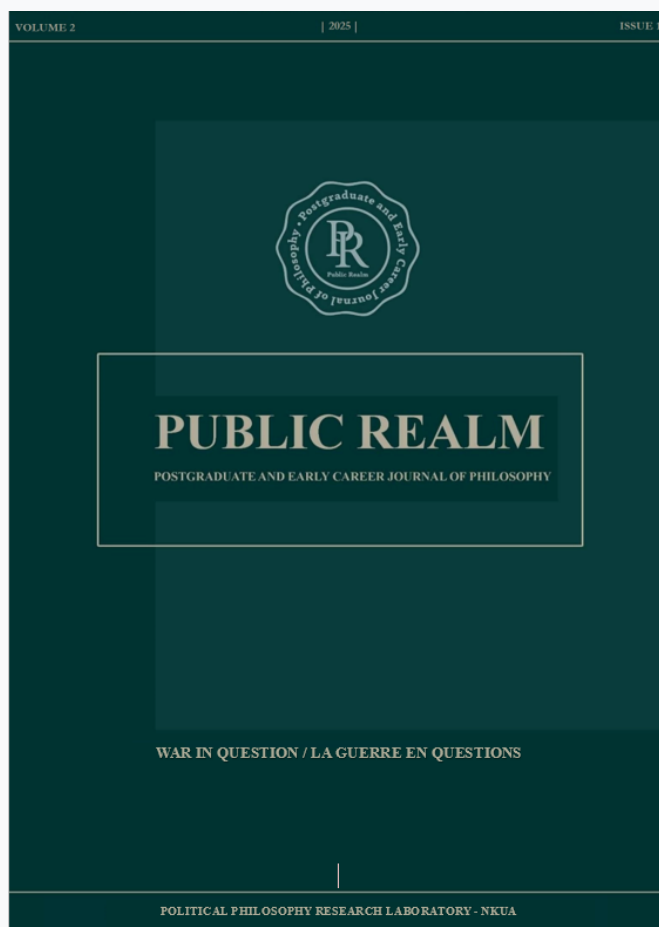


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When does morality win in war?

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Abstract

Morality in war has long been a topic of scholarly and political discussion. Just war theory suggests three dimensions of war that should be morally considered: whether it is justified to wage war, how a war could be fought justly, and how can justice be guaranteed after a war. To this day, there has not been any definitive consensus on what makes a war just or on how morality in war should be approached. The purpose of this essay is to answer the question of when morality prevails in war. According to the argument put forth, morality prevails when the state upholds the right to national defence insofar as it serves as a means for a people to exercise their right to collective self-determination, and that is because this is the most effective way to guarantee that the largest number of people will benefit the most over time.

Keywords

Morality, philosophy, just war theory, self-determination, utilitarianism

Introduction

Morality in war has been studied by scholars and political thinkers for centuries. Some intellectuals deny that morality has a part in war, and others believe that the horrors of war could never be justified morally. According to just war theory, there are three aspects of war that should be taken into account from a moral perspective: 1) the justification for waging war (*jus ad bellum*), 2) how a war may be waged justly (*jus in bello*), and 3) how justice can be secured after the end of war (*jus post bellum*). Although the relevant literature is rich in arguments, there is as yet no conclusive agreement on the question of what constitutes a just war and how we should approach morality in war.

In an effort to provide a more convincing answer, this essay seeks to answer a question posed by Saul Smilansky: in times of war, when does morality win?¹ Smilansky's conclusion is that we should give a nation that defends itself against external attacks more leeway in maintaining the universally applied moral standards of just war. While taking into consideration Smilansky's assumptions and line of reasoning, this essay proceeds in a different direction and arrives at a different conclusion. Firstly, it is suggested that it is more fitting to adopt a utilitarian perspective on the principles of just war theory on the basis of institutional - rather than inter-personal - moral reasoning. It is thus demonstrated why it is more appropriate to regard morality in war as an institutional matter and why, from an institutional standpoint, a utilitarian approach offers the most coherent understanding of the moral principles that comprise the just war theory doctrine.

Subsequently, this essay claims that the most compelling argument for justifying a war is a state's right to national defence and that a utilitarian viewpoint is better suited to bolster this argument. It is specifically argued that peoples should be recognized as entitled to collective self-determination because there is a moral value in people being able to establish laws of justice as members of politically organised communities. Given that the state has proven to be the most effective means for people to exercise their right to collective self-determination, the state ought to be authorized to use right of national defence.

Finally, the concluding argument maintains that collective self-determination guarantees the most beneficial result for the largest amount of people because co-establishing and abiding by rules of justice ensures that most individuals enjoy certain rights and have opportunities to improve their well-being. Thus, the most convincing response to the question of when does morality win in war requires an institutional moral reasoning perspective and holds that a state's right to national defence to the extent that the state serves as a means for the people to exercise their right to self-determination. The reason for this is that collective self-determination, and thus national defence, is the best way to ensure the best long-term outcome for the majority of people.

¹ Saul Smilansky, "When Does Morality Win?, " *Ratio* 23, no. 1 (January 4, 2010): 102-10.

When does morality win?

In his essay “When does morality win?” Saul Smilansky argues that we need to gain a better understanding of what it takes for morality to win, to acknowledge this as a significant moral issue, and to reconsider how morality can prevail more frequently. To illustrate his point, he presents a hypothetical scenario of two nations at war; Benevolentia and Malevoran. Malevoran engages in unjust aggression and disregards the accepted moral standards of war. Benevolentia’s troops and leadership strictly adhere to those rules, and as a result, Benevolentia loses. This constitutes a “*reductio* of the prevailing morality of warfare”, Smilansky claims, since morality has been undermined by Malevoran’s victory over Benevolentia.²

In this scenario, Malevoran has launched an unfair war and is fighting it in an unjust manner (targeting Benevolentia’s civilian population, for example), but that is not the only evil thing about its activities. Malevoran’s strategy is predicated on the notion that it can succeed in doing evil (pursuing an unjust war) because it uses its enemy’s moral rectitude to its advantage. Malevoran cannot be stopped, Smilansky notes, because it has brought about a circumstance wherein, should Benevolentia tries to fight back, it would implicate itself in the unintentional harming of numerous civilians, who Malevoran has deliberately put in harm’s way.

From Smilansky’s point of view, morality has lost. In particular, the moral nation and army are defeated by the immoral ones and good people have lost and ultimately suffered more because of the evil people’s aggression.³ Needless to say, it does not sound right when people find themselves in a worse predicament the more rigidly they adhere to moral principles, and Benevolentia’s morality proved to be a terrible burden for both the country and its people. We may also acknowledge that Malevoran’s triumph has been attributed in large part to the fact that Malevoran had taken advantage of Benevolentia’s higher moral standards. It would be fair to assume that, as a result of witnessing this turn of events, other nations would now be far more inclined to follow Malevoran’s example in similar circumstances.⁴ Thus, not only has immorality prevailed, but it also appears to be the wisest course of action.

According to a different perspective, in Smilansky’s scenario morality has triumphed since Benevolentia’s combatants were strongly tempted to act immorally but resisted the urge. Although the good Benevolentians have ultimately suffered more than the evil Malevorans, this is ethically unimportant because since moral values were upheld by Benevolentia’s leaders and combatants, morality has triumphed.⁵ This viewpoint assumes that moral purity is what matters most. Moreover, one might argue that if Benevolentia had adhered to its higher moral standards, morality would still have triumphed because other countries, fearing Malevoran, would have sided with Benevolentia to preserve world peace.⁶ However, as Smilansky points

² Smilansky, “When does morality win?”, 102.

³ Ibid., p. 103.

⁴ Ibid.

⁵ Ibid., p. 104.

⁶ Ibid., p.104.

out, this response is unlikely to be convincing because it presents an overly optimistic view of international relations.

Smilansky encourages us to approach the problem in “evolutionary” terms. In particular, we should be concerned about ensuring that morality will not allow its opponents to dominate; that the option of morality seems to be the most beneficial to the people, and that immorality will lose the appeal it gains when morally upright people consistently and overwhelmingly suffer because they uphold moral principles in difficult times.⁷ However, in order to achieve these goals, we must reject the rigorous absolutism of the conventional morality of war which requires us to uphold the high moral standards regardless of whether an opponent retaliates and regardless of the ramifications of our actions.

According to Smilansky, we will have achieved a moral upgrade if we give Benevolentia more leeway in its attacks on Malevoran and if Malevoran is held accountable for the subsequent Malevoranian casualties.⁸ In other words, we have to set lower standards and show tolerance for those who are attempting to protect their defenceless civilians from opponents who have no regard for morality. We uphold morality, Smilansky contends, when we defend ourselves against those who act immorally and deliberately try to prey on the consciences of others. One could claim, though, that Benevolentia would have ended up just as evil as Malevoran by doing evil similar to that of Malevoran. As Hemingway wrote, “Being against evil doesn’t make you good. [...] when you start taking pleasure in it you are awfully close to the thing you’re fighting”.⁹ Smilansky counter-argues that this is false comparison: firstly, because Benevolentia would not have acted the way it did if Malevoran had not attacked in the first place and secondly, because Malevoran purposely puts its own non-combatant inhabitants in danger and seeks to injure as many of them as it can because this would signify success, while Benevolentia views the killing of non-combatants as accidental and a moral failure. In other words, Benevolentia’s potential misconduct is restricted to specific actions with calculable consequences, rather than an all-out assault on a nation’s populace or a random onslaught similar to that of terrorists.¹⁰

While I find Smilansky’s reasoning convincing, I do not believe Benevolentia should have the right to not fully adhere to the moral principles of just war theory because it has the right intentions. When the rules are twisted or relaxed to benefit one actor over another based on preconceived notions of what is morally right, their significance is compromised. The question of how morality might prevail, or more accurately, of how we can ensure that morality does not become ineffective on a global scale and can be discarded, should be approached in a different way. In agreement with Jeffrey P. Whitman, I propose the adoption of a utilitarian approach to just war theory based on institutional moral reasoning. By doing so, we arrive at the conclusion that we need to prioritize a state’s right to national defence as a yardstick for justifying war in order for morality to win, because this leads to the best possible long-term outcome for the greatest number of people.

⁷ Ibid., p. 107.

⁸ Ibid., p. 108.

⁹ Hemingway Ernest, *Islands in the Stream* (London: Arrow Books, 2013).

¹⁰ Smilansky, “When does morality win?”.

A Utilitarian Perspective

In his article “War and Massacre,” Thomas Nagel notes that a person who recognizes the force of constraints in conflict can face significant moral quandaries. He may believe, for example, that bombing a community will put an end to a terrorist campaign. If he believes that the benefits of a particular measure will clearly outweigh the costs, but he still suspects that he should not implement it, he is in a dilemma caused by a conflict between two opposing categories of moral reason: utilitarian and absolutist, in which utilitarianism prioritizes concern with what will happen and absolutism prioritizes concern with what one is doing.¹¹ However, not all just war theorists adhere to this dichotomy.

In his essay “Just War Theory and the War on Terrorism: A Utilitarian Perspective” Whitman presents his approach to just war theory. According to Whitman, just war theory can provide the conceptual means necessary to address the evolving circumstances of the modern world.¹² It lies halfway between realism and pacifism, he notes. While realists hold that morality usually has no role in conducting war, and that only national interests and military necessity should be prioritized, pacifists generally believe that all forms of violence and war are immoral.¹³ His main argument rests on the idea that a re-examination of the tradition’s moral underpinnings in the context of the fight against terrorism shows that, as opposed to the generally accepted rights-based, deontological view of just war theory, a rule-utilitarian perspective is the most relevant one for comprehending the just war tradition. A utilitarian foundation would yield a balanced assessment of the advantages and disadvantages of policy decisions concerning war and suggest more caution and prudence in fighting terrorism and external aggression.

According to just war theorists, morality establishes restrictions on what kinds of wars and tactics can be justified. In order to achieve this, the three main objectives of just war theory are to: (1) reduce the likelihood of war occurring; (2) lessen the severity and suffering of war; and (3) reduce the likelihood that a war will break out after it has been resolved by achieving a just peace. The goal of reducing the incidence of war is primarily guided by what just war theorists refer to as the *jus ad bellum* standards, which must be satisfied in order for a state to wage a just war. As Whitman notes, “most standard interpretations of *jus ad bellum* list six criteria: just cause, legitimate authority, right intention, likelihood of success, proportionality, and last resort”.¹⁴ Secondly, the principles of *jus in bello* regulate the methods of waging war that apply to the second objective of just war theory, namely to lessen the savagery of conflict. The most significant of these regulations deals with how non-combatants - including the sick and wounded and prisoners of war - are treated during armed conflict. Lastly, just war theorists have developed what are known as the *jus post bellum* criteria, which apply

¹¹ Nagel, Thomas “War and massacre.” *Philosophy and Public Affairs*, 1972, 1 (Winter): 123-144.

¹² Jeffrey Whitman, “Just War Theory and the War on Terrorism: A Utilitarian Perspective,” *Public Integrity* 9, no. 1 (January 1, 2007): 23-43.

¹³ *Ibid.*, p. 26.

¹⁴ *Ibid.*

to the theory's third aim, which is to preserve the peace following the conclusion of a conflict.

In discussing *jus ad bellum* Whitman contends that "a just war is a defensive war aimed at defeating aggression which in turn is defined as any violation of a state's territorial integrity or political sovereignty".¹⁵ He also argues that the aspect of just cause and the acts done in support of it are inextricably linked with the right intention aspect in the way that, if just cause is an objective norm, then right intention is its subjective equivalent. Furthermore, Whitman notes that the proportionality criterion compares the costs and benefits of using military action for all parties involved, not just the state considering doing so. This is the utilitarian test and it is the most important *jus ad bellum* standard that is applied to the moral justification of war because it asks if the costs of victory will be worth it for all sides involved.¹⁶

The *jus in bello* rules are based on two primary moral precepts, proportionality and discrimination. The general rule of discrimination states that non-combatants and their property should never be directly attacked. Whitman stresses the word "direct" here since the concept of discrimination does allow for unintentional, or indirect, attacks on people who are protected and their property - also known as "collateral damage". The principle of double effect, which is frequently used in such circumstances, allows harm to be done to protected individuals as long as it is an inevitable and unintentional consequence of operations intended to achieve legitimate military goals, such as demolishing opposing forces or taking control of strategically important territory, and as long as the benefits of those operations outweigh the costs.¹⁷

Following Whitman's analysis, in the context of *jus in bello*, proportionality demands that the devastation caused by a specific act of war must not be out of proportion to the objective to be achieved. To distinguish this from the *jus ad bellum* principle of proportionality, which requires balancing the costs and benefits of the entire war, Whitman draws attention to specific acts of war. For instance, it would be wrong to use artillery fire to level a whole hamlet, killing civilians in the process, in order to apprehend or neutralize one or two enemy snipers.¹⁸ The methods used must not undermine the prospect of peace or foster disrespect for human life. When using the proportionality criterion, Whitman asserts, soldiers and their superiors are effectively making a utilitarian decision.

The last aspect of the just war theory is the concept of *jus post bellum* and refers to the moral requirements of justification of the end-of-war period, such as reconstruction and establishment of a just peace. A just peace would be achieved if the authorities strive to make up for the wrongs committed by the aggressor without inflaming tensions to the point where a new conflict breaks out. Although public authorities may be sensitive to feelings of retaliation, *jus post bellum* principles require them to use "coldly

¹⁵ Ibid., p. 27.

¹⁶ Ibid., p. 28.

¹⁷ Ibid., p. 29.

¹⁸ Ibid.

calculating” reason to overcome the public’s natural impulses in order to achieve the aim of a better condition of peace.¹⁹

As Whitman notes, unwarranted and excessive use of force in the armed forces tends to sow discontent and the seeds of future terrorism. Therefore, a theory of just war must acknowledge the interconnectedness of *jus ad bellum*, *jus in bello*, and *jus post bellum*, especially with regards to the war on terrorism. This could be achieved precisely by acknowledging the utilitarian foundation of just war theory, which holds that all of the theory’s requirements are justified eventually by weighing benefits against costs and risks.²⁰

The definition of a just cause, Whitman points out, has changed over time - moving from employing military action to right a wrong, to protecting a state’s territorial integrity or sovereignty, to include the use of force for humanitarian intervention. Whitman argues that the most fitting moral foundation for comprehending just war standards is provided by Robert Goodin’s version of rule utilitarianism which says that the best strategy to maximize total utility when establishing a framework of rules and regulations is to use the utility calculus.²¹ One advantage of rule utilitarianism is that by applying general principles, just war theory can adapt to changing global political conditions without sacrificing the moral goal of these laws, which is to lessen the likelihood of conflict.²²

There are more advantages that rule utilitarianism offers to just war theory. The adoption of general, utility-maximizing institutional regulations enables individuals and institutions to make rational future plans without having to worry about a lot of rule exceptions.²³ For example, the use of military force is morally justified typically only when a country is defending itself against real, continuous aggression. Permitting one nation to launch a pre-emptive war against another would put nations in a condition of perpetual fear of possible enemy assaults and increase the frequency of warfare globally. This works against the achievement of the greater good of the people that rule utilitarianism advocates. Moreover, the use of force in the battlefield with discrimination and proportionality leads to a net gain in utility because it maximizes the likelihood of a just peace.²⁴

A reasonable objection to rule utilitarianism is based on the fact that the protection of human rights seems to be of lesser importance from a utilitarian perspective. Nevertheless, the rights reasoning is intertwined with rule utilitarianism’s version of just war theory. In particular, rule utilitarianism weighs up whether recognizing a particular right will increase long-term expected benefit. As a result, rights are not fundamental in this institutional moral reasoning context, but rather arise from the utility calculus, without, thus, being undermined.²⁵

Proponents of rule utilitarianism, according to another critique, face the danger of violating rights if doing so maximizes utility, and thus eventually

¹⁹ Ibid., p. 31.

²⁰ Ibid., p. 29.

²¹ Ibid., p. 32.

²² Ibid., p. 34.

²³ Ibid.

²⁴ Ibid., p. 35.

²⁵ Ibid.

practice actutilitarianism. For instance, they could decide to publicly endorse the commitment to non-combatant immunity, but in private be prepared to break the law when it deems necessary for the sake of expediency.²⁶ In response to this criticism, this combination strategy will not be effective if the policies adopted by the rule utilitarian are publicly accessible. When such rights are violated, the public seldom, if at all, benefits in the long run. For instance, several “disutilities” might occur if it is well known that your armed forces has resorted to mistreating and torturing POWs in order to obtain intelligence information: firstly, you expose your own prisoners to the possibility of receiving the same treatment from the enemy, and secondly, as soldiers lose interest in surrendering, you run the risk of escalating the ferocity and brutality of the fighting on both sides.²⁷ In the end, the animosity created by such a policy will significantly reduce your chances of achieving a just and more stable peace. Ultimately, rule utilitarianism endorses and prohibits many of the same policies and tactics as the human rights approach, but for different reasons.

Whitman argues that there is no rule that applies in all circumstances. This is partly the reason why the kind of rule utilitarianism put forth here prioritizes guiding institutional principles above strict interpersonal guidelines for behaviour. As previously said, enforcing broad standards of conduct offers several utility-maximizing advantages in addition to being important from a practical standpoint. There is a significant benefit of adopting such a perspective in the fight against terrorism, Whitman claims, which is that it resists the urge to transform the conflict into an idealistic crusade against evil.²⁸

The professional military ethics as expressed in the moral requirements of just war tradition do not clash, in theory, with the interests of the state, although regrettably, this is not always the case. It is frequently necessary to weigh the state’s interests and ideals against the moral requirements of just war in order to apply the just war theory’s criteria and the rules of war. This kind of value-balancing is precisely what just war theory from a rule utilitarian standpoint offers.²⁹ Following established, utility-maximizing principles in war is usually the default course of action at the lowest levels of decision-making. Establishing a suitable command environment and practical instructions for implementing utility-maximizing principles becomes one’s moral duty as one rises in rank and responsibilities while the default course of action at the lowest levels of decision-making is to follow the rules that derive from those principles. The challenge for those in the highest leadership positions — including those in government — is to determine whether the current regulations still maximize utility or whether they should be revised and reinterpreted, or even if a new rule should be created.³⁰

²⁶ Ibid., p. 36.

²⁷ Ibid.

²⁸ Ibid., p. 37.

²⁹ Ibid., p. 39.

³⁰ Regarding the matter of who has the last word and within what limits are the final decisions made, we need to note firstly, that everything is ultimately decided by political leaders and governmental officials, and secondly, that these decisions are subject to the customary institutional safeguards of a well-established rule of law system.; Ibid., 40.

According to Whitman, the existing just war tradition is essentially utility-maximizing. When making changes to the established set of moral standards, it is important to avoid any bias. Any changes that are considered should be universal in scope (i.e., applicable to all situations of the same or similar nature), publicly accessible and utility-maximizing insofar as they are directed toward the just war theory primary objectives: that is, limiting the likelihood, severity, and occurrence of war.³¹ The actions and choices that the theory permits or forbids must have a morally sound purpose. Rule utilitarianism best meets the goals of just war because it aims to minimize the major negative effects of war as much as possible.³²

Whitman emphasizes that extra attention must be paid to *jus post bellum* issues as the war continues.³³ Distinguishing between terrorists and their civilian supporters, who might have legitimate complaints that can be resolved through political means, is crucial while working toward a just peace. All parties involved must have their domestic rights protected, and no side of the conflict should bear an undue financial or political burden. The best source of the *jus post bellum* criteria is the concern with developing utility-maximizing norms for ending conflicts; yet, in order to apply these criteria, it is frequently necessary to see these broad principles through the lens of maximizing benefits over harms.³⁴ Furthermore, in order to effectively combat terrorism, a more equitable global peace must be established, one in which everyone has access to a fair amount of political freedom, economic prosperity, peace and security at home. Without these necessities, people may experience a level of bitterness and hopelessness that terrorist groups might take advantage of to enlist new members and fighters for their cause.

The moral value of collective self-determination

The moral standing of states

The *jus ad bellum* doctrine's central tenet - that only a defensive war is morally justified, and that a state has the right to defend itself against external aggression - is the one requirement for the justification of war that the majority of contemporary just war theorists endorse. In his essay "The Moral Standing of States Revisited" Charles Beitz addresses the issue of the moral standing of states and endeavours to situate Michael Walzer's perspectives on intervention and humanitarian intervention within the framework of global justice, wherein collective self-determination plays a crucial role.³⁵ Charles Beitz argues that "the rights to life and liberty correspond to the rights of states to territorial integrity and political sovereignty".³⁶ Violations of these rights constitute crimes, he contends, and people whose rights are violated, as well as those in a position to address these violations, are justified in employing force to defend against the abuses and punish the perpetrators. As Beitz notes, Walzer's perspective permits

³¹ Ibid.

³² Ibid., p. 41.

³³ Ibid., p. 40.

³⁴ Ibid.

³⁵ Beitz, Charles R. "The Moral Standing of States Revisited." *Ethics & International Affairs* 23, no. 4 (2009): p. 325-47.

³⁶ Ibid., p. 326.

exceptions to the non-intervention principle in three situations: when it would oppose an earlier and unwarranted intervention by another state; when it would support a secessionist movement that has proven its representative nature; and when it would terminate actions that “shock the moral conscience of mankind”.³⁷

According to Walzer, there isn’t a single set of ideas that defines what constitutes a legitimate state. He argues that the “fit” (or historical and cultural resonance) between a state’s government and its people determines the legitimacy of that state; or, as he notes, “a people governed in accordance with its own traditions” is what constitutes a legitimate state.³⁸ This position could be characterized as an example of “reiterative universalism”: it is “universalistic” in the sense that it maintains that “every government should be legitimate”, but it is “reiterative” in the sense that the standards of legitimacy are contingent upon the unique political culture and historical background of each society.³⁹ Since community members must choose whether to abide by state laws, they are the ones who must determine whether a state’s institutions are actually legitimate. In contrast to those under the control of an illegitimate state, citizens of a legitimate state are bound by its laws. And, as a matter of fact, the former may have a right to rebel.

Beitz argues that in Walzer’s *Just and Unjust Wars*, a broader understanding of global political justice appears to be implied. It is the perspective of the “society-of-peoples”. He recognizes three key concepts entailed in it. The first concept relates to the makeup of our social environment which, according to Beitz, is actually a community-based world. Every community is the centre of a shared existence where morals, culture, and sometimes even religion are frequent manifestations of human ingenuity. The second point has to do with how this world is organized politically. The territorial national state is its principal form, yet it can also take the form of a multinational state, depending on historical conditions. By setting up its political decision-making procedures and guarding them against outside intervention, the state enables a community to decide its own destiny. Lastly, the global order is the subject of the third concept. As an order predominantly made up of autonomous communities arranged into states, it presents a unique set of challenges. He contends that “the exercise of human creativity simultaneously in many different communities produces a plural world expressed in differing moralities, cultures, religions, and ideas of political legitimacy” and that managing this pluralism is the primary issue for a just global political order.⁴⁰

Ultimately, collective self-determination, Beitz argues, is morally valuable because it upholds or defends specific individual rights and interests. The legal and political autonomy of a state determines “external” self-determination, meaning that the government of an autonomous state has the final say over its citizens and its territory. Consequently, an autocracy can be self-determining from the outside. However, only when there is a certain characteristic in the connection between a nation or people and its state—

³⁷ Ibid.

³⁸ Ibid., p. 327.

³⁹ Ibid.

⁴⁰ Ibid., p. 332.

namely, that the state should allow the people to rule themselves—can a people be considered internally self-determining.⁴¹ In the end, Beitz concludes that for a state to be characterized as self-governing, its institutions ought to give its citizens the power to shape their own shared future.⁴²

The moral standing of peoples

Following a different path, in her analysis of why a state has moral standing and why national defence is morally justified, Margaret Moore presents a compelling argument for the moral value of collective self-determination. Moore considers it crucial to address the issues of who is entitled to national defence and to appreciate the value of the ideals contained in political community. But before that, Moore wants to get one misconception out of the way: namely, that the common justification of defensive rights is largely based on a false parallel between individual and national self-defence. This is where she departs from Walzer's and Beitz's individual-rights-based perspective.

Moore argues that the aforementioned comparison falls short because innocent people will unavoidably be killed in war on both sides - rather than just troops on the attacking side - and because the aggressor state does not always present a deadly threat to civilians, especially since no one would be harmed if the defending state merely concedes the lost area of its territory.⁴³ Thus, Moore claims, the question of why killing innocent people is justified when defending political objectives must be addressed in some other way in order to support defensive war. In particular, she contends that it would be more fitting to treat this issue as one of institutional as opposed to interpersonal morality.⁴⁴

The best way to approach the justification of defensive war, Moore claims, is not from a human rights point of view. Considering the innocent people who are killed during a conflict, an emphasis on individual rights as a foundation for reasoning is more likely to lead to pacifist conclusions than to a justification of war in self-defence.⁴⁵ Moreover, attacks on sovereign territory are seen as acts of war and do not seem to be reducible to individual rights, particularly when no lives are lost. Therefore, an argument for both territorial and individual rights is required, one that is grounded in the importance of collective self-determination and may be practiced on land that a group legitimately occupies. We need to keep in mind, though, that it is the people who have a right on the territory they occupy and the ones who own the right to collective self-determination, not the state.⁴⁶ Thus she

⁴¹ Ibid., p. 336.

⁴² Ibid., p. 345.

⁴³ Moore, Margaret. "Collective Self-Determination, Institutions of Justice, and Wars of National Defence." In *The Morality of Defensive War*, edited by Cécile Fabre and Seth Lazar, 1st ed., 185-202. United Kingdom: Oxford University Press, 2014, 185.

⁴⁴ Ibid., p. 186.

⁴⁵ Ibid.

⁴⁶ Moore, Margaret. "Territory, Self-Determination, and Defensive Rights." In *Walzer and War: Reading Just and Unjust Wars Today*, edited by Graham Parsons and Mark A. Wilson, 1st ed., 31-50. Palgrave Macmillan, 2020, 44.

argues that a balance between individual and collective rights and duties must be found.

Moore is not the only one who does not consider the human rights perspective not to be most appropriate way to understand just war theory. Apart from her, and Whitman's rule-utilitarian perspective, Michael Ignatieff also presents a strong argument against the human rights moral reasoning in just war theory. The concept of non-combatant immunity exemplifies the distinction between the "particularistic" framework of the laws of war and the "universalistic" framework of human rights.⁴⁷ From the perspective of the laws of war, there is a clear distinction between the moral standing of actors with different status, such as combatants, non-combatants, military personnel, detainees, and medical personnel. On the other hand, Ignatieff argues, human rights principles oppose moral discrimination by status.

Following this line of reasoning, from human rights perspective, civilian immunity is a contradictory concept running counter to the idea that all people deserve the same respect. For instance, when viewed through the prism of human rights, national liberation struggles ought to be constrained by the laws upholding those rights, which will most likely result in their defeat.⁴⁸ Thus, Ignatieff emphasizes that there are limitations to human rights as a moral framework. One restriction inherent in human rights, Ignatieff argues, is its pacifism, which condemns the oppressed to defeat and submission. Because of that, he maintains that if nonviolent protest has failed to address a problem that affects a fundamental human right, then the question of whether violent action is warranted rests on whether all other peaceful, deliberate avenues have been truly exhausted.⁴⁹

As mentioned earlier, Moore reaches the conclusion that there needs to be a balance struck between individual and collective rights. The balance Moore seeks for, she finds in institutional moral reasoning. In her own words, "the rights and duties that attach to political communities, and individuals as members of those communities, should be based on institutional moral reasoning, which assesses institutional design, practices, and principles on the basis of whether they contribute to moral progress in international and/or national governance".⁵⁰ In line with Allen Buchanan,⁵¹ she defines institutional moral reasoning as the process by which institutions, policies, and practices are collectively justified, as opposed to an individual defending the morality of their own conduct. She also presents a normative account of "moral progress" which conveys that in order to guarantee that people live by rules of justice, political communities should be granted a fundamental right to collective self-determination; in particular, in the context of the interstate system, national defensive rights are "justified in terms of their consequences in achieving a just result".⁵²

In more detail, Moore argues that "institutional moral reasoning [...] justifies policies and practices as a set" in terms of that set's content and

⁴⁷ Ignatieff, Michael. "Human Rights, the Laws of War, and Terrorism." *Social Research: An International Quarterly* 69, no. 4 (December 2002): 1143-64.

⁴⁸ *Ibid.*, p. 1153.

⁴⁹ *Ibid.*, p. 1156.

⁵⁰ Moore, "Collective Self-Determination", p. 187.

⁵¹ Buchanan, Allen E. "Justice, legitimacy, and self-determination moral foundations for international law". Oxford: Oxford University Press, 2004.

⁵² Moore, "Collective Self-Determination", p. 187.

function in the system, as well as the “criteria for determining what counts as morally progressive”.⁵³ With regard to the “function in the system” aspect, Moore argues that, in order to constitute morally progressive institutional responses to aggressive war, policies, practices, and rights must be evaluated in light of their intended purpose.⁵⁴ Concerning the content of that set of policies and practices, as well as the criteria for determining moral progress, Moore notes that we should follow a consequentialist reasoning for their justification in the sense that, the institution should have the fewest possible drawbacks and prevent negative outcomes.

Adding to this last point, what Moore says is that the respective institution “should aim at the overall achievement of the values of justice and self-determination and non-domination, where non-domination is conceived of as a feature of just relations, and where collective self-determination is conceptualized, not in terms of non-interference, but in terms of non-domination”.⁵⁵ She also notes that, in order to prevent situations in which the political community aids and abets in the continuation of injustice, institutional rules of war should help individuals collaborate to establish rules of justice to guide their lives within those communities.

In order for a political community to fulfil its purpose as a justice-establishing entity, it needs to occupy some space. Therefore, an argument in support of territorial rights is required. The justice-based argument for territory, which is founded on Kant’s ideas, is arguably the most widely accepted explanation for why territorial rights are justified. Political communities, according to this argument, have territorial rights because they uphold justice. According to Kant, people who live close to one another and hence inevitably interact with one another have a moral need to acknowledge a political authority that possesses the capacity to defend their property rights by coercive legislation, establishing thus a just state - that is, a politically organized community governed by laws.⁵⁶

Moore believes in the significance of political communities arguing that their members co-create and abide by standards of justice. In particular, political communities “realize justice in their own way, thus realizing collective autonomy as well”, and consequently “they realize the fundamental principle of non-domination”.⁵⁷ Moore contends that political communities also matter because they crystallize “feelings of co-membership and co-participation in a common political project” and as such they constitute a morally significant relationship that is difficult to replace by another set of justice-establishing institutions.⁵⁸ Political communities’ moral value, Moore argues, derives from the community’s process of establishing and upholding justice as well as creating the norms that guide its shared life. People who engage in collective self-government enjoy a sort of autonomy that is different from individual autonomy because they have the institutional capacity to shape the conditions of their common life and destiny.⁵⁹

⁵³ Ibid., p. 188.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Kant, Immanuel and Gregory, Mary J., “*Kant: The Metaphysics of Morals*”. Cambridge: Cambridge University Press, 1996 [1797].

⁵⁷ Moore, “*Collective Self-Determination*”, p. 193.

⁵⁸ Ibid.

⁵⁹ Moore, “*Territory*”, p. 42.

It is evident that, diverging from traditional arguments, Moore does not come up with a national defence argument based on the supposed inherent value of the state or the nation. She contends that the value of collective self-determination cannot be reduced to the “self-determination” of the state. She does not make a justice-based argument, which interprets defensive rights only in terms of the protection of individual human rights, nor a conventional justification for self-determination under international law, which concentrates on state rights. Furthermore, she views the people as a collective agent but does not make reference to any shared ancestral culture or form of cultural community. Rather, she argues that the people can be defined as a collective agent firstly, if a significant portion of the population is connected to each other with ties that entail a common political engagement to live under shared rules as an attempt to realize their self-determination; secondly, if they are capable of establishing and maintaining political institutions of self-determination; and thirdly, if they have a demonstrable history of political cooperation, such as “participating in state or sub-state institutions, or even through mobilizing and participating in a resistance movement”.⁶⁰

National defensive rights, Moore holds, are the reflection of collective self-determination rights but, as such, are second-order rights, “grounded in the people’s right to be collectively self-governing, and operating against foreign aggression to maintain the entitlement of the people to be collectively autonomous and live in a political order organized according to the principle of non-domination”.⁶¹ The conclusion that follows, thus, from Moore’s reasoning is that any state that is subject to an armed invasion by a foreign power that violates its “political sovereignty” or “territorial integrity” has the right to self-defence and it is justified to wage war on the basis of safeguarding “the moral goods that are realized through political self-determination”.⁶² In this context, the ability for just political relations to exist at all depends on political communities’ existence and independence as well as on the establishment of an interstate order marked by relations of non-domination.⁶³

It may seem to the reader that Moore does not attribute enough value in human rights arguments as a basis for moral reasoning in terms of just war theorizing. But that is not true. She acknowledges that war entails an attack on individual rights but she argues that we can still justify war in the interest of national defence. Moore claims that fighting a war cannot demand a complete commitment to upholding individual rights and so she argues that, while it is acceptable to honour the restrictions on individual rights violations of *jus in bello* and *jus ad bellum*, “we should resist implausible attributions of individual liability to the enemy combatants,” whom we must deliberately harm in order to win, and to the non-combatants on both sides, some of whom will inevitably perish in the course of the war.⁶⁴

As was previously mentioned, Moore holds that territorial rights, particularly those pertaining to jurisdiction, belong to the people who are

⁶⁰ Ibid., p. 41.

⁶¹ Moore, “*Collective Self-Determination*”, p. 198.

⁶² Ibid., p. 201.

⁶³ Ibid.

⁶⁴ Ibid., p. 202.

lawfully residing in a region. In other words, political communities are entitled to their own territory because they establish rules of justice. Moreover, a state's ability to defend itself in a conflict may only exist if it serves as the means of the people's exercise of self-determination. That explains why even states which uphold the rule of law have no right to annex territory from states that do not. That is also why a state may be legitimate in terms of its territorial rights but illegitimate according to justice or democratic standards.⁶⁵ And finally, that is why every time the "territorial integrity" of a state is endangered, we cannot merely invoke the significance of that state's territorial integrity as a value.⁶⁶

All peoples are vulnerable, Moore contends, if we do not allow their defence against political aggression. And if we do not allow retaliation against aggression motivated by political aims, every people run the risk of having their collective self-determination threatened and of existing in an institutional order defined by relations of dominance and subordination".⁶⁷ The moral justification of national defence as the protection of a people's right to collective self-determination ensures that peoples can avoid that vulnerability. If state institutions and practices reflect the identity and shared goals of individuals as members of communities that seek to actualize collective self-determination, then both peoples as collective agents and states, secondarily, as these peoples' instruments, have the right to protect their territory.

Arriving to this essay's core claim, Moore's argument makes more sense from a rule-utilitarian viewpoint. Rule utilitarianism endorses the establishment of general, guiding institutional principles concerning the justification of war based on a costs and benefits analysis for all parties involved and in the long run. Acknowledging and supporting a state's right to national defence, on the basis of a people's right to self-determination, from a rule utilitarian perspective, as a guiding institutional moral principle for the justification of war, indicates that war will be less likely to occur, will be less savage, and lastly, less likely to re-occur. Put differently, a state's right to defensive war guarantees the most beneficial outcome for the most people and thus it is best understood as a utilitarian argument. And since it does guarantee the most beneficial outcome for the greatest number of people, it answers the question of when morality prevails in war.

Conclusion

The point of this essay is to provide a more convincing answer to Saul Smilansky's question about morality's triumph in war than his contention that morality wins when we grant a country that defends itself against attack greater latitude in upholding the generally accepted moral principles. The first step is to argue for the adoption of a utilitarian approach in interpreting the principles of just war theory on the basis of institutional moral reasoning - or else, to illustrate why it is more fitting to view morality in war as an

⁶⁵ Moore, "Territory", p. 44.

⁶⁶ Ibid., p. 47.

⁶⁷ Moore, "Collective Self-Determination", p. 198.

institutional issue and why a utilitarian perspective offers in this institutional context the most coherent interpretation of our established views on moral justification of war.

The second step was to show that the fundamental justification for going to war is a state's right to national defence; something that is best acknowledged and supported by adopting a utilitarian viewpoint. In particular, it was argued that there is moral value in the fact that people, as co-dependent individuals organised in political communities, have the capacity to establish rules of justice, and because of that, peoples should be recognized a right to collective self-determination. Consequently, if we accept that the state has proven to be the best vehicle for people to exercise that right, the state should be granted the right to national defence.

Ultimately, since living under rules of justice guarantees to a large extent that most people enjoy certain rights and have opportunities to advance their well-being, we could argue that collective self-determination offers the most beneficial outcome for the greatest number of people. Therefore, from an institutional moral reasoning perspective, the appropriate response to the question of when does morality win is to support a state's right to national defence to the extent that the state acts as a vehicle for the people to exercise their right to self-determination because this guarantees the most beneficial outcome for most people over time.

I would like to end this essay with a suggestion for future research. A people's right to self-determination presupposes other agents' obligation to not violate that right by aggressive war. The obligation requires the existence of a superior authority to protect these rights and to impose penalties on those who breach their commitments. And since states' rights are second-order rights, there should be no conflict of legitimacy between a state's authority and a supranational authority. In the same spirit, Moore supported the establishment of an interstate order characterized by relations of non-domination in order for just political relations to exist among political communities and Charles Beitz argued that "the ideal of a society of self-determining peoples may be achievable only in conjunction with an increasingly robust internationalism willing to challenge the moral standing of particular states in the name of the wider ideal".⁶⁸ These lead me to consider that we need to advocate for the establishment of an international or supranational authority that guarantees the peoples' rights to defend themselves as collective actors against aggressors, in order for morality to prevail. Needless to say, the already existing international set of institutions and organizations that bear corresponding responsibilities, while endorsing the just war principles, have demonstrated their inadequacy in guaranteeing morality's victory in war.

⁶⁸ Beitz, *"The Moral Standing of States Revisited"*, p. 345.

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