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War and intervention

HELEN FROWE

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✓ Reader's guide

War is one of the most morally difficult, and morally pressing, aspects of human existence. It nearly always involves killing and maiming on a vast scale. It destroys social infrastructure, political systems, and important cultural sites, and can cause catastrophic environmental harm. And yet, war persists: despite the rise of rights talk on the international stage and the spread of democracy across large parts of the world. → See Chapters 4 and 9 the last twenty years have seen wars in Kosovo, the Falklands, Iraq, and Afghanistan, as well as ongoing civil conflicts in Chechnya, Sri Lanka, Syria, Libya, and Sierra Leone, to name but a few. In this chapter, we will explore the main theoretical approaches to war, and consider the circumstances under which it is permissible to wage war.

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Introduction

Since the ‘9/11’ attacks on the World Trade Center in 2001, and the ensuing wars in Afghanistan and Iraq, there has been a surge of interest in the ethics of war amongst both scholars and the general public. War brings into sharp focus many of the political and philosophical issues covered in this textbook. With the spread of democracy, we have become more responsible for the wars that our leaders fight. As we become increasingly concerned to recognize and fulfil universal human rights, we must determine whether, for example, this extends to waging wars of humanitarian intervention to rescue people from grave suffering abroad. And, as wars are fought against non-state groups, we must think about the role of political authorities in legitimizing violence and our obligations to obey those who might order us to fight.

It is common, in the face of these most pressing debates, to hear people talk of ‘just war theory’, and to make claims about what that theory permits or prohibits. But this is misleading, for it suggests that there is a single theory of what makes a war just, and that we can judge wars by reference to this single theory. In reality, of course, there are various competing theories about what makes a war just or unjust. And, whilst there is some consensus concerning the kinds of things to which we ought to pay attention when judging the morality of war (such as whether the war is proportionate), there is considerable disagreement about what exactly it *means* for a war to meet these criteria—what it is for a war to be proportionate, or to count as a last resort, and so on. In addition, recent years have seen deeper disagreement emerge between just war scholars concerning the moral foundations of a state’s apparent right to employ force to achieve certain ends. These fundamental differences in approach produce markedly different conclusions about central issues in the ethics of war.

KEY TEXTS

Frowe, *The Ethics of War and Peace: An Introduction* (2011)

Frowe’s text offers a critical overview of the most important debates in recent just war theory. It covers the relationship between war and self-defence from collectivist and individualist perspectives, the three main stages of war (*jus ad bellum*, *jus in bello*, and *jus post bellum*) with detailed discussion of just causes for war, the moral status of combatants, and the principle of non-combatant immunity. It includes a chapter on the role of terrorism in contemporary just war theory and the permissibility of using interrogational torture on (suspected) terrorists. It also contains an annotated guide to further reading.

The just war tradition

Historical roots

The just war tradition with which most people are familiar has its roots in Catholic writings, particularly the works of Aquinas and Augustine. Aquinas and Augustine were concerned with how an activity like war could be reconciled with the Church’s teachings about

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the wrongness of killing. Although less extensive than Aquinas's writings, Augustine's claims about just causes for war were particularly influential, holding that wars may be fought for the purposes of defence, correcting wrongs (for example, the re-taking of stolen goods), and punishment.

The **doctrine of double effect (DDE)**—a key part of various aspects of traditional just war theory—originates in Aquinas's work on self-defence. Aquinas argues that one can sometimes, permissibly, bring about harm as a foreseen side-effect of pursuing a good. In the case of using defensive force, then, the idea is that one does not intend harm to one's attacker (which would be immoral), but intends only to save one's own life, foreseeing that this will involve harm to the attacker. Even though many philosophers are sceptical about the DDE, its role in just war thinking has been significant.



KEY CONCEPTS

The doctrine of double effect

The doctrine of double effect holds that, whilst it is wrong to aim at harm, it can be permissible to foreseeably cause harm as an unavoidable side-effect of pursuing a proportionate good end. So, when one's action will have multiple effects (for example, the death of an attacker and the saving of one's own life), one must aim only at the morally permissible effect (saving one's life).

The next major developments in just war thinking come with the early scholars of international law, such as Hugo Grotius (2004), Samuel Pufendorf (2005), and Francisco Suarez (1994). Despite its largely religious roots, much of the just war tradition is essentially secular. Much of what we call the 'Laws Of Armed Conflict' (LOAC) is made up of customary law—that is, law established through long practice—although some key elements have been formally codified in treaties such as the 1899 and 1970 Hague Conventions and the 1949 Geneva Conventions and their Additional Protocols. But, as already indicated, given the disagreement amongst just war theorists about how we ought to judge the justness of war, it would be a mistake to take the existing LOAC as the definitive guide to the morality of war. Whilst looking at the law can be a useful starting point for assessing aspects of war, much of the philosophical opinion about war will diverge from those laws.

It is with the development of international law that just war theory begins to develop its distinct branches. *Jus ad bellum* (justice prior to war) sets the conditions under which it is just to declare war. *Jus in bello* (justice during the war) sets the 'rules of engagement', governing the conduct of combatants during a conflict. *Jus post bellum* (justice after war) deals with topics like war reparations and punishment of aggression and had, until recently, received comparatively little attention in the just war literature. But the aftermath of the wars in Iraq and Afghanistan has led to renewed interest in this field: these wars have taught us that what happens after an initial invasion can be just as important for securing the just cause of a war as how the war is fought.

We should notice that, in using the term 'just' to describe some wars, we are not committing ourselves to the claim that such wars are *good*. Most just war theories, especially those working today, will agree that war is a very bad thing—this is precisely why we spend so much time thinking about how to limit its use. To say that a war is just, then, is to claim that

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it is morally permissible or required as a necessary means to achieve some important good. Under these circumstances, it can be a good thing that the war is fought, but not even just wars are desirable in themselves.

Alternatives to just war theory

What unifies just war theorists, if not their views about when war is just? Essentially, just war theorists share two beliefs: that wars can, at least in theory, sometimes be just, and that the fighting of war is governed by moral rules.

But not all those who engage in moral theorizing about war share these two beliefs. **Pacifists** reject the idea that the use of force can ever be just, and therefore think that the just war theory project is misguided because we should always eschew violence (even in the face of violence by others). **Realists** comes in various guises, but typically reject the idea that concerns of justice apply to war at all—not because war is always wrong, but because war is a political tool designed to serve the interests of states (or other groups). When one ought to wage war, and how one ought to fight it are not, according to this view, moral questions at all.

Not many people are absolute pacifists, although there has been a rise in the popularity of a position within just war theory known as *contingent pacifism* (Bazargan, 2014). Contingent pacifists believe that the use of force is not inherently wrong, and that there could, in theory, be such a thing as a just war (at both the *ad bellum* and *in bello* levels). But, as a purely contingent matter, the methods of fighting war that are currently available are too crude to allow us to fight justly. We simply do not possess sufficiently precise weapons or sufficiently reliable information to ensure that we only ever strike legitimate targets and inflict only proportionate collateral harm. Since we therefore know in advance that our war will inevitably involve inflicting wrongful harms, war is, in practice, always unjust.

This chapter will focus on just war theory, rather than realist or pacifist approaches to war. As I described earlier, just war theorists disagree about pretty much all aspects of the ethics of war. But they do at least believe that there can be such a thing *as* ethical warfare, and that we should try to understand what such warfare would entail.

★ KEY POINTS

- Just war theorists believe that war is, at least in theory, sometimes just.
- Just war theory is usually divided into *jus ad bellum*, *jus in bello*, and *jus post bellum*.
- Pacifism and realism offer alternative approaches to the ethics of war.

Theoretical approaches to the ethics of war

Collectivism

Just war theory has, for most of its history, been dominated by a position that I will call the **collectivist** approach to war. This view makes two central claims. The first is that war

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KEY TEXTS

Walzer, *Just and Unjust Wars* (1977; 2000)

Just and Unjust Wars is the most developed recent defence of the traditional, collectivist account of just war theory. It makes extensive use of historical examples to illustrate its claims. Walzer's human rights-based account reflects long-held views about the moral independence of *jus ad bellum* and *jus in bello*, the distinction between combatants and non-combatants, and the essentially state-based nature of war. Controversially, Walzer also develops the 'supreme emergency' exception to his otherwise stringent prohibition on the attacking of non-combatants, arguing that it can be permissible to intentionally target non-combatants if doing so is necessary to avert a genuine catastrophe.

is a relationship between collectives—essentially, states—rather than between individuals. The second, related, claim is that we cannot, therefore, judge the morality of war by looking to the morality of ordinary life. This is partly because war is a relationship between collectives, and, according to this view, this relationship gives rise to considerations that cannot be captured by thinking about the individual people who make up those collectives. We see this most clearly at the *ad bellum* level. The kinds of goods that are typically thought to give rise to a just cause for war—say, the protection of a state's territory or its political integrity—seem to be collective goods. But the belief that war cannot be judged by the morality of ordinary life also stems from a view about the nature of war itself. War involves the intentional transgression of some of our most fundamental moral prohibitions. It is about killing and maiming as a means of achieving an end, knowing that both the guilty and the innocent will suffer as we pursue our goal. This concern speaks most obviously to *jus in bello*: to how a war is fought. Since war essentially comprises activities that we ordinarily prohibit, we cannot judge war by our ordinary standards of morality.



KEY THINKERS

Michael Walzer

In 1977, Walzer published *Just and Unjust Wars*, which has come to represent the 'traditional', collectivist account of just war theory in much of the recent literature. In Walzer's view, war is an essentially political activity, not a relationship between persons. He is particularly concerned in his work on the ethics of war to reflect the experiences of soldiers engaged in fighting. His view that it is the common life that is defended in war ties in with his broader Communitarian view of political philosophy. His other books include *Arguing About War* (2004) and *Spheres of Justice* (1983).

International law defines an act of aggression between states as an act that violates, or threatens to violate, the victim state's *sovereignty*. Sovereignty is the label given to a state's political and territorial integrity—that is, its control over its political system and land.

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Even though collectivists reject the idea that we should judge war by the moral rules of ordinary life, they have nonetheless made use of what is called *the domestic analogy* as a way of understanding and recognizing instances of aggression:

Every reference to aggression as the international equivalent of armed robbery or murder, and every comparison of home and country or of personal liberty and political independence, relies upon what is called the *domestic analogy*. Our primary perceptions and judgments of aggression are the products of analogical reasoning. When the analogy is made explicit, as it often is among the lawyers, the world of states takes on the shape of political society the character of which is entirely accessible through such notions and crime and punishment, self-defense, law enforcement, and so on.

(Walzer, 1977: 58)

We can make use of comparisons between the sorts of wrongs that states can commit against one another, such as invading and occupying each other's land, and the sorts of wrongs that individuals inflict on one another, in order to understand when aggression has taken place. And, according to Walzer, what justifies a state's armed response to aggression is its right (and obligation) to defend its citizens' 'common life'.

The common life is the way of living that citizens create between themselves. It refers to communities and cultures—to the bonds between people that arise from their shared values, practices, beliefs, and language. Since the common life depends on the connections *between* individuals, it is an essentially collective good, irreducible to the individuals themselves. Walzer believes that the protection and flourishing of the common life requires freedom from outside interference. This is why sovereignty matters so much—without it, states cannot enable their citizens to enjoy a common life.

So, the rights of states to use force to defend their sovereignty are, ultimately, grounded in the rights of their citizens to enjoy and defend their common life. But this does not mean that we can judge what states may do to defend their sovereignty by thinking about the defensive rights of individual citizens. The domestic analogy might help us to recognize an act of aggression, Walzer says, but when it comes to the *conduct* of war, we lack any domestic activity to which we can helpfully compare war. There is simply nothing in ordinary life that is like fighting a war, and so there is nothing in ordinary life that can tell us the right way to go about it.

The collectivist position has influenced many of the laws of war pertaining to both *jus ad bellum* and *jus in bello*. As we noticed earlier, the kinds of good that are ~~standardly~~ recognized as providing a just cause for war are collective, state-based goods: the defence of political and territorial integrity. And, the *ad bellum* condition of legitimate authority effectively restricts the legal power to declare war to heads of state.

Since they have the legal capacity to declare war, states also enjoy certain *in bello* legal privileges that are not typically afforded to non-state groups. For example, imagine that a state, Alpha, decides to unjustly invade another state, Beta. Under international law, Alpha can order its combatants to attack Beta combatants and, provided that they obey the rules of *jus in bello*, the Alpha combatants will have legal immunity for the harms they inflict. This privilege obtains even though Alpha is fighting an illegal unjust war. The leaders of Alpha may be prosecuted for the crime of aggression, but their combatants are not liable

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to prosecution for fighting in the aggressive war. They have what Christopher Kutz has described as ‘essentially *political* permission to do violence’ that is grounded in their membership of the collective—in this case, their state (Kutz, 2005: 173). This permission can, in Kutz’s view, make it permissible for them to do things that would normally be impermissible. In serving the collective’s will, they act not as individuals but as agents of the collective. In assessing the morality of their actions, therefore, we must treat them not as individuals but as agents of the state.

Individualism

Over the last two decades, the collectivist approach to war has been subjected to sustained and influential criticism, most notably in the writings of Jeff McMahan. McMahan defends a reductive individualist account of the morality of war. It is *reductivist* because it holds that the moral principles that govern both the declaring and fighting of war are the same moral principles that govern the use of force in ordinary life. It is *individualist* because it holds that individuals, not collectives, are the proper focus of moral evaluation in war.



KEY TEXTS

McMahan, *Killing in War* (2009)

Killing in War offers the first book-length defence of the reductive individualist view of war. McMahan develops an account of moral liability to defensive harm that holds that a person forfeits his or her usual rights against being harmed when that person is morally responsible for an unjust threat of harm, and harming him or her is necessary to avert that threat. He then builds upon this account to defend his claim that unjust combatants are not morally equal to just combatants.

A central tenet of this view is that states, or indeed any groups that engage in political violence, do not enjoy special moral permissions to cause harm simply because they are collectives, or because their violence is political. For a start, we would presumably have to limit the sort of collective that gets to sanction the inflicting of harms—we do not think that the Mafia, or a group of Manchester United fans, or the University Rock Climbing Society should enjoy this kind of power. Christopher Kutz suggests that we might set this limit by restricting the power to groups that are properly organized, with political aims that they have a reasonable prospect of achieving. But McMahan is sceptical:

The suggestion, then, is that by organizing themselves politically, with internal norms of authority and obedience, individuals can somehow authorize each other to use violence for political reasons, thereby making it permissible for each to do what none would otherwise be permitted to do. This, however, presupposes a form of moral alchemy to which it is difficult to give credence. How can a certain people’s establishment of political relations

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among themselves confer on them a right to harm or kill others, when the harming or killing would be impermissible in the absence of the relevant relations?

(McMahan, 2007: 52–3)

McMahan's objection, then, is that if individuals are not permitted to pursue a certain goal, they cannot simply, by deciding to form a group, give themselves licence to pursue that goal. What matters for the permissibility of harming in pursuit of a goal is not whether the goal is political, but whether it is *just*, and whether its pursuit warrants inflicting harm on people. Political goals can be deeply immoral—ethnic cleansing, for example—and the mere fact that some people decide to form a group to pursue such goals cannot make it permissible to pursue them. If, in contrast, a goal is just, it is its *justness*, not its being political or pursued by a particular sort of group, that makes it permissible to pursue it.

If we reject the idea that groups, including states, have special permission to do violence, it seems that we can understand the morality of warfare only by thinking about the permissions that individuals have to do violence. The most obvious circumstance in which individuals are permitted to use force is in defence of themselves and their property, and other people and their property. The reductive individualist view holds that by analysing these conditions of self-defence and other defence, along with other moral principles familiar from ordinary life, we are able to capture and explain the moral permissions that obtain in war.



KEY THINKERS

Jeff McMahan

Over the past twenty years, McMahan has published a substantial body of work undermining the traditional, collectivist approach to the ethics of war. McMahan defends a reductivist individualist account of war, according to which the moral rules governing war are simply the moral rules of ordinary life, most obviously the rules of self-defence and other defence. His work has important implications for, amongst other things, the relationship between *jus ad bellum* and *jus in bello*, and the moral status of combatants. Much of his work to date is summarized in his *Killing in War* (2009).



KEY POINTS

- Just war theory has been historically dominated by the collectivist view that war is a relationship between states, not individuals.
- The domestic analogy holds that, whilst we can use comparisons with ordinary life to recognize aggression, we cannot judge behaviour in war by thinking about the morality of ordinary life.
- Recent work by individualists challenges this view, arguing that collectives do not enjoy special moral permissions to do violence.

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Jus ad bellum

In a conventional just war theory account, whether one can justly declare war is determined by whether one's war meets the following conditions:

- legitimate authority
- just cause
- last resort
- proportionality
- right intention
- public declaration
- reasonable prospect of success.

The conditions are not ranked in terms of importance, since (on a conventional view) one must meet all of them in order to count as justly declaring war. But legitimate authority and just cause have priority in the sense that they must be satisfied before the others can be addressed.

As we have just seen, many just war theorists believe that being a legitimate authority—a head of state, who represents his or her citizens on the international stage, or perhaps a governing body like the US Congress—is a condition not only of declaring a *just* war, but of declaring war *at all*. But this condition has been somewhat undermined in recent years by the rise of non-state military organizations such as Al Qaeda. The rise of **asymmetric wars**—wars between a state and a non-state group or groups—have caused some just war theorists to reject the idea that wars require a legitimate authority.

The requirement that one have a just cause—a just goal that the war is intended to secure—is much less controversial. Several of the other conditions (proportionality, last resort, reasonable prospect of success) make sense only when one has a just cause to judge them against. The paradigm just cause for war is self-defence or collective defence. Self-defence is the defence of one's own sovereignty against an act of aggression. Collective defence is the defence of an ally with whom one has a mutual defence treaty. Article 51 of the UN Charter protects the rights of self and collective defence.

Remember, though, that 'aggression' includes both an actual violation of one's sovereignty and the *threat* of such a violation. Wars that respond to mere threats to sovereignty are described as *pre-emptive* wars. Such wars count as self-defence and are legal (strictly speaking, all self-defence is pre-emptive, since one cannot defend oneself against a harm that has already been inflicted). Pre-emptive wars are distinguished from *preventive* wars. Although it is hard to draw a clear line between pre-emption and prevention, we might say that pre-emptive wars try to curtail threats before they eventuate in harm, whereas preventive wars try to curtail a state's capacity to do harm even in the absence of any threat. For example, we might destroy a hostile state's nuclear factories even if we do not believe they are currently planning to wage war or are even capable of making nuclear weapons. Here, we do not respond to an existing threat but, rather, try to ensure that they cannot pose a future threat.

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Paradigm unjust causes for war include expansion of one's own territory, the imposition of regime change, and ethnic or religious persecution. Those fighting wars for unjust causes are engaged in aggression, and their behaviour can give rise to a just cause for a defensive war on the part of those whom they are aggressing ~~against~~. Once one has a just cause for war—that is, one ~~has been~~ the victim of aggression—one can consider whether a war fought to secure that cause would meet the other *ad bellum* conditions. To count as a last resort, one must have reasonably explored feasible, non-violent alternatives to war, such as diplomacy and negotiations, economic sanctions and trade bans. In order to judge whether war is proportionate, one must determine whether securing the just cause is sufficiently important to justify the costs and harms that war is likely to entail. The requirement of a reasonable prospect of success reflects the view that one ought not to fight a war that has very little chance of achieving the just cause, since wars inevitably involve widespread harm to combatants and non-combatants. It is wrong to inflict such harms if one has only a slim prospect of victory. This can mean that a ~~small~~, less wealthy nation can be required to appease a nation with a much more powerful military, even if the ~~smaller~~ nation is the victim of aggression and has a just cause.

We can see why this is plausible, even though it involves permitting injustice, by thinking about self-defence. Imagine that an attacker is going to kill you. Your only means of defence is to throw a grenade at him or her (you never go out without your grenade). But, your aim is rather poor. It is likely that the attacker will be able to dodge the grenade, but wherever the grenade lands, the explosion will badly burn a child who is standing nearby. Whilst it might be permissible for you to throw the grenade and burn the child, if doing so is very likely to save your life, many people would think that you ought not to throw the grenade if it has only a slim chance of saving your life. You should not risk such serious harm to an innocent person in a likely futile bid to prevent injustice to yourself. The same sort of reasoning explains the success requirement: since wars always involve killing and maiming people—often innocent people—there must be at least a reasonable prospect that the war will achieve its goal in order for the war to be just.

The requirement of right intention holds that one must declare and fight the war for the reasons that genuinely motivate it. It is a slightly odd condition, since it is hard to know how we would judge what really motivates a head of state (and this gets even more difficult if the legitimate authority is made up of a group of people, all of whom might have different motivations for wanting to fight the war). This is probably why international law does not include a right intention condition. But, nonetheless, the condition is not without its appeal. Prior to (and during) the invasion of Iraq in 2003, many people expressed scepticism about the motivations of the Bush and Blair administrations. It was popularly thought that even if the leaders *said* they were fighting to obtain Saddam Hussein's weapons of mass destruction, they were really trying to secure their own countries' access to oil. The criterion of right intention is probably at least partly motivated, then, by thoughts about what leaders owe their citizens and, especially, what they owe the combatants who will be fighting the war. A state should not deceive its armed forces into fighting in a war motivated by illicit ends, even if there exist genuinely just ends that the war could pursue.

Finally, wars need to be publicly declared. One reason for this is that being at war changes the legal status of a state's behaviour in the manner described earlier. Declaring war, therefore, signals that the laws of war now govern one's relationship with the enemy state.

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A public declaration also makes possible, at least to some extent, the evacuation of non-combatants from likely target zones. Additionally, it serves as further support for the claim that war is a last resort. Declaring one's intention to wage war gives the enemy a final opportunity to surrender and desist in its aggression.



KEY CONCEPTS

Legitimate authority and asymmetric war

Traditionally, being a legitimate authority has been thought to be a prerequisite, not of fighting a just war, but of fighting a war *at all*. Only those appropriately situated with respect to a state (such as the head of state) have been regarded as capable of declaring war. But this view has been undermined in recent years by the growing importance of non-state military organizations such as Al Qaeda. The prevalence of asymmetric wars—wars between a state and a non-state group or groups—has caused some just war theorists to reject the idea that conflicts must be fought upon legitimate authority in order to count as a war.

Recently, the idea that humanitarian intervention might be a just cause for war has gained considerable popularity. Armed humanitarian intervention is the use of force by an external group (usually a state) to protect a group of citizens from harm within their own state, without the consent of their government. Sometimes these are harms being perpetrated against the citizens by their own government, but sometimes, the government is simply unable or unwilling to protect the citizens from being harmed by people within the state.

Humanitarian intervention is legally complex. As we have seen, international law places enormous weight on the importance of sovereignty. Defence of sovereignty is the only recognized just cause for war. Humanitarian intervention challenges this importance in two ways. First, it suggests that there can be other just causes for war—that the defence of human life can justify war even if their states' sovereignty is not at risk. Second, it implies that the value of sovereignty is not absolute, since humanitarian interventions take place without the consent of the government of the state in which one intervenes. Thus, it looks like such interventions require violating the sovereignty of the state in which one intervenes.

However, in recent years, the 'conditional sovereignty' view has gained credence amongst scholars of international law and war. This view holds that statehood is independent of sovereignty. Whether or not a state enjoys sovereignty—rights over its land and political system—is conditional on whether it protects its citizens' basic human rights. States that fail to protect these rights lack sovereignty. This means that when there are widespread human rights abuses taking place in a state and the state's leaders either encourage these abuses or fail to accept assistance to end them, the state lacks sovereignty. Taking this view, then, it is not the case that the sovereignty of a state is justifiably overridden by the need to save lives. Rather, there is no sovereignty that can be violated by a war of humanitarian intervention in such a country.

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BOX 10.1 THE KOSOVO INTERVENTION

The political landscape surrounding humanitarian intervention shifted significantly as a result of the Kosovo intervention in 1999. Peace talks aimed at ending the ethnic cleansing of Kosovars by Serbs repeatedly failed. As the violence worsened, large numbers of people began to flee, resulting in widespread displacement and homelessness. But whilst the United Nations Security Council issued resolutions condemning the violence, it did not authorize the use of ‘all necessary means’—the crucial wording that sanctions the use of military force. Whilst nations have the independent right to engage in self-defence and collective defence, other uses of force—including force to protect those with whom one has no mutual defence treaty—are subject to UN authorisation. Strictly speaking, then, the NATO intervention, which took the form of an aerial bombing campaign between March and June 1999, was illegal under international law. But, helped, no doubt, by its comparatively rapid success in forcing a Serbian withdrawal from Kosovo, many people believed that the intervention was morally justified.

☆ KEY POINTS

- The paradigm just causes for war are self-defence and collective defence.
- But wars must meet a range of further conditions—in addition to having a just cause—in order to be just.
- Wars of humanitarian intervention are wars that seek to militarily defend people against abuses perpetrated or permitted by their own state.
- Historically, such wars have been thought to violate a state’s sovereignty and constitute illegitimate interference in another state’s domestic affairs.
- More recently, scholars have argued that states’ sovereignty is conditional on their protecting their citizens’ basic human rights. Thus, when humanitarian interventions are necessary, they do not violate sovereignty.

Jus in bello

Three central moral principles underpin the rules of *jus in bello*:

- discrimination (between combatants and non-combatants)
- proportionality
- military necessity.

The requirement to discriminate between combatants and non-combatants holds that whilst combatants are legitimate targets of attack, it is impermissible to intentionally harm non-combatants or civilian infrastructure (the requirement is also known as the principle of non-combatant immunity). This means that certain types of weapons, such as firebombs, are prohibited because they are essentially indiscriminate—once one drops a firebomb, one cannot control its spread.

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Unlike non-combatants, combatants are typically thought to have forfeited their usual rights not to be attacked by enemy soldiers, and combatants on all sides of a war therefore enjoy a mutual licence to kill each other. Exactly why and how combatants forfeit their right not to be attacked is the subject of some dispute. Some just theorists argue that, by joining the armed forces, combatants agree to be attacked by the enemy in war. Others hold that since combatants threaten and are threatened, they have rights to kill each other on grounds of self-defence. An important claim of the individualist view, however, is that just combatants do not forfeit their usual rights against attack. We return to this later.



KEY CONCEPTS

Qualifying as a combatant

The 1949 Geneva Convention holds that for a person to qualify as a combatant, he or she must:

1. be part of a hierarchical group, such that there is a recognizable chain of command
2. wear a distinctive emblem that is visible from a distance
3. bear arms openly
4. obey the rules of *jus in bello* as laid out in the Convention.

The second and third conditions were revised in 1977 to take account of the fact that under some circumstances, it is very dangerous, or otherwise impractical, for a combatant to openly identify him or herself. The new conditions grant a person combatant status provided that he or she bears their arms openly during combat and immediately prior to combat, thereby distinguishing him or herself from the non-combatants.

Non-combatants are thought to retain their usual rights not to be attacked. But this does not mean that non-combatants may not be harmed at all in war. On the contrary: it is predictable and inevitable that non-combatants will be harmed, and, in some conflicts, non-combatant casualties outnumber those of combatants. In order to meet the requirement of discrimination, these harms must be merely foreseen, but not intended. This invokes the kind of double-effect reasoning we discussed earlier. As long as the amount of harm inflicted on non-combatants during an offensive is both necessary and outweighed by the good of securing the military objective, such harming is permitted by the rules of *jus in bello*.

The moral equality of combatants

As we have seen, traditional just war theory holds that combatants may kill and be killed with impunity, provided that those killings adhere to the *in bello* rules. According to this view, it is only political leaders who are responsible for whether the *ad bellum* conditions are met. It would, therefore, be unfair to condemn soldiers simply for fighting in an unjust war, since they have no control over the sort of war in which they are ordered to fight. All that they can control is whether they fight well. On the traditional model, *jus in bello* is morally independent of *jus ad bellum*. A just war can be unjustly fought, and an unjust war can be justly fought. We call this the ‘moral equality of combatants thesis’.

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The idea that combatants can fight justly, even if their war lacks a just cause, has been the focus of much of the individualist critique of traditional just war theory. Again, it is McMahan who has most powerfully articulated these concerns (McMahan, 2006). It is, he says, deeply implausible to think that a person who is unjustly attacked, and who then uses force in legitimate defence, somehow becomes the moral equal of his or her attacker. Rather, a person who engages in necessary and proportionate defence against an unjust attacker does not forfeit any of their usual rights not to be harmed. If an attacker kills a person, he or she therefore violates that person's right not to be killed. The attacker, in contrast, *does* forfeit his or her usual rights against being harmed. If the victim's defence harms the attacker, this does not violate his or her rights. There is moral inequality between unjust attackers and their innocent victims. And, according to McMahan, this is no less true when the attackers and victims are combatants. When unjust combatants kill just combatants, they violate their rights. But when just combatants kill unjust combatants, they act in self-defence, and do no wrong.

So, this argument rejects the idea that we can separate how combatants fight (*jus in bello*) from whether their country's war is just (*jus ad bellum*). A combatant's moral status, and the moral status of the killings he or she carries out, depend on whether the person is fighting a just or an unjust war. Furthermore, McMahan argues that unjust combatants cannot meet the *in bello* proportionality principle. Recall that this principle governs the inflicting of collateral harms on non-combatants during an offensive. Such harms are justified if they are warranted in order to secure a particular good. But when combatants are fighting on the unjust side of a war, they are not pursuing good ends. They are pursuing *unjust* ends, such as the wrongful expansion of their territory. They therefore lack any good ends that can outweigh the collateral harms they cause. This means that all collateral harms that unjust combatants inflict fail the proportionality condition and are impermissible. So, according to McMahan, it is nearly always impossible for unjust combatants to fight well.

BOX 10.2 PRISONERS OF WAR

The Geneva Convention includes rules for the treatment of captured enemy combatants, commonly known as prisoners of war (POWs). Entitlement to POW status is one of the main privileges afforded combatants. This is partly why there is so much contention about whether non-state actors (e.g. members of terrorist groups) are entitled to be treated as combatants, since, if they are, they should also be granted POW rights. These rights include that one must not be punished for fighting, be subjected to dangerous, degrading, or inhumane treatment, be coerced into revealing information, or be forced to contribute to the detaining power's military effort. POWs should be evacuated from dangerous places and kept with their fellow combatants, and their own military should be informed of their capture. Crucially, they must be released once the war is over.

Non-combatant immunity

Although most people believe that it is wrong to intentionally attack non-combatants in war, it is difficult to explain exactly why such attacks are wrong. This is because it is hard

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to point to a morally significant difference between combatants and non-combatants that will explain why all combatants may be attacked, but no non-combatants may be attacked. We can, of course, point to various non-moral differences between combatants and non-combatants; combatants wear uniforms, for example, whilst non-combatants do not. But to show why the requirement of discrimination has *moral* force, we need a morally relevant difference, and it is not clear that wearing different clothes is the right sort of difference to explain why some people may be intentionally killed whilst others may not (May, 2005).

We might think that it is easy to capture the difference between combatants and non-combatants, because combatants are the ones posing threats, which is surely morally significant. Walzer, for example, says that a combatant ‘has allowed himself to be made into a dangerous man’ (Walzer, 1977: 145). But this will cover all combatants only on a very broad notion of what it is to pose a threat. Most combatants are not on the front line firing guns. Many threaten indirectly, by providing logistical, technical, and intelligence support. If these combatants are to count as legitimate targets, we must grant that people making only these indirect contributions count as posing a threat. But once we adopt this broad notion of what it is to pose a threat, many non-combatants will count as legitimate targets as well. Non-combatants often make important contributions to their country’s military capacity—think of the Land Girls or Women’s Timber Corps in World War Two, or of scientists developing nerve gas to be used at Ypres, or engineers building drones to bomb militants in Pakistan.

In light of this sort of difficulty, George Mavrodes has argued that the requirement of discrimination does not, in fact, reflect an important moral feature of non-combatants (Mavrodes, 1975). Rather, it is a useful convention that has been adopted because it is mutually beneficial for all sides of a conflict. Since war is terribly damaging and costly, it is morally important to try to restrict this damage as much as we can, whilst recognizing that people are going to fight wars. The ideal solution would be the ‘champion’ model of conflict resolution, where each party to a conflict sends out a representative to fight in single combat. If we agree that the winner’s country will be taken to have won the conflict, we can resolve the conflict without having to resort to war. But Mavrodes argues that this model is impractical because the losers would not abide by the result: it is likely that they would simply fight the war anyway.

Since the single combat model is out, then, the next best thing is to divide the population into legitimate targets and illegitimate targets, since then the harms of war will, at least, be somewhat restricted. We make the legitimate targets wear uniforms and call them ‘combatants’, but our doing so is grounded in the moral requirement to limit harm, not some moral fact about non-combatants that warrants giving them special protection.

In Mavrodes’s view, therefore, it is morally important not to attack non-combatants, but this is because having a convention of non-combatant immunity limits the overall harms of war. We might wonder, then, what we should do if one party to a conflict violates the convention and begins to attack non-combatants. Something is a convention only if people follow it: once people cease to adhere to it, it is no longer a convention. If the prohibition on attacking non-combatants rests solely on the importance of the convention for limiting the harms of war, it is hard to see what, if anything, could ground the prohibition if the convention is erased. And, indeed, whilst Mavrodes emphasizes that conventions can be reinstated, he is ultimately forced to concede that, in the face of others’ persistent deviance from the convention, the moral reasons for adhering to it, oneself, evaporate.

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KEY POINTS

- The rules of *jus in bello* prohibit targeting non-combatants and civilian infrastructure.
- Any harm to non-combatants must be a proportionate and necessary side-effect of pursuing a military goal.
- Reductive individualists reject the claim that just and unjust combatants are morally equal, since just combatants act in legitimate self-defence. This means that, contrary to the traditional view, *jus in bello* is not independent of *jus ad bellum*.
- It is hard to identify a morally significant difference between combatants and non-combatants that explains their different treatment, leading some writers to suggest that the requirement of discrimination is merely a useful convention.

Jus post bellum

Until very recently, the study of justice after a war—*jus post bellum*—had been somewhat neglected by scholars working on just war theory. What has emerged in the wake of the wars in Iraq and Afghanistan is a much more patchwork set of guidelines than we see *ad bellum* and *in bello*. The field of *jus post bellum* covers reparations, rebuilding, the obligations of victors, reconciliation, and punishment, and these myriad topics do not lend themselves to a neat set of principles.

But *post bellum* issues are connected to both *ad bellum* and *in bello* concerns. A central *post bellum* interest must be that of securing and bolstering the just cause of the war. If, for example, the war was fought to stop an unjust expansion of territory, it is unlikely that merely driving the aggressors back to their own territory will suffice. The victors might also need to limit and partially disarm the aggressor's armed forces in ways that remove their capacity to recommence war. Of course, this assumes that the victors are the just side: one cannot secure the just cause if one has fought a victorious unjust war. Just as McMahan argues that *jus in bello* is robustly connected to *jus ad bellum*, Brian Orend argues that *jus post bellum* cannot be divorced from whether the victors had a just cause (Orend, 2007). Justice after war is only possible, he argues, when the just side are the victors.

We can distinguish between minimalist and maximalist accounts of *jus post bellum* (Bellamy, 2008). Minimalist accounts focus on the rights of victors, seeking to limit the harms that victors might inflict upon a defeated enemy. Historically, victors would demand the unconditional surrender of an enemy and then help themselves to the 'spoils of war', including people and property. Minimalist accounts hold that victors may act only to secure the just cause of the war and punish aggression. Maximalist accounts, in contrast, focus upon the obligations of victors. Brian Orend suggests that those who win the war incur at least some of the following obligations:

1. The peace terms must be proportionate and publicly declared.
2. The rights that were threatened by aggression must be secured.
3. The burdens of the peace terms should not disproportionately burden non-combatants.

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4. Those responsible for the aggressive war must be punished.
5. Those responsible for war crimes must be punished.
6. Ensure that the victims of the aggression are fairly compensated.
7. Ensure the political rehabilitation of the aggressive government.

We can see, ~~now~~, why Orend thinks that only a just victor can meet the *post bellum* conditions. An aggressor can hardly secure the rights that justified their war, and can hardly punish the aggressors for that war. Nor is an aggressor likely to fairly compensate its victims or rehabilitate itself.

But notice that the obligations Orend lists could be very demanding—especially the ~~one~~ of political rehabilitation, which Orend concedes could require the removal and replacement of the existing regime. Regime change is not, itself, a just cause for war, but Orend believes that such change could be required as a means of securing the just cause for war. And, he argues that victors may not leave the citizens of a defeated state without the infrastructure they need to meet their basic human rights. Such reconstruction could be expensive and administratively burdensome, and it is not obvious why the victors of a just war—that is, those who have repelled an aggressor—must take on these burdens.

★ KEY POINTS

- *Jus post bellum* covers a wide range of moral issues that arise in the aftermath of a conflict, including the prosecution of war crimes, the imposing of reparations, and the securing of the just cause.
- Some authors believe that only the victors of a just war can bring about a just peace.
- Historically, the focus of *post bellum* accounts has been to limit the excesses of victors.
- More recent accounts, in contrast, argue that extensive obligations befall the victors, including an obligation to ensure that a defeated state is able to meet its citizens' basic human rights.

Conclusion

Just war theory covers a range of issues in moral and political philosophy, and has had significant influence on the drafting of laws designed to regulate the harms of war. The traditional, collectivist approach to war has dominated the political and legal discourse, as reflected in the state-based goals that are established as just causes for war. Combatants who fight for states are afforded legal protection for the harms they inflict and are entitled to prisoner of war status if they are captured. The importance of group membership—of whether one is a combatant or a non-combatant—also underpins many of the *in bello* rules that govern the fighting of war.

But this collectivist account of war, that affords groups special permissions to engage in political violence, has been substantially undermined by the reductive individualist

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account. Traditional just war theory was largely developed during periods of history when states consisted of subjects and rulers, and when vast chunks of the population had no political representation, education, or wealth. In modern democratic states, we do not typically believe that the justness of our country's war is a matter only for our leaders, and that ordinary citizens, including those serving in the armed forces, need not concern themselves with whether that war is just. The rise of human rights legislation reflects growing awareness of injustice and suffering that many people believe gives rise to obligations of assistance, irrespective of whether that assistance requires intervening in another state. And, the growing role of non-state groups in international affairs makes it increasingly difficult to judge the ethics of violence on a state-based model. The challenge for just war theorists, now, is to show how the principles that have been traditionally thought to govern warfare can be revised to illuminate the moral features of conflicts in the twenty-first century.



CASE STUDY

Afghanistan and the 'war on terror'

On the 11th of September 2001, terrorists hijacked four planes in US airspace. Two of the planes were flown into, and destroyed, the twin towers of the World Trade Center in New York City. The third crashed into the Pentagon in Washington DC. The fourth plane missed its target, but was possibly intended for the White House. Thousands of people were killed in the attacks, which were the trigger for the 2001 war in Afghanistan and the broader 'war on terror'.

The US government identified a violent Islamic group, Al Qaeda, as the group responsible for the '9/11' attacks. They demanded the extradition of the group's leader—a Saudi Arabian national, Osama bin Laden—from Afghanistan. Afghanistan's Taliban leadership refused to extradite bin Laden without evidence of his involvement in the attacks; the US, although insisting that they had such evidence, refused to supply it. Declaring that they would recognize no distinction between terrorists and 'those who harbor them', a coalition of the US, the UK, and Australia began the military action 'Operation Enduring Freedom' in Afghanistan on October 7th, 2001.

Justice?

The 9/11 attacks were certainly the appropriate sort of wrong to trigger a debate about whether war might be a justified response. If a state had perpetrated these attacks, we would consider them a clear violation of US sovereignty—an act of aggression. Military action aimed at ensuring that the responsible state could not, or would not, perpetrate similar attacks in future could meet the criterion of just cause. But things were made more complicated by the fact that Al Qaeda is a non-state organization, and such organizations are not usually thought to be capable of engaging in aggression because aggression is a crime between states. This is why the assertion that those who harboured the perpetrators would be treated as if they, themselves, were the perpetrators, is so important—because it connects the Afghan state to the attacks.

It is not implausible to think that states giving shelter to people carrying out these kinds of attacks may be treated as accomplices to those attacks. What many people disagree about is whether Al Qaeda, and specifically bin Laden, was in fact responsible for the 9/11 attacks, and whether the US and the UK had sufficient evidence of this responsibility. Bin Laden initially denied involvement (although he later revoked this, claiming responsibility), and much of the case for Al Qaeda's involvement focused on its record of comparable attacks, its clear willingness

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to be involved in attacks on the US, and the improbability of anyone else having had the willingness and capacity to carry out such attacks. But, as Darrell Moellendorf argues, whether there was a just cause for war really turns not on whether the US had sufficient reason to declare bin Laden guilty, but on whether there was sufficient reason to demand his extradition to stand trial (Moellendorf, 2002). If US evidence met a standard sufficient to warrant demanding his extradition, Moellendorf argues that it would be 'inappropriate' to then deny that it was permissible for the US to respond forcefully to a refusal to extradite, especially given the concern that bin Laden posed an ongoing threat to US citizens (Moellendorf, 2002).

Proportionality and a reasonable prospect of success

Moellendorf argues that, in order to know whether the war in Afghanistan was proportionate, we must know how likely it was to succeed in achieving the just cause of preventing future attacks. He maintains that if the war was unlikely to succeed, it was unlikely to produce more good than harm, and, therefore, unlikely to have been proportionate (Moellendorf, 2002).

But I think Moellendorf's characterization of how we assess *ad bellum* proportionality is mistaken. The proportionality requirement is distinct from, and must be assessed independently of, the prospect of success requirement. The proportionality requirement governs *means*: it tells us whether a use of force is a proportionate way of securing a good. But only on the assumption that force is successful can we compare the good (to be) secured with the harm (to be) inflicted—that is, ~~we need to~~ do a proportionality calculation. In determining the proportionality of defensive force, we must ask whether, *if successful in securing the good*, the force would be a proportionate means of securing that good. When we ask whether a war would be *ad bellum* proportionate, then, we are asking, 'Would war, fought with the permitted means at our disposal, be a proportionate way of securing the just cause?' But this means that we build an *assumption* of success—of securing the just cause—into our calculation. The calculation cannot, therefore, also be sensitive to the *probability* of success, which is what the reasonable prospect of success condition asks us to judge.

If there were reason to believe that further attacks, comparable to the 9/11 attacks in terms of scale and impact, would be perpetrated if the leaders of Al Qaeda were not imprisoned or killed, military force could be a proportionate means of preventing such attacks, assuming that the coalition forces had military measures at their disposal that would not inflict harms that exceed the good to be secured. I think that the war in Afghanistan may, therefore, have satisfied the *bellum* proportionality condition.

But, even if the reasonable prospect of success condition is not a component of proportionality, this condition must still be satisfied if a war is to be deemed just. The harms to combatants and non-combatants can make it impermissible to wage a war, even to secure a proportionate just cause, if the war is unlikely to succeed. Part of the problem of waging a war to prevent a non-state group like Al Qaeda from perpetrating future attacks is that it is not clear that ordinary military methods can be effective in achieving this sort of goal. Al Qaeda had training camps and personnel, but little else in the way of infrastructure, the targeting of which could disable their capacity to launch attacks. The inhospitable terrain and presence of sympathetic parties in neighbouring countries made it feasible that members of the group could leave Afghanistan (and, unlike a head of state fleeing in the face of an invader, the departure of Al Qaeda operatives would not constitute a victory, but rather a failure, for the invaders). It also seems reasonably predictable that a war in Afghanistan would alienate people living there and increase radicalization, particularly given the hostility towards the US even prior to the invasion. This increase in radicalization undermines the just cause of preventing future terrorist attacks. Given the rather low prospect of

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success, then, it seems unlikely that the war in Afghanistan was, all things considered just, even if pursuing those responsible for the 9/11 attacks provided a just cause.

The 'war on terror'

The war in Afghanistan was part of a broader initiative that US President, George W. Bush, famously described as a 'war on terror'—a campaign of military force aimed at eradicating (or at least seriously depleting) the capacities of terrorist organizations thought to threaten the US and its allies. It would be a mistake, though, to think of this as the sort of war that can be judged completely by just war criteria. The war on terror consists of a range of activities and events, including (but not limited to) the war in Afghanistan, the war in Iraq, the killing of Osama bin Laden, the detaining of hundreds of suspected terrorists in Guantanamo Bay, and drone attacks in Pakistan. Whilst it might be possible to judge at least some of these activities using just war criteria, it is likely that some parts of the war on terror are just and other parts are unjust.

A particular difficulty for just war theorists, and indeed for legal scholars, has been incorporating the role of the non-state actors, who are often the targets of the war on terror, within the statist framework of traditional just war theory and international law. This has been most starkly illustrated by the treatment of suspected terrorists by coalition forces. The 'detention centre' in Guantanamo Bay has become notorious as the home of suspected terrorists from Afghanistan, Iraq, and elsewhere, not least as a result of the allegations of abuse and torture of prisoners at the hands of their captors. One of the many important questions raised by the detaining of suspects in Guantanamo is whether we should treat individuals who fight as part of non-state groups as combatants or as criminals. If we deem members of Al Qaeda to be combatants, this has the 'benefit', in strategic terms, of making it lawful to kill them; by virtue of the very fact that they are combatants, and to detain them without trial for the duration of the conflict (which, in the war on terror, is a rather indeterminate period of time). But combatant status also affords those combatants some privileges: they cannot, for example, be prosecuted or punished simply for fighting, and they are entitled to prisoner of war status if they are captured. This means, amongst other things, that they should not be tortured, insulted, humiliated, paraded in public as 'objects of curiosity', or required to give up information other than their name, affiliation, date of birth, and rank. It would certainly not be lawful to water-board a prisoner of war.

If, in contrast, we class members of Al Qaeda as criminals, we set the bar for lawfully harming them very high. In order to kill or imprison a person suspected of a crime, one would normally need to demonstrate, in a fair trial and beyond all reasonable doubt, their complicity in a sufficiently serious crime. One cannot kill a suspected criminal simply for being a member of a particular group, or because one thinks that he or she will commit (further) crimes in the future.

In an attempt to navigate this legal minefield, the US government has adopted a third category of 'unlawful combatant' to describe the status of members of terrorist groups. John C. Yoo and James C. Ho (2003) argue that this category describes people who fight, but who fail the conditions for qualifying as a combatant laid out in the 1949 Geneva Convention. Recall that these conditions originally stated that to be a combatant, a person must:

1. be part of a hierarchical group, such that there is a recognizable chain of command
2. wear a distinctive emblem that is visible from a distance
3. bear arms openly
4. obey the rules of *jus in bello* as laid out in the Convention.

Members of Al Qaeda can probably meet the first condition. Although some experts argue that Al Qaeda is a fairly loosely-organized network of cells, rather than a single hierarchical group, any

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particular cell is still likely to have a leader and subordinates. The fact that members of groups such as Al Qaeda tend not to wear distinctive emblems to distinguish them from non-combatants, and that they do not bear their arms openly would have precluded their being granted combatant status under these original Geneva Convention rules. But under the revised conditions of 1977, it is sufficient, for claiming combatant status, that a fighter bears his or her arms openly immediately prior to and during combat. A person need not also wear a distinctive emblem, such as a uniform, and carry their arms openly at *all* times. There is no reason why members of Al Qaeda could not meet these revised conditions (although it may be contingently true that they often do not).

However, we might think that members of Al Qaeda will always fail the fourth condition of obeying the rules of *jus in bello*, vindicating Yoo and Ho's claim that they are unlawful combatants. Al Qaeda is identified as a terrorist group because its members target non-combatants—a clear violation of the principle of discrimination. But even here, the law does not clearly state that this precludes their being granted combatant status. The Geneva Convention holds that 'violations of these [*in bello*] rules shall not deprive a combatant of his right to be a combatant, or, if he falls into the power of an adverse Party, of his right to be a prisoner of war.' (1977). Moreover, a detaining power—that is, a state that captures an enemy combatant and holds him or her as a prisoner of war—is not supposed to prosecute a prisoner of war for crimes committed prior to capture (although this is controversial—see International Committee of the Red Cross (ICRC) at <http://www.icrc.org/applic/ihl/ihl.nsf/b466ed681ddfcfd241256739003e6368/5cd83e96981e1ee0c12563cd00427ee4>). The detaining power is, thus, in something of a catch-22 situation: in order to deny a person combatant status, one must show that he or she fails to meet the qualifying conditions—in this case, that the person has violated the principle of discrimination. But to be tried for crimes committed prior capture, one must have already shown a person not to be a combatant, since captured combatants are prisoners of war, and detaining powers should not prosecute prisoners of war.

? QUESTIONS

1. Is there a morally significant difference between harms that I intend to inflict and harms that I foresee will be a side-effect of my action?
2. Is war a relation between political entities or between individuals?
3. Can a war be justly fought even if it lacks a just cause?
4. Can preventive war sometimes be just?
5. Do just combatants forfeit their usual rights against being attacked?
6. Is there a morally significant difference between a combatant who shoots at enemy soldiers and a non-combatant munitions worker who makes guns for the army?
7. Do the victors of a war against unjust aggression have an obligation to bring about the political rehabilitation of the aggressive state?
8. Are members of Al Qaeda entitled to prisoner of war status?
9. Do wars of humanitarian intervention violate sovereignty?
10. Is it morally wrong to embrace pacifism?

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FURTHER READING

- Bellamy, A. (2008) 'The responsibilities of victory: *Jus Post Bellum* and the just war', *Review of International Studies*, 34: 601–5 Bellamy's paper outlines the history of *jus post bellum* and argues that we ought not to regard it as part of just war theory.
- Frowe, H. and Lang, G. (eds) (2014) *How We Fight: Ethics in War*, Oxford: Oxford University Press This collection of ten essays explores theoretical issues relating to *jus in bello*, including the doctrine of double effect, non-combatant immunity, and the distribution of risk between combatants and non-combatants.
- Frowe, H. (2011) *The Ethics of War and Peace: An Introduction*, New Abington: Routledge Frowe's introduction to just war theory focuses on contemporary debates concerning the moral equality of combatants, non-combatant immunity, the moral status of terrorists, and the legitimacy of humanitarian intervention.
- Kutz, C. (2005) 'The difference uniforms make: collective violence in criminal law and war', *Philosophy and Public Affairs*, 38, No. 2: 148–80 Kutz's influential paper defends the claim that certain groups have licence to engage in political violence.
- May, L. (2005) 'Killing naked soldiers: distinguishing between combatants and non-combatants', *Ethics and International Affairs*, 19, No. 3: 39–53 May's paper explores the difficulty of identifying morally significant differences between combatants and non-combatants that might underpin the principle of distinction.
- McMahan, J. (2009) *Killing in War*, Oxford: Oxford University Press This is McMahan's book-length defence of the reductive individualist position. It outlines his account of individual liability to defensive harm and draws together key arguments from his earlier papers.
- Moellendorf, D. (2002) 'Is the war in Afghanistan just?', *Imprints*, 6, No. 2 Gives an analysis of the justness of the war in Afghanistan, focusing on just cause, last resort, proportionality, and a reasonable prospect of success.
- Scheid, D. E. (ed.) (2014) *The Ethics of Armed Humanitarian Intervention*, Cambridge: Cambridge University Press This is a collection of original papers by philosophers, legal scholars, and political theorists on the morality and legality of armed humanitarian intervention.
- Walzer, M. (1977; 2000) *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, New York: Basic Books Walzer's book is the most influential piece of just war scholarship of the twentieth century. It defends the traditional collectivist position, and has been the inspiration for, and target of, much of what has been written since.
- Yoo, J. C. and Ho, J. C. (2003) 'The status of terrorists', *Virginia Journal of International Law*, 44: 207–28 Yoo and Ho argue that terrorists ought to be viewed as illegitimate combatants.



WEB LINKS

- <http://www.carnegiecouncil.org/index.html> This is the website of the Carnegie Council for Ethics and International Affairs.
- <http://plato.stanford.edu/entries/war/> Brian Orend's entry in the Stanford Encyclopaedia gives an overview of just war theory.
- www.stockholmcentre.weebly.com The website for the Stockholm Centre for the Ethics of War and Peace has links to various sources of information and events on just war theory.

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- <http://www.justwartheory.com/> This is a list of readings and other information about just war theory.
- <http://www.icrc.org/eng/war-and-law/index.jsp> The website of the International Committee of the Red Cross contains all the articles of the Geneva Convention and its Additional Protocols, along with useful commentary on each article.



Visit the Online Resource Centre that accompanies this book to access more learning resources: <http://www.oxfordtextbooks.co.uk/orc/mckinnon3e/>