

## Violence and Warfare: A Critical Assessment of the Just War Tradition in a Rebalancing World

**'Bimbo OGUNBANJO, PhD**

**Department of Government**

**Lagos State University**

**School of Basic and Advanced Studies, Lagos, Nigeria**

**Email: [mbimboogunbanjo@yahoo.com](mailto:mbimboogunbanjo@yahoo.com)**

**ORCID ID: <https://orcid.org/0000-0002-8112-8764>**

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### Abstract:

The Just War tradition (JWT) is viewed in this paper as a corpus of ideas that discusses the morality and ethics of war. It has changed throughout more than 1,500 years, making it a complicated one. The Just War tradition is broad and multifaceted, yet it is confined within some essential principles that determine its boundaries. It differs from pacifism in that it holds that wars can occasionally be justified and from realism, which views war as outside the purview of moral judgment, in that it holds both the choice to go to war and the tactics used in conducting it are subject to moral inspection. Within such confines, just war theorists disagree with one another not only about subtleties of the theory but also over fundamental issues like whether or not a war may be justified by something other than the necessity of defending oneself against an already-initiated armed attack. The main goal of this research is to provide a clear and comprehensive understanding of the JWT, the conditions under which it permits and restricts acceptable damages and the moral conundrums these arguments raise. Regarding modern just war theory, one of the central concerns is whether war can be fought and damage done for "humanitarian" or "cosmopolitan" purposes, including protecting human rights. Stated differently, the question is whether there exists a clear and present need to conduct war. This paper lays out the main problems with the use of violence, evaluates the cosmopolitan and anti-cosmopolitan contributions to Just War thinking, and ends with some observations on the suitability of Just War thinking and its connection to cosmopolitanism.

**Keywords:** Anti-Cosmopolitanism, Cosmopolitanism, Just War Tradition, Violence, Warfare

**Introduction:**

The debate in this paper is on the negative obligations to prevent or lessen harm in the event of interstate violence. It specifically looks at the main arguments within the (European) Just War tradition (JWT). The JWT seeks to control violence and answer the question of whether it is appropriate to cause harm to other people. The nature of the damages that nations are allowed to inflict upon foreigners is a concern of the JWT. It offers a set of rules that specify what kinds of injuries are permitted and prohibited once an exemption has been granted, as well as when and when a state may resort to war and how to wage that war. This paper aims to make clear the moral bounds on a state's ability to go to war as well as its negative obligations to restrict the harms that a state may inflict on the armed forces and civilian population of another state.

The tradition of Just War extends over many centuries; throughout human history, people have debated whether or not war is necessary and, if so, how. St. Thomas Aquinas, a key figure in the development of just-war theory, posed the question, "Is war always sinful?" and offered a categorical rejection, establishing three standards by which war may be judged to be good: sovereign power, reasonable cause, and just aim (Burke 2014). Theorists from more modern times often supplement Aquinas's deontological elements with consequentialist ones. For instance, there must be proportionality between the anticipated costs and benefits of the war, a realistic possibility of victory, and the war should be waged only as a last choice. In general, however, whether through humanitarian intervention or self-defense, war should only be used against aggressors.

The concept of a righteous war is met with a great deal of pessimism. If someone detests war, why promote ideas that aim to ethically defend it? Although the majority of just war theorists do not support war, the fact that it has remained a major aspect of human civilization throughout history has raised serious questions about the morality of war's justifications. In this way, the concept of a fair war itself arises from the ontological foundation of realist thought, which is the common belief that, in the end, international life is hazardous and chaotic, and that, despite our best attempts to stop it, war will inevitably break out (Burke 2014). Realistically speaking, a cautious statesman would always be ready for conflict in light of this unfortunate truth. But such a reality necessitates the existence of moral standards for when and how to go to war, especially for those who desire to use force as seldom and humanely as possible, albeit

nevertheless when required. Therefore, it is stated that the just war tradition places moral restrictions on those who would wage war. Michael Walzer defines "the war convention" as "the set of articulated norms, customs, professional codes, legal precepts, religious and philosophical principles, and reciprocal arrangements that shape our judgments of military conduct" (Walzer 2000: 44) in his groundbreaking book *Just and Unjust Wars*. Known as the "just war tradition," this collection of concepts on moral assessments in times of war has a long history. It has grown and changed throughout the ages, settling around a few central beliefs, concepts, and tenets.

One of the earliest and most well-established schools of thought outlining states' moral duties to one another is the just war tradition. It has a long and illustrious history; most experts assume it dates at least as far back as the fall of the Roman Empire. During this time, the custom has come together around three main themes. The *jus ad bellum* is the first of them. Its main focus is on the following query: When and when may it be appropriate to use force? Usually, the response to this query is expanded into a set of principles. The *jus in bello* is the second thematic topic. The conduct of combat is its mandate. It poses the following question: When is using force justifiable? In response to this question, certain basic ideas are usually mentioned. The *jus post bellum* constitutes the third thematic focus. It is concerned with the just conclusion of conflicts. It focuses on the obligations of belligerents in the immediate aftermath of conflict rather than producing a tidy collection of rules. Regretfully, there are plenty of reasons for us to become acquainted with these concepts. Naturally, there is always going to be conflict on a global scale. There is hardly a week that passes without new news of atrocities occurring on the battlefield in some troubled region of the world. Terrorist acts, meantime, are still tearing at the foundation of society everywhere. As a result, relatively few lives are spared from the effects of war. Even if one manages to avoid the front lines, taxes are paid for a variety of purposes, including armory stocking, troop training, and financing our leaders' military adventure. You may not be interested in war, but it is surely interested in you, as Leon Trotsky is believed to have stated.

Recognizing the pervasiveness of conflict is one thing. It is another issue entirely to acknowledge that discussing war in connection with justice is legitimate. However, unless we want to completely reject the use of force in all situations, we inevitably find ourselves discussing war in words similar to these. With the backdrop of World War II, Albert Camus urged his readers to take a chance and believe "that words were more powerful than munitions" in his writing

(Zinn, 2012: 73). However, Camus was not an ardent pacifist. He was a part of the armed resistance that confronted the Nazi occupiers. Thus, his experience points to the complexity of these issues and the possibility that there is occasionally a connection between justice and conflict. The first step in identifying this connection is to pose several straightforward but crucial questions: Is there ever a case for war? If so, what minimum standards need to be fulfilled? How ought a righteous war to be fought? How do you achieve the right balance between the demands of military necessity and human rights? And lastly, is there any chance that a battle will ultimately result in something approaching a just peace? One has already interacted with the concepts and terminology of just war once they find themselves asking these kinds of questions.

There are elements of pluralism, communitarianism, and cosmopolitanism in the JWT. This tradition calls into question cosmopolitan ideals by asserting that obligations exist to prevent harm to foreigners even in times of conflict. But in terms of a valid right to self-defense, the JWT also seeks to strike a balance between these rights to strangers and rights to community sovereignty.

The *jus ad bellum* tradition is typically connected to pluralism in general. It establishes guidelines for when it is acceptable for governments to go to war. According to this perspective, laws about and for states, about obligations between nations, are used to define what constitutes acceptable and unacceptable grounds for war. Other governments are used as the rationale for war, not God or humanity. This is what Michael Walzer (1977) refers to as the "war convention" or the legalist tradition, an unofficial but significant agreement between nations. According to the *just ad bellum*, the defense of a state's sovereignty and, to some extent, the idea of a society of states are the only legitimate grounds for going to war. This can be contrasted with the more global components of *jus in bello*, which make clear reference to people and their right to minimal injury during times of conflict. Humanity is the ultimate referent, and the principles of discrimination, non-combatant immunity, and proportionality all allude to people's rights to be shielded from harm (Walzer 1977). The Geneva Conventions and several additional accords restricting the use and deployment of particular weapons, such as chemical weapons, landmines, and weapons of mass destruction (WMD), are examples of international humanitarian law that has been shaped by the *jus in bello* principles.

The JWT also shows how, when it comes to the fundamental elements of the JWT, cosmopolitan arguments about universal human rights and arguments about natural obligations are essentially in accord. Additionally, it illustrates how the notion of "supreme emergency" and the concept of civilian immunity serve as new contexts for the main distinctions between cosmopolitan arguments and natural obligations. The JWT, for anti-cosmopolitans, represents the boundaries of nations' ethical obligations; naturally, for realists, even these obligations are severely limited by the prudential calculations of necessity. But cosmopolitans find it even more problematic when violence is used for political purposes since, as Kant noted, war is an affront to the categorical imperative. This begs the issue of whether cosmopolitans can come to terms with the "sorry comforters" of the JWT. The following debate will demonstrate that it is conceivable for many cosmopolitans to support some, but not all, of the fundamental JWT tenets. The distinction lies in the fact that cosmopolitans support these ideas on cosmopolitan rather than statist grounds. The focus on the moral duty to eradicate war from the conduct of international affairs, however, sets most cosmopolitans apart from other JWT proponents, such as pluralists and legalists. The goal of pluralists and anti-cosmopolitans is to accept the inevitable evil of war without completely giving in to its deadly logic. They do not believe that war has an end. One of the most significant questions the JWT raises is whether the cessation of war is desirable or attainable. This paper makes the case that the JWT is still insufficient from a Kantian cosmopolitan standpoint because it ignores the prospect of ending war.

The just war tradition has become firmly based on several fundamental concepts, beliefs, and ideas. Before delving into the specifics of these fundamental ideas, it is critical to understand the differences between just war *theory* and the just war *tradition*—two phrases that are distinct but sometimes used interchangeably. We found Alex J. Bellamy's interpretation of these two concepts to be rather compelling. According to Bellamy, the just war tradition is the extensive normative discourse concerning the legitimacy of war that started in antiquity and was picked up and improved upon by a large number of later commentators who each advanced a normative theory about the ethics of war that was connected but different. In this way, the concept of a single, comprehensive "just war theory" is misleading because, in reality, there are a variety of just war theories—religious, secular, legal, moral, and so forth—that are all connected by a few key elements that together make up the larger just war tradition (Bellamy



2016: 4). Therefore, when a Christian moral philosophy concerning war is referred to as "just war theory," it refers to a specific subset of a larger tradition that has its roots in the teachings of Thomas Aquinas and St. Augustine of Hippo. The tradition is fractured, with several sub-traditions that exist, none of which is permanent, according to Bellamy (Bellamy 2016: 3). However, there are three things that all the theories and sub-traditions that make up the just war tradition have in common: (1) they argue that the use of force should be kept to a minimum and that war should be conducted as humanely as possible; (2) they all have their roots in Western legal, philosophical, or theological traditions; and (3) they present a set of principles that are supposed to guide the use of force (*jus ad bellum*), the conduct of war (*jus in bello*), and—increasingly—the ending of war (*jus post bellum*) (Bellamy 2016: 4).

After two millennia of discussion, the following set of principles surface, the first of which relates to *jus ad bellum*:

1) *Just Cause*: Only one or more just causes, which must be sufficiently serious to justify the use of force, may be the basis for a conflict. The justice of some *casus belli*, which have historically included punishing evil, regaining stolen property, and making amends, is a topic of debate among just war theorists (Johnson 1999: 28). Self-defense against aggression is the justification that is most often accepted, although there is dispute about other justifications, such as humanitarian intervention (saving people from their own government's massacre) and preemptive self-defense (avoidance of impending aggression).

2) *Right Authority*: The right to wage war must be attributed to a legally established authority that has widespread recognition. Generally speaking, the term now refers to independent political entities (states). Some people add to this idea the need that the conflict be announced in public and that the authorities be able to manage and stop using force (Orend 2017: 50; Evans 2015: 13; Johnson 1999: 28). The question of whether political authorities may conduct war independent of their moral standing and if their political institutions need to uphold a minimum standard of justice is similarly contentious (Orend 2017: 52).

3) *Right Intention*: The goal of the conflict should be the objective right cause, not any covert or subversive agenda like intimidation or territorial expansion. This idea is controversial because it raises questions about whether the just cause must be the sole justification for going to war, or if other factors can also play a role. This issue

comes up a lot when discussing humanitarian assistance (Bellamy 2014: 218).

4) *Proportionality of Ends*: The total projected benefits of starting a war must exceed the predicted costs. Put another, there must be more benefits from the battle than drawbacks. Thus, a particular wrong committed may be a justifiable reason for going to war; yet, a war is unjust if it is likely to bring more harm than benefit. Whether to take into account the costs and rewards of war that are global or only selfishly national is the main point of contention over this idea. Comparing and evaluating various forms of damage and benefit is also quite challenging.

5) *Last Resort*: Nonmilitary means of resolving the conflict should be explored to a fair extent before resorting to war. This does not imply that before using force, every non-military option must be rigorously explored and rejected. If this were the case, there would never be a fair war since talks could always go on. Instead, the majority of just war theorists agree that there must be good cause to think that non-coercive means such as sanctions, talks, and diplomacy would fail (ICISS 2011: 36).

6) *Reasonable Prospect for Success*: A war should not be started unless there is a plausible chance that the objectives (those included in the just case) will be accomplished. This prudential standard effectively outlaws the use of deadly force where it is known to be ineffective beforehand (Orend 2017: 58). In the uncommon event that a military victory is doubtful, political leaders have an obligation to both their population and warriors to avoid sacrificing their welfare by going to war. More contentiously, some academics add that there must be a plausible chance that the conflict would result in permanent peace (Johnson 1999: 29; Evans 2015: 178).

Regarding *jus in bello*:

1) *Proportionality of Methods*: the methods employed in a conflict must be commensurate with the purposes sought, which forbids causing more devastation than is necessary to accomplish the military objective. This standard, which has been enshrined in several conventions, serves to forbid the employment of specific weapons that inflict such needless suffering, such as chemical and biological weapons, as well as specific means and methods of warfare that inflict unnecessary suffering on both combatants and noncombatants (e.g., wanton destruction of infrastructure) (Detter 2010: 211).

2) *Noncombatant Immunity*: Also known as the "discrimination" concept, this one states that the only people who may be intentionally

targeted are combatants and "legitimate military objectives." The premise behind what Walzer refers to as the "moral equality of soldiers" is that, under proportionality constraints, troops may only lawfully kill enemy soldiers (Walzer 2000: 34). The definition of "combatants," however, is a topic of debate, especially when it comes to fighters who do not belong to a state's armed forces. The "doctrine of double effect," which essentially states that harm to noncombatants can be acceptable (though regrettable) if it is not intentionally caused and if reasonable measures are taken to minimize harm to civilians, also almost always qualifies this principle (Orend 2017: 115-116). When confronted with the quandary of bombing "dual-use" targets—that is, locations that serve both military and civilian purposes or are predominantly military installations that are known to be inhabited by sizable civilian populations—proportionality concerns come into play under this principle.

There is less consensus about *jus post bellum* since fewer analysts have addressed justice after the war than the justice of war's inception and conduct (Orend 2012: 43; Pillar 1983; Taylor 1985). The following concepts are shown by Brian Orend's significant work, which follows Walzer:

- 1) *Rights Vindication*: When aggression is successfully resisted, as long as the war's justification—that is, the resistance of aggression—it is the responsibility of the winning side to restore the status quo so that people and political communities can feel more securely in possession of their fundamental rights. This obligation extends beyond the widely held belief that the only reasonable objective of a fair war is to restore the pre-conflict status quo. Instead, "restoration plus," in the words of Michael Walzer, is the objective of a just war (Walzer 2000: 119).
- 2) *Elimination of Unjust Gains*: In cases where aggression has resulted in the invasion and seizure of property or territory that did not previously or legally belong to the state committing the aggression, the property should be returned, the secure borders should be re-established, and the victim of the aggression should be allowed to rebuild itself as a separate political community (Orend 2017).
- 3) *Punishment*: The necessity for the aggressor to receive punishment has two components. First, the aggressor must compensate the victim for a portion of the expenditures paid during the conflict, as aggression infringes upon rights and creates harm (Orend 2010). Second, subject to proportionality restrictions, those who were heavily involved in organizing and starting acts of aggression as well as breaking the *jus in bello* rules ought to stand trial before an impartial



and open court and be granted full due process rights (Walzer 2000: Hayden 2015: 169).

4) *Demilitarization and Political Rehabilitation*: Based on the type and extent of the aggression, the aggressor might have to demilitarize to the point where it won't be a threat to the victim or the world community for some time, but not to the point where it becomes too weak to be able to uphold law and order inside its borders. More contentious—and undoubtedly in the most severe of circumstances, as that of Nazi Germany—the aggressor may be forced to adopt new, peaceful, orderly, and rights-abiding domestic political institutions (Orend 2012: 50; Reiss 1991: 170).

This succinct overview of the principles and criteria that stem from the just war tradition aims to highlight the unique significance of each principle as it has been molded and passed down by the tradition. As previously mentioned, there is ongoing debate on the meaning, applicability, and particular needs of these principles. According to James Turner Johnson, there are distinctions, if not conflicts, between the diverse theories and discourses that make up the tradition and their respective conceptions of these principles (Johnson 1999: 27). For example, at some moments in the tradition's history, the just cause criterion allowed for the employment of war as a tool of retribution against wrongdoers; nevertheless, this practice has since been declared "unlawful reprisals" by positive international law (Heinze 2018: 105). Furthermore, as several academics and authors have demonstrated, the introduction of non-state actors as combatants in armed conflict calls into question a number of these principles, most notably the *in bello* principle of distinction and the *ad bellum* requirement of right authority (Aina & Nnamdi 2020; Chalder 2022; Williamson 2023). However, this is our overall understanding of just war principles as they have developed throughout the last two millennia in the just war tradition.

The aforementioned does not imply that the vocabulary of "just war" is the exclusive means of discussing the normative dimensions of war, as other traditions have also contributed to the development of legal and ethical standards that aim to control armed conflict. For example, the liberal tradition has created perspectives on the morality of war that have influenced the development of the modern law of armed conflict. The concepts of nonintervention, the Geneva Conventions' protection of combatants' rights, the UN Charter's prohibition on the use of force, and the current discussion surrounding humanitarian intervention can all be traced, in part, to the works of

liberal philosophers like John Stuart Mill, Jeremy Bentham, Immanuel Kant, and John Locke (Heinze 2018: 105).

Similarly, the Marxist tradition has long studied how the nation-state is submerged by the private sphere of economic relations, and consequently how a specific group of non-state actors—corporations—both seizes control of the state (making it do capital's bidding by establishing a “business-friendly climate”) and largely elides its authority (Rupert 2020: 254). Marxist criticism also explains the complaints of people who do not benefit from this global capitalist system; when these groups are denied socioeconomic opportunities, some of them may resort to violence. Furthermore, when seen through a Marxist lens, the decision made by nation-states to rely on private security contractors looks almost anticlimactic given how difficult it is to hold these actors responsible to democratic or legal systems. Similarly, the Gramscian articulation of hegemony centers on the epistemic context: how the privatization of security was made possible by the neoliberal championing of privatization, which was portrayed by "dominant groups [as a] vision which claims to serve the interests of all," and how civil society organizations are required to provide the means of resistance to effectively articulate a counter-hegemonic vision of legitimacy, a "war of positioning" (Rupert 2020: 257; Cox 1981: 126).

The present English School discussion of global and international society has served as a testing ground for the legitimacy of force usage by both state and non-state actors. However, we argue that all of these traditions may be partially seen as fundamental to the just war tradition, generally interpreted, insofar as they offer moral guidelines about warfare. For instance, this claim would shed light on how liberal feminists and liberal democratic peace scholars, like Bruce Russett and Jean Bethke Elshtain, have utilized the just war tradition to elucidate and expand upon previously developed theoretical claims (Elshtain 2015, 2017; Russett 2015: 399).

By and large, this paper addresses the conventional domain of international ethics—violence and warfare. It offers insightful analyses of the main tenets and assertions of the just war tradition. Its main goal is to provide a clear understanding of the nature of the JWT, the conditions under which it permits and restricts acceptable damages, and the moral conundrums these arguments raise. Regarding modern Just War thinking, one of the central concerns is whether war can be fought and damage done for "humanitarian" or "cosmopolitan" purposes, including protecting human rights. Stated differently, the question is whether there exists a clear and present need to conduct

war. This paper outlines the main problems with the use of violence and evaluates the contributions to Just War thinking that are both cosmopolitan and anti-cosmopolitan. It emphasizes that examining the cosmopolitan versus natural duties arguments from the perspective of the Just War tradition offers an intriguing perspective. This tradition reflects certain cosmopolitan traits while also drawing on arguments based on natural duties or natural law. Within the Just War tradition, there are arguments from both cosmopolitan and communitarian perspectives that center on the kinds of violence and injury that may be acceptable to inflict against outsiders. What kinds of violence are acceptable for "us" to do against "them" (and vice versa) is an issue that the Just War tradition attempts to answer. This paper highlights significant differences between the cosmopolitanisms of Rawlsian and Kantian thought. It also looks at why humanitarian intervention and Just War are better explained morally by Kantian theory. It ends with some observations about the applicability of Just War thinking and how it relates to cosmopolitanism.

### **What is Just War Thinking?**

There are several ways to consider the connection between ethics and war, of which the JWT is one (Ceadel 1989). Just War thinking is shared by several ethical systems and cultural traditions. Scholars of Confucianism and Islam discussed the issues of how to balance the need for warfare against its blatant violation of common morality. Arguably the most extensive competitor to the European tradition is the Islamic JWT. Though it still gives Islam moral direction, it has not been made part of international law, unlike the European JWT.

The JWT was either a question of religious contemplation or customary international law throughout most of its history. International customary law concerning Just conflict, and specifically justice in conflict, has been formalized into treaties and accords since the late 1800s. Between the state's authority to wage war and the prohibition of certain weapons, such as anti-personnel landmines, these accords have addressed everything. The Geneva Conventions, which regulate the treatment of enemy soldiers captured and forbid torture and other cruel treatment, are the most well-known of these accords.

Many authors allude to a "Just War Theory" (see Elshtain 1992), suggesting that thinking about Just War forms a cohesive body of knowledge that can be somewhat mechanistically applied to particular situations, akin to act or rule utilitarianism. According to Rengger (2012: 360), the framework regards Just War principles as relatively simple universal moral principles with relatively simple applications.

These principles involve "a moral slide rule from which legitimate instances of the use of force can be read off." Some academics contend that this is an incorrect interpretation of the doctrine's essence and that Just War thinking should be viewed as a tradition with several contributions. In this context, a tradition is a series of questions that are shared by several thinkers but do not have a single, accepted response (Rengger 2012; Gunnell 1974). To put it another way, Just War thinking produces distinct solutions for comparable situations at various points in time. Thus, the Just War doctrine has been used to both defend and criticize the US invasion and occupation of Iraq in 2003. Whichever of these analyses is right, it becomes hard to grasp and appreciate just war as a tradition. Because of this, discussing the JWT cannot be limited to only applying the "theory" to certain situations. The JWT itself, along with its tenets, should be viewed as controversial since it creates as many ethical conundrums as it tries to resolve. Although this causes great discomfort for some, it should serve as a reminder that, in the end, determining what is ethical is a question of interpreting universal principles in specific settings, and that, in turn, reflection on these contexts prompts changes in the interpretation of universals. A deeper discussion of a few of these conundrums will be provided below.

The European JWT asserts a lineage dating back to St. Augustine at the very least. Most people agree that the JWT got its start in opposition to the Roman Empire becoming Christianized. Most Christians agree that Augustine was the first to define the conditions under which Christian participation in military action for the benefit of the state was acceptable or at the very least defensible. Christian Orthodoxy has been adamantly pacifist up to that point. Augustine's writings first focused on the responsibilities of individual Christians, but over time they developed into a theology of state that explains when it is appropriate for nations to go to war. Bellamy states that there are several different schools of thought about just war, including "positive law, natural law, and realism" (2016: 6). Positive law, according to Walder's legalist tradition, refers to laws created by governments and is consistent with many interpretations of global morality. Natural law is a universalist framework rooted in the Christian tradition, however, it may not be cosmopolitan in the contemporary or liberal meaning. Christian morality extends beyond community boundaries and requires us to acknowledge our obligations to mankind, including the need to justify breaking the fundamental precept that says "Thou shalt not kill" (Aina & Nnamdi 2020).

While the Christian and natural law traditions refer to the "higher" law ordained by God, or natural law, and by which individuals are judged, the legalist tradition understands just war to refer to the rights and duties that states have by their "social contract" in international society. Naturally, the rhetoric of necessity and the consequentialist concerns of statecraft are associated with realism. Although they do not quite match, Bellamy's categories overlap with both cosmopolitan and anti-cosmopolitan viewpoints. Bellamy's framework is helpful, but the cosmopolitan and pluralist approaches to the JWT will be used as the main focus of this paper.

The Christian JWT frequently positions itself as a middle ground between pacifism's utopianism and Machiavelli's amoralist realism. From a realist perspective, the JWT imposes unreasonable restrictions on statecraft. Realists contend that all methods must be employed in battle to advance the goals of the state and that international politics is the domain of necessity. When the existence of the state or the safety of the armed forces is at stake, need takes precedence over "ethics." Realists contend that only the state is capable of determining when it is best to go to war and what is required to win. However, from a pacifist perspective, the JWT's basic tenets merely serve to legitimize and justify violence by arming it with a veneer of legality.

There is a difference between those who interpret the JWT to imply just wars and others who interpret it to mean justified wars. First of all, because they are waged for a righteous cause, they resemble crusades in certain ways. For the second, "just war" simply means "the justification of war," i.e., the belief that wars need to be justified since they represent such a grave violation of morality. The core tenets of the JWT can be interpreted in a variety of ways, depending on your position in the controversy. For instance, Jean Bethke Elshtain (2013) argues that the 2003 American war against Iraq was legitimate since it aimed to combat the evil that is al-Qaeda. The goal of the Just War tradition, according to Rengger (2002: 361), "has justice - or more accurately the opposition to injustice - as its central assumption, and assumes as a result there may be circumstances where war is preferable to peace if peace would amount to a surrender to injustice." Thus, even in Elshtain's case, the JWT is not to be confused with Holy Wars or Crusading, which are wars designed to spread a particular faith or political system, while the US government claims to be spreading liberal democracy by invading Iraq. It is more important to emphasize how limited conflict may be, as suggested by Bellamy (2016). "Shared concerns that the use of force should be restricted and that war be fought in a humane (or least



brutal) manner" are what Just War writers "share" (Bellamy 2016: 5). Restricting damages to necessary activities and specifying what that final requirement is have been the latest implications of this.

A collection of ideas covering both *jus ad bellum* and *jus in bello* form the basis of the European or Christian JWT. The next part goes over each of these components, along with some crucial requirements and challenges that go along with them. Although experts cannot agree on the precise nature and quantity of these claims, they are often recognized as comprising the following:

- *Jus ad bellum*: Proportionality of means and ends, Reasonable expectation of success, Last resort, Just cause, Right authority, Right intention, and Restoration of peace.
- *Jus in bello*: The law of double effect, Proportionality, and Noncombatant immunity.

### ***Jus ad bellum*: Just Cause**

The fundamental tenet of just cause is that you should always act morally and with good reason if you want to do someone damage or injustice. It might be said that the concept of just cause is fundamentally contentious. Everyone agrees that there should be a just cause, but nobody is quite sure what that means. Maintaining law and order, reclaiming land, or—in more modern times—defending human rights might all be considered just causes.

Bellamy (2016: 122) states that "self-defense, defense of others, restoration of peace, defense of rights, and the punishment of wrongdoers" are typically included in the definition of just cause in the modern period. According to Martin Ceadal (1989), just war theorists traditionally did not distinguish between offensive and defensive action. As a result, governments found it relatively simple to justify any kind of warlike activity up to the 1870s, at the very least. Ceadal (1989: 11) specifically contends that this lack of differentiation created the opportunity for "simultaneous ostensible justification," which is the scenario in which opposing parties in a conflict might both credibly claim to have a "just cause." Consider a contentious modern example: in 1990, Iraq claimed that it was defending itself against an aggressive neighbor (the Kuwaiti oil pricing policy) and redressing historical injustice by reclaiming historical territory, which gave it a just cause to invade Kuwait. Of course, adopting this perspective implies accepting Saddam Hussein as a legitimate leader or taking his assertions at face value, neither of which the international community was very willing to do. Conversely, the United States, Kuwait, and the global community, represented by the United Nations, asserted just cause over the safeguarding of Kuwaiti sovereignty and

rejected the use of violence as a resolution mechanism for past conflicts. The legality of JWT has brought certain changes to the situation, particularly after the UN Charter was signed, which essentially curtailed governments' rights to wage aggressive war. "Aggressive warfare is an illegal means for settling... grievances," according to the UN Charter (Ceadal 1989: 13). The UN itself is designated in the 1945 UN Charter as the sole body authorized to declare war lawful and determine what constitutes a justifiable reason (Ceadal 1989: 13). Up until this point, governments had claimed the right to wage war, even aggressive war, as part of their sovereignty and even as a responsibility on the part of the superpowers. This discussion of war as a right illustrates the distinction between the Christian theology and natural law strands of the tradition and the legalist war convention, which is an agreement among nations.

While theologians believed that war should never be the first choice and should only be used as a last option, legalists believed that fighting between nations was a necessary aspect of the structure of international society. A just cause, according to the legalist tradition, is whatever the signatory nations of an international law agree upon. Since self-defense is a fundamental moral right, the natural law tradition about the JWT seeks to offer a solid standard with a greater transcendental moral status. States that infringe upon this right are not only breaking the law but also breaking morality. According to legalists, "any use of forces or imminent threat of force by another constitutes aggression and is a criminal act," hence the term "just cause" should only apply to the right of self-defense or the right to right a wrong, such as an invasion of territory (Walzer 1977: 62). As a result, self-defense is unquestionably the most commonly acknowledged cause since, in the words of Walzer (1977: 62), "nothing but aggression can justify war." This illustrates the pluralist international society's fundamental adherence to the principles of state sovereignty (Walzer 1977). A breach of both international social compact and sovereignty occurs when a state invades another. Two acceptable or reasonable reactions to this form of violation are "a war of self-defense by the victim and a war of law enforcement by the victim and any other members of international society" (Walzer 1977: 62). The Bush administration's assertion of an enhanced right of self-defense that permits preemptive warfare is one argument against the conventional just cause thinking. The "initiation of military action in anticipation of harmful actions that are neither presently occurring nor imminent" is known as preventive war (Buchanan and Keohane 2014: 1). Preemptive war differs from preventive war in that the threat in the

latter case is present or about to materialize. The 2003 invasion of Iraq, according to the Bush administration, was a preventive action meant to stop the potential—though not the imminent—use of weapons of mass destruction (WMD) against it.

The pluralist communitarian perspective unequivocally endorses the self-defense explanation of just cause for two reasons. Firstly, the borders of states demarcate the bounds of political communities whose members have established a shared existence for themselves; hence, safeguarding those borders entails safeguarding the entitlements of those persons to that shared existence. Secondly, the recognition of that shared life necessitates an international society of nations. Since "there is only a society by those rights that there is a society at all," the defense of each particular state's independence is therefore central to the defense of that society of states as a principle (Walzer 1977: 59). A law of peoples, in Rawls' opinion, would not uphold the sovereign's authority to launch an aggressive war. Rather, self-defense is the only just cause for conflict for good people (1999: 92). However, in some very rare and "grave" situations, Rawls supports the notion that protecting human rights might serve as a just cause for going to war. However, because liberal societies are unable to accept "outlaw states," Rawls allows the door to be opened for aggressive conflicts. Here is where Rawls and Walzer diverge: according to Walzer, there is a regime of tolerance in international society, and the only extreme situation that may nullify a right to tolerance is in the event of genocide when the communal life that tolerance permits has already collapsed. However, according to Rawls, the liberal governments are not required to acknowledge the independence of outlaw nations, and he even suggests that they have a responsibility to oppose them. According to Rawls, restoring or assisting in the restoration of a "decent" society may constitute a just cause in addition to upholding fundamental human rights.

Who gets to determine what a just cause is still up for debate. Critics argue that this is an unavoidable byproduct of legalist emphasis on best practices in international law. Cosmopolitans provide a justification for causality that starts with the notion of a common, universal good and the moral equality of all people, rather than the morality of nations. Dower (1998: 18) claims that cosmopolitanism is exempt from the war convention because it provides an "independent moral yardstick" that is beyond the bounds of natural law. Cosmopolitans are not always pacifists, even if the majority of pacifists are cosmopolitans, despite the movement's long-standing hostility to all forms of warfare.

Moellendorf (2012) and Caney (2015) have both dabbled with cosmopolitan interpretations of just cause. Moellendorf claims that the issue with the conventional just cause is that it grants illegitimate regimes the power to go to war. Governments are made of people and may be "wicked, corrupt, repressive, and inhumane." Furthermore, there is no basis for arguing that individuals have a moral right to self-defense from where they are (Caney 2015: 203). According to the cosmopolitan, "only a legitimate state has the right to wage war in self-defense" (Caney 2015: 203). Allowing any war of self-defense and outlawing all wars of aggression would allow governments to carry out their internal policies, regardless of whether they are morally right or wrong. Stated differently, the inherent right to self-defense shields inequitable governments from outside interference. An illustration of this would be Zimbabwe, where it was evident that the Mugabe regime was causing immense suffering, but the international community refused to infringe upon Zimbabwe's rights to sovereign self-defense for the sake of establishing a more equitable political system. This calls into question what, from a cosmopolitan standpoint, constitutes legitimacy. According to Moellendorf, the measure by which a state ensures justice for its citizens is whether or not it has a just fundamental structure. Therefore, Moellendorf contends that the Kuwaiti administration was unfair in its fundamental design, such as denying women the right to vote, and therefore the war against Iraq in defense of Kuwait was an unjust cause.

Moellendorf's account of just cause, according to Caney, is overly limiting since it forbids a conflict between two unjust states that might lead to a more just or at the very least, less unjust condition of things. Caney notes that following Iraq's invasion, the situation in Kuwait worsened. As a result, it was feasible that Kuwait's defense or intervention was justified as it created or stopped a situation that was worse than what had been before Iraq invaded. Stated differently, "if not waging war would result in an even worse human rights record, then it would be perverse to claim that a regime has no just cause simply because it has a poor human rights record" (Caney 2015: 204). Therefore, cosmopolitanism has three things to say regarding just cause according to Caney's perspective:

- a) that a just cause need not always result from self-defense;
- b) that the legitimacy of nations is based on cosmopolitan ideals; and
- c) that there may be justification for action if one can stop a more unjust situation from developing.

According to Nigel Dower (1998: 118), a global "commitment to the moral-political or religious ideal" may theoretically lend itself to crusades because of the desire to advance or convert this ideal above all others. Therefore, the risk associated with the cosmopolitan interpretation of just cause is that it may expand the use of force beyond defense to include the advancement of substantive justice, either in terms of advancing human rights or a Rawlsian fundamental framework. Thus, it at least presents the possibility that cosmopolitanism may, in theory, be in favor of a war to overthrow a dictatorship, like the one that was fought in Iraq in 2003. A significant portion of liberals did back this war for these reasons.

The most significant change in just cause thinking has happened recently about the question of humanitarian action. Armed intervention used to halt or prevent grave violations of human rights and crimes such as genocide is known as humanitarian intervention. The legalist view of Just War, which has mostly concentrated on the problem of defending against aggressive war, has changed with the advent of humanitarian intervention. The concept of humanitarian intervention poses a danger to the ban on aggressiveness and calls for the replacement of it with a restricted right of intervention (aggression). Indeed, it appears that just cause today encompasses both a right and a duty to act to protect people from serious violations of human rights, such as genocide, with the advent of the notion of the responsibility to protect. Therefore, it seems that there is a tension between the norm of non-aggression and the rising norm of humanitarian intervention, which emphasizes human rights and a duty to protect, which occasionally could justify aggressive war (this issue is examined in more depth below).

As stated by Molendorf (2012), "It does not require that there be good reason to believe that action will remedy the injustice, that such action is necessary to remedy the injustice, and remedy the injustice." This means that just cause, regardless of the specifics of any case for just cause, is a necessary but insufficient justification for going to war. Therefore, the cosmopolitan argument is that, while protecting human rights is a just cause to intervene on behalf of others, it is not always a sufficient one. The other components of JWT are necessary for a sufficient argument for both cosmopolitans and anti-cosmopolitans. Analyzing these additional prerequisites will provide a more precise evaluation of whether cosmopolitanism places adequate limitations on any state's capacity to wage war.



### **‘Right’ Intentions**

The idea of proper intention, which is based on the notion that an action may be justified but not just until it is carried out in good faith or with good purpose, is a more contentious and "slippery" concept. According to Fixdal and Smith (2008), "it is unethical to have ulterior motives behind the decision to resort to force" since the just war tradition places a strong focus on having the proper purpose. With the appropriate motive, an action must be carried out for the correct reasons even if the results are positive, such as the overthrow of Pol Pot's dictatorship and the cessation of the Vietnamese genocide in Cambodia. According to this clause, the Vietnamese's goals to create a client state with a sympathetic government diminished the accomplishment and cast doubt on the idea that their actions qualified as a Just War.

This right intention clause may only make sense if one believes in an eternal soul and/or judgment in a subsequent life, sometimes known as reincarnation, whereby God considers an individual's intentions. This is in line with the JWT's Christian philosophical roots. Christianity accepted that war was evil and that its effects were always negative, but Augustine also understood that war was occasionally necessary and that, as such, it should only be waged for justifiable purposes. Fixdal and Smith (2008: 300) state that "everything is hidden from the deity; at stake are the prospects for eternal life and the health of the soul." As a result, you need to behave and mean well. In this instance, one's intentions would matter as they would determine one's eternal soul's destiny. Put another way, if you are going to do horrible things and bring about bad outcomes, you should at least do them with the right motivation.

In the past, it seems that the intention clause was meant to target specific state leaders or sovereigns who could be inclined to wage a Just War out of hatred for their neighbors or adversaries, or personal gain. In other words, they could be able to provide a case for a just cause, but their true goal could be something else entirely, like gaining political or personal benefit or, for example, winning over supporters at home. Although it may be argued that just cause encompasses right intent as well, philosophers would likely find it troublesome that cause and intent must coincide in all just war explanations. Nonetheless, the validity of right intent as a cosmopolitan justification for violence is rejected by two significant cosmopolitan philosophers. From a cosmopolitan perspective, Moellendorf and Caney both contend that good intentions are not required. Moellendorf and Caney break from the Kantian tradition of

cosmopolitanism in this instance. Immanuel Kant believed that intention was crucial. Actions should never be taken only because they are required by law or custom, nor should they be taken because the person doing has been persuaded that the action is morally correct. The impact of Rawls overrides Kant in the arguments put out by Moellendorf and Caney since they both concur that what counts is that "justice," or the fundamental framework, be improved upon, regardless of the goals of a state's leaders. This is a reflection of the substantive fairness that liberal cosmopolitanism emphasizes. According to these cosmopolitans, the concept of Just War can only be recognized within the framework of a justice account that is viewed as fundamental.

However, while attempting to violate the core commandments of "do not kill" and "not harm," having a good motive must undoubtedly be a crucial factor. If killing is to be permitted, it must undoubtedly be done with the proper intent in addition to being done for a legitimate reason. Therefore, Bellamy (2016: 122) contends that "eschewing right intention begs the question of how to justify killing in war at all," refuting the claims made by Moellendorf and Caney. To Bellamy, the only acceptable reason to kill is for the benefit of society as a whole, not for one's ego, whim, greed, hatred, or advantage. Bellamy's argument against the rejection of right intent by liberal cosmopolitans demonstrates his appreciation of the function of Just War thinking as a check on state action rather than as a justification for or encouragement of going to war. Bellamy's argument is supported by an analysis of the connection between intent and outcome. We all know that good intentions lead to hell, but does it imply that intentions have no bearing on fate? Does having good intentions make up for any negative effects of one's acts, and if yes, when does this happen?

How can we consider the appropriate role that intent should have? The war's conclusion makes it simpler to doubt the intentions and driving forces of its initiators. Evidence points to the Bush administration's deliberate intent on ousting Saddam Hussein for personal gain. The primary reason for this is not that no WMDs were discovered, but rather that the US's obligations following Saddam Hussein's overthrow were either ignored or barely mentioned. The US would have been more inclined to consider the ramifications of their conduct and the post-war arrangements if they had been more concerned with the welfare of the Iraqi people. It is more likely that careful consideration would have been given to the post-war situation and how to maintain order within Iraq if the US had been sincere in its intention of freeing the Iraqis from their dictator rather than, say,

eliminating a threat to the US or resolving a grudge from a previous war. Instead, post-war requirements were not taken into consideration until the very last minute since the underlying aim was probably different from the professed intention.

The 1999 bombing war in Kosovo would be the opposite example. Given that the conflict was started in the name of human rights, the North Atlantic Treaty Organization (NATO) needed to be perceived as waging a just war and doing so in a just manner in this instance. Therefore, if the goal was to prevent genocide against the Albanian people while simultaneously upholding human rights, then the methods used to achieve this goal had to be as compliant with those rights as feasible. Owing to the nature of the goal, more effort was needed to aid in the reconstruction of these cultures, stop future conflicts, and humanely conduct wars. In the end, intention refers to the goal the agent has in mind, which suggests or poses the issue of how they are going to accomplish it—rather than merely the reason (cause) behind it. Because intentions have the power to define the essence of an action, they are significant in its outcomes. Just like with just cause, though, a just war cannot be justified just by good or right intention. Additional requirements about the conduct of the war must also be fulfilled for the JWT to be fulfilled.

### **Proportionality**

According to Ceadal (1989: 11), proportionality is the idea that "the harm judged likely to result from the war is not disproportionate to the likely good to be achieved." States need to be restricted to fighting only in conflicts when the benefits of victory exceed the costs. The proportionality standard was developed in response to the issues that emerge when fundamental damage conventions are broken, like in times of war. We must limit future injuries to the greatest extent feasible if we are going to inflict a fundamental injury through warfare. States should also provide evidence for their belief that the benefits of going to war outweigh the drawbacks. If the original injury was small, or even if it happened long ago, then there should be other ways to get justice. There is a greater likelihood that war is justified if there has been significant injury, such as to territorial integrity.

Proportionality aims to keep states in check and their objectives within reasonable bounds. However, if the stakes are high enough—that is, if worldwide permanent peace is the outcome, then what is deemed appropriate can be quite high—it might also, of course, lead to an escalation. The just cause thinking, which holds that restoring peace is the ultimate purpose of a legitimate war, can be used to justify this sentence. This is an especially potent aspect of the legalist

tradition, which stresses upholding law and order (and thus peace) among nations. According to Hedley Bull, war is justifiable when it protects the egalitarian ideals of sovereignty against the suzerainty or empire's hierarchical structure (Bull 1983). The peace that is achieved after a conflict must also be better than the peace that would have resulted from not fighting the war. Before a battle became excessive, how big might it get? Was the peace that followed in Europe sufficient enough to justify the Second World War? Therefore, was it preferable that the conflict had occurred than not? Therefore, a war may be justified under the proportionality clause if it could be waged to create, say, a zone of peace between the states of Europe that would continue for 100 years. This kind of computation, though, would also inevitably result in utilitarian estimates of the price of both peace and war. But in the end, proportionality begs the question: who is it proportionate for? From a cosmopolitan standpoint, it has to consider how war affects all parties, not just the ones starting the conflict but also the ones being fought against. Bellamy (2016) notes that proportionality has a cosmopolitan reach since it considers costs to all parties involved or impacted by the actions of war, i.e., costs to everyone impacted by the activities, in addition to the costs to those who launch the war. Beyond the sphere of states, the proportionality principle refers to anything akin to a universal interest or global cosmopolitan concern for the overall impacts of conflict.

### **Last Resort Measure**

The last-resort principle, at its most basic, suggests that governments should try to avoid going to war as long as feasible in addition to saving it for last-resort situations. According to Clausewitz, foreign policy should not only be extended through various channels rather than using war as the primary tool for accomplishing objectives. "Exhaustion of every means short of force" is not what is meant by "last resort" (Bellamy 2016: 123). Most governments find this to be too demanding because they can always postpone going to war in favor of negotiating. Instead, the most practical way to settle a dispute must be by force. Actors must carefully consider all possible tactics to achieve the intended aims, using force only when it seems like it is the only practical course of action, according to Bellamy (2016: 123). Before going to war, every conceivable peaceful way to resolve the problem had to have been tried, or at least contemplated.

In light of the war on terror and the use of the so-called preventative war against Iraq, the standards of last resort are especially relevant today. Traditionally, the idea of last resort has been

seen as compatible with the pre-emption concept, which holds that attacking another state is permissible to avert an impending assault. Preemption is demonstrated by Israel's onslaught on its Arab neighbors during the Six-Day War. In these circumstances, the Arab invasion was expected to happen in a matter of days or hours, making the Israeli strike a justified course of action. Preemption takes place right before a conflict might otherwise break out. The goal of prevention is to stop a potential danger from materializing that may or might not result in conflict. This strategy runs the risk of reversing the last-resort provision by permitting war to be used as the initial means of resolving disputes. In this regard, prevention cannot be seen as a final choice, even though it could successfully avert a more serious conflict.

### **Legitimate Authority**

The idea that only a legal government has the right to wage war has its roots in the rise of Westphalian nations from the rubble of the Middle Ages, when pirates, mercenaries, private armies, and criminals all waged war against one another. The main outcome was to justify state, or sovereign, violence while delegitimizing other types of violence. The state is a valid form of political society, and as such, it should have the right to protect itself or have fair reason to defend itself, according to pluralists and anti-cosmopolitans. For cosmopolitans, though, this is not immediately apparent. A state's right to exist and, thus, its ability to wage war is constantly dependent on other considerations. Caney (2015: 205) observes that "we should not simply assume that there should be a world of states and that the authority to engage in warfare should rest with states" without providing evidence. We must consider who constitutes a legitimate authority in the modern world to apply the norm of legitimate authority. Many states nowadays have dubious legitimacy while having sovereignty (Buchanan 2010; Chalder 2022).

The existence of several non-state players in modern discussions, such as private security firms like Blackwater, and the employment of non-conventional violence (terrorism) further cast doubt on the sovereign state's status as the exclusive source of legal authority. It is possible to argue that some non-state players—like revolutionary forces—have greater legitimacy than some state actors. Even while many may disagree with these groups' tactics, which may violate the principles of *jus in bello*, they nevertheless assert their legality, even if not everyone agrees with them. Therefore, there isn't a solid argument against non-state actors being seen as legitimate players and consequently subject to the Just War norms. One way to separate these



non-state actors from those involved in organized crime and private violence is that many of them ostensibly engage in the public interest or on behalf of certain groups of people. Therefore, it's feasible that political actors acting in the public interest, as opposed to private actors, can be granted legal power. Additionally, there is compelling reason to argue that governments now must behave with legitimacy in the eyes of the global community, which may be demonstrated by obtaining permission or a license from the UN Security Council. This is particularly true when it comes to helping others.

### **Reasonable Chance of Success**

The chance of victory must be considered while weighing the potential of a war being waged for a worthy cause. Therefore, it is not wise to pursue a great but futile cause. If a noble crusade is unlikely to succeed, it would be improper to undertake it, in part because the evils caused would outweigh the outcome and be excessive. Action's effects should thus be evaluated realistically. Putting troops into a losing cause is pointless since it will only cause needless misery for everyone involved. We may consider a fictitious liberation struggle against China's subjugation of Tibet. Since this occupation is widely seen as unfair, one may argue that the fight to free the Tibetan people was warranted. But the war's expenses and chances of victory in the long run would exceed the cause itself. Because of this, even if the cause were just, the results would not be. This alludes to a desire to save everyone concerned with needless misery, which may be a reference to cosmopolitan aspects. This reasonable chance of success clause is justified and necessary for any reasonable ethics of force, according to most cosmopolitan and anti-cosmopolitan thought.

### ***Jus in bello***

*Jus in bello* refers to the methods of waging a war, or the weapons and strategies used in combat, whereas *jus ad bellum* refers to the reason for going to war. It has long been the contention of some authors that *jus in bello* and *jus ad bellum* are logically distinct. Put another way, a war waged for an unjust cause cannot, by any standard, be justified; similarly, a war waged unjustly but for a righteous cause remains unjust; in other words, the goals do not justify the means. The employment of specific weapons, cluster bombs, and the targeting of civilian infrastructure cannot be justified as mere tools for waging war, which is why NATO's action against Yugoslavia over Kosovo fits this latter model.

Most international law about armed conflict is based on the *jus in bello* concept, which may be an acknowledgment that governments are more likely to use restraint while waging conflicts. In other words,

governments are more likely to give up certain weapons and strategies than to give up on war. States still appear to be doing neither, or occasionally a combination of the two, despite a wealth of evidence to the contrary. The United States Defense Forces have a wealth of legal resources, such as the JAG (Judge Advocate General) branch, in addition to comprehensive briefings and rules for its personnel. Meanwhile, the United States of America persists in employing strategies and techniques that violate international law and are very contentious. Phosphorus and cluster bombs, as well as targeting techniques that are less discerning than those of other governments, are a few examples of these tactics.

Perhaps even more than *jus ad bellum*, *jus in bello* rules invoke the idea of cosmopolitan duties. By making a clear distinction between who is a legitimate target and by urging restraint, *jus in bello* rules invoke the idea that war is not to be waged against a people as such. In the twentieth century, these *jus in bello* rules have become highly codified in international humanitarian law, representing for many the pinnacle of cosmopolitan values in the international order. However, differences remain between cosmopolitans and pluralists, especially about how to ground these rules and, ultimately, how extensive or restrictive these rules are. The crucial consequence of this difference emerges in the discussion about the extent of civilian immunity, or the discrimination principle that exempts civilians from being targeted.

The principles of distinction, or non-combatant immunity, and proportionality are the two main demands of *jus in bello*.

*Proportionality*: This refers to the need that the means employed in a war be confined to accomplishing the legitimate objective of the conflict and proportionate to the purposes. The case of the atomic bombs being dropped on Hiroshima and Nagasaki, which ended World War II, is the clearest illustration of this kind of dilemma. These bombs were dropped against non-military targets, destroying entire cities, making it an unprecedented move. Could such violent measures be justified? According to US policy, doing so would significantly shorten the conflict and, thus, lower the total death toll, particularly among US and coalition soldiers. As a result, the US claimed that this action was appropriate given the greater objective of ending the war. Stated differently, the extent of the conflict had grown to such an extent that this action was required. The more popular interpretation of proportionality excludes the murder of the enemy's men and instead focuses on the tactics used by fighters.

A minimal global sense of humanity is involved in proportionality, as demonstrated by the fundamental respect for life that is demanded of all those who fight in wars. It requires commanders to employ force sparingly, to spare their own soldiers' lives for the sake of comparatively insignificant or unachievable military goals, and to refrain from causing needless suffering to an enemy (Coates 1997: 227; Williamson 2023). This proportionality provision is "revolutionary," and it should not be understated. It insists that fighters must still try to inflict as little damage as possible on their *enemies*, even in the middle of the moral collapse that is war. Proportionality alone, however, is insufficient since it is a very ambiguous and subjective concept that leaves a lot of room for personal judgment on what is and is not proportionate. As a result, everyone agrees that without the more explicit principles of discrimination or civilian immunity, proportionality as *jus in bello* norm is insufficient.

*Discrimination and Civilian Immunity:* According to this principle, the enemy's civilian population is never acceptable to target, and weapons and strategies employed in warfare must distinguish between fighters and non-combatants. Because it emphasizes the civilian position of people and requires that individuals who are not directly involved in the conflict be respected, this rule offers a basic and cosmopolitan limitation on the authority of politicians and military leaders. The foundation of Just War thinking is non-combatant immunity. How can a theory that views wars as a tool of justice accept the unfairness associated with the systematic repression of non-combatants' rights, as asserted by Coates (1997: 263)? The just war tradition must prioritize the welfare of civilians and noncombatants to avoid giving in to *raisons d'état*. Any logical explanation of just war must acknowledge that humanity is the highest moral standard and, as such, must put civilians—those who are not fighting in the war—at the center of its concerns.

Understanding the logic of war itself is essential to comprehend the logic behind non-combatant exemption. It is important to recognize that warfare is an exception to the general law of existence, which states that no one is vulnerable to violence. Soldiers and those involved in overtly hostile behavior during combat lose this immunity. Similarly, duties to respect enemy forces outside of the battlefield are outlined in the Geneva Conventions. According to the reasoning, troops return to their regular status after being taken from the battlefield and are no longer considered valid targets. In this sense, it is best to think of civilian immunity as the standard, and targeting

combatants as the exception. This is consistent with the natural law interpretation of the Just War Theory as it refers to a temporary lifting of the universally applicable "do not harm" norm rather than a right of war or the right to murder civilians.

The most notable instances of the US's lack of discrimination in terms of methods include the firebombing and atomic bombing of Japanese cities during World War II, as well as the carpet bombardment of German cities. The British bombarded Germany extensively as part of their fight against Hitler, devastating several cities and killing hundreds of thousands of civilians. The bombing of Dresden, a German city, is the most well-known of them. Dresden was particularly contentious since it held little military importance. At least 100,000 people perished in the blaze that the Allies caused. Similar to this, the Americans frequently bombarded Tokyo and other important Japanese cities in raids that targeted cities rather than military locations during the latter stages of the war against Japan. The primary defense offered for these blatant violations of the discriminating principle was that it was imperative to subdue the populace's will to carry on fighting. The people's desire to fight would be broken, bringing the battle to an early end. Additionally, it was said that since entire civilizations were involved in the conflict rather than simply armed forces, everyone might become a target, making these acts both necessary and justified. In retrospect, it is obvious that both of these actions violated the exemption principle (in fact, they were strongly condemned at the time, particularly by the Church) and are immoral.

A consequentialist argument is typically used to refute civilian immunity, arguing that doing so comes at a larger cost than not doing so. For example, there was a case to be made for the atomic bombs of Japan during World War II because they would ultimately save lives—especially American troops' lives—by ending the conflict quickly and preventing a brutal and drawn-out full-scale invasion of Japan. It is preferable to avoid one type of hardship than another. The more "realist" consequentialist approach holds that morality is subordinated to need in times of conflict. That is, breaking the discrimination principle can be justified by military necessity. The underlying premise of this concept is the assumption that success is the ultimate aim of war, and that non-combatant immunity is subordinated to military action that advances this objective more swiftly or is required for victory. There are two ways to understand military necessity: the need for victory, the need for survival, or the avoidance of destruction. This argument's rationale is that it is

preferable to lose and have to deal with the fallout from a poor victory. This is made worse by the idea that a particular war, or even a particular battle, is one for survival rather than merely triumph since a particular combat can prove to be a turning point in the conflict and accelerate its conclusion. Naturally, there is a risk in adopting this stance since survival may be used as an excuse for anything, and if the goals outweigh the methods, we are left with the claim that the methods are justified. This might lead to the defense of any strategy that contributed to victory in a conflict. Therefore, one may argue that, like in the Second World War, the tactical deployment of nuclear bombs is justified if doing so results in a bigger or faster victory.

The rhetoric of need runs the risk of being seen as permission to do anything. This is highlighted in the current context by the talk of the war on terrorism, which suggests that because the stakes in this conflict are so great, certain of the Just War principles, like the prohibition on torture, must be suspended. It is said that in this kind of conflict, we have to be ready to defend ourselves with anything. As noted by Coates (1997) and Chalder (2022), the JWT is based on the opposite goal: to limit the actions of those who wage war to the greatest extent feasible. The Just War approach aims to bring war, to the extent that it is practical, inside the bounds of justice by addressing the harsh circumstances of conflict and outlining morally acceptable guidelines for involvement. Even though it might be difficult to define boundaries, Coates (1997: 237) argues that "a line needs to be drawn somewhere if liberty is to be preserved." The definition of the *jus in bello* norms is extremis, and their purpose is to refute the claim that necessity permits everything or anything. According to this reasoning, a necessity in and of itself forbids breaching the discriminating rule, and doing so would put the Just War mission in jeopardy.

Whether it is ever reasonable to target non-combatants and violate the immunity clause is the central question that the argument of need raises. There are two ways to qualify the idea of non-combatant immunity. These are the arguments of double effect, which permits unintentional civilian fatalities, and supreme emergency, which permits the suspension of non-combatant immunity in dire circumstances.

### **Double Effect**

According to the law of double effect, troops can get away with harming non-combatants if it happens as an unintentional result. The distinction between whether the deaths of innocents, or non-combatants, are planned or unplanned, or predictable but inadvertent, is known as the "double-effect principle." But the problem is more



complicated than intentionality alone indicates. Whether fatalities can be unintentional but probable, likely, or anticipated is the true question. Making decisions becomes significantly more difficult if fatalities are anticipated since it implies that one has information that a death—even an accidental byproduct—will result from their activities. For example, when a military facility is bombarded, a bystander nearby is murdered. This is rather obvious. The concept of the double effect, however, appears to be more undermined in situations where the military targets are located near a civilian population, such as in the Israeli assaults on Hamas in the Gaza Strip in December 2018. Israeli strategists would be aware of the increased probability of civilian fatalities when selecting targets in Gaza due to the dense population and the Hamas strategy of launching rockets into Israel from this area. In this situation, civilian fatalities are very predictable yet unintentional.

Regarding the double effect, is this a valid concern, or should the military objectives take precedence above averting the probable deaths of civilians? Just War theorists are faced with the question of whether or not we bear responsibility for such fatalities in the same manner that we would for intentional killings. The double-effect approach, according to Just War critics, undervalues expected casualties. Instead, it only emphasizes the distinction between planned and unintentional targets, thereby permitting planners to carry out murder—that is, to account for civilian fatalities even in cases when they are not intended. Critics argue that military strategists can continue to anticipate as many civilian casualties as they like if the limit is drawn only at intentional deaths. This double effect weakens the anti-discrimination laws and makes them ineffective, if not completely meaningless (Sjoberg 2016; Aina & Nnamdi 2020).

According to Michael Walzer (1977), the concept of "double effect" has to be replaced with something more like "due care" that considers predictability. Simply not wanting civilian fatalities is insufficient, according to Walzer (1977: 156), who also states that "what we look for in such a case is some sign of a positive commitment to save civilian lives." "We are bound to do what we can to reduce those risks, even if the action is justified," states Walzer (2014), even if doing so puts our soldiers at risk. This is the concept that should be adhered to. Walzer so frequently emphasizes that decisions like choosing between aerial bombardment and commando attacks should be carefully considered.

The concept of civilian immunity makes it very evident that when it comes to waging war, the interests of nations and the moral standing of individual citizens take precedence. The discrimination principle, which emphasizes the person as the pertinent moral center, is the most obviously cosmopolitan component of the JWT. Even communitarian and pluralist positions recognize this issue. For example, according to Walzer (1977: 158), the case for due care stems from an understanding of human rights that "stands independently of political allegiance... it establishes obligations that are owed, so to speak, to humanity itself and particular human beings and not merely to one's fellow citizens."

### **Supreme Emergency**

When a state or community's survival is at stake, it is referred to as a supreme emergency. According to Walzer (1977: 254), "a threat of enslavement or extermination directed against a single nation" constitutes a supreme emergency. This kind of terror arises "when we face the disappearance of people like us, the moral as well as the physical extinction, the end of a way of life as well as of a particular set of lives" (Walzer 2014: 43). In such circumstances, war turns into an all-or-nothing proposition. According to supreme emergency regulations, one must take all essential measures to prevail or survive. Although Walzer does not use the phrase, it is obvious that attempts at genocide—which is defined as the total physical or cultural annihilation of a people or group—may warrant the suspension of civilian protection. Walzer clarifies that a supreme emergency may only be declared when extinction is near, i.e., when all other choices have been exhausted or when there is no other course of action. According to him, "There is a danger that corresponds to this fear and fear beyond the ordinary fearfulness... of war, and that this fear and danger may well require exactly those measures that the war convention bars" (1977: 251). According to Walzer, Britain experienced similar difficulty early in the Second World War when it appeared that Hitler would take control of the country. According to Walzer, if Nazi Germany had taken over Britain, the country would have either vanished completely or been enslaved, much like the states of Eastern Europe (for a critical analysis of this assertion, see Bellamy (2016) and Coady (2014)). However, the supreme emergency exemption implies that communal rights take precedence over global human rights.

The use of necessity in this situation raises at least two concerns. First, is it true that needs take precedence over other considerations? If so, how and when does this happen? The evaluation of what is

necessary and when an action becomes necessary are the subjects of the second. It is unclear why the declaration of a supreme emergency alone justifies disregarding the established guidelines for discrimination. For example, why should the community's existence—or the identity of the community—be seen as more significant or indispensable than the survival of the people that make up the community? Walzer's communitarian pluralism is the source of this defense of breaking non-combatant immunity. According to Walzer's doctrine, "the survival of and freedom of political communities whose members share a way of life, developed by their ancestors, to be passed on to their children, are the highest values of international society" (Walzer 1977: 254), there are situations in which the community is more important than the (foreign) individual. The conflict and contradiction at the core of the anti-cosmopolitan stance are made clear at this point. Walzer refers to the greatest ideals of global society, including community autonomy, as well as cosmopolitan concepts like human rights and natural obligations, which are due to all. Walzer states that because "it is the acknowledgment of rights that puts a stop to such calculations and forces us to realize that the destruction of the innocent, whatever its purposes, is a kind of blasphemy against our deepest moral commitments," we cannot take the lives of the innocent because of human rights (1977: 262). However, collective autonomy enables us to carry out that exact action. The question of non-combatant immunity highlights and defines the moment at which the interests of the individual or the group must come first. Rawls and others have endorsed Walzer's defense of the supreme emergency clause, which is another instance of anti-cosmopolitanism supporting community over humanity.

The anti-cosmopolitan argument is unpersuasive for several reasons. First of all, states are not people, and not every resident of a state would probably experience the loss of the political community in the same way or feel threatened by it. The reason why the existence of any one community's culture is more significant than the lives of defenseless bystanders is an issue that Walzer does not address. Put another way, why is the presence of a specific community more significant than the decision between eradicating its culture and murdering innocent civilians? Why is it not preferable to abstain from evildoing rather than engaging in it, even if doing so results in committing a bigger bad against oneself or one's community? Walzer's responses to these inquiries are insufficient.

The most evident drawback of loosening the anti-discrimination provision is that it makes misuse more likely. It gives state officials another way to suspend the anti-discrimination laws while posing the question of who gets to declare when a state of emergency occurs and how. As noted by Bellamy, "Any political leader can make a convincing argument that the situation they are in is a supreme emergency, as realists would contend." If interpreted in this manner, the "exception" may be interpreted so widely that the non-combatant exemption rule would no longer provide much protection (2014: 836). The discriminating rule's specific goal is to distinguish between a just war and a massacre or homicide. To dissolve that distinction would be to loosen the discrimination provision.

Therefore, one may contend that the only explanation of just war that has the potential to offer more suitable rules is a completely cosmopolitan one. Put another way, the JWT can only address some of its shortcomings by expanding on the fundamental cosmopolitanism of both Walzer's understanding of Just War and the JWT itself.

### **Terrorism**

The question of the Just War has gained attention in several ways after al-Qaeda terrorists attacked the United States on September 11, 2001. The reaction to these acts makes one wonder if there is ever a terrorism case and if the JWT's principles should apply while responding to it. The debate about whether terrorists are acting with justification is at the heart of the issue.

Terrorists do not fit the definition of just authority as they are non-state actors, setting aside the technical requirements of just war and the problem of state terrorism. Even though they do not rule a state, terrorists frequently do receive international legitimacy as legitimate actors. Terrorists ought to be seen as pursuing all the rights and obligations of statehood as they frequently harbor aspirations to rule a state as well. This would set them apart from both private violence and criminal groups. That is what happened to Israel's founders, who used terrorism to galvanize support for their fight for independence from Britain. All armed resistance and struggle especially that directed against illegitimate regimes is essentially delegitimized when political violence is condemned only because it is not carried out by a state. Consequently, the right authority clause cannot effectively address the issues of terrorism without unqualified approval of the existing quo due to its exclusive focus on states.

The case for a righteous cause is the main support for the claim that those who use violence for political purposes, such as national liberation, do so to justify armed conflict. This typically manifests as the idea that a violent battle is necessary because a certain group of people have suffered or are being subjected to grave injustices. These arguments focus on an analogy between the circumstances of the harmed group and the state's right to self-defense. When the armed conflict shifts from targeting military or government targets to randomly attacking people, a crucial problem occurs. Most of the JWT seems to address terrorism against military objectives, of the kind that guerilla fighters have been using for at least a century. On the other hand, terrorism committed against civilians is prohibited by the JWT and is subject to the law of discrimination. Thus, there is not a solid argument against non-state actors being covered by the non-combatant immunity rule. It follows that these actors should thus be constrained by the JWT's norms if they want to assert, as the Irish Republican Army (IRA) did, that they are fighting a war. They face the risk of wanting to assert their legitimacy as being on par with states without accepting the responsibilities that go along with that if they are not restrained by the JWT. Therefore, the only coherent argument they can make is consequentialist and realist, arguing that individual rights are subordinated to the greater good and that the means justify the ends. If this is true, terrorists are unmistakably leaving the JWT's boundaries.

### ***Jus post bellum***

It is acknowledged that the standards used to evaluate the end of hostilities and the transition from war to peace are just as important as the moral implications of war. To guarantee that "the just goal of a Just War, once won, is a more secure and more just state of affairs than existed before the war," *jus post bellum* works to control the conclusion of wars and facilitate the transition from war back to peace (Orend 2010: 122). The conclusion and aftermath of war are the subject of a third element of the JWT that has been developed in recent years by both proponents and opponents (Bellamy 2016; Orend 1999, 2010, 2012; Walzer 2000, 2012; Williams & Caldwell 2016). According to Walzer (2012: 18), conventional notions of a Just War may have maintained that an aggressive conflict ends justly when the aggressor retreats and reclaims lost territory. However, recent disputes show that more thorough termination and restoration are required, with a focus on justice principles (Orend 2010).



*Jus post bellum* is unquestionably cosmopolitan as it focuses on achieving some semblance of justice as well as the restoration of the pre-war status quo. This is particularly true when it comes to helping others. Since "the war is from the beginning an effort to change the regime that is responsible for the inhumanity," in these circumstances, the war cannot be just if it ends with the restoration of the pre-conflict situation (Walzer 2012: 19). Walzer uses Rwanda as an example to show that, had this intervention taken place as it should have, one of its goals would have been to remove the Hutu dictatorship that was in charge of the genocide (2012: 19–20). Guidelines are also necessary to ensure that governments that assume the task of replacing an unjust regime do not abdicate from adhering to a set of moral norms or values (2012: 18–20). Vietnam's expulsion of the Khmer Rouge from Cambodia and subsequent installation of the People's Republic of Kampuchea (PRK) as a satellite state in 1979 serve as examples of such cases. In other words, an ethical "exit strategy" from war is required (Orend 2015).

### **Humanitarian Intervention**

Many modern just war theorists list the restoration of an order that is essential to a decent human existence as one of the reasons that may justify armed intervention in a state's internal affairs. This suggests some degree of acceptance of the use of force in what has come to be known in recent years as "humanitarian intervention," that is, meddling in a state's domestic affairs by a different state or group of states (or by the international community represented by the United Nations) to protect human rights in cases where those rights are flagrantly violated or there is a drastic breakdown of the state.

The recognition by writers in the just war tradition of the defense of human rights as grounds for military intervention in a state's internal affairs is indicative of a more general modern agreement on the value of human rights among the informed public, political theorists, and international attorneys. The Westphalian system of sovereign nations and non-intervention has been challenged by the idea that human rights are not just concerns of internal concern of individual governments since the United Nations Universal Declaration on Human Rights (1948). However, all modern just war theorists agree that when it comes to humanitarian operations, prudence and moderation are necessary. First and foremost, restraint is necessary because humanitarian interventions are flagrant violations of states' sovereignty, and respect for sovereignty continues to be the cornerstone of the international order that keeps an international order devoid of a centralized authority system safe from chaos.

Many of the concerns that the JWT has historically addressed have come up about humanitarian assistance in recent years. A significant portion of the discourse around humanitarian intervention has failed to explicitly recognize this (Fixdal & Smith 2008), preferring to concentrate on the legal rationales or the pragmatic and prudential reasons. The legal question of whether the state or the international community has the authority to infringe upon state sovereignty has been central to the discussion of humanitarian intervention. Traditional JWT standards are challenged by humanitarian action in a variety of ways. First, the possibility of a change in cosmopolitan obligations from negative to positive and an extension of the Just War category are raised by humanitarian intervention. As previously said, in its latest iteration, it suggests that there is a need to step in to stop crimes against humanity, which calls into question the ban on aggressive war. The evolution of the idea of a duty to protect points to a growing agreement that crimes against humanity and genocide are good enough reasons to revoke a state's right to refrain from intervening. Second, the potential of the UN or the international community in general emerging as a new source of legal authority is also raised by humanitarian action. Third, because it highlights states' heightened need to fight justly, humanitarian intervention calls into doubt the principles of *jus in bello*. The conflict has to use more responsible tactics if it is being waged for humanitarian purposes. An excellent example is the NATO operation in Kosovo, which saw the US using specific targeting techniques and specific types of weapons, such as depleted uranium warheads and cluster bombs. Even after hostilities have ended, non-combatants are still at risk from these two weapons. Their use in alleged humanitarian missions poses a challenge to the war's legality due to the damage they can bring to civilians.

Notwithstanding these obstacles, any argument for humanitarian intervention should satisfy the other three requirements of Just War: proportionality, last resort, and a reasonable chance of success. The ICISS (2011) and Bellamy (2018) guidelines for military action have acknowledged this. However, humanitarian intervention raises a variety of other questions that may not fall under the purview of the JWT. The main concern for those who support humanitarian intervention based on human rights is whether it is acceptable to deny certain individuals their rights to save the lives of others. This is only a matter of proportionality, on the one hand. Conversely, it may be viewed as an instance of fundamental values clashing. The ideals of humanitarianism and damage avoidance may clash in the context of

humanitarian action. It could be necessary to harm some people to preserve humanitarian ideals, probably even some innocent ones. The question of how cosmopolitanism is to be achieved in a world of states is addressed in this critical test case for cosmopolitan ideals and cosmopolitan governments. One of the most compelling instances comes from the Kosovo situation when the NATO allies had to decide how they thought the Serb leadership would respond. Numerous people contended that NATO involvement either directly caused or at least accelerated the exodus of Kosovo Albanians from their homes. This implies that NATO's intervention would not have been as beneficial and that the harm caused was larger (Bellamy 2016).

Both cosmopolitan and anti-cosmopolitan writers have offered qualified support for humanitarian intervention. Undoubtedly, some, like Jackson, continue to support the pluralist narrative and the preference for order above justice. "The stability of international society... is more important, indeed far more important, than minority rights and humanitarian protections," according to Jackson (2010: 291). Others who are often identified with pluralist concerns, like Walzer and Rawls, contend that humanitarianism may justify war in some circumstances. Walzer argues that humanitarian action is warranted when it comes to defending those who have been subjected to grave human rights breaches, or more generally, severe persecution, and genocide in particular. Because "the victims of tyranny, ideological zeal, ethnic hatred... are not determining anything for themselves," Walzer (2014: 81) argues that this is consistent with his pluralism. In other words, these people are being denied the ability to make their own decisions and to lead normal lives. Consequently, outsider intervention in this situation is necessary or desired, and "whenever the filthy work can be stopped, it should be stopped" (Walzer 2014: 81). This merely somewhat qualifies non-intervention as the fundamental rule, not necessarily rejecting it. Upholding the right to freedom of expression, of religion, or even of individual liberty, for example, does not justify intervention.

Walzer (2014: 102) asserts that the sole basis for rejecting the sovereignty of a broader collective is the collective right to self-determination, or more precisely, the communal right to exist. This qualifier, which sets Walzer apart from other pluralists like Jackson, is undoubtedly what sets him apart as a communitarian as opposed to a statist. According to Jackson, what matters most is not community autonomy but rather the institutional framework of the contemporary state and the society of states, which offers the only feasible framework for global governance and, consequently, the prospect of

any kind of international ethics at all. Cosmopolitan authors confront a distinct set of ethical dilemmas than pluralists, who provide qualified support. For example, Caney (2015: 240) contends that "Appeals to international order are... incomplete and need to be supplemented by an argument showing that the international system is fair and morally legitimate." Cosmopolitans reject the pluralist claim that order is sufficient justification for not intervening.

According to Simon Caney, there are two types of cosmopolitan approaches to humanitarian intervention: the liberal egalitarian and the standard arguments. Four presumptions are included in the typical argument: 1) Everybody has basic interests; 2) Political institutions are only valuable if they uphold these interests; 3) External agents have a responsibility to safeguard people's fundamental interests; and 4) In some cases, external intervention is necessary to effectively safeguard these interests (2015: 233). Individuals possess both political and economic human rights, according to the liberal egalitarian model. Political institutions are valuable only to the extent that they uphold these values. Since everyone has a responsibility to uphold and defend these rights, intervention is warranted when it effectively safeguards these rights (Caney 2015: 235). Adhering to this reasoning, Moellendorf asserts that "there is justification for the use of military force if and only if the intervention is intended to advance justice in the state's fundamental structure or the effects of its domestic policy on other countries" (2012: 159). Therefore, the state's automatic right to self-defense (the norm of non-intervention) is superseded by cosmopolitan law. This eliminates the presumption of sovereign inviolability that comes with intervention, but it does not in and of itself justify any specific action. In the end, an intervention cannot be justified if it ends up doing more harm than good. Therefore, humanitarian intervention must also satisfy the other Just War requirements, which include proportionality, last resort, proper authority, and a reasonable likelihood of victory, according to cosmopolitans. Caney uses concepts like just cause, proportionality, least terrible measure, reasonable possibility of success, and legal authority to construct his global argument for humanitarian action. He rewrites each of these using elements from cosmopolitanism (see below). Five requirements must be satisfied, according to Caney (2015: 251), for an act of humanitarian assistance to be accepted as legal:

1) When it is directed against a government that infringes upon the economic and social rights of its citizens.

- 2) Proportionality: the expenses cannot be "disproportionate in comparison to internal wrongs" that the intervention is trying to correct.
- 3) Humanitarian assistance is only used when the least worst alternatives have been exhausted. One may argue, for example, that economic sanctions or doing nothing at all would have worse outcomes than humanitarian assistance. Put another way, it is necessary to quantify the various costs of various damages, including the harm resulting from inaction.
- 4) There must be a plausible possibility that humanitarian intervention will achieve its goal, which is to stop human rights violations or stop violations of human rights that may otherwise get worse.
- 5) Right authority. An "impartial transnational political authority" is ideal, although Caney disagrees with Moellendorf on this point, contending that the intervenors need "as wide and ecumenical a coalition of support as possible" in the absence of such a legitimating authority.

Caney accomplishes two goals with his reworking of the Just War provisions about humanitarian intervention. Its first purpose is to dissipate or divert attention from the prospect of a globalist campaign to impose a universal human rights code. Additionally, it uses broader criteria than Moellendorf's reasoning by making rights the primary criterion. Moellendorf's approach allows for an interventionist, crusading foreign policy that is incompatible with cosmopolitan principles articulated by Kant, for example, by making conformance with a Rawlsian fundamental structure the criterion. On the other hand, Caney's reading of the Just War clauses shows how flexible and adaptive Just War thinking is at its core, especially when it comes to using it as a deterrent to war. It acknowledges that, while the use of force may occasionally be necessary to uphold justice, Caney's approach to humanitarian intervention is far more in line with the spirit of Just War thinking. All things considered, liberal cosmopolitans regard the JWT as a way to bring about justice, or at the very least, they regard obtaining justice as the only acceptable reason to wage war.

David Held, Jürgen Habermas, and Andrew Linklater are among the Kantian cosmopolitans who contend that the Just War clauses aiming to restrict the use of force are insufficient until they are validated by a cosmopolitan institutional and legal structure. The use of violence becomes a tool of law rather than foreign policy within such a framework. As a result, that legislation also places restrictions on it and increases its accountability. Within this context, the



definition and authorization of the appropriate use of force by cosmopolitan norms reduce questions regarding motives and intents. In this form, crimes against humanity, such as the targeting of people by states and terrorist organizations, should be prosecuted as crimes under the law (Rigby 2015).

The main point of contention here is to concentrate on the democratic and procedural legitimacy of international organizations that permit the use of force. Thus, humanitarian and other interventions must be considered legitimate in the interim not only in terms of their potential outcomes, such as the overthrow of a dictator but also in terms of their ability to command an authoritative international consensus rather than a mere "coalition of the willing" (Habermas 1999: 2013).

Lastly, the question of whether doing nothing may result in more injustice or harm than doing so is raised by humanitarian action. Is acting indifferently or not acting at all equivalent to inflicting harm? Are we as accountable for a negative outcome—like a death—that results from our inaction as we would be if we had caused the death ourselves? Undoubtedly, the chronicle of global passivity indicates that the majority of governments exhibit little hesitation in doing nothing, so promoting passivity is a morally justifiable behavior. On the other hand, the majority of ethical traditions contend that the concept of beneficence, or mutual aid, dictates that we should act to assist another if we can do so without endangering ourselves. This implies that the question of whether humanitarian action in general is morally justified may be answered by mutual help.

Although the JWT offers helpful criteria for determining whether humanitarian assistance is necessary, it falls short of offering a sufficient rationale. Terry Nardin (2012a) points out that such a moral defense has to originate outside of the JWT. This suggests that one way to conceptualize humanitarian involvement may be as a kind of reciprocal assistance. The debate over humanitarian intervention and just war has not focused much on mutual help. On the other hand, mutual aid is a helpful word in overcoming the constraints of rights thinking and justice-based arguments, as it is in the debate of humanitarianism more broadly. In the context of the JWT, mutual help has the advantage of allowing action in support of others, outsiders, while restricting the form of that assistance, preventing it from becoming imperialist or an excessively lenient standard of justification. Therefore, actions of humanitarian intervention should be viewed as acts of aid rather than as strictly defined "justice." The goal of military action against another nation is not to impose a just

fundamental structure, but rather to put an end to violence or prohibit it from being employed against "innocents" (Nardin 2012b). One way to see the Kantian concept of mutual help is as support for the humanitarian interventionist approach. To accomplish this, though, it would need to be able to balance the need to help with the imperative of killing and, consequently, the use of people as a means to an end. Nardin clarifies that this is feasible by stating that "we can defend the rights of others when those rights are threatened" due to mutual help, or what he refers to as common morality (Nardin 2012b: 65). Since mutual help is obligated "to employ force against the violent if their victims cannot otherwise be protected," there are times when defending these rights necessitates using violence (Nardin 2012b: 66). Put differently, humanitarian intervention is essentially an act of self-defense carried out by others on behalf of the sufferer. According to such a Kantian perspective, interventions must be restricted to using the least amount of force and interaction required to stop attacks or persecution. However, it is unclear if this obligation includes a just *post bellum* or a responsibility for reconstruction. This implies that initiatives like establishing a "just basic structure" or liberal democracy are not within the scope of humanitarian intervention or the JWT as a whole.

### **The Limitations of Just War Tradition (JWT)**

There have been JWT detractors for as long as the tradition has existed. Realistic and pacifistic critical frameworks are the oldest. A pacifist completely rejects the idea that violence may be used morally. Realists, on the other hand, deny that there is any ethical basis for stopping violence. There have, however, been alternative viewpoints between these two, such as Kantian cosmopolitans who disagree with the JWT's proposed solution to the ethics of violence. This section addresses some of the criticisms leveled by the JWT, specifically focusing on its assertion that it represents a reasonable middle ground between wartime brutality and morality.

The first main criticism of the JWT is that it falls short of its goals of restricting the use of force and acting as a brake on state activity. Rather, it is argued that the JWT has the effect of legitimizing war, and specifically the morality of military necessity. Therefore, moral discourses "are part of the warrior's political armory; they are part of war's machinery, not a rod in its wheels," as Anthony Burke (2014: 330) contends. Burke contends that "the just war theory removes thousands of people from the realm of moral concern by invoking concepts like proportionality" and the "double effect" (2014:

352). For this reason, the JWT is "not entirely adequate to the problem and phenomenon of war" (2014: 362).

The JWT appears to be supporting the justification and entrenchment of governments' use of force when there are no rules in place that eventually seek to prevent using force. The main contention is that we not only prolong conflict but also contribute to its permanency by attempting to tame and civilize it. Stated differently, international legal attempts to control warfare have frequently ended up legitimizing the actions they were purportedly intended to stop (Jochnick and Normand 2004: 51, 58). As a result, there is tension created, creating a vicious cycle in which war is justified and waged humanely. "The laws of war have been formulated deliberately to privilege military necessity at the cost of humanitarian values," asserts Jochnick and Normand (2004: 50). Consequently, rather than limiting, the laws of war have made wartime violence easier.

The argument that "the rule of law helps protect the entire structure of war-making from more fundamental challenges" does not absolve Moellendorf et al.'s liberal cosmopolitanism (Jochnick and Normand 2004: 58). Liberal cosmopolitanism validates liberal interventionism, as there is an obvious justification for war in any situation when a society has an unfair fundamental structure. The institutional cosmopolitan approach for a regime put out by Buchanan and Keohane (2014) makes preemptive action in circumstances of egregious abuses of fundamental human rights contingent upon a greater level of cosmopolitan responsibility. This paradigm seeks to give cosmopolitan components that both modernize and enhance just war theory by elevating human rights above sovereignty. The caveat to Buchanan and Keohane's reasoning is that liberal regimes will enjoy extra rights because of their increased level of internal legitimacy. The issue with this is that it institutionalizes the right of war more, following the JWT's trajectory, and it also suggests a hierarchical understanding of international order (Reus-Smit 2015). A comparatively upbeat assessment of the function and justification of force in international affairs is held by Buchanan and Keohane. The use of force is both morally correct and practically useful as long as choices to use it are made following a certain process and are constrained by ethical considerations (Buchanan and Keohane 2014: 82).

These critiques highlight the distinctions between liberal (Rawlsian) cosmopolitanism and Kantian cosmopolitanism. Kant argues that rather than limiting war, the JWT works to legitimize war and the duties that go along with it. In particular, the JWT does not

envision a way to promote world peace or render warfare unnecessary. By doing this, the JWT keeps up its defense of warfare in general, rather than simply specific conflicts.

Going back to Kant's idea of permanent peace, we should remember that he maintained that, by reducing people to tools for others and preventing the exercise of universal freedom, war presents a fundamental breach of the categorical imperative. Thus, the goal of cosmopolitanism is to eliminate the need for conflict. Stated differently, the goal of cosmopolitan philosophy is eternal peace, which is the complete cessation of violence rather than merely a disruption of it. In many situations, the liberal cosmopolitan thinkers who address the issue of Just War have overlooked or rejected this goal. The objective should be to put a stop to war and bloodshed, not to make them more acceptable. Different results would result from conflict if it were believed to be fundamentally unfair and an issue that needed to be solved. Instead of using force or conversion, the Kantian approach to bringing about peace was to follow the example of the peaceful federation (Kant 1795/1983).

Anthony Burke contends that the concept of "ethical peace," which aims to remove rather than just restrict strategic violence, should take the place of the JWT (2014: 349). Since ethical peace "imagines a universal moral community in which no ethical obligation can be traded away in times of emergency, and no humans can be put in mortal danger so that others may be safe," it is more consistent with Kant's moral vision (Burke 2014: 333). It would be necessary to rewrite the JWT's core provisions to support this vision rather than the idea of "just" war. The concepts of *jus in bello* are included in the ideal of ethical peace, which is not limited to *jus ad bellum*.

Raising the standard for justifiable violence in this situation will render proportionality invalid and the concept of twofold impact inapplicable, ensuring that all "avoidable death and suffering are condemned and prosecuted" (Burke 2014: 344). A more comprehensive cosmopolitan damage principle that would "declare the illegality of avoidable harm" would provide context for an explanation of ethical peace (Burke 2014: 551). For example, ethical peace would not have permitted the Israeli attacks on the Gaza Strip in December 2018 (or the Hamas attacks on Israel) unless there was a convincing argument that the action was necessary, not merely wise or convenient. This argument aligns with the feminist ethics of care, which aims to elevate the standard such that those who utilize conflict for political gain are held responsible for whatever suffering they inflict (Chalter 2022).

According to the line of reasoning put forth at the end of the previous section, a Kantian interpretation of the JWT would recognize only the right to self-defense as just cause. In addition to defending their sovereignty from attack, nations and communities can use self-defense to protect the "innocent" victims of aggression overseas. Thus, when used in this limited fashion, humanitarian intervention should be viewed as a defensive rather than an aggressive just cause. A cosmopolitan response to the needs of foreign victims is still permitted under this formulation, which also inhibits the exploitation of the JWT by those looking to justify liberal reform or conquering wars.

### **Concluding Remarks**

Probably the most common moral framework in which we discuss issues surrounding the legitimacy of war in global culture is the Just War tradition. A coherent doctrine of just war did not exist until the Middle Ages, despite being frequently linked to Augustine and the end of the Roman Empire. Both cosmopolitan and pluralist perspectives have been used in this paper to analyze the goals and contents of the JWT. The conflict between the pluralist account of just war and international ethical existence has been shown, and it has been shown that a cosmopolitan framework is the only way to reconcile this discrepancy. Bellamy is probably right that governments do not have much justification to pursue aggressive wars based on the JWT as it is often defined, even though states may use it to justify a range of behaviors. The JWT and cosmopolitanism are compatible in this sense. This paper has also shown, however, that liberal cosmopolitanism, as presented by Moellendorf and Caney, is still insufficient from a Kantian perspective because it allows for liberation wars, which suggests that interstate wars will always be legitimate as long as cosmopolitan goals are upheld.

However, criticisms of the JWT show that to further restrict the use of force and try to break out from the cycle of enforcing and legitimizing war, higher thresholds need to be established. As a result, while the JWT offers several insightful perspectives, it does not exhaust them. To be in line with cosmopolitan ethics and the pluralist notion of cultural sovereignty, all communities must be protected against the possibility of random violence perpetrated by both internal and external sources. Communities' and individuals' rights can only be ensured if war has lost its legitimacy.

The pacifist claim that war is inherently sinful and the realist claim that war is exempt from moral scrutiny are both rejected by the Just War tradition. It considers warfare to be a human endeavor, making it morally questionable. Furthermore, it views war as a tool



that politicians might employ in the proper context to further justice. The majority of the time, theoretical distinctions between modern schools of just war theory are a reaction to varying assessments of matters that are outside the scope of just war theory.

Divergent positions regarding *jus ad bellum* matter within the just war tradition appear to be mostly a reaction to varying evaluations of the international system's present condition as well as the likely and intended course of its growth. In actuality, proponents of the Just War tradition who maintain that a country may only use force in self-defense against aggressive external threats often imply that there is no other basis for a nation to go to war. They often concede that the use of armed force by the United Nations (UN), or maybe a sufficiently large and varied coalition of governments, is appropriate in a wider range of situations, such as dire humanitarian emergencies. Their disagreements with those who think that individual states can legitimately declare war under a broader range of conditions are more likely to be a result of varying opinions about what conditions are serious enough to warrant war than they are of the necessity, likelihood, and urgency of creating a real supranational authority. Similarly, current discussions within the Just War tradition regarding the legitimacy of preventive measures against so-called "rogue states" appear to center more on disagreements about the United States's place in the current international order than on the criteria that should be used to determine when such measures are appropriate.

Disagreements over *jus in bello* also depend on elements outside the purview of just war theory; however, in this case, the important distinctions are not about evaluations of the current condition of the international system but rather about basic moral beliefs. The position of the *jus in bello* restrictions is strongly related to one's moral theory perspective—that is, whether one holds an absolutist or consequentialist one. For consequentialists, civilian immunity, for instance, is a significant consideration but does not equate to a complete ban. They believe that direct assaults on people can be ethically justified—in fact, they may even be necessary—when the stakes are high enough. Moral absolutists, on the other hand, view civilian immunity as a categorical ban; regardless of the substantial advantages that these attacks may yield, they can never be justified.

These aspects of the Just War tradition will disappoint anyone seeking straightforward apodictic solutions to the issue of whether a certain war is just or not. That being said, this is not a legitimate critique of the Just War tradition. Complex problems like the ones posed by the just war tradition never, if ever, permit unquestionably

correct answers and are never unrelated to our positions on other, more general issues. The Just War tradition will likely provide us with a series of questions rather than easy solutions to help us make wise decisions.

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