

# Just Cause for War

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Perhaps it should be rather heartening that democratic leaders who wish to take their countries to war are now obliged to advertise the war as having a “just cause.” Politicians now routinely invoke this rather quaint phrase drawn from the traditional theory of the just war. In deed, when the administration of George H. W. Bush decided to invade Panama, it christened its war “Operation Just Cause,” thereby appropriating a label that George W. Bush might later have found serviceable had it still been available. But despite the increasing prominence of the notion of just cause in political discourse, there are few serious discussions of it, and those there are tend to be perfunctory. The usual practice is to offer a simple characterization of the requirement of just cause—for example, that it is the requirement that there be a good or compelling reason to go to war—and then to observe that, at least until quite recently, contemporary just war theory and international law have recognized only one just cause for war: self- or other-defense against aggression. It is then often noted that the consensus on this point is currently being challenged by those who claim that the prevention of large-scale violations of people’s human rights by their own government also provides just cause for war. Occasionally, skeptics of just war theory will also, for satirical effect, cite instances from the classical literature of causes for war that are now rejected but were once

widely accepted as just, such as the punishment of wrongdoing and the spread of the Christian religion.

In this essay I advance a conception of the requirement of just cause that is revisionist in the context of contemporary just war theory, but that has roots in an older tradition of thought about the just war with which contemporary theorists have lost touch to a considerable extent. This revisionist conception has various heterodox—indeed, heretical—implications that I will highlight and defend: for example, that a just cause is necessary for the satisfaction of any of the other conditions of a just war, that there can be various just causes for war other than defense against aggression, that both sides in a war can have a just cause, and so on. The conception of just cause for which I will argue must ultimately be assessed by reference to the moral plausibility both of these implications and of the larger understanding of a just war in which the conception is embedded. As I will make clear below, I mean by a just war something more than merely a morally justified war.

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## RESORT TO WAR, CONTINUATION OF WAR, AND TERMINATION OF WAR

In the just war tradition, just cause is one of the requirements of *jus ad bellum*—that is, one of the conditions of justification for the resort to war. Contemporary just war theorists often assume, therefore, that the requirement of just cause applies only to the initial resort to war, and that after war has begun all that matters is how the war is conducted. But this cannot be right. It is possible that a war can begin without a just cause but become just when a just cause arises during the course of the fighting and takes over as the goal of the war. When this happens, it would be absurd to say that an unjust war has concluded and a new, just war has begun. Rather, one and the same war may cease to be unjust and become just—just as a war that begins with a just cause may continue after that cause has been achieved or has simply disappeared on its own.<sup>1</sup> But if a war in progress can either acquire or cease to have a just cause, then the requirement of just cause must apply not only to the resort to war but also to the continuation of war.<sup>2</sup> A just cause is, indeed, always required for engaging in war. Just cause specifies the ends for which it is permissible to engage in war, or that it is permissible to pursue by means of war.

One important implication of the idea that any engagement in war requires a just cause is that when the just cause of a war has been achieved, continuation of the war lacks justification and is therefore impermissible. Just cause thus determines the conditions for the termination of war.

There are, however, complexities here of which it is important to be aware. Although theorists in the just war tradition often write as if just cause were always a single, unitary

goal, such as collective self-defense, there is no reason to suppose that a war may have only one just cause. Even if the requirement of just cause applied only to the resort to war, there could in principle be two or more just causes. It is even possible that, if there were two or more just causes, no one on its own would be sufficiently important to make the resort to war proportionate, though all together would be. And assuming that the requirement of just cause applies not only to the initial resort to war but also to the continuation of war, it is also possible for there to be different just causes for the same war at different times. Consider, for example, a war that has self-defense against unjust aggression as its initial just cause. It might be justifiable to continue the war even after the initial aggression had been defeated in order to protect people in a justly occupied area or to ensure the effective disarmament of the aggressor. These would be just causes that, while not part of the justification for the recourse to war, may legitimately be pursued by the continuation of the war.

The idea that war may not be continued in the absence of a just cause explains why it cannot be permissible to demand that an adversary surrender unconditionally. For the idea that it could be permissible to demand unconditional surrender presupposes that the denial of *any* condition that the other side might set for surrender would

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<sup>1</sup> Grotius observed that “a war may be just in its origin, and yet the intentions of its authors may become unjust in the course of its prosecution.” See Hugo Grotius, *The Rights of War and Peace* (1625), trans. A. C. Campbell (London: M. Walter Dunne, 1901), p. 273. But a shift of intention does not entail the disappearance of the just cause. Thus, Grotius goes on to say that “such motives, though blamable, when even connected with a just war, do not render the war ITSELF unjust.”

<sup>2</sup> Here I am in agreement with David Mellow, *A Critique of Just War Theory* (Ph.D. dissertation, University of Calgary, 2003), p. 201.

itself be a just cause for the continuation of war. And that cannot be the case. Suppose the enemy insists on something perfectly reasonable as a condition of surrender—for example, that the victors pledge not to kill the prisoners of war they are holding. If it were permissible for the victors to insist on unconditional surrender and to continue the war until they secured it, that would presuppose that it is permissible for them to assert by means of war their alleged right to withhold a pledge not to kill prisoners.

This of course leaves open the question of what may be done when an adversary who has fought without justification demands as a condition of surrender something to which they are not entitled, yet the demand is also of a type that it would not be permissible to resist by means of war. Suppose, for example, that an adversary who has been largely defeated militarily demands as a condition of surrender that they be allowed to continue certain unjust domestic practices, such as certain forms of religious discrimination (for example, providing state funding for schools that promulgate the state religion, but not for others). Just as it may be necessary for an individual not to resist certain forms of wrongdoing when the only effective response would be inappropriate or excessive in relation to the offense, so it may be necessary in war to grant certain undeserved concessions when the only alternative is to continue to fight without sufficient justification.

### THE MORAL PRIORITY OF JUST CAUSE IN *JUS AD BELLUM*

It is not only unjust aims that cannot permissibly be pursued by means of war. There are also many good or legitimate aims that cannot permissibly be pursued by means of war. The requirement of just cause is not

simply that war must have a just or worthy goal. Nor is it a requirement that there be a worthy goal, the achievement of which would outweigh the bad effects of war. In the just war tradition, the task of assessing the comparative importance of the goal or goals of war is assigned to the independent *jus ad bellum* requirement of proportionality. Proportionality requires, roughly, that the relevant bad effects attributable to the war must not be excessive in relation to the relevant good effects.<sup>3</sup> According to the view I accept, it might in principle be possible for considerations of proportionality to be fully subsumed within the requirement of just cause. Many just war theorists would resist this suggestion, however, because they believe that the goods that count in the proportionality calculation are not restricted to those specified by the just cause. But unless just cause fully accounts for considerations of proportionality, it ought not to say anything about the scale, magnitude, or comparative importance of the goods to be achieved by war. For it would be uneconomical and indeed pointless to divide the work of weighing and measuring values between two requirements—for example, by having just cause stipulate that the goal of a war must be to achieve some very great good, while proportionality would require that the

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<sup>3</sup>This is not, as some have supposed, a requirement that the bad effects, or expected bad effects, not exceed the good. A war might kill more people than it saves and still be proportionate if, for example, the majority of those killed are combatants who fight without a just cause, so that the war achieves a net saving of the lives of those who are fully innocent in the relevant sense. I will not pursue these complexities here. For discussion, see Thomas Hurka, "Proportionality in the Morality of War," *Philosophy & Public Affairs* 33 (2005), pp. 34–66; and Jeff McMahan and Robert McKim, "The Just War and the Gulf War," *Canadian Journal of Philosophy* 23, no. 4 (1993), pp. 506–18.

good be great enough to outweigh the relevant bad effects of the war.

I suggest, therefore, that just cause says *nothing* about considerations of scale or magnitude, but functions entirely as a restriction on the *type* of aim or end that may legitimately be pursued by means of war. It does not require that there be a great deal of good to be gained from war; nor does it imply that if there *is* a great deal of good to be gained, there is therefore a just cause.

This way of understanding the requirement of just cause parallels commonsense beliefs about the morality of individual action. Consider killing, for example, which occurs on a large scale in war. Suppose—to alter the details of Dostoyevsky’s *Crime and Punishment* only slightly—that by killing the miserly and misanthropic old moneylender, Raskolnikov could have divided her wealth among a large number of poor people, bringing significant benefits to each that together would have greatly outweighed the harm to her. Most people think that this is not even the right *kind* of justification for killing. It is widely held that only certain *types* of aims—such as self-defense against an unjust attack—can provide a justification for killing. In the same way, there are numerous worthy and important goals that cannot justify the resort to war, or the practice of war. It cannot, for example, be a justification for going to war against a people that it would stimulate the world economy, no matter how great the economic benefits would be.<sup>4</sup>

I will soon turn to the question of how those types of goal that might provide a just cause for war may be distinguished from those that cannot. For the moment I will say more about the relation between just cause and proportionality.

Because just cause is only a restriction on the type of aim that can justify war, the pro-

portionality requirement may have a larger role than many people suspect. Suppose, for example, that the defense of a state’s territorial integrity against even partial annexation by another state is a just cause for war, as many people believe. If just cause is not a matter of scale, then there would be a just cause for war if a neighboring country were about to capture an acre of our territory on its border—an acre that it regards as a holy site, but that we are using only as a garbage dump. In this case, the reason why it would be wrong for us to go to war to retain our possession of that acre is not that our aim would be too trivial to constitute a just cause; it is, rather, that our just cause would be too trivial for war to be proportionate. (Something of this sort might have been argued with respect to Britain’s resort to war when Argentina seized the Falkland Islands—though defenders of that war argued that the proportionality calculation had to take into account the importance of deterring even limited acts of aggression in order to uphold the principle of territorial integrity.)

If this is right, there is a sense in which just cause does less work than many have supposed, while proportionality does more. But there is also a sense in which just cause has a kind of priority over all the other requirements of *jus ad bellum*. In most statements of the traditional theory, the following requirements are included among the principles of *jus ad bellum*: just cause, competent authority, right intention, reasonable hope of success, necessity, and proportionality. The satisfaction of each is held to be neces-

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<sup>4</sup> See McMahan and McKim, “The Just War and the Gulf War,” pp. 502, 512–13. There we acknowledge our debt on this point to Thomas Hurka, whose “Proportionality in the Morality of War” is one of the most probing and rigorous contributions to just war theory in recent decades.

sary in order for the resort to war to be justified. And in that sense all the requirements are of equal importance. But I believe that just cause has priority over the other valid requirements in this sense: the others cannot be satisfied, even in principle, unless just cause is satisfied.

Admittedly, this is not true of the traditional requirement of competent authority, but I reject that component of the traditional theory for reasons I will not present here.<sup>5</sup> I also think that the plausible element in the requirement of “reasonable hope of success” is subsumed by the proportionality requirement.

That leaves right intention, necessity, and proportionality. Although it is not obvious to me that right intention is a valid requirement, suppose for the sake of argument that it is. It requires that war be pursued for the reasons that actually justify the war. It insists that those reasons not simply serve as a cover for the pursuit of other aims. What this means is that right intention is the requirement that war be pursued *in order* to achieve the just cause. Without a just cause, therefore, there are no reasons that can properly motivate the resort to war.

There is, it might be argued, one way in which right intention could be satisfied even in the absence of a just cause: if people falsely believed that there was a just cause and fought with the intention of achieving it. Yet it seems to me that this would clearly *not* be the *right* intention in the circumstances, though it might well be a *good* intention.

Consider next the requirement of necessity. This requirement demands that war be a necessary means of achieving the just cause. The claim that war is necessary for something other than the achievement of a just cause has no justificatory force.

In the case of proportionality, there is an equally simple argument. If just cause indi-

cates the range of goods that may permissibly be pursued by war, then no goods that fail to come within the scope of the just cause, or are instrumental to achieving it, can count in the proportionality calculation. If they did, that would imply that a war is justified, at least in part, by the fact that it would achieve certain goods that cannot permissibly be achieved by means of war. (For those who are unconvinced by this simple argument, I will say more on this point in a later section on just cause and proportionality.)

### JUST CAUSE AND *JUS IN BELLO*

I have argued that none of the valid requirements of *jus ad bellum* can be satisfied in the absence of a just cause. I also believe something even more controversial, which is that the requirements of *jus in bello* also cannot—except in rare instances—be satisfied in the absence of a just cause. This is a highly unorthodox claim. It is an axiom of contemporary just war theory that whether action in war is permissible or impermissible does not depend on whether there is a just cause. Just cause, on this view, governs only the resort to war. It is an *ad bellum* requirement, and as such has no role in the account of *jus in bello*. For the requirements of *jus in bello* and those of *jus ad bellum* are, as Michael Walzer puts it, “logically independent”; hence, just as a war that one is justified in fighting may be fought in an unjust manner, so a war that is itself unjustified

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<sup>5</sup> Although I reject competent authority as a necessary condition of a just war, I concede that it is of practical importance to restrict the authority to take certain actions to certain individuals or bodies when we seek to give institutional expression or embodiment to the requirements of a just war. It may be that, once certain institutions are established, some just causes for war can permissibly be pursued only by those with proper authority.

may nevertheless be fought in a just manner or, as Walzer says, “in strict accordance with the rules.”<sup>6</sup> The requirements of *jus ad bellum* are, moreover, thought to apply only to the political leaders, those with the authority to commit a people to war, and not to those who do the actual fighting. On this view, there is a moral division of labor that makes soldiers responsible for adherence only to the principles of *jus in bello*, which must therefore be satisfiable whether or not their war meets the conditions of *jus ad bellum*. It would be intolerable to suppose that all soldiers who are commanded to fight in an unjust war, or who fight in such a war without knowing that it lacks a just cause, are for that reason criminals or even murderers.

It may seem obvious, in any case, that at least some of the requirements of *jus in bello* can be satisfied even by those who fight without just cause. The requirement of discrimination, for example, requires only that combatants restrict their attacks to military targets—that they target only other combatants and not noncombatants. This is implicit in the widely used alternative label for the requirement: the “requirement of noncombatant immunity.”

But this is in fact just one interpretation of the requirement of discrimination, which in generic terms is simply the requirement to discriminate between legitimate and illegitimate targets and to make deliberate attacks only on the former. In my view, which I have defended elsewhere, the distinction between legitimate and illegitimate targets does not coincide with that between combatants and noncombatants. Rather, what discrimination requires is that soldiers target only those who are morally responsible for an unjust threat or for some other grievance that provides a just cause for war. If that is right, soldiers who lack a just cause also lack legitimate targets.<sup>7</sup>

Similarly, if soldiers lack a just cause, there are no goods that they are justified in pursuing by means of war. So even if there are goods for which belligerent action is necessary, they are not goods that can permissibly be achieved in that way. And when there are no goods that may be pursued by means of war, there are no goods that can properly be weighed against the bad effects that an act of war would cause; therefore, no act of war can be proportionate in the absence of a just cause.<sup>8</sup> In short, when there is no just cause, acts of war can be neither discriminate, necessary, nor proportionate.

There is, I concede, a small class of exceptions to this general claim. These are acts of war by those who lack a just cause that are necessary to prevent their adversaries from acting in ways that would be seriously wrong—for example, to prevent those fighting with a just cause from pursuing it by illegitimate means, such as by attacking people who are innocent in the relevant sense as a means of coercing those people’s government to surrender.<sup>9</sup>

This concession necessitates that we distinguish between a *just cause for war*, which can contribute to the justification for going to war and may legitimately be pursued by means of war, and what I will call a *discrete just aim*, which cannot contribute to the justification for the resort to war or for its continuation, but may legitimately be pursued by means of war if war is in progress. Such aims are “discrete” because they occur in iso-

<sup>6</sup> Michael Walzer, *Just and Unjust Wars* (Harmondsworth, U.K.: Penguin, 1977), p. 21.

<sup>7</sup> For elaboration, see Jeff McMahan, “The Ethics of Killing in War,” *Ethics* 114, no. 4 (2004), esp. pp. 718–29.

<sup>8</sup> I have argued at length for the claim that those who fight without just cause cannot satisfy the *jus in bello* requirement of proportionality. See *ibid.*, pp. 708–18.

<sup>9</sup> *Ibid.*, pp. 712–14.

lation and are unconnected with the larger aims of the unjust war of which they are a part. The permissibility of pursuing a discrete just aim by means of war is doubly conditional: it may be pursued *if* war is already in progress and *if* the wrong to be prevented cannot be avoided by surrendering on morally acceptable terms.

In general, however, a just cause is necessary for an act of war to be justified. It is for this reason that war must cease once the just cause has been achieved. Soldiers may not continue to fight once the aims that justified their fighting have been achieved. And if this is true, it should also be true that they may not fight at all if there are not and never were any aims that justify their being at war. Just cause is necessary not only for it to be permissible for political leaders to resort to war; it is also necessary for it to be permissible to *participate* in war.

This is not to say that those who participate in war without a just cause are necessarily culpable or deserving of punishment. Just as in the law a person may be fully exculpated for action that is objectively in breach of a statute, so most soldiers who fight without a just cause may have a variety of excuses that partially or even fully exculpate them. And even if the excuses that soldiers have for fighting in an unjust war never fully exculpate them, it is possible, and almost certainly highly desirable, not to treat mere participation in an unjust war as punishable under international law.

## THE CONNECTION BETWEEN JUST CAUSE AND MORAL LIABILITY TO ATTACK

These claims about the dependence of *jus in bello* on just cause deviate substantially from the currently orthodox understanding of the just war. I will now advance a view about

what types of aim can be just causes for war that is also heretical, given the consensus that has developed between international law and contemporary just war theory that defense against aggression is the sole just cause for war (with the possible exception of the prevention of large-scale violations of human rights, such as genocide). The view about what may be a just cause for war that I will defend does, however, have roots in the writings of earlier just war theorists and earlier theorists of international law.

Thomas Aquinas, for example, was close to the truth when he wrote that “a just cause is required, viz. that those who are to be warred upon should deserve to be warred upon because of some fault.”<sup>10</sup> This claim is, however, in one respect too narrow and in another too broad. It is too narrow in its insistence that it is necessary for just cause that those attacked should *deserve* to be attacked. I take the claim that a person *deserves* to be harmed to imply that there is a moral reason to harm him even when harming him is unnecessary for the achievement of any other aim—for example, when harming him would not prevent, deter, or rectify any other harm or wrong. In this sense, people seldom if ever deserve to be warred upon.

The notion I would substitute for desert is *liability*. To say that a person is liable to be attacked is not to say that there is a reason to attack him no matter what; it is only to say that he would not be *wronged* by being attacked, given certain conditions, though perhaps only in a particular way or by a particular agent. This notion is broader than

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<sup>10</sup> Thomas Aquinas, *Summa Theologiae*, IIaIIae, q. 40, art. 1, resp., quoted in Jonathan Barnes, “The Just War,” in Norman Kretzmann, Anthony Kenny, and Jan Pinborg, eds., *The Cambridge History of Later Medieval Philosophy* (Cambridge: Cambridge University Press, 1982), p. 777. Since the only citation is to the Latin text, I assume that the translation is Barnes’s own.

desert in that, while desert implies liability, liability does not imply desert.

Although liability to attack usually or perhaps always arises from action that is wrongful, there is no necessary connection between liability and punishment or retribution. To say that a person is liable to be harmed even though he does not deserve to be harmed is just to say that if it is unavoidable that someone must be harmed, there is reason that he should be the one who is harmed and that he will not be wronged by being harmed.

Substituting the notion of liability for that of desert, we can say that there is just cause for war only when those attacked have made themselves liable to be warred upon. But Aquinas's claim that the basis of their liability is fault, or culpability, may be both too broad and too strong. It is possible to read his claim as implying that *any* fault that might make a person deserving of harm could be a basis of liability to attack, in which case it would be too broad. For the relevant fault must be specifically for a wrong that war against the perpetrators would prevent or redress. And the insistence on fault, or culpability, may in principle be too strong in that it is possible—though not likely—that a people could make themselves liable to be warred upon by being morally responsible, though faultlessly, for a wrong that war against them would prevent or redress.<sup>11</sup>

Here, then, is a statement of the formal concept of just cause. There is just cause for war when one group of people—often a state, but possibly a nation or other organized collective—is morally responsible for action that threatens to wrong or has already wronged other people in certain ways, and that makes the perpetrators liable to military attack as a means of preventing the threatened wrong or redressing or cor-

recting the wrong that has already been done.

The connection I am claiming between just cause and liability may be found, though not altogether explicitly in the work of some of the earlier jurists writing in the just war tradition. These writers typically insisted that just cause is founded in an injury, by which they meant a wrong or a violation of rights. Hugo Grotius, for example, noted with approval that “St. Augustine, in defining those to be just wars, which are made to avenge injuries, has taken the word *avenge* in a general sense of removing and preventing, as well as punishing aggressions.”<sup>12</sup> Similarly, Emmerich de Vattel claimed that “the foundation, or cause of every just war is injury, either already done or threatened. . . . And, in order to determine what is to be considered as an injury, we must be acquainted with a nation's *rights*. . . . Whatever strikes at these rights is an injury, and a just cause of war.”<sup>13</sup> But the most explicit of the classical writers is Francisco de Vitoria, who argued that a political leader “cannot have greater authority over foreigners than he has over his own subjects; but he may not draw the sword against his own subjects unless they have done some wrong; therefore he cannot do so against foreigners except in the same

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<sup>11</sup> Some people accept that if you reasonably but mistakenly believe that I am culpably trying to kill you, you may be morally and legally justified in killing me. Even if this were so (I think it is not, but I cannot argue for that here), this would not imply that I would be liable to be killed. I cannot be made liable by your mistake, even if it is a reasonable one. The basis of moral liability must be some form of responsible action by the person who is liable. For discussion, see Jeff McMahan, “The Basis of Moral Liability to Defensive Killing” *Philosophical Issues* 15 (2005, forthcoming).

<sup>12</sup> Grotius, *The Rights of War and Peace*, p. 76.

<sup>13</sup> Emmerich de Vattel, *The Law of Nations* (1758), trans. Joseph Chitty (Philadelphia: Johnson & Co., 1863), p. 302.



circumstances. . . . It follows from this that we may not use the sword [that is, resort to war] against those who have not harmed us; to kill the innocent is prohibited by natural law.”<sup>14</sup> It is an implication of this view that those who fight by permissible means in a just cause are innocent and may not permissibly be attacked.

To kill the innocent, Vitoria says, is impermissible. And the innocent are those who have done no wrong; they are those who have done nothing to make themselves morally liable to be killed. This, as Vitoria recognizes, supports the view for which I argued above—that the requirement of discrimination cannot be satisfied in the absence of a just cause. For a war that lacks a just cause is a war fought against those who have not made themselves liable to attack. It is a war fought against the innocent. Vitoria therefore concludes that if a person is certain that a war is unjust, he must not fight in it, even if he is commanded to do so by a legitimate authority. For “one may not lawfully kill an innocent man on any authority, and in the case we are speaking of the enemy must be innocent. Therefore it is unlawful to kill them.”<sup>15</sup> This view—that only those who fight in an unjust war are liable to attack—is shared by Francisco Suárez, who asserts that “no one may be deprived of his life save for reason of his own guilt”; thus, the innocent include all those who “have not shared in the crime nor in the unjust war.”<sup>16</sup>

Contemporary just war theorists think that this is a crude mistake. “Innocent,” they point out, contrasts in this case with “threatening,” not with “guilty” or “culpable.” Anyone who poses a threat is noninnocent, and therefore soldiers on both sides are noninnocent in the sense that is relevant for determining liability to attack.<sup>17</sup> This, after all, is what gives the distinction between combatants and non combatants its moral signifi-

cance: combatants pose a threat to others; non combatants do not. Thus, because all

<sup>14</sup> Francisco de Vitoria, “On the Law of War,” in *Political Writings* Anthony Pagden and Jeremy Lawrance, eds. (Cambridge: Cambridge University Press, 1991), pp. 303–304.

<sup>15</sup> *Ibid.*, p. 307. Vitoria seems to accept a subjective account of justification, according to which it is wrong for a person to fight in a war that he believes to be unjust, even if his belief is mistaken (p. 308). This account of justification may not be *fully* subjective, however, because elsewhere Vitoria suggests that only *reasonable* belief is sufficient for justification (p. 306). But this means that he accepts that a person can be *justified* in fighting in an unjust war, provided that he reasonably believes that it is just; and Vitoria suggests that whenever there is uncertainty about whether a war is just, it is reasonable for a citizen to accept the assurance of his government that it *is* just (pp. 312–13).

<sup>16</sup> Francisco Suárez, “On War” (Disputati on XIII, *De Triplici Virtute Theologica: Charitate*) (c. 1610), in *Selections from Three Works*, trans. Gladys L. Williams, Ammi Brown, and John Waldron (Oxford: Clarendon Press, 1944), pp. 845–46.

<sup>17</sup> See, e.g., Thomas Nagel, “War and Massacre,” in Charles R. Beitz, Marshall Cohen, Thomas Scanlon, and A. John Simmons, eds., *International Ethics* (Princeton: Princeton University Press, 1985), p. 69; Anthony Kenny, *The Logic of Deterrence* (London: Firethorn Press, 1985), p. 10; and Michael Walzer, *Just and Unjust Wars*, p. 145. Elizabeth Anscombe, another influential contributor to the literature on the just war, is inconsistent on this point. In her justly celebrated pamphlet opposing Oxford’s award of an honorary degree to President Truman (on the ground, in effect, that mass murderers ought not to be awarded honorary degrees), she wrote that “‘innocent’ . . . is not a term referring to personal responsibility at all. It means rather ‘not harming.’ But the people fighting are ‘harming,’ so they can be attacked.” (Anscombe, “Mr. Truman’s Degree,” in *Ethics, Religion, and Politics: Collected Philosophical Papers*, vol. 3 [Minneapolis: University of Minnesota Press, 1981], p. 67.) But in a later paper she wrote that “what is required, for the people attacked to be non-innocent in the relevant sense, is that they should themselves be engaged in an objectively unjust proceeding which the attacker has the right to make his concern; or—the commonest case—should be unjustly attacking him.” (“War and Murder,” in the same volume, p. 53.) In this quotation, “non-innocent” means neither “harming or threatening” nor “guilty,” but “engaged in objectively wrongful action.” So when she wrote the second essay, she had reverted to a position more in keeping with the older just war tradition but inconsistent with the contemporary orthodoxy.

soldiers are noninnocent, even those who have a just cause are not wronged when they are killed by those who lack a just cause. Simply to be a soldier is to make oneself liable to be killed.

But this is an implausible understanding of the basis of liability. If simply posing a threat were a basis of liability to attack, those individuals who engage in justified self-defense would thereby make themselves liable to preemptive counterattack by those who have wrongfully attacked them. And police would not be wronged by being preemptively attacked by those whom they were about to attack in order to prevent them from committing crimes.

Why, then, do most contemporary just war theorists think that such an account of liability is appropriate in the case of war? I suspect that it has to do with their conviction that most ordinary soldiers are not criminals, even if they fight in a war that lacks a just cause. They believe that it is reasonable to absolve ordinary soldiers of responsibility for determining whether a war is just or unjust. That responsibility lies with others. Soldiers may thus see themselves *and their adversaries* as engaged in an activity dictated by goals for which they are not responsible and over which they have no control. They are bound by a code of honor that is suited to and distinctive of their role as warriors, but they are not holy warriors with a mandate to eradicate evil. They must not, for example, take vengeance on prisoners or seek to punish the vanquished. This is the only fair way for soldiers to view and treat other soldiers, given the various pressures and constraints under which they all must act. And, it is often argued, this way of understanding the morality of war also works out far better in practice than a view that treats those who fight with a just cause as innocent in the way their civilian popula-

tion is innocent, but treats those who fight without a just cause as wrongdoers. To regard the liability of soldiers as a function merely of their role as combatants not only limits their liability to matters of *jus in bello*, and thus rules out the legitimacy of punishment merely for fighting on the wrong side, but also has as a corollary the prohibition of deliberate attacks on civilians. The separation of *jus in bello* from the question of just cause thus effectively limits or constrains the savagery of war.

What this view leaves out, however, is the insight of the classical jurists—that people are treated unjustly if they are deliberately killed without having done wrong. The currently orthodox view, which holds that the moral status of soldiers is unaffected by whether they have a just cause, implies that a person who takes up arms to defend himself and others from a threat of unjust aggression thereby makes himself morally liable to be killed by the aggressors, who then act permissibly, and do him no wrong, if they go on to kill him. It is very hard to believe that this could be right. Moreover, at least some of the practical benefits that are attributed to this orthodox view may be attained just as well by regarding some of those who fight without a just cause as excused for rather than as morally justified in fighting.

The contemporary theory of the just war seems, in short, to be less concerned than the tradition it claims to represent with what is just and unjust in war, and is instead more concerned with the consequences of war and the conventions that are useful in controlling those consequences.<sup>18</sup>

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<sup>18</sup> For an argument that it is necessary for the law of war to diverge from the underlying, nonconventional morality of war, see Jeff McMahan, "The Laws of War and the Morality of War," in David Rodin and Henry Shue, eds., *Just and Unjust Warriors* (forthcoming).

## A SUBSTANTIVE ACCOUNT OF THE REQUIREMENT OF JUST CAUSE

Thus far I have offered only a formal account of the requirement of just cause, claiming that there is a just cause for war only when those attacked are liable to be warred upon. A substantive account of just cause has to go further by providing a criterion for determining what sorts of action engender liability to military attack.

The classical jurists to whom I have referred typically offer a short list of just causes for war. The jurists tend to agree that the just causes for war are basically these: defense against unjust threats; recovery of or indemnity for what has been wrongfully taken, or compensation for the violation of rights; and punishment of wrongdoing, not solely for the purpose of retribution but to prevent or deter further wrongful action by the culprit or by others.<sup>19</sup> These suggested just causes for war are all consistent with the insistence that, for war to be just, those attacked must be morally liable to attack. But a unified account of the morality of war ought also to explain why certain forms of action give rise to liability to attack while others do not. In this section I will offer a preliminary sketch of a method for determining whether a certain goal can be a just cause for war.

War involves killing and maiming; or, rather, war that involves killing and maiming is what requires a just cause. In principle and even in law, there might be a wholly nonviolent war—for example, one declared by opposing belligerent powers but terminated by agreement before their forces engage. That is not my topic. War, as I understand it here, necessarily involves killing and maiming, typically on a large scale. A just cause, then, has to be a goal of a type that can justify killing and maiming.

Contrary to what I wrote earlier, this gives considerations of scale a role in the concept of just cause.<sup>20</sup> Only aims that are sufficiently serious and significant to justify killing can be just causes. Beyond this, however, considerations of scale are irrelevant to just cause.

Let us assume that people can make themselves liable to be killed (for example, in self-defense or as punishment) only by virtue of seriously wronging or threatening to wrong others. On this assumption, the just causes for war are limited to *the prevention or correction of wrongs that are serious enough to make the perpetrators liable to be killed or maimed*.

If this is right, it does not automatically generate a list of just causes, but it does provide some much-needed guidance in identifying what may be a just cause for war. We can, in particular, consult our beliefs—which are quite robust and stable—about which kinds of wrong are sufficiently serious that the killing or maiming of the perpetrator could be justified if it were necessary to prevent or correct the wrong. Most people agree, for example, that one person may permissibly kill another if that is necessary to prevent the other person from wrongfully killing, torturing, mutilating, raping, kidnapping, enslaving or, perhaps, imprisoning her. Many people would also accept that it can be permissible to kill in defense against unjust and permanent expulsion from one's home or homeland, and even, perhaps, in defense against theft—though here questions of scale are obviously relevant to pro-

<sup>19</sup> See, e.g., Grotius, *The Rights of War and Peace*, pp. 75–76; Vitoria, “On the Law of War,” pp. 302–306; Vattel, *The Law of Nations*, pp. 301–14; and Samuel Pufendorf, *De Jure Naturae et Gentium, Libri Octo* (Oxford: Clarendon Press, 1934), p. 1294.

<sup>20</sup> I am grateful to Rachel Cohon for calling this to my attention.

portionality. It is only when theft would threaten an extreme and protracted deprivation that killing could be a proportionate means of defense. Perhaps what we should say is not that it can be permissible to kill to prevent theft, but that it can be permissible to kill to prevent any sort of act that would wrongfully reduce a person to utter destitution.

If each of these types of wrong is such that its prevention—or, when possible, its correction—can justify killing, then its prevention or correction can also be a just cause for war. There are, of course, complexities and complications involved in extrapolating from the individual to the collective level. Except for heuristic purposes, we cannot rely on what Walzer calls the “domestic analogy,” applying the principles that govern relations between individuals to relations between collectives, as if collectives were individuals. For a collective is not an individual: it does not have a single will, a single set of desires, or a unitary good. Extrapolation has to proceed by composition rather than by analogy, but even the most reductive form of individualism must take account of distinctively collective goods, such as collective self-identification or collective self-determination, and thus recognize that there may be wrongs that are not entirely reducible to wrongs against individuals because they have a collective as their subject. I cannot pursue these complications here.

Instead, I will explore in the following section a few of the implications of the view I have sketched.

## JUST AND UNJUST CAUSES

### *Recovery of Goods Lost to Prior Aggression*

In morality, if not in law, just cause is not limited to self-defense against armed aggression. It is, for example, possible for an offen-

sive war to be just. This is clearest in cases in which defense against wrongful aggression fails and the aggressor achieves its aim—for example, by seizing and occupying territory, or by imposing an alien or collaborationist government that will do its bidding. In such cases it would be absurd to suppose that the victims lose their rights when they lose their war of defense. If it later becomes possible for them (or third parties acting on their behalf) to reassert through armed rebellion the rights that were violated by the earlier aggression, and thereby to recover the territory or political independence of which they were unjustly deprived, they will not wrong the aggressor if they do so. Successful aggressors remain liable to attack as long as they retain the spoils of their wrongful aggression. (Recall that just cause is not the sole condition of a just war. War must also be, among other things, necessary. Unjust occupation or political subordination may often be more effectively defeated, and with far fewer casualties, by means of nonviolent resistance, particularly when the occupier is a democratic society with a free press—as, for example, Israel is.<sup>21</sup>)

There is, however, a moral statute of limitations here, particularly with respect to territorial rights. If, following an unjust seizure of territory, enough time passes for a new society with its own infrastructure to arise within the territory, the members of that society may acquire an increasingly strong moral claim to stay, particularly as

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<sup>21</sup> I believe, though this cannot be proven, that if the Palestinians had produced a leader like Gandhi rather than Arafat, they could have had their own state decades ago and could now be free and prosperous, and that this, by removing one potent source of grievance and humiliation among Arabs and Muslims, could in turn have helped forestall some of the worst instances of recent terrorism. Palestinian terrorism has, in short, been not only morally shameful but also self-defeating.

new generations who are entirely innocent of the initial aggression establish their own lives there. This is why Israeli settlements outside the borders Israel was assigned by the UN are properly regarded as instruments of insidious territorial aggression. The longer the settlers stay, the more they build, and the more children they have, the stronger their moral claim to the land becomes. Consequently, Israelis who move to the settlements voluntarily are morally responsible participants in unjust aggression, and as such are morally liable to defensive attack—though their young children are not. Even when they do not themselves bear arms, which they usually do, their presence in the occupied territories is possible only because of a background threat of military protection. There is, therefore, a case for regarding them as having combatant status and thus as being liable, even according to the orthodox theory of the just war. If there are those who refuse to bear arms, they are morally like civilians who make themselves liable by voluntarily acting as shields for combatants engaged in territorial aggression, and who thereby facilitate aggression by forcing the other side to have to kill civilians in order to resist.

### *Humanitarian Intervention*

Governments sometimes gravely wrong their own citizens, particularly members of ethnic or other minorities or political dissidents. These wrongs may make their perpetrators liable to attack for purposes of defense or correction. Just as resistance to these wrongs may in rare instances lead to justified civil war by the victims against the perpetrators, so military intervention by third parties may also be justified on behalf of the victims. There are, of course, various conditions that must be met if humanitarian intervention is to be permissible. It must,

for example, either be requested, or there must at least be compelling evidence that the intended beneficiaries would welcome rather than oppose intervention by the particular intervening agent or agents. (One reason why the American invasion of Iraq in 2003 was not a justifiable instance of humanitarian intervention is that there was no evidence that ordinary Iraqis wanted to be freed from the Ba'athist dictatorship by the United States—a country that a little more than a decade earlier, and under the leadership of the current president's father, had bombed their capital, decimated their civilian infrastructure, and successfully pressed for the institution and perpetuation of sanctions that subsequently resulted in many thousands of deaths among civilians.)

Many people have thought that considerations of national self-determination militate against humanitarian intervention. This objection is often specious, however, when the intervention is desired by the victims of governmental persecution. For in such cases the gulf between victims and perpetrators is typically so wide that there is no longer (if there ever was) a single collective "self" whose autonomy is threatened, but rather two or more distinct collective selves, one of which is engaged in wrongful action that is not protected by its right of self-determination.<sup>22</sup> There are various other objections to humanitarian intervention, but the most serious are of a pragmatic nature, having to do with such considerations as the likelihood of self-interested abuse of any norm recognizing the legitimacy of war for altruistic reasons. But no such objections show that certain aims of

<sup>22</sup> For detailed discussion, see Jeff McMahan, "Intervention and Collective Self-Determination," *Ethics & International Affairs* 10 (1996), pp. 1–24.

humanitarian intervention cannot be just causes for war.

### *The Prevention of Future Aggression*

It is highly contentious whether the prevention of future aggression can be a just cause for war. By prevention of future aggression I mean action taken to address a threat of unjust attack that is neither in progress nor imminent, but temporally more remote. Whether this can be a just cause for war is obviously central to the issue of the legitimacy of preventive war.

Many theorists of the just war accept that the prevention of future aggression can be a legitimate aim of war once war is already in progress. Samuel Pufendorf, for example, writes: “It is permitted to apply force against an enemy not only to the point where I have repelled the danger which he threatens against me, or where I have recovered or wrested from him that which he has unjustly seized from or refused to furnish me; but I can also proceed against him in order to obtain a guarantee for the future. So long as the other allows this to be wrested from him through force, he gives sufficient indication that he still intends to injure me even thereafter.”<sup>23</sup> Similarly, Vattel acknowledges that prevention through forcible disarmament can be permissible once aggression has occurred. But he insists on a prior injury as a condition of legitimacy: “For an injury gives us a right to provide for our future safety, by depriving the unjust aggressor of the means of injuring us.”<sup>24</sup> Here Vattel echoes his predecessor, Vitoria, who, as I noted above in the discussion of moral liability to attack, asserted that violence may be done only to those who have “done some wrong.” If, as these writers claim, the prevention of future aggression can be a legitimate aim of war once war is already in progress, that implies, on the understanding of just cause for which

I have argued, that it can be a just cause for war. For a just cause is any aim that may legitimately be pursued by means of war; it may justify only a phase of a war or even just a single act of war without justifying the resort to war or the war as a whole.

I once thought, as these classical writers imply, the prevention of future aggression could not *on its own* be a just cause for war. In a paper drafted during the Gulf War of 1990–91, Robert McKim and I drew a distinction between an *independent* just cause, which could justify war or the resort to war on its own, and a *conditional* just cause, which could contribute to the justification for war, but only when triggered or activated by the presence of an independent just cause.<sup>25</sup> I thought at the time that the prevention of future aggression could be only a conditional just cause—that is, that it could legitimately be pursued only when war was already justified by reference to an independent just cause arising from a wrong that had been done, was being done, or was on the verge of being done. I thought that only an act that made a country liable to attack for some reason other than prevention could also make it liable to preventive attack. I now think that this view is mistaken.

It is true that when the prevention of future aggression is a just cause for war, it is in most cases because a country is already committing a wrong—for example, is engaged in an act of unjust aggression—that makes it simultaneously liable to both

<sup>23</sup> Craig L. Carr, ed., *The Political Writings of Samuel Pufendorf*, trans. Michael Seidler (New York: Oxford University Press, 1994), p. 259.

<sup>24</sup> Vattel, *The Law of Nations*, p. 310.

<sup>25</sup> McMahan and McKim, “The Just War and the Gulf War,” pp. 502–506. In this article we used the terms “sufficient just aim” and “contributing just aim,” rather than the more perspicuous terms “independent just cause” and “conditional just cause.”

defensive and preventive attack. In these cases, a single wrongful act makes the offending country liable to attack for more than one reason. But all that is necessary for prevention of future aggression to be a just cause is that a country should have done something to make itself liable to be attacked as a means of preventing it from committing a wrong in the future. And the kind of action that engenders this form of liability need not engender liability to attack for any other reason. In other words, the prevention of future aggression may, in some cases, be the *sole* just cause for war. In these cases, the country that is liable to preventive attack may be guilty of no wrong other than the kind recognized in the area of criminal law concerned with conspiracy: the kind of wrong that involves collaborators manifestly intending and actively preparing to commit a crime. In order for this kind of activity to constitute a just cause for war, the intended wrong must be grave enough that its prevention could justify killing and maiming.<sup>26</sup>

#### *Just War as One Type of Morally Justified War*

Consider now a different kind of case. Suppose that country A is about to be unjustly invaded by a ruthless and more powerful country, B. A's only hope of successful defense is to station forces in the territory of a smaller, weaker, neighboring country, C, in order to be able to attack B's forces from prepared positions as they approach A along the border between B and C. A's government requests permission from the government of C to deploy its forces on C's territory for this purpose, but C's government, foreseeing that allowing A to use its territory in this way would result in considerable destruction, denies the request. Suppose that C is within its rights to deny A the use of its territory but

that, all things considered, it is nonetheless justifiable for A to avoid an otherwise inevitable defeat at the hands of B by going to war against C in order to be able to deploy troops there, provided that it will withdraw immediately after fighting off the invading forces from A. (One historical case that approximates this scenario is Russia's war against Finland in 1939–40. The Russian government believed that control of Finnish territory within artillery range of Leningrad was necessary to protect the city from Nazi bombardment. It offered the Finns an exchange of territory, but the offer was refused, and the Russians then went to war to capture the territory they thought was necessary as a buffer against the Nazis. One reason this is only an approximation of my hypothetical example is that the Finns had good reason not to trust Stalin's assurances that Russia's aims were limited, since, among other things, Russia had only a short time earlier collaborated with the Germans in carving up Poland.)

Given that C is not morally required to sacrifice its territory for the sake of A, it seems that C does nothing to make itself liable to attack by A. On the account I have offered, therefore, A does not have a just cause for war against C. Yet if A is nevertheless morally justified in going to war against C, it must be possible for there to be wars that are morally justified yet unjust. A war is just when there is a just cause and all other relevant conditions of justification are also

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<sup>26</sup> For a more detailed discussion of these issues, see Jeff McMahan, "Preventive War and the Killing of the Innocent," in David Rodin and Richard Sorabji, eds., *The Ethics of War: Shared Problems in Different Traditions* (Aldershot, U.K.: Ashgate, 2005), pp. 169–90. See also Allen Buchanan and Robert O. Keohane, "Governing the Preventive Use of Force: A Cosmopolitan Institutional Proposal," *Ethics & International Affairs* 18, no. 1 (2004), pp. 1–22.

satisfied. But, while all just wars are morally justified, it seems that not all morally justified wars are just wars. As the example of A, B, and C suggests, there seem to be wars that are morally justified despite their requiring the targeting of those who are innocent in the relevant sense, so that at least some necessary phases of the war, and perhaps indeed all of its phases, lack a just cause. The form of justification in these latter cases is familiar: in rare circumstances, considerations of consequences override constraints on action that would otherwise be decisive. It is commonly recognized, for example, that it can in principle be permissible intentionally to harm or kill an innocent person if that is necessary to avert some great disaster. The necessity of preventing the disaster outweighs the grave injustice done to the individual victim.

If war may be justified in the absence of a just cause, one may wonder how significant the notion of just cause can be.<sup>27</sup> The answer is that the presence or absence of a just cause has a dramatic effect on the stringency of the proportionality requirement. When there is no just cause, all those who are targeted in war are innocent. And harms inflicted on the innocent weigh more heavily against the goals of a war than harms inflicted on those who are liable. The burden of justification is therefore very substantially greater in the absence of a just cause.

### *Deterrence*

Deterrence is problematic as a just cause for the same reason it is problematic as the sole aim of punishment. In both cases it seems objectionable because it uses the harming of some as a means of influencing the action of others. So, for example, even if a government's systematic violations of the human rights of some of its citizens are sufficient to make it liable to attack for the purpose of

stopping the violations, they do not obviously make that government liable to further or harsher attacks intended to warn other governments of the penalties for violating human rights. And certainly the violation of its citizens' human rights cannot make a government liable to attack as a show of force intended to deter other countries from engaging in the different crime of aggression.

Yet deterrence of others *can* be a just cause and thus contribute to the justification for war *if* the wrong committed by the country that is attacked would itself otherwise increase the probability that other countries would commit wrongs of a sort that would constitute a just cause for war. For in that case the country's wrongful action would make it to some degree responsible for the increased risk of further wrongful action by others. That responsibility makes it liable to legitimate action necessary to deter the wrongs that its own action had made more likely. Suppose, to take a historical example, that Argentina's seizure of the Falkland Islands, if unopposed, would have emboldened other countries wrongfully to seize by force certain territories to which they believed they had a historical claim. In that case, the aim of restoring the deterrence of such ambitions to previous levels could have contributed to the justification for Britain's going to war and for its action during the war.

Although deterrence may thus be a just cause, it is, unlike the prevention of future aggression, unlikely ever to be the sole just cause for war. For any action that is sufficient to make a country liable to be used as a means of deterring others will almost necessarily be the sort of action that gives rise to another just cause as well. For example, it

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<sup>27</sup> Thanks to Jon Mandle for pressing me on this point.



seems that a country can make itself liable to attack as a means of deterring others from engaging in aggression only by itself engaging in aggression, in which case defense against that aggression will also be a just cause. And the same seems true for other wrongs that may make a country liable to be attacked for the purpose of deterrence.

### *Democratization*

The Bush administration has contended that war can be justified as a means of bringing democracy to people who lack it—that is, that democratization can be a just cause. But one does not even need a substantive account of just cause to rule this out; it is ruled out by the formal claim that just cause is always correlated with liability to attack on the part of those targeted for attack. For people cannot be liable to killing and maiming simply for failing to organize their internal affairs in a democratic manner, even if democracy would be better for them and for their relations with others.

There might be a just cause for war if a people were being forcibly *prevented* by a tyrannical government from organizing themselves democratically, for then the government itself might be liable to attack for wronging its citizens. A war to stop the suppression of a people's democratic aspirations would not be a war for the promotion of democracy, but would instead come within the category of humanitarian intervention, as its fundamental aim would be to stop a government from violating the rights of its citizens.

This admittedly presupposes a conception of humanitarian intervention that is rather more expansive than the prevailing conception. If the concept of humanitarian intervention is insufficiently elastic to include interventions that are necessary to defend the right of a people to democratic

self-government from suppression by a tyrannical regime, this suggests the need for a further category of intervention—namely, intervention that is necessary for the defense of the rights of a people against violation by others within their own state, particularly by their own government. But note that what is really at issue here is not the concept of humanitarian intervention or the right to democracy, but the permissibility of military intervention to defend a people's right to collective self-determination. Such intervention might be justified even if what people want is not democracy but rule by what they perceive to be the law of god, while their government insists on subjecting them to some different form of rule instead. One important question here is whether interventionary war could be justified even when a people's aspirations for self-determination were being suppressed not by force but merely by a threat of force. If what I have claimed earlier is right, the way to think about this is to ask whether those who are responsible for the suppression thereby make themselves liable to be killed if that is necessary in order to end it. A useful test is to consider whether the people whose rights are being violated would be justified in resorting to armed rebellion in defense of those rights. If they would be, that suggests that external military intervention on their behalf would be justified as well, other things being equal.

### JUST CAUSE AND PROPORTIONALITY

I claimed in the earlier section on the moral priority of just cause that only the achievement of aims that are specified by a just cause can contribute to the satisfaction of the *ad bellum* proportionality requirement. No other goods that might be realized by

war may weigh against the bad effects that would be attributable to the war in determining whether war would be proportionate. In light of the formal and substantive elements of the account of just cause I have sketched, it may now be clearer why this is so. A just cause is necessarily connected with moral liability to attack on the part of those targeted for attack. The basis for liability is moral responsibility for a wrong that belligerent action would either prevent or somehow rectify. The substantive component of the account specifies the types of wrong that may permissibly be prevented or corrected by means of war—namely, wrongs that are sufficiently serious to make those responsible for them liable to be killed or maimed, if necessary, in order to prevent or correct them.

To see that only the prevention or correction of wrongs can weigh against the evils of war in the proportionality calculation, consider what would follow if other desirable goals were allowed to count as well. I am assuming that people can become morally *liable* to be killed or maimed only by virtue of action (which I take to include knowingly allowing things to happen) that wrongs or threatens to wrong others. If that is right and we assume that desirable goals unconnected with the prevention or correction of wrongs can count in the proportionality calculation, it follows that the achievement of these goals could justify (or contribute to the justification for) deliberately killing or maiming innocent (that is, nonliable) people. Although I have conceded that this may be true in extreme cases in which the alternative to killing the innocent would be a catastrophe involving substantially greater harm to the innocent, I have also daunted that a war fought in this way would not be a *just* war.

It seems, therefore, that the only goods that can count in the *ad bellum* proportionality calculation involve the prevention or correction of wrongs for which those warred against are responsible (for again it would be obviously unjust to prevent or correct a wrong by going to war against people not responsible for that wrong). If, moreover, war could be expected to prevent or correct wrongs that are insufficiently serious to make those responsible for them liable to killing or maiming, it seems that those good effects must also be excluded from the proportionality calculation. One argument for this claim invites us to suppose, to the contrary, that good effects of this sort—that is, the prevention or correction of wrongs that do not rise to the level of just cause for war—could figure in the proportionality calculation and thus contribute to the justification for the war. Suppose, for example, that the prevention or alleviation of certain forms of religious oppression, such as coercing women to wear veils, cannot be a just cause for war. Yet suppose there is a just cause for war against a certain country, and that going to war against that country could be expected also to mitigate the harshness of the religious oppression that many of its citizens suffer. It may seem that the expectation of alleviating religious oppression could contribute to the justification for war by weighing against the bad effects in the proportionality calculation, at least if those warred against were responsible for the oppression. But this seems to imply that the pursuit of an end that is insufficient to justify killing and maiming—namely, alleviating religious oppression—can contribute to the justification for an activity—war—that necessarily involves killing and maiming. And that makes no sense. It seems, therefore, that the only ends that can weigh

against the bad effects of war in the proportionality calculation are those specified by the just cause or causes for war.

There is, however, a forceful challenge to this argument. Not all of the bad effects of war involve killing or maiming. There are many lesser types of bad effect. Even if the relief or mitigation of minor religious oppression cannot justify killing or maiming, perhaps it can weigh against, and therefore justify, the infliction of some of the lesser bad effects of war. If that is so, perhaps certain expected good effects that do not rise to the level of just cause can count in the proportionality calculation, provided that they are weighed only against lesser expected harms and not against the inevitable killing and maiming. Only those goods specified by a just cause can be weighed against the killing and maiming.

If good effects beneath the threshold of just cause can weigh only against the lesser bad effects of war, it follows that in certain cases some such effects cannot count at all. If, for example, a war would have twice as many good effects beneath the level of just cause as it would have lesser bad effects, half the good effects would count in canceling out the bad, but the other half would have no justificatory role at all.

This understanding of the proportionality calculation may, however, require comparisons of expected effects that are too fine-grained to be possible. It seems unrealistic to suppose that we could separate both the good and bad expected effects of war into two categories and compare the expected effects in one category only with the expected effects in the corresponding category. So assuming that this challenge to the claim that only goods specified by a just cause can count in the proportionality calculation is correct, its practical significance may be negligible.

## CAN MORE THAN ONE BELLIGERENT HAVE A JUST CAUSE?

I noted in the introduction that the received view in international law and contemporary just war theory is that the only just cause for war is defense against aggression. This is pleasing to orthodox theorists because it coheres well with the traditional view that at most one side in a war can have a just cause.<sup>28</sup> But if, as I have argued, there are more just causes than defense against aggression, and if, as seems obvious, a country can pursue both just and unjust causes in the same war, then it is clearly possible for both sides in a war to have a just cause.

Here is what I take to be a clear case in which two opposing belligerents both have a just cause. A and B both plot to conquer territory belonging to the other. A seizes a piece of B's territory and B seizes a piece of A's territory—not as a reprisal but in accordance with plans formulated in advance. Both are pursuing unjust causes, but each side's unjust cause gives the other a just cause: namely, self-defense or the recovery of captured territory. But neither is simultaneously fighting two wars, one of aggression and another of defense; rather, each is fighting one war on two fronts. Each has the aim of defeating the other militarily, thereby

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<sup>28</sup> In answering the question “whether war can be just on both sides,” Vitoria writes that “except in ignorance, it is clear *that this cannot happen*.” The exception he makes for ignorance is a mistake. After correctly noting that “invincible error is a valid excuse,” he then concludes that those who fight in good faith, erroneously believing their cause to be just, are justified in fighting. But excuse excludes rather than entails justification. (Vitoria, “On the Law of War,” pp. 312–13.) Vattel too asserts that “war cannot be just on both sides,” but says, more plausibly, of a party fighting an unjust war, that “if he acts in consequence of invincible ignorance or error, the injustice of his arms is not imputable to him.” (Vattel, *The Law of Nations*, p. 306.)

enabling itself to reclaim its own territory, but also to annex the coveted part of the other's territory.

This kind of example forces us to reconsider what might be meant by the assertion that a war as a whole is either just or unjust. For what this case shows is that at least in some instances a war may have elements or phases that are just even though other elements or phases are unjust. It is not clear how these can be aggregated to yield an overall judgment of a war as a whole. One coherent question is, of course, whether the war is such that it is better that it be fought than not. But that question, even if we take account of considerations of justice in answering it, is not equivalent to the question of whether the war as a whole is just.

#### “COMPARATIVE JUSTICE”

The idea that both sides in a war may simultaneously or sequentially pursue both just and unjust causes is different from the view of the U.S. Catholic Bishops that both opponents in a war may have some degree of justice on their side, and that just cause is therefore a matter of “comparative” rather than absolute justice. On their view, just cause is a matter of “the comparative justice of the positions of the respective adversaries or enemies. In essence: Which side is sufficiently ‘right’ in a dispute. . . ?”<sup>29</sup> A similar though more carefully worked out view is advanced by A. J. Coates. He argues that both sides can have just cause (what he calls “bilateral justice”), though it may be that only one is justified in fighting. “Though never absolute or unilateral, there may be such a preponderance of justice on one side and injustice on the other as to constitute just cause, and even sufficient perhaps to justify recourse to war.”<sup>30</sup>

But the plausible idea that neither side may be absolutely right and the other absolutely wrong—the idea that both sides may have legitimate claims and grievances—does not belong in our conception of just cause. Certainly both sides in a war may have legitimate complaints and grievances. But to suppose that just cause is compounded out of all these elements is to presuppose an overly broad conception of just cause.

Compare individual self-defense. Prior to a conflict, both parties may have legitimate grievances or claims and each may be guilty of wrongful provocations. But this is compatible with one having a right of self-defense and the other having no right at all in the conflict—for example, if one party unjustifiably succumbs to provocation and attacks the other as a means of resolving their disputes. It is the single act of aggression that makes the aggressor liable and gives the defender a right of self-defense. The same may be true in war.

#### THE PLURALITY OF CAUSES AND THE MORAL STATUS OF COMBATANTS

There are many cases in which one side in a war has no just cause at all. All of its war aims are unjust. There are also cases in which one side in a war has one or more just causes but still ought not to be fighting at all—for example, because its war is disproportionate, or because it is simultaneously pursuing a larger unjust cause that all its acts of war tend to advance. It is also possible that a country may have a just cause or set of just

<sup>29</sup> The Pastoral Letter of the U.S. Catholic Bishops, *The Challenge of Peace* (London: CTS/SPCK, 1983), p. 27.

<sup>30</sup> A. J. Coates, *The Ethics of War* (Manchester, U.K.: Manchester University Press, 1997), p. 151.

causes sufficient to justify its being at war, but that this country also and simultaneously pursues other aims—either aims that are laudable but inappropriate for pursuit by means of war or aims that are positively unjust. These cases, which may even constitute the great majority of cases in which we have been inclined to judge that a war was just overall, pose a number of problems. I will close by mentioning just one of the problems that I think is particularly important. Recall that I argued earlier that a soldier's moral status and what he may permissibly do—his immunities and rights—both depend on whether he has a just cause. The problem is that one and the same soldier may at one time act to serve a just cause but at another act to serve an unjust cause, and may not himself even know which is which. Or it may well be that a single act by this one soldier will serve both a just and an unjust cause.

In these cases, what is that soldier's status? Is he liable to attack when his action serves an unjust cause but not when it advances a just cause? And what presumptions are soldiers on the other side entitled to act on, given that in practice they cannot have knowledge about whether a particular adversary's action supports a just or unjust cause? Matters would be dearer if we could assume that all

soldiers on one side have a just cause while all those on the other side do not.

One thing we *can* say is that those who fight in a war that is unjust overall might be morally liable to attack even at a time when they are pursuing a just cause, because they will soon revert to the pursuit of the larger unjust cause or causes that give the war its overall status as unjust. When they are pursuing a just cause they are nevertheless at the time engaged in fighting an unjust war—just as they are while they are asleep.

There is a great deal more to be said about this vexed set of issues, but here is not the place to try to say it. I hope, however, to have advanced and defended a conception of just cause for war that ties it closely to an adversary's liability to attack as a result of a wrong for which that adversary is or, in the absence of defensive action, would be responsible. I have tried to show that this conception, which has deep roots in the work of classical theorists in the just war tradition but is in many ways antithetical to contemporary just war theory, has radical implications for our thinking about the morality of war. I hope to explore these implications further in future work.<sup>31</sup>

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<sup>31</sup> Most comprehensively in a book called *The Ethics of Killing: Self-Defense, War, and Punishment* (New York: Oxford University Press, forthcoming).