rights and their exercise, whether innocent or malicious. How if at all can we identify and distinguish whatever *is* just from mere appearances of or pretenses to justice? Here the Dilemma of the Criterion looms large, as it should: it cannot be addressed cogently by any of the typical approaches pursued by moral philosophers or jurists, which inevitably take as basic premises whatever people may think, believe, feel, claim, or codify to be just. The most such approaches afford is identifying and systematizing the commitments of whatever group(s) sufficiently share those purported basic premises. Justice, however, cannot be justice merely for agreeable people, for effective majorities nor for vocal minorities; it must address those issues and problems posed by the morally ignorant, negligent, vicious, erroneous, obstinate, belligerent, *and* by victims and casualties of injustice. Who are these exactly, and why so? These questions, too,

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[18] See Westphal, "Kant's 'Critical Philosophy'?" Kant's Categorical Imperative, Formula of Universal Law: "Act only in accord with that maxim through which you can at the same time will that it become a universal law" (*GMS* 4:221); Kant's Universal Principle of Justice: "An act is *right* if it, or if according to its maxim, one's freedom of will can coexist with everyone's freedom in accord with a universal law" (*MS*, *Einl.* §C, 6:230). (The latter principle indicates the universality basic to the former, *per* below.)

[19] Westphal, *Grounding Pragmatic Realism*, §§71-91.

raise the Dilemma of the Criterion. Appealing to a transcendent being won't help because such appeals are so often controversial, factional, fractious, disingenuous, or even murderous.[20] Appealing to positive law won't help, because legal enactment, whether constitutional or statute, does not suffice to identify or distinguish between justice and injustice, in contrast to legality and illegality (within some jurisdiction). Appealing to what Kant calls the 'dignity' or incommensurable value of humanity within each and every person won't help, because whether there are incommensurable values remains hotly contested by utilitarians and disregarded by today's virtue theorists. Appealing to empirical facts won't suffice, because facts as such do not suffice to identify or resolve issues of legitimacy, including permissibility. Indeed, none of the typical moral theories or methods prominent today nor in the previous three centuries can address these basic issues about identifying and justifying fundamental principles of ethics and justice.[21]

Fortunately, there is a cogent method for identifying and justifying the core principles of a universally valid natural law morality, *without* appeal to moral realism, nor to (purportedly) moral motivations, 'values,' utility (however calculated or distributed), manifest preferences, validity claims, game theory, nor to Kant's account of 'dignity.' This method was discovered by Kant, adopted and augmented by Hegel, yet the core principle is quite common historically and globally. One formulation is found in the Hippocratic Oath: "[...] above all, I shall do no harm, nor commit injustice."[22]

Versions of this principle can be found globally, across cultures, religions, and history. To use this principle requires identifying – accurately, of course – what counts as just and unjust, and what counts as (impermissible) 'harm.' Kant's universalizability tests using the Categorical Imperative or the Universal Principle of Justice stress the publicity of just

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[20] This remark solely concerns religious (or pseudo-religious) *claims* made within public debate; the present analysis is strictly independent of, hence entirely *neutral* about, living religious faith.

[21] See Onora O'Neill, *Constructing Authorities: Reason, Politics and Interpretation in Kant's Philosophy* (Cambridge: Cambridge University Press, 2015), 56-85; Onora O'Neill, "Justice Without Ethics: A Twentieth Century Innovation?" in *The Cambridge Companion to the Philosophy of Law*, ed. John Tasioulas, 135-151 (Cambridge: Cambridge University Press, 2020); K. R. Westphal, *Hegel's Civic Republicanism: Integrating Natural Law with Kant's Moral Constructivism* (London and New York: Routledge, 2020), §§8-11; K. R. Westphal, "Gilligan, Kohlberg and 20th-Century (C.E.) Moral Theory: Does Anglophone Ethics Rest on a Mistake?" *Jahrbuch für Recht und Ethik/Annual Review of Law and Ethics* 30 (2022): 199-234.

[22] Hippocrates, *Oath*; *cf. Epidemics* 1.11; *CW* 1: 298.17-18, 164.11-12, resp., in *idem*., *Collected Works*, 2 vols., ed. and tr. W. H. S. Jones (Cambridge, MA: Harvard University Press, 1868); cited as '*CW*' by vol:p.line numbers.

or morally permissible maxims or actions, by proscribing as wrong any action or any maxim (*i.e.*, any principle of action) which requires for its success the evasion or over-powering of anyone's rational agency. Any action or maxim which can only succeed by evading or over-powering anyone's rational agency cannot be rationally justified because it fails Kant's explication of rational judgment and justification (*per* §§2.1, 2.2), as signalled by his publicity requirement (*per* §2.3).

Using this criterion of right action requires us to know and understand human agency and our human circumstances of action here on Earth, within in our present circumstances. Using Kant's moral principles requires, he insists, a 'practical anthropology' which catalogues our (attitude-independent) human capacities and incapacities for reasoning, acting and suffering.[23] To this Hegel adds, the proper use of Kant's moral principles requires a comprehensive political economy and theory of social institutions to understand our principles and our actions within our actual social circumstances, so that we can and do attend to the unintended consequences of our actions and collective interactions. Hegel expressly upholds Kant's fundamental principles and their use; Hegel addresses core issues of their actual use within our actual societies,[24] invoking strict liability for consequences of one's actions, defending freedom of thought and action, and devising a comprehensive institutional theory, including political representation, provisions for adequate public education and for sufficient public information regarding actual institutional functioning so that unintended consequences of group activities can be identified, assessed and as needed remedied.[25] Hegel's political institutions are not impracticable; they were incorporated into the modern Finnish republic by Johan Vilhelm Snellman, which served as a model for Nordic and Scandinavian countries.[26]

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[23] K. R. Westphal, *How Hume and Kant Reconstruct Natural Law: Justifying Strict Objectivity* without *Debating Moral Realism* (Oxford: The Clarendon Press, 2016), §§21, 38.

[24] Westphal, *Hegel's Civic Republicanism*.

[25] I criticize several common presumptions which occlude Hegel's Kantian principles, *sans* transcendental idealism, in "Was heißt es, sich in der kritischen Philosophie zu orientieren? Heterodoxe hermeneutische Briefe zur Beförderung der Humanität," in Werner Flach und Christian Krijnen, *Kant und Hegel über Freiheit. Mit Diskussionsbeiträgen* (Leiden: Brill, 2021), 201-216. Hegel was the first philosopher to recognize that Kant's properly Critical philosophy consists in his comprehensive Critique of Reason, which holds altogether independently of Kant's transcendental idealism; *cf.* Westphal, *Grounding Pragmatic Realism*, and K. R. Westphal, "The Question Answered: What is Kant's 'Critical Philosophy'?" In *The History of Philosophy as Philosophy: The Russian Vocation of Nelly V. Motroshilova*, ed. Marina F. Bykova (Leiden: Brill, 2023).

[26] See Johan Vilhelm Snellman, *Låran om Staten* [*Staatslehre*] (Stockholm: Z. Hæggström, 1842); Westphal, *Hegel's Civic Republicanism*, §§47, 6.2, 77.1.

## IV. Training to autonomy

### a. Moral autonomy

Literally, 'auto-nomy' means being law unto oneself, or self-legislating. Confusions about Kant's account of moral autonomy persist by assuming that individual autonomy consists in creating one's own moral code. That is quite the opposite of Kant's account, for it insures total mutual mis-understanding and interference. Just, equable solutions to a host of social coordination problems are fundamental issues of justice. 'Legislating' requires not only a rule of action (or omission), but also enacting it *as obligatory*, the *Gebung* (legislat*ing*) of moral requirement *to oneself*. What we ourselves author and authorize in Kant's account of moral autonomy is holding *ourselves* accountable to moral requirement.[27] Moral imperatives are 'categorical' insofar as they are obligatory *regardless* of one's contingent wants, hopes or aims. This has its exact parallel regarding cognitive autonomy: that we hold ourselves accountable to the requirements of accurate, justifiable cognitive judgment. Such autonomy of individual rational judgment is required to understand and assess evidence, testimony, theory, explanations, advice, expert opinion, or proposed policy, in contrast to merely accepting or rejecting them; this holds both in morals and in cognition; *this* is Kant's autonomy of rational judgment and justification (*per* §II).

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[27] *GMS* 4:333, 440, 453, 454; *TL* 6:383, 444. As Kant's view remains so widely misunderstood, here are key statements of *his* account of autonomy: "Der Gegenstand der Achtung ist also lediglich *das Gesetz* und zwar dasjenige, *das wir uns selbst und doch als an sich nothwendig auferlegen*. Als Gesetz sind wir ihm unterworfen, ohne die Selbstliebe zu befragen; *als uns von uns selbst auferlegt*, ist es doch eine Folge unsers Willens [...]. Alle Achtung für eine Person ist eigentlich nur Achtung fürs Gesetz (der Rechtschaffenheit etc.), wovon jene uns das Beispiel giebt." (*GMS* 4:401-2 Anm.); "Der schlechterdings gute Wille, dessen Princip ein kategorischer Imperativ sein muß, wird also, in Ansehung aller Objecte unbestimmt, bloß die Form des Wollens überhaupt enthalten und zwar *als Autonomie, d.i. die Tauglichkeit der Maxime eines jeden guten Willens, sich selbst zum allgemeinen Gesetze zu machen, ist selbst das alleinige Gesetz, das sich der Wille eines jeden vernünftigen Wesens selbst auferlegt*, ohne irgend eine Triebfeder und Interesse derselben als Grund unterzulegen." (*GMS* 4:444); "Die übersinnliche Natur eben derselben Wesen ist dagegen ihre Existenz nach Gesetzen, die von aller empirischen Bedingung unabhängig sind, mithin zur *Autonomie* der reinen Vernunft gehören. Und da die Gesetze, nach welchen das Dasein der Dinge vom Erkenntniß abhängt, praktisch sind: so ist die übersinnliche Natur, so weit wir uns einen Begriff von ihr machen können, nichts anders als *eine Natur unter der Autonomie der reinen praktischen Vernunft*. *Das Gesetz* dieser Autonomie aber ist *das moralische Gesetz* [...]." (*KpV* 5:43); "Also ist das allgemeine Rechtsgesetz: handle äußerlich so, daß der freie Gebrauch deiner Willkür mit der Freiheit von jedermann nach einem allgemeinen Gesetze zusammen bestehen könne, zwar *ein Gesetz, welches mir eine Verbindlichkeit auferlegt* [...]." (*RL* 6: 231); "Da [der Mensch] sich aber nicht blos als Person überhaupt, sondern auch als Mensch, d.i. als eine Person, die *Pflichten auf sich hat, die ihm seine eigene Vernunft auferlegt*, betrachten muß [...]." (*TL* 6:435). See further O'Neill, *Constructing Authorities*, 103-150.

b. Education

Nothing is automatic about individual rational autonomy. Kant agrees entirely with both Aristotle and Hegel about our manifold mutual interdependencies, including birth, nurture, upbringing, education (both informal and formal) and commerce. Hence Kant agrees entirely with both Aristotle and Hegel about our being a *ζῷον πολιτικὸν*, and about the decisive importance of our fidelity to reason. All three highlight that anyone's recognizing and affirming one's decisive obligation to hold oneself responsible to moral and to cognitive requirement requires sufficient education. Given a good enough start, each of us can with diligence continue developing our rational autonomy and acquiring relevant, accurate information to inform our properly judging whatever matters come before us, or to identify good sources of information or expert advice whenever needed. So doing requires that we learn to suspend our own presumptions, prejudices or beliefs pertaining to that topic so that these, too, can be re-assessed, and either revised, replaced or corroborated. The 'universality' fundamental to Kant's universalization tests is the universality required for publicity, to scrutinize one's own best judgments, and to afford their public scrutiny, so that we can identify objectively actual states of affairs, and distinguish these from error, insufficient accuracy or insufficient justification, whether innocent or malicious.

c. Enlightenment: Individual and collective

Accordingly, enlightening individuals through proper education and 'training to autonomy,' as Barbara Herman aptly calls it,[28] is feasible, as Kant notes at the end of "What is Orientation in Thinking?":

> To employ one's own reason means simply to ask oneself, whenever one is urged to accept something, whether one finds it possible to transform the reason for accepting it, or the rule which follows from what is accepted, into a universal principle governing the use of one's reason. Everyone can apply this test to oneself; and then superstition and zealotry will be seen to vanish immediately, even if the individual lacks sufficient knowledge to refute them on objective grounds. [...] Hence it is easy to lay the basis of enlightenment in individual *subjects* by education; one must merely begin early to accustom young minds to this reflection.[29]

[28] Barbara Herman, *Moral Literacy* (Cambridge, MA: Harvard University Press, 2007), 130-153.

[29] Kant, "Orientation in Thinking" (DO), 8:146-7 ftnt. Note that Kant here counters mere

There Kant also notes a key problem confronting public reason and reasoning publicly; in contrast,

> To enlighten an age [...] is arduous; for there are numerous external obstacles which either proscribe that manner of education or burden its implementation.[30]

Accordingly, Kant notes that his own 'age of enlightenment' is not itself an enlightened age.[31] The problems confronting enlightenment Kant notes in answering the Akademie prize question, What is enlightenment? remain problems today, indeed more pervasively and urgently so.

Nevertheless, training to autonomy and the enlightenment this fosters is not at all optional! In his Doctrine of Virtue, Kant addresses the difficult challenge to properly explicate a crucial class of strict self-regarding duties.[32] Central among these is the strict duty to hold oneself responsible to moral requirement; this is the duty to become and to maintain one's moral autonomy, and to assess one's own moral conscientiousness. So doing is no luxury. Kant argues, soundly I submit, that acquiring any individual (or 'subjective') right requires understanding that right, its scope and limits, and its constitutive strict juridical duty to exercise one's right *only* rightfully, by identifying and omitting any abusive mis-uses of that right, to which one is not at all entitled, neither by one's right, nor by general juridical principles. Both *Rechtsfähigkeit* (juridical competence) and moral imputability require individual autonomy; nothing less and nothing else can do.[33]

From these considerations we can also grasp the fundamental moral, juridical and civil principle of *humility*! Of refraining from believing or acting so as to impose one's own views or actions upon others, merely because one supposes one may so believe or act. With this,

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acceptance of another's word; he does not at all claim, nor believe, that we each can acquire all relevant information and understanding solo.

[30] Ibid., 8:147 ftnt.

[31] "What is Enlightenment?" (WA, 1785), 8:14.

[32] *Die Metaphysik der Sitten* (1798), *GS* 6:205-493; Part II: *Tugendlehre* (Doctrine of Virtue; '*TL*'), §§13, 14, 21, 22.

[33] For an independent and illuminating account of conscience and conscientiousness which coincides with and corroborates Kant's account of autonomy, without using the term, see Thomas Green, *Voices: The Educational Formation of Conscience* (Notre Dame, IN: University of Notre Dame Press, 1999).

we return to the injunction classically formulated in the Hippocratic Oath.[34]

## V. The precarities of public reasoning

### a. Theory and practice redoux

The theoretical challenges reviewed above (§§II-IV): the Dilemma of the Criterion, the character and requirements of rational judgment and justification, and the individual rational autonomy involved in holding oneself responsible to moral and to cognitive requirement, are not merely theoretical: they are profoundly practical. Born near Chicago in 1955, I grew up in the Cold War, the fallout of the McCarthy era, the stifling conservative conformism of white middle class respectability, yet for a *goy* I learned about the atrocities of the two world wars and the Holocaust before I was ten, thanks to my best friend, Dick Purdy, and his father's historical library. Neighboring Chicago was a civics lesson in *Realpolitik* of the sort shunned by US civics classes. I was confronted with virulent, ignorant white racism when Evanston schools introduced a bussing program to bring black students to much better, predominantly white schools (1966). I heard Martin Luther King Jr. preach at the First Methodist Church of Evanston following his march through segregated neighborhoods on the near West side of Chicago (5.08.1966); my memories of the occasion remain fresh to this day. Already quite alert to events and to issues of justice, I grew up through the US Civil Rights Movement, the (predominantly white middle-class) student protests against the Viet Nam War, third-wave feminism and the rise of environmentalism. I was a very interested observer; too young to participate, but only so avoiding doing anything stupid, harmful or counter-productive. In each of these hotly contested issues, I witnessed the same fundamental problem: Each side of each issue insisting ever more loudly that it alone was right and righteous, and that the opposing faction was wrong and deluded or wicked (or both). All of these manifest *in concreto* the Dilemma of the Criterion, with a very morbid lesson: Either we solve that Dilemma, in theory *and* in practice, or we are at one another's throats. Accordingly, I devoted my studies and career to determining whether the Dilemma of the Criterion can be solved, and whether cogent criteria of objectivity can be identified and justified in moral philosophy (ethics and justice) and

[34] A strongly convergent account of fundamental moral-juridical principles and their justification is developed by Deryck Beyleveld; see *Ethical Rationalism and the Law*, eds. Patrick Capps and Sean Pattinson (Oxford: Hart Publishing, 2017).

in epistemology (including history and philosophy of science). Finding positive, insightful resolutions of these issues required neglecting philosophical factions and fads and painstaking scrutiny of (especially) Kant's and Hegel's texts and views. These theoretical successes etch yet more deeply the problems of implementing sound principles within our very unruly, fractious practices, both within philosophy and within our social lives, domestically and internationally.

b. Liberal education

The aim of liberal education was identified by Aristotle: it is the public education required to be and to conduct oneself as a free citizen within one's polity.[35] This education was fostered and beautifully illustrated by Herrad von Landsberg in 'Hortus deliciarum.'[36] These methods were examined and illustrated by Kant, both as matters of general pedagogy and specifically pertaining to moral education. These pedagogical methods were used by Hegel, as Rector and Professor of Preparatory Philosophical Studies at the Nürnberg Gymnasium (1808-1816),[37] and are central to his civic republicanism.[38] The deleterious encroachment of professional schools upon the proper tasks of liberal university education were detailed and urgently decried by J. S. Mill in his Rectorial Address to the University of Edinburgh (1867),[39] the fountainhead a swelling current of detailed diagnostics into the present day.[40] The problem remains the same: Occidental cultures and nations have stressed individual rights of various sorts, without proper attention to the responsibilities constitutive of any such individual right and its rightful exercise, nor to the kind of education required for any putative right holder to understand these crucial issues and to act according-

[35] Randall Curren, *Aristotle on the Necessity of Public Education* (Lanham, MD: Rowman & Littlefield, 2000).

[36] Herrad von Landsberg, "Hortus deliciarum," *ca.* 1180, http: //www.plosin.com/work/Hortus.html.

[37] See Friedrich Kapp, *Georg Wilhelm Friedrich Hegel als Gymnasial-Rektor. Oder die Höhe der Gymnasialbildung unserer Zeit* (Minden: Eßmann, 1835); Kristina Bosakova and Marina Bykova, "Hegel and Niethammer on the Educational Practice in Civil Society," *Journal of Philosophy of Education* 55, no. 1 (2021): 99-125.

[38] Westphal, *Hegel's Civic Republicanism*, §§29.4, 37.5-6, 72, 74.

[39] John Stuart Mill, "Inaugural Address Delivered to the University of St. Andrews," in *The Collected Works of John Stuart Mill*, 33 vols., ed. J. M. Robson (Toronto: University of Toronto Press, 1963-1991), 21: 217-257.

[40] Catalogued in K. R. Westphal, "Higher Education and Academic Administration: Current Crises Long Since Foretold," *Social Epistemology Review and Reply Collective* 7, no. 1 (2018): 41-47.

ly.[41] I was lucky; I received much of the core of such education from my mother, Alice, who early taught me (and my sisters) not to settle for easy answers, and from my high school training in library research and thesis papers, with which I made the most of my university and graduate studies. I have done all I can to impart these same skills to my students, often with great (if not always immediate) success.[42]

In the USA, the public education required for enlightened, responsible citizenship was well understood by Thomas Jefferson, who proposed its legislation to the Commonwealth of Virginia.[43] No such education has been mandated in the USA, though individual schools or school districts may undertake its provision. The reasons constantly urged against liberal education for proper citizenship in the USA are ever the same: penny wisdom complaining about costs, coupled with pound foolishness disregarding the devastating and far greater costs of inadequate education.[44] Due to its original federation of states, the USA has no Ministry of Education setting national standards or curricula; standards and curricula are entirely the responsibility of individual states and local school districts. (The US Department of Health, Education and Welfare handles only some funding issues in education.) This situation is exacerbated by publishers aiming to produce textbooks for national use. Expanding markets in this way requires limiting content to national consensus. In such a fractious nation, that consensus is very meager; textbooks are vetted and rewritten by committee to preclude offending anyone. Thus, historical and current offences are avoided or expurgated. The resulting expository 'style' is awful; no wonder student achievement continues to decline in the USA, especially (though not only) in history. Angered by liberal reforms to improve justice, the 'Republican' party has shamelessly promoted appointing Supreme Court justices solely due to conservative convictions; the Historical School of Jurisprudence countered by Hegel recurs in the vacuous ju-

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[41] *Cf.* K. R. Westphal, "Back to the 3 R's: Rights, Responsibilities and Reasoning," *SATS* 17, no. 1 (2016): 21-60.

[42] They are summarized in my 'Guidelines for Philosophy Essays', which are guidelines for thesis papers across the disciplines, posted on my webpage under 'Study Aids', together with a sample writing intensive syllabus, by which these methods and skills are best taught and learned at university level.

[43] Thomas Jefferson, "Bill for the More General Diffusion of Knowledge," in *Report of the Committee of Revisors appointed by the General Assembly of Virginia in MDCCLXXVI*. Published by order of the General Assembly and printed by Dixon & Holt, in the city of Richmond [VA], November 1784; Bill no. 79, ch. LXXIX, 53-55.

[44] K. R. Westphal, "'A Republic, If You Can Keep It,'" *Social Epistemology Review and Reply Collective* 11, no. 7 (2022): 22-32.

ridical slogan of 'original intent,' which is used to block any laws which cannot be rooted in the black letters of the US Constitution – as if there were no 'original intent' of the US Constitutional Convention and the ratification of the US Constitution to 'form a more perfect union,' as Lincoln later put it.

c. Legality vs. justice

As Hegel's philosophy is so deeply Kantian in principle, allowing Hegel to attend extensively and intensively to institutional, legal, and juridical history, I draw from Hegel to more sharply focus the precarities of public reason and public reasoning. The Enlightenment aspirations for freedom, justice and liberty for all expressed in the US Declaration of Independence (1776) are thwarted by the US Constitution (1787) which conceded to chattel slavery in the South, which denied both liberty and justice to blacks, each of whom was nevertheless counted as 3/5 of a human being for calculating 'proportional' representation in the US House of Representatives.[45] Nearly a century later (1868) this shameful legal compromise was expressly repealed by §2 of the 14th (constitutional) Amendment. Despite this legal improvement, the USA remains deeply racist to this day, as is now widely reported in news regarding white supremacist groups, too many chronically corrupt police departments and practices, and a vitally urgent nationwide movement so absurdly yet suitably named: Black Lives Matter; no such group nor name should be required in any democratic republic![46]

d. Hegel vs. Restauration

Hegel recognized – in print – the abomination of slavery, also in the USA.[47] Leopold von Henning testified that Hegel's philosophy of history always, also in its final presentation (WS 1830/31), celebrated the ideals of the French Revolution,[48] whilst Eduard Gans, expert in Hegel's philosophies of justice and of world history, expressly noted that Hegel's *Philosophical Outlines of Justice* expand upon, further undergird and aug-

[45] US Constitution, Article 1, Section 2, Clause 3.

[46] For subtle, informative examination of this important movement see Vincent Lloyd, *Black Dignity: The Struggle against Domination* (New Haven, CT: Yale University Press, 2023), whose findings strongly converge with the present analysis.

[47] Hegel, *Rph* §§57R, 66+R, 270R, *n.*2.

[48] Carl Ludwig Michelet, "Sitzungsbericht der Philosophischen Gesellschaft," *Der Gedanke. Philosophische Zeitschrift* 2 (1861): 76.

ment Rousseau's and Kant's republican principles of justice and liberty.[49] Indeed, Hegel's *Outlines of Justice* details the most robust account of civic republicanism we have.[50] There Hegel argues cogently, incisively, and persistently for inclusive republican justice, against the conservative historical school of jurisprudence headed by Haller, Hugo, and von Savigny. The historical school of jurisprudence is positivist: Law is whatever is codified within some specified jurisdiction. The historical school merely preferred *old* positive law, especially Roman law, and countered (*inter alia*) attempts to revise Germanic law to provide uniformity across German regions, such as *Das allgemeine Landrecht*.[51] Hegel argued expressly against the historical school,[52] and argued repeatedly against the views of Haller and Hugo by name. In many footnotes Hegel singles out absurdities and irrationalities in Roman law, demonstrating why Roman law, so cherished by the historical school, can be a key source (which it is), yet no ultimate foundation for jurisprudence.

Hegel witnessed Prussia's abandoning further legal and social reforms after 1815. In 1810 Friedrich Wilhelm III took a decidedly conservative turn, reverting to a cabinet-based government of precisely the kind vom Stein abolished in 1807. Friedrich III emphatically asserted his absolutism in the Karlsbad decrees (1819). In brief, Hegel lived through the struggle between sheer positive law wielded by conservative or reactionary powers to block, counter or repress the republican principles of *just* law Kant and Hegel articulated, justified and defended in no uncertain terms in print.[53] Indeed, Hegel knew this conflict between rule by edict, the key principle of state power, and natural law principles of justice is ancient, dramatized by Sophocles in the figures of Creon and Antigone.[54]

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[49] Eduard Gans, "Vorrede," in Georg Wilhelm Friedrich Hegel, *Grundlinien der Philosophie des Rechts oder Naturrecht und Staatswissenschaft im Grundrisse*, ed. Eduard Gans, v-xvii (Berlin: Duncker & Humblot, 1833), *SW* 8:v-xvii; trans. M. Hoffheimer in M. Hoffheimer, *Eduard Gans and the Hegelian Philosophy of Law* (Dordrecht: Kluwer, 1995), 87-92; Gans, "Vorrede," in Hegel, *Philiosophie der Geschichte*, *SW* 9:v-xxi; trans. J. Sibree, and repr. in Hoffheimer, 97-106.

[50] Westphal, *Hegel's Civic Republicanism*.

[51] *Allgemeines Gesetzbuch für die preussischen Staaten*, 4 Bde (Berlin: Königliche Hofbuchdruckerei, 1791).

[52] *Rph* §§3R, 211R.

[53] *Rph*, and already in his reports on the Estates Assembly of Würtemburg, 1815-1816 (MM 4:462-597).

[54] See K. R. Westphal, "L'ispirazione tragica della dialettica fenomenologica di Hegel," translated by C. Ferrini, in *Antichi e nuovi dialoghi di sapienti e di eroi. Etica, linguaggio e dialettica fra tragedia greca e filosofia*, ed. Linda M. Napolitano Valditara (Trieste: ETS Edizioni Università di

The conservative hegemony of purely positive law persisted in Prussia under Friedrich Willhelm IV (reign: 7.06.1840 - 2.01.1861) and Bismarck (high offices: 1862 - 1890), who skillfully out-manoeuvred liberal reform. Indeed, this hegemony of sheer positive law persisted after Bismarck, through Hindenberg, right up to WWII;[55] it has always been ruthlessly deployed by autocrats, and by would-be autocrats. Yet autocrats have no monopoly on legal positivism, nor its use to evade or suppress justice.

e. Our continuing history of injustice

Freedom, justice, republicanism and popular representation all require and deserve educated, competent, engaged, responsible citizens.[56] However, from the outset the USA persistently blocked, and continues to block, proper public education due to short-sighted budgetary priorities, thus underscoring the adage: 'If you think education is expensive, ignorance is more so!'[57] As commercial and technological developments have made our societies ever more complex and interlinked, our publics have (on the whole) become ever more poorly educated and informed, hence ever less prepared to understand these developments and deal with them responsibly.This situation is exacerbated by the huge expansion of state security organs during and following the Cold War, allowing ever more government activities and putative *raison d'etat* to be cloaked in secrecy. Conversely, the US 'two party system' mostly works to share power between these established parties, suppressing representation of other political voices, regardless of the merits of their aims or proposals. 'Democracy' in the USA is restrict-

Trieste, 2002), 151-177, or K. R. Westphal, *Hegel's Epistemology: A Philosophical Introduction to the Phenomenology of Spirit* (Cambridge, MA: Hackett Publishing Co., 2003), §§3-8. On the genesis of German conservatism, see Klaus Epstein, *The Genesis of German Conservatism* (Princeton, NJ: Princeton University Press, 1966).

[55] Hermann Jahrreis, "Expert Opinion by Defense Witness Professor Jahrreis concerning the Development of German Law," in *Trials of War Criminals before the Nuernberg Military Tribunals under Control Council Law No. 10, Nuernberg October 1946-April 1949* (Washington, D.C.: US Government Printing Office, 1951), vol. 3: USA *vs.* Josef Altstoetter, *et al* (Case 3; "The Justice Case"), 3:252-284; https://www.loc.gov/rr/frd/Military_Law/NTswar-criminals.html; on Hindenberg, see 261-262.

[56] Westphal, "Back to the 3 R's"; and K. R. Westphal, "Universal Moral Principles and Mother Wit, *or:* Étienne Tempier and Cold War Rationality," in *Regelfolgen, Regelschaffen, Regeländern – die Herausforderung für Auto-Nomie und Universalismus durch Ludwig Wittgenstein, Martin Heidegger und Carl Schmitt*, eds. Manuela Massa, *et al.*, 313-356 (Frankfurt am Main: Peter Lang, 2020).

[57] The adage developed at the turn of the 20th C. (C.E.); on its origins and refinement see https://quoteinvestigator.com/2016/05/03/expense/.

ed to the sufficiently affluent, politically influential few.[58] Those who try to raise such points publically are routinely rebuffed for fomenting class war, whereas in the USA there are supposedly no classes; Cold War ideology and rhetorical strategy remain politically effective.[59]

The constitutional reform made by the 14th Amendment (§2) to the US Constitution was thwarted in practice, not only in former confederate states, but throughout the country by commerce dominated by whites.[60] Black citizens of the USA, especially working class and poor blacks, have remained disenfranchised by law, not least by crafty voter registration regulations, and voting districts constantly re-drawn to serve those already holding state office, and by various illicit real estate practices. Reliable, accurate information regarding racial or economic justice is available,[61] but is chronically shunted aside by 'mainstream' US media, most of which require advertising revenues, which inevitably compromise reliable, independent, comprehensive news reporting.[62] One brief, illuminating example is this: When world heavy-weight champion boxer, Cassias Clay, converted to Islam and adopted the name Muhammad Ali (6.03.1964), he did so to protest the slaughter of blacks in the USA and black youth deployed by the USA to Southeast Asia to fight a misguided, undeclared, protracted war.[63] Ali's conversion was reported in mainstream US media as no more than the latest surprising stunt of the master showman he always was. Martin

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[58] Michael Parenti, *Democracy for the Few* (New York: St. Martins, 1970); 9th ed.: Boston, MA: Wadsworth/Cengage, 2010.

[59] In Germany, political parties have resisted measures for greater public participation in politics, expressing various forms of demophobia; see Gertrude Lübbe-Wolff, *Deomophobie. Muss man die direkte Demokratie fürchten?* (Frankfurt am Main: Klostermann, 2023).

[60] Manning Marabel, *How Capitalism Underdeveloped Black America* (Boston, MA: South End Press, 1983).

[61] *E.g.*, Richard Wright, *Black Boy: A Record of Childhood and Youth* (Cleveland & New York: World Publishing Co., 1945); John Howard Griffin, *Black Like Me* (Boston: Houghton Mifflin, 1961; 2nd corrected ed.: Antonio, TX: Wings Press, 2004). The Southern Poverty Law Center (https://www.splcenter.org) provides detailed recent and current information about hate groups and hate crimes in the USA. In accord with the Hate Crimes Statistics Act (1990), the FBI collects national statistics on hate crimes. The FBI reports 'Supplemental Hate Crime Statistics, 2021,' showing an increase of 11.6% over 2020, mostly against Asians, though for technical reasons it was unable to collect all relevant reports from local law enforcement agencies; see Federal Bureau of Investigation, "Report: Supplemental Hate Crime Statistics, 2021," March 3, 2023, https://www.documentcloud.org/documents/23706818-supplemental-hate-crime-statistics-2021?responsive=1&title=1.

[62] The US Public Broadcasting Service is ever more frequently burdened by 'Republican' grip on their purse strings, so that PBS news is no longer as comprehensive or searching as it once was.

[63] David Zirin, "How Cassius Clay Became Muhammad Ali," *The Progressive Magazine*, March 16, 2016, https://progressive.org/magazine/cassius-clay-became-muhammad-ali/.

Luther King, Jr. made his dream of freedom and justice for *all* powerfully and eloquently in his famous speech, stressing that the US Declaration of Independence speaks of 'all men,' not restricting their lofty ideals solely to whites, to men, nor to any other group.[64] The 1963 March on Washington King addressed was a march for jobs, for constructive employment. Instead, the US Congress devised the Welfare System; those who need such aid have been excoriated by conservatives ever since.[65]

Yes, progress has been made, *e.g.,* by the landmark Supreme Court decision in Brown *v.* Board of Education (1954) which outlawed segregated schooling across the USA, and by the Voting Rights Act (1965). Such progress was aided by TV news of freedom marches by Southern blacks, of their March on Washington (1963), of the potent hostilities when the high school in Little Rock, Arkansas, was officially desegregated (1957) under the many watchful, well-armed eyes of the National Guard, called in (and required) to preserve peace. TV reporters such as Eric Sevareid knew in advance what exposing Southern racism on national television news would achieve, as later it achieved in turning public opinion against the undeclared, abominable US war in Viet Nam. However, each of these advances suffered subsequent degradation in practice as conservatives restricted their implementation or buttressed segregationist practices by other means, including statute law (*cf.* Rooks 2017). Johnson signed the Voting Rights Act into law on 2 July 1964; that evening he predicted, 'we just delivered the South to the Republican Party for a long time to come.'[66] That is why the main trend is as indicated here, despite apparent counter-evidence.[67] In brief,

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[64] In his speech at the March on Washington for Jobs and Freedom (28.08.1963); *cf.* Hansen (2003, 53, 56), as he stressed in his delivered speech (*ibid.*, 73, 91, 123), though also in a longer version of his prepared speech (*ibid.*, 92), just as Frederick Douglas made the same point about 'we the people' in Glasgow (1860), in a speech well-known to King (*ibid.*, 136); see Drew Hansen, *The Dream. Martin Luther King, Jr., and the Speech that Inspired a Nation* (New York: Harper Collins, 2003).

[65] Francis Fox Piven and Richard Cloward, *Regulating the Poor: The Functions of Public Welfare* (New York: Pantheon, 1971; 2nd rev. ed., 1993); William Ryan, *Blaming the Victim* (New York: Pantheon, 1971; 2nd rev. ed. Knopf/Doubleday, 1976).

[66] According to some accounts, this remark followed his signing the Civil Rights Act (1965); see Ken Germany, *Lyndon B. Johnson and Civil Rights: Introduction to the Digital Edition* (Charlottesville, VA: University of Virginia, 2010), available online.

[67] For present purposes it suffices to identify this arc of purely positive law prevailing from Hegel's day to our own. Much more belongs to this prevailing arc, including persistent undercutting of Native Americans' and women's rights. On the very hard right turn taken by what still calls itself the "Republican" party, see *e.g.* John Dean, *Conservatives without Conscience* (New York: Viking, 2006); John Dean, *Broken Government: How Republican Rule Destroyed the Legislative, Executive, and Judicial Branches* (New York: Penguin, 2007); Jane Mayer, *The Dark Side: The inside Story of How the War on Terror Turned into a War on American*

this is how the US polity shifted from the interest groups championed by David Truman[68] to the now obvious rule of powerful, predominantly white elites, *per* C.W. Mills,[69] all at the expense of public goods, such as pollution control,[70] which because they benefit everyone, don't foster sufficiently wealthy, politically active groups whose favor, funds and votes can be curried by political officials promising to serve those groups' interests.[71]

With domestic politics so gerrymandered to thwart rather than support 'government of the people, by the people, for the people,' as Lincoln declared at Gettysburg (19.11.1863), citizens are unable to do what Kant expected in republics: to cautiously and prudently resist foreign wars.[72] Instead, with so much political influence wielded by major industries and wealthy individuals, US foreign policy often and readily turns to 'gunboat diplomacy', *i.e.*, using military means to enforce US strategic aims abroad;[73] US foreign aid programs too often serve corporate interests – equated with national interests – more than the legitimate interests of recipient states,[74] a phenomenon also exhib-

*Ideals* (New York: Doubleday, 2008). The 'Republican' lurch ever father to the right began under Nixon, who apprenticed under Joseph McCarthy and his 'House Un-American Activities Committee' (HUAC); this time-line cannot be detailed here, see Dan Carter, *The Politics of Rage: George Wallace, the Origins of the New Conservatism, and the Transformation of American Politics* (Baton Rouge, LA: Louisiana State University Press, 1995; 2nd rev. ed., 2000); Dan Carter, *From George Wallace to Newt Gingrich. Race in the Conservative Counterrevolution, 1963-1994* (Baton Rouge, LA: Louisiana State University Press, 1996). One significant detail from 1980 was first reported on 19.03.2023 (*sic*!) by the *New York Times*; see Chas Danner, "Lawmaker Confirms 'October Surprise' Plot to Sabotage Jimmy Carter's Reelection," *New York Intelligencer*, March 19, 2023, https://nymag.com/intelligencer/2023/03/lawmaker-admits-1980-gop-plot-to-prolong-iran-hostage-crisis.html.

[68] David Truman, *The Governmental Process: Political Interests and Public Opinion* (New York: Knopf, 1951).

[69] Charles Wright Mills, *The Power Elite* (New York: Oxford University Press, 1956).

[70] Matthew Crenson, *The Un-politics of Air Pollution. A Study of Non-decisionmaking in the Cities* (Baltimore, MD: Johns Hopkins University Press, 1971).

[71] The Republican National Committee now shamelessly requires a minimum number of campaign *donors* for anyone to qualify as 'Republican' candidate for the US Presidency. At least the RNC now prudently requires candidates to sign an oath of loyalty to the US Constitution (!).

[72] ZeF 8:351.

[73] Smedley D. Buttler, *War is a Racket* (New York: Round Table Press, 1935); expanded edition ed. Adam Parfrey (Los Angeles, CA: Feral House, 2003). On Brigadier General Smedly D. Butler, US Marine Corp., the most highly decorated soldier in US history, see Hans Schmidt, *Maverick Marine: General Smedley D. Butler and the Contradictions of American Military History* (Lexington, KY: University Press of Kentucky, 1988).

[74] *Cf. e.g.,* Andrew Bacevic, ed., *The Imperial Tense: Prospects and Problems of American Empire* (Chicago, IL: Ivan R. Dee, 2003); Amy Chua, *World On Fire: How Exporting Free Market Democracy Breeds Ethnic Hatred and Global Instability* (New York: Doubleday, 2003);

ited by Western Europe,[75] and more generally between our Northern and Southern hemispheres.[76] The US 'War on Terrorism' has taken on many features of McCarthyism, becoming equally a war upon domestic civil rights and 'American ideals.'[77] Kant expected the 'spirit' of international trade would foster peaceful international relations;[78] though concerned about colonial injustice,[79] Kant underestimated the ease and extent to which *free* exchange would be preempted by imperialist or colonialist commerce.

Public reason and reasoning cogently in public are decisive; little wonder they remain thwarted in practice: Those who benefit most from present social arrangements have vested interests in preserving such arrangements. Hence typically they reject counter-proposals out of hand, *modus tollendo tollens*. Hence the urgency of both the Dilemma of the Criterion, and its sole alternative: cogent, responsible public reasoning. Kant is right that the *bello omnium contra omnes* in Hobbes' state of nature has its exact counterpart in the life of the mind,[80] which can only be rectified by thorough Critique of reason – *and* training to autonomy. This predicament is pervasive: people asserting their freedom of expression, whilst neglecting their correlative duty to speak constructively within the public sphere.[81] In the USA unbridled pursuit of rent-seeking behavior, now triumphant as managerialism, wrests control of all sorts of public institutions to which rent-seeking behaviors are utterly unsuited, indeed antithetical, supplanting the ancient Roman motto for sustained rule, 'bread and circuses,' with (proportionally) ever less 'bread' (earnings) plus an unbridled media onslaught of commercial and pop-cultural distractions, promoting ever more the imperatives to 'shop till you drop,' to 'dance all night and party all day' and by all means keep up with the latest fashions, much of which are

Ilia Xypolia, *Human Rights, Imperialism, and Corruption in US Foreign Policy* (Cham: Palgrave Macmillan, 2022).

[75] Walter Rodney, *How Europe Underdeveloped Africa* (Washington, D.C.: Howard University Press, 1982).

[76] Ruth Blakeley, *State Terrorism and Neoliberalism: The North in the South* (New York: Routledge, 2009); Haar and Kaufmann, *Gerechter Krieg und Niemandsland*.

[77] Mayer, *The Dark Side*.

[78] ZeF, 8:364, 368.

[79] See Inés Valdez, "It's Not about Race: Good Wars, Bad Wars, and the Origins of Kant's Anti-colonialism," *American Political Science Review* 111, no. 4 (2017): 819-834.

[80] *KrV* B780.

[81] *Cf.* Onora O'Neill, *Speech Rights, Speech Wrongs* (Amsterdam: Vangorcum, 2016).

ever more exhibitionist[82] – of course only if you're sufficiently affluent to afford such distractions.

In his prescient novel, *1984*, George Orwell envisioned telescreens, devices inundating people with relentless government propaganda whilst recording their every word and deed.[83] Well, nothing so crude these days! Today we have instead (so-called) smart phones to do those jobs – for any industry or government who seeks to have them done. The closing passages of Orwell's novel merit attention still today: There he states that full implementation of Newspeak is so portentous that it was planned for the year 2050! One key portent is that Newspeak would render utterly unintelligible such declarations of human rights as the first paragraph of the US Declaration of Independence, quoted *verbatim* by Orwell. Sound-bite 'news' and so-called 'social media' selecting for 'high impact', *i.e.,* panic responses, are serving these ends all too effectively. Having now unwittingly created the Anthropocene – by neglecting the sociological law of unintended consequences and everything known about population dynamics – we have much negligence and denial to answer for, and much urgent work to accomplish if we are to secure justice, peace, liberty and indeed life for all. The principles of rational judgment and public reason are clear and cogent, whilst public reasoning has become ever more precarious. That is our urgent dilemma, which requires robust liberal education to remedy.[84]

In complex, risky decisions, algorithms or decision procedures may be useful, but both in principle and in practice, their use is subject to *ceteris paribus* clauses and to limits upon both required and presently feasible approximations. All causal information we have about material processes, and all social regularities we know, both of which are crucial to public policy and to decision-making, including military decisions, are subject to *ceteris paribus* clauses. Action is future-oriented and can at best anticipate how things can or most likely shall turn out: We always decide how to act on the basis of imperfect information, knowledge and forecasting. We may often anticipate well enough for many activities, but the more complex is the situation or more crucial is the decision, the more important are these kinds and sources

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[82] Carmine Sarracino and Kevin M. Scott, *The Porning of America: The Rise of Porn Culture, What It Means, and Where We Go from Here* (Boston, MA: Beacon Press, 2009).

[83] George Orwell, *Nineteen Eighty Four* (London: Secker & Warburg; New York: Harcourt, Brace & Co., 1949).

[84] See Randall Curren and Charles Dorn, *Patriotic Education: Realizing America in a Global Age* (Chicago, IL: University of Chicago Press, 2016); Randall Curren and Ellen Metzger, *Living Well Now and in the Future: Why Sustainability Matters* (Cambridge, MA: MIT Press, 2017).

of fallibility. Regarding physical processes, planning to act can attain engineering tolerances; not so for social processes, much less the 'human factors' inevitably involved in strategic gamesmanship; the greater complexity or urgency of the situation, the more sources of insufficient approximation and error. Excessive hopes for and reliance upon algorithms and decision procedures during the Cold War nearly drove reason to lose its mind.[85]

Hegel knew history to be a slaughter bench,[86] but subsequent history belies his youthful optimism, that once our philosophical comprehension is revolutionized, the actual world does not hold out.[87] Instead, our recent history confirms Frederick Douglass' (1857) observation, quoted and endorsed by Robeson,[88] seconded by Lewis[89]: "If there is no struggle, there is no progress. Power concedes nothing without a demand. It never did and it never will."[90]

Our challenge is, How can *de jure* justice triumph over *de facto* power, domestically and internationally? Nothing less will limit illicit state action, domestically or internationally. Kant's account of rational judgment and justification do not directly address the knotty questions of ethics within war, yet they provide crucial moral orientation and criteria of rational justification, without which those knotty questions cannot be addressed properly and cogently.[91] Furthermore, Kant's comprehensive moral theory, embracing

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[85] Paul Erickson, *et al.*, *How Reason almost Lost Its Mind: The Strange Career of Cold War Rationality* (Chicago, IL: University of Chicago Press, 2013).

[86] Hegel, *Vorlesungen über die Philosophie der Geschichte*, MM 12:35.

[87] To Niethammer, 28.10.1808; For illuminating, concise reflections on Kant's and Hegel's philosophies of history, see Hans-Dieter Klein, "Of Eternal Peace," in *The History of Philosophy as Philosophy: The Russian Vocation of Nelly V. Motroshilova*, ed. Marina F. Bykova (Leiden: Brill, 2023). Regarding Hegel's constructive contributions to international relations, see Max Erdmann, *Die Vernunft zwischen den Staaten. Zur Grundlegung des Völkerrechts im Werk von G. W. F. Hegel* (Tübingen: Mohr Siebeck, 2023). Although Hegel held (implausibly) that war fosters civic unity, which during peace tends to ossify into factions, much more effective provisions for sustaining civic unity would be (*e.g.*) two years of mandatory national service for young adults, one year domestic, a second year international. Hegel's civic republican government would readily support such programs.

[88] Paul Robeson, *Here I Stand* (London: Dodo Books, 1958), 97.

[89] John Lewis and Michael D'Orso, *Walking with the Wind: A Memoire of the Movement* (New York: Simon & Schuster, 1998), 473.

[90] Frederick Douglass, "West India Emancipation," speech in Canandaigua, New York, 1857, in *Two Speeches, by Frederick Douglass: One on West India Emancipation, Delivered at Canandaigua, Aug. 4th: and the Other on the Dred Scott Decision, Delivered in New York, on the Occasion of the Anniversary of the American Abolition Society, May, 1857* (Rochester, NY: C. P. Dewey, 1857), 3-24; reprinted in *Frederick Douglass: Selected Speeches and Writings*, eds. Philip S. Foner and Yuval Taylor (Chicago, IL: Lawrence Hill Books, 1999), 358-368, available online at https://www.blackpast.org/african-american-history/1857-frederick-douglass-if-there-no-struggle-there-no-progress/.

[91] *Cf.* Onora O'Neill, *Justice Across Boundaries: Whose Obligations?* (Cambridge: Cambridge University Press, 2016), 153-169.

both ethics and justice, affords a rich and important account of non-ideal normativity within actual institutions and practices, domestic and international.[92] Hence the urgent practical dilemma just noted is no ground for despair. Among Kant's quartet of key Critical questions is, 'What may I hope?' Kant quietly yet comprehensively answered the more fundamental question: What *should* we hope? – this 'should' is both moral and prudential.[93] Sustaining our hopes for sufficient justice for all, and promoting these hopes – our own and others' – by how we act and interact, all belong to moral requirement, to moral integrity and to proper public reasoning.

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[92] Christoph Horn, *Nicht-Ideale Normativität. Ein neuer Blick auf Kants politische Philosophie* (Berlin: Suhrkamp, 2014); O'Neill, *Justice Across Boundaries*, *idem.*, *From Principles to Practice: Normativity and Judgement in Ethics and Politics* (Cambridge: Cambridge University Press, 2018).

[93] Seniye Tilev, "What Should We Hope?" *Philosophia* 50, no. 5 (2022): 2685-2706.

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# Military Ethics Education – What Is It, How Should It Be Done, and Why Is It Important?

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**Abstract**

*This paper explores the topic of military ethics, what we mean by that term, what it covers, how it is understood, and how it is taught. It suggests that the unifying factor that makes this a coherent subject beyond individual national interpretations of it is the core idea of military professionalism. The paper draws out the distinction between training and education and draws on research conducted by a number of different people and agencies, including the International Committee of the Red Cross, to establish what factors contribute to effective pedagogy and the inculcation of appropriate attitudes and behaviours. The paper concludes by looking at the way military ethics contributes to military outcomes from protecting civilians and the vulnerable to building resilience in our own military personnel to protect their mental health, through to the strategic costs of losing the moral high ground if behaviour is seen to fall short of that expected from military professionals.*

**Keywords:** *military ethics education; professional ethics; continuing professional development*

## I. What do we mean by military ethics?

Military ethics is a specialist subset of applied ethics. Applied ethics is concerned not with conceptual or even existential questions about what ethics is, what the terms 'right' or 'wrong' mean or what grounds our understanding of morality (if anything), but rather with what the right thing to do is in a particular context. For us, that context is military service. In their short but excellent

essay "What Should We Mean by Military Ethics?" that marked the start of their joint tenure in charge of the *Journal of Military Ethics*, Sykes and Cook argue convincingly that *military ethics* does not, or rather should not, exist as a descriptive subject.[1] Its purpose is to provide practical guidance to those who need to know what is the appropriate thing to do, often in challenging situations. As such, military ethics refers to the principles and values that should guide the behaviour and decision-making of individuals within the military, encompassing and addressing the type of real-world challenges that are likely to arise in this particular area of human activity. Importantly, this should cover not just wartime activity, but also the behaviour and attitudes of the military in all their other day-to-day activities.

Due to the scope that the subject of military ethics embraces, it can be useful to break it down into three component areas – related and often overlapping, but also distinct.[2] The *Individual in the Profession* focuses on the military virtues, values and standards expected of professional military personnel, such as courage, integrity, and loyalty, and how they might be applied appropriately in specific situations.[3] The *Profession at Work* is concerned with the laws, rules and principles that guide and govern the work of military personnel at all levels of responsibility.[4] This ranges from understanding issues relating to defence planning, officership and followership, through to when and against whom it is appropriate to use force which of course includes an understanding of the laws of armed conflict – International Humanitarian Law (IHL). It also extends to informing an understanding of the context within which the military exists, looking at the way decisions to use military force at the level of governments and states are made, and how these translate through to the extraordinary permissions, rights, and duties of uniformed personnel when they act on behalf of those political communities, up to and including the use of lethal force. The

[1] Martin L. Cook and Henrik Syse, "What Should We Mean by 'Military Ethics?'" *Journal of Military Ethics* 9, no. 2 (2010): 119-122.

[2] The following tripartite approach is taken in NATO's Public Administration and Governance Defence Management and Economics Ethics and Leadership, *Partnership Action Plan on Defence Institution Building: Reference Curriculum* (Kingston, ON: Canadian Defence Academy, 2008), https://www.nato.int/nato_static_fl2014/assets/pdf/pdf_2015_10/20151013_151013-pap-dib-eng.pdf; the author has found this approach particularly useful when considering how to effectively design a comprehensive curriculum.

[3] See Michael Skerker, David Whetham, and Don Carrick, eds., *Military Virtues: Practical Guidance for Service Personnel at Every Career Stage* (Hampshire: Howgate Press, 2019).

[4] For an accessible overview of this area, see Deane-Peter Baker, ed., *Key Concepts in Military Ethics* (Sydney: UNSW Press, 2015).

third area, the *Profession and Society*, is concerned with understanding the relationship between the state and those who serve it.[5] It explores the responsibilities and duties on both sides of the civil/military divide, and also explores how wider social values relate to the military institution. It also, crucially, sets the limits on military obedience by explaining what the military can legitimately be tasked with doing – as well as what it cannot.

One of the challenges that arises when talking about military ethics is the question as to whether the challenges in the three areas set out above have different answers depending upon where you are the world. On the face of it, it is difficult to argue with the fact that different cultures have different ethical codes or values. Therefore, it would appear to follow that ethics, and in this case *military ethics*, can have no objective truth because they are simply based on opinions derived from one's cultural norms.[6] If indeed true, this leads us to the question, is there one *military ethic* or many? As well as being a fascinating topic to explore, this question also has very practical implications from a pedagogic perspective. I teach at a UK military institution that receives over 50 different nationalities on its flagship Staff Course to study and learn alongside British officers. I have taught at other institutions around the world, from Brunei to Colombia, via Ireland, France, and Nigeria, and many others. Is it really the case that *military ethics* can be treated as a single subject that can be taught in the same way wherever you are? What could provide the unifying factor that can tie the subject together into a coherent discipline and allow us to talk meaningfully about *military ethics* as if it is a single subject?

I believe the answer is to focus on what John Rawls might call the "overlapping consensus" – that common core of *professional* military values that do not change from place to place, demonstrating that even when some values conflict, many more will still be shared.[7] I will explain this a little more below, but the implications are that, while this chapter is titled Military Ethics Education, what we actually mean here is *Professional* Military Ethics Education, because that is what provides the core basis for the agreement. Part of that will be a commitment

[5] An excellent starting point for understanding this area is Pauline Shanks Kaurin, *On Obedience: Contrasting Philosophies for the Military, Citizenry, and Community* (Annapolis, MD: US Naval Institute, 2020).

[6] David Whetham, "The Challenge of Ethical Relativism in a Coalition Environment," *Journal of Military Ethics* 7, no. 4 (2008): 303.

[7] David Whetham, "Expeditionary Ethics Education," in *Routledge Handbook of Military Ethics*, ed. George R. Lucas, 123-132 (Abingdon and New York: Routledge, 2015), 129.

to upholding the laws of armed conflict and routine training in IHL, but this is also significantly bigger than simply about being a legally compliant organisation. There is a legal requirement for all military personnel to receive regular IHL training and all senior commanders should be supported by, or at least have access to, appropriately qualified legal advisors. Obviously, ethics and the law are closely related, but they are also not synonymous. While the law defines what can and cannot be done, professional judgment is required to determine what actually 'should' be done in a given circumstance within those, often wide, parameters. This is where professional military ethics informs decision-making and therefore shapes military action.

## II. How should military ethics be taught?

Different contexts will inevitably have an impact, sometimes profound, on the way that professional military ethics are understood, and therefore taught. For example, the states of the former Soviet Union or contemporary People's Liberation Army in China can pose cultural challenges when exploring the limits of obedience, where dissent is not viewed as something to be encouraged (to put it mildly). One can easily see that military service appears to require just such a disciplined obedience and that this that must be maintained, so that orders in the face of overwhelming danger on the battlefield will be obeyed without hesitation. That is something all professional military forces understand, because such attitudes are required for the military to be effective. But that does not mean that asking questions is universally discouraged. A special forces unit or a liberal state with a relatively flat hierarchical structure as far as attitudes are concerned may have a developed military institutional idea of 'reasonable challenge' that is designed to empower all individuals within an organisation to be able to speak up and be heard when they recognise that something is not right.[8] Such an approach was advocated for strongly in the UK's Chilcott Inquiry launched in the aftermath of the highly controversial invasion of Iraq.[9] The inquiry noted in excruciating detail significant failures in the planning of the campaign and specifically focused on

[8] United Kingdom Ministry of Defence, *The Good Operation: A Handbook for Those Involved in Operational Policy and Its Implementation* (Assets Publishing Service, 2017), 62, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/674545/TheGoodOperation_WEB.PDF.

[9] The National Archives, Committee of Privy Counsellors, *The Report on Iraq Inquiry*, November 23, 2017, https://webarchive.nationalarchives.gov.uk/ukgwa/20171123122743/http://www.iraqinquiry.org.uk/the-report/.

the dangers of groupthink and how detrimental this was for effective organisational culture. How can both positions be true – a requirement for rigid hierarchical obedience *and* reasonable challenge? While some life-and-death situations will absolutely require an instant response, the need for discipline is all too often used as an excuse not to listen to or offer alternative views when there is the time and opportunity. That way, disasters can be avoided.

That does not mean that all states will encourage such a degree of questioning throughout its military institutions. But even in the most rigidly hierarchical of contexts, unquestioning obedience under *any circumstances* is not something that is taught. The military profession, as with all professions, is defined and governed in large part by its ethic: the rules and behaviours by which its members conduct themselves. Any professional military force, anywhere in the world, sees itself as distinct from a 'mere' group of mercenaries or long-term contractors, and that self-identity is based on more than simply being a recognised servant of the state, authorised to employ violence as and when required. A degree of autonomy over how that violence is employed and the structured adherence to laws, codes, and accepted norms is part of that identity. That means that there are also some orders that must never be obeyed regardless of how important the person issuing the order is. 'I was only following orders' is not a defence against being found guilty of committing a war crime, and there is a positive duty in law as well as a professional obligation to refuse such an order. Importantly, that core idea does not vary between different militaries around the world. Unquestioning obedience in all situations, regardless of what it is you are being required to do, is *not* the mark of a professional organisation. A breach of those rules may be legally wrong and therefore make the perpetrator liable to legal sanction, but it is also likely to be seen as institutionally wrong in the sense that it will be considered unprofessional. A military that follows orders but, in the process, deliberately commits war crimes has failed the standard required to be considered a professional organisation. This also explains why for members of the armed forces, to be called 'unprofessional' is a significant insult. While civil military relations, the type of recent operational experience or even the demographic makeup of different militaries may vary from state to state, there are also core assumptions and an acceptance of core duties and obligations towards serving something bigger than simply an individual at the top of the hierarchy. This commitment towards serving the state and the corresponding responsibility for seeing the 'bigger picture' does not vary as much as one

might think.[10] Where unquestioning obedience to an individual rather than that bigger idea is demanded and provided, we have good reasons for questioning whether such an organisation should really be considered professional in a meaningful sense.[11]

While some ethical ideas may vary between (and even within) societies (although I think that the degree of difference is often overemphasised, which in the process tends to overlook the incredible amount of agreement that also exists across and between different cultures), there are also certain core ethical understandings that mean that the same principles do form a common grounding and also therefore a common normative language for discussing the rights and wrongs of different courses of action in a military context *wherever you are*.[12] This becomes obvious when you are talking with people that come from different countries but share membership of that military profession. The values that they agree on and the things that they consider to be important to uphold are surprisingly uniform (pun intended). In part, this is what Walzer refers to as the War Convention – that "set of articulated norms, customs, professional codes, legal precepts, religious and philosophical principles, and reciprocal arrangements that shape our judgments of military conduct."[13] While it is easy to focus on specific differences in how to apply a principle (for example, see which states have signed up to the anti-personnel landmine ban, or how some states can interpret the use of lethal force in individual self-defence to include defence of property, while others cannot), disagreements take place against a backdrop of extraordinary consensus. The fundamental principles and things like IHL – the Geneva Conventions having been universally ratified by every single state in the world – provide an astonishing level of agreement (even if some states do not always uphold those principles in practise in every case).[14] It is just such a level of

[10] The topic of military professionalism is explored well in chapter 3 of Stephen Coleman, "Professional Ethics, Duties and Obligations," in *Military Ethics: An introduction with Case Studies* (Oxford: Oxford University Press, 2012), 35-64.

[11] For example, whereas it is difficult to argue that the Wehrmacht in the Second World War were not operationally competent, the personal oath to serve their Fuhrer that they were obliged to make from 1934 onwards, rather than the German people and the country, made them effectively a private military rather than a professional one.

[12] For example, stealing, lying, or torturing babies are not activities recognised as being ethically good in any society, and for good reason.

[13] Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic Books, 2000), 44.

[14] Knut Dörmann, "Geneva Conventions still going strong at 60, other, International Committee of the Red Cross," *International Committee of the Red Cross*, August 7, 2009, https://www.

consensus that makes organisations such as the International Society for Military Ethics (ISME) possible.[15]

Of course, even where the idea of professionalism provides that unifying factor, that is still not the same as saying that it is therefore possible to teach military ethics in the same way wherever you are because *context matters*. The disagreements that arise are often actually very narrow in focus. To return to our obedience example above, the difference will not be about whether there is an obligation to refuse certain orders, but rather how such an obligation should be discharged. That understanding will likely shape other areas about how an organisation responds to other types of disagreement as well. While the principles may be broadly the same, the way that some of them are understood and applied may also have a degree of variation that needs to be appreciated and understood in context. Understanding the culturally appropriate way to raise a legitimate challenge is exactly the kind of context-specific activity that means a one-size-fits-all approach to military ethics is likely to be poorly received in many places.

Traditionally, another thing that is common across multiple states and jurisdictions is that military ethics was not a subject that was, historically, formally taught at all. Paul Robinson cites a process of 'institutional osmosis' as responsible for much of the values exhibited by the British Armed Forces in the past.[16] While that may have changed for the better today, much of the training and education done in this area is still not always done explicitly, or even consciously, and is still often taught through example and environmental exposure rather than formally. The bedrock of military ethics around the world is the institutional articulation and inculcation of certain 'values and standards,' representing a virtue ethics approach that would have been very familiar to Aristotle. Virtue ethics concentrates on the importance of character and on how we can nurture the right types of behaviour by practicing what we should do. The more we do the right thing, the more it becomes habit and therefore part of one's character.[17] While stated as values rather than virtues, the different services around the world

icrc.org/en/doc/resources/documents/interview/geneva-convention-interview-120809.htm.

[15] For example, for more information, see the website of the European Chapter of the International Society for Military Ethics: www.euroisme.eu.

[16] Paul Robinson, "Introduction: Ethics Education in the Military," in *Ethics Education in the Military*, eds. Paul Robinson, Nigel de Lee, and Don Carrick, 1-12 (Hampshire and Burlington, VT: Ashgate, 2008).

[17] David Whetham, "What Senior Leaders in Defence Should Know about Ethics and the Role That They Play in Creating the Right Command Climate," *The International Journal of Ethical Leadership* 8 (2021): 74.

provide institutional articulations of expected behaviour and expect recruits to learn and absorb them. For example, the values of the Australian Defence Force are professionalism, service, courage, respect, integrity, and excellence.[18] In the UK, the Royal Navy core values are: commitment, courage, discipline, respect for others, integrity, and loyalty.[19] The Royal Navy values are very similar to those of the British Army, and this is not that surprising when thinking about the purpose of those values.[20] One will see very similar values wherever one finds martial virtues articulated in such an institutional setting because long experience suggests that certain virtues are important in such a context.[21] The institutional hope is that, by fostering such behaviours in initial training, reinforcing it through exemplars of such behaviour, and promoting those individuals who consistently demonstrate them, people will be able to both recognise and actually do the right thing when the situation demands it. This inevitably leads to a focus on character. In theory at least, those with good character will flourish, while those who do not possess it, or cannot be moulded into having an appropriate character through training and education will be excluded.

Such a hope can be found in the reporting processes of both officers and enlisted personnel around the world. A focus on character development is often combined with continuing professional development opportunities at key career points, usually connected to promotion, to periodically acquire or reflect on effective analysis, and ethical decision-making skills as professional responsibilities grow.[22] However, there is a risk in focusing on character at the expense of understanding and appreciating the wider context. The Afghanistan Inquiry into allegations of war crimes committed by Australian Defence Force personnel notes that the power of the situation to undermine even the strong-

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[18] Australian Defence Force, *Military Ethics* (Canberra: Directorate of Information, Graphics and eResources Lessons and Doctrine Directorate, 2021), 29-30, https://theforge.defence.gov.au/sites/default/files/2021-10/ADF%20Philosophical%20Doctrine%20-%20Military%20Ethics.pdf.

[19] Royal Navy, "Chapter 21: The Divisional and Regimental System. Section 7," *Naval Personnel Management*, Ministry of Defence, 2016, https://www.royalnavy.mod.uk/-/media/royal-navy-responsive/documents/reference-library/br-3-vol-1/chapter-21.pdf.

[20] British Army, *A Soldier's Values and Standards,* Ministry of Defence, 2023, https://www.army.mod.uk/who-we-are/our-people/a-soldiers-values-and-standards/.

[21] Paul Robinson explores the similarity in language used around the world in "Introduction: Ethics Education in the Military," 1-12.

[22] Although it should be noted that this tends to be focused on officer education rather than enlisted training. For a discussion on this, see Paul Robinson, Nigel de Lee, and Don Carrick, eds., *Ethics Education in the Military* (Hampshire and Burlington, VT: Ashgate, 2008).

est of characters is now well-documented.[23] Preparing people for the environmental factors that will impact on their ethical awareness and understanding is also an essential function of *effective* military ethics education. Only in this way can a military institution build the essential resilience in its people to ensure that they do the correct thing – not simply say the right thing in a classroom, but actually *do* the right thing in the field. Drawing on rich empirical evidence of what is effective in terms of ethics education, Canadian military psychologist Deanna Messervey suggests the type of activity that is required:

> First, ethics training can be conducted in a non-stressful environment so that key lessons can be absorbed (such as the impact that crowds can have on ethical decision making). This information can be repeated to increase retention of key lessons. Next, ethics training can simulate stressful situations (such as surprise and shock) to teach soldiers how to respond when confronted with ethical dilemmas under stressful conditions. This can also allow soldiers to practise coping with strong emotions such as anger. Finally, when conducting scenario-based training, soldiers and leaders can practice intervening during a staged ethical misconduct.[24]

Of course, the range of areas addressed by the broad subject of military ethics means that different approaches will be required for those different areas. What is common across them all is that if one can normalise the discussion of ethical issues and turn it into a routine activity rather than an exceptional one, this can have an ongoing affirmation of the skills and attitudes that you are trying to promote. Reminding people about ethics on a regular basis has a positive impact on their behaviour.[25] This strongly suggests that military ethics education must be seen as an ongoing professional development process, not something that is limit-

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[23] Commonwealth of Australia, "Annex A to Chapter 3.03: Special Operations Command: Leadership and Ethics Review," *Inspector-General of the Australian Defence Force Afghanistan Inquiry Report*, by David Whetham, IGADF, 2020, https://www.defence.gov.au/about/reviews-inquiries/afghanistan-inquiry.

[24] Deanna L. Messervey and Jennifer M. Peach, "Battlefield Ethics: What Influences Ethical Behaviour on Operations?" in *The Human Dimensions of Operations: A Personal Research Perspective*, eds. Major Gary Ivery, Kerry Sudom, Waylon H. Dean, and Maxime Themblay, 83-101 (Kingston, ON: Canadian Defence Academy Press, 2014).

[25] Nina Mazar, On Amir, and Dan Ariely, "The Dishonesty of Honest People: A Theory of Self-Concept Maintenance," *Journal of Marketing Research* 45, no. 6 (2008): 633-644.

ed to initial training, and best practice suggests a need to embrace a full range of learning environments, both formal and informal.

This was the thinking behind the creation of a variety of online course materials and the innovative ethics education playing cards. Fifty-two questions from across the broad area of military ethics have been carefully developed by the King's College London Centre for Military Ethics (KCME), based on professional military ethics education curricula, in conjunction with research and testing on military focus groups, and in consultation with specialist lawyers.[26] The questions are matched to physical playing cards which are available (at cost price), along with the (free) android and Apple app, to military units everywhere.[27] These can be used to prompt informal discussion about the ethical challenges faced in military environments. Questions include:

- Should a soldier challenge an order if they consider it to be illegal? If so, how?
- Is necessity ever a reason to break the laws of war?
- Can soldiers refuse to serve if they disagree with their government's decisions?

Understanding that simply asking the question is not sufficient to create a learning moment, to ensure an appropriate 'take away' from any discussion, each card has a QR web link to the KCME webpages where there are additional prompts, questions, and information for each question, along with reading and articles. Groups of questions can be thematically linked so impromptu or pre-planned supported discussions can quickly be developed using the open-access material. The intervention can be integrated into formal classroom settings or taken completely out of that environment – to the firing range, pre-deployment briefing, or informal downtime between activities, permitting the type of regular engagement and socialising of values that is so important when building organisational ethos. The cards are used regularly by British, Australian, and Canadian units, and with assistance from international partners, such as Euro ISME, the military versions have so far been translated into Spanish, French, Portuguese, German, Serbian, Turkish, Arabic, Greek, Ukrainian, and Russian. In addition, a military

[26] "Playing Cards," Centre for Military Ethics – King's College London, accessed September 28, 2023, https://militaryethics.uk/en/playing-cards.

[27] King's College London – SSPP, "Enhancing ethics education for the military: SSSP Impact Prize Video," YouTube Video, 3:27, September 15, 2023, https://www.youtube.com/watch?v=X-EAVNZagLc.

medical ethics deck has also been developed to address the specific concerns that clinicians are likely to be faced with in different operational environments.

## III. Why is teaching military ethics important? Does it work?

In short – yes. We know that even short courses in military ethics, "delivered in the right way, by the right people, using the right material and methods of delivery can have very real results on the behaviour of personnel deployed on operations."[28] Teaching military ethics has been shown to reduce suffering and distress. For example, a training package, delivered to a US Infantry Brigade in Iraq, was administered between December 2007 and January 2008 in the middle of a fifteen-month high-intensity combat deployment. The package involved a session of leader-led discussions on popular movie vignettes, with structured questions relating to whether people agreed with the choices made on screen, and the thinking behind such decisions. At the end of the deployment, reports of unethical behaviour and attitudes in this group were compared with a randomly selected sample from the same brigade, pre-training. Though limited the intervention was, the ethics intervention was associated with significantly lower rates of unethical conduct of soldiers and a greater willingness to report and address misconduct than in those before training or for those that did not receive it.[29]

Research conducted by the International Committee of the Red Cross, and published in the *Roots of Restraint* in 2020, moved attention away from simply focusing on why people break the rules, to looking at why they don't.[30] In the process, the study identified that organisational culture is essential; simply focusing on the rules alone would be less successful than also appreciating and nurturing an ethical culture in the organisation itself. Many of militaries around the world will have advanced military ethics programmes and will have thought long and hard about how to do this will. Many more simply do not have the institutional capacity or pedagogic expertise to develop and deliver effective curricula to everyone who needs to be able to access it. Ensuring that there are quality materials freely available that can be used by anyone is therefore very important if we are to support those

[28] Whetham, "What Senior Leaders in Defence Should Know," 86.

[29] Cristopher H. Warner et. al., "Effectiveness of Battlefield-Ethics Training During Combat Deployment: A Programme Assessment," *The Lancet* 378, no. 9794 (2011): 915-924.

[30] International Committee of the Red Cross, *The Roots of Restraint in War*, June 20, 2020, https://www.icrc.org/en/publication/4352-roots-restraint-war.

institutions around the world. King's College London has a simple mission: to make the world a better place – and that accords with the 'public good' approach that we take to promoting and supporting military ethics education around the world.[31] As of July 2023, the KCME free online resources have been accessed by over 53,000 unique users from 178 different countries, with over 90,000 hours of video content and answered over 340,000 questions on military ethics worked through.[32] The medical ethics cards and app have been integrated into NATO courses and have been utilised in the training programmes provided by the International Committee of Military Medicine.

While adoption rates can be measured relatively easily, showing that any of this has actually worked is more challenging. Definitively demonstrating impact on behaviours rather than just attitudes is not an easy thing to gather data on – especially during a combat deployment – KCME has extensive validation from practitioners in different parts of the world on the different courses and pedagogic tools that are available. To give one example from our collaboration with the Colombian War College in Bogota, by April 2022, over 3000 mid-ranking and senior military personnel had successfully completed our *Key Concepts in Military Ethics* course. In their post course feedback, the majority of these perceived that military ethics was not only able to improve intra- and inter-unit cohesion but is also positively correlated with military effectiveness (2,272/2,828 respondents). A clear majority of respondents who took the course understood that adhering to ethical principles of conduct is always a must, regardless of how one's adversary behaves. We already have significant evidence that the cards are an effective tool for enhancing existing military ethics education materials. For example, in Colombia, 881/945 respondents from the Army (93.2%) stated that they found the cards useful. The tools have also received very positive reviews from military educators around the world. For example, this one from a US-based educator:

> The KCME Military Ethics Education Playing Cards Deck is an exceptionally versatile tool that has great utility for both individual reflection and organizational-level ethics education. It should become part of professional military ethics education toolkits across the U.S. Armed Forces and its allies and partners.[33]

[31] "Vision and Strategy," King's College London, https://www.kcl.ac.uk/about/strategy.

[32] King's Centre for Military Ethics internal data.

[33] Ray Kimball, "Playing at Ethics: Reviewing Military Ethics Education Playing Cards," *The*

One of the areas that is attracting considerable attention at the moment is the role military ethics education may be able to play in ameliorating moral injury and post-traumatic stress disorder (PTSD) prevention. Evidence strongly suggests that ambiguity and uncertainty over rules can contribute to PTSD and may also be linked to the idea of moral injury. The term *moral injury* was proposed by the American psychologist Jonathan Shay a decade ago to describe unseen wounds thought to be distinct from the more closely studied experience of PTSD. Shay suggests that *moral injury* is present when "there has been a betrayal of what is morally correct; by someone who holds legitimate authority; and, in a high-stakes situation."[34] Placing people into situations that they are unprepared for can contribute to this, so military ethics appears to have a role to play in looking after the psychological wellbeing of our own personnel as well as looking after the physical wellbeing of civilians and wounded enemy combatants.[35] Familiarising people with what they are supposed to do, socialising those appropriate responses among peers, and in the process giving people the confidence to be able to challenge if they are placed in an ethically compromising situation is a key part of building organisational resilience.

In 2022, KCME proactively approached the British military to support Ukrainian troops being trained in the UK. The existing military ethics materials were translated into Ukrainian, and then a partnership of KCME, Euro ISME and Case Western Reserve University funded the printing and distribution of 500 packs of cards. We have subsequently been asked to provide additional packs directly to units in Ukraine to be used by psychologists supporting front line troops as part of the Ukrainian version of Trauma Risk Management (TRiM). The ethics cards are used to explore different scenarios and situations and establish what options are available and what are the most appropriate responses given the context. In addition to help protect the mental health of their own personnel, the Ukrainians appear very aware that international support is closely linked to their overall strategic success or failure. Maintaining the moral high ground and demonstrating that they take internationally accepted military ethics norms seriously, is therefore closely associated with preserving international public support.

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*Strategy Bridge*, May 4, 2022, https://thestrategybridge.org/the-bridge/2022/5/4/playing-at-ethics-reviewing-military-ethics-education-playing-cards.

[34] Jonathan Shay, *Achilles in Vietnam: Combat Trauma and the Undoing of Character* (New York: Simon and Schuster, 1994), 20.

[35] Whetham, "What Senior Leaders in Defence Should Know," 81.

To ensure that the material is genuinely useful, it needs to draw on the real-life experience and expectations of those using it. Therefore, soliciting feedback and constructive criticism is essential to ensure currency. For example, the practical experience of using the Ukrainian language version of the Military Ethics Education cards in field conditions are being fed back into the design and development stages so they can be refined and made as useful as possible. This focused research is done *with* practitioners, leading to pragmatic, accessible and relevant tools that are both desperately needed and can make a real difference.

## IV. Conclusion

The type of ethical challenges that are posed by military service sometimes do not have straightforward answers. Sometimes, there are competing answers, leading to the perception that 'it's all relative.' However, it is important to note that the disagreements that arise are often actually very narrow in focus. Philosophers and ethicists tend to be drawn to the complicated examples where it is not straightforward to see how to apply the rules in that specific situation, but that is very different from saying that there is no agreement on the 99% of other situations. Discussing complicated examples allows us to explore which principle is best applied in which circumstance, and the strengths and weaknesses of different tools to do this.

Clearly, good training is better than no training, but this is also exactly why there is a need for genuine education rather than simply training in this important area. Training, done well, teaches what to do in a specific situation. Education, done well, is about equipping individuals with the tools and skills to be able to make sense of and do the correct thing in *any* situation, regardless of whether it has been trained for. It is precisely the questions that do not have black and white responses that need to be engaged with, thought about and discussed by the people for whom they are most pertinent – military practitioners – before those people are put into situations where they need to actually make those decisions. There is an institutional cost in time and money of doing this properly. The cost of not doing it, an on individual, organisational and strategic level, is likely to be considerably higher.

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