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Kamm on Intention and Proportionality in War

Thomas Hurka

Professor of Philosophy, University of Toronto

tom.hurka@utoronto.ca

Abstract

This paper discusses the novel versions of the right intention and proportionality conditions in the *ius ad bellum* proposed in Chapter 3 of Frances Kamm's *Ethics for Enemies*. It argues that Kamm is right to weaken the right intention condition to require, not positively intending a war's just cause, but only having that cause's presence be a necessary condition for war, but wrong to place no limits on why one makes a just cause necessary. It then argues that the weakening she proposes of Jeff McMahan's very strict interpretation of proportionality does not go far enough. She argues that "conditional just aims" such as disarming an aggressor and deterring future aggression can count toward a war's proportionality only if they will follow from harms needed to achieve the war's initial just cause but not if they require additional harms. The paper argues that such aims can justify additional harms.

Keywords

Kamm – morality – war – right intention – proportionality

Frances Kamm's *Ethics for Enemies* contains her characteristic mixture of novel insights and ingenious hypothetical examples and, like all her writing, sheds new light on important topics.¹ This paper will examine her book's third chapter, which discusses what just war theory calls the right intention and proportionality conditions on the legitimate resort to war. In each case she addresses a version of the condition that she thinks is too strict and proposes one or several more permissive alternatives. Her alternatives are intended to be only

¹ F. M. Kamm, *Ethics for Enemies: Terror, Torture, and War* (Oxford: Oxford University Press, 2011). Bracketed page references are to this book.

minimally more permissive; she wants to criticize the strict conditions in a way that makes as few controversial further claims as possible. While agreeing with her that the strict conditions are too strict, I will argue that her alternative to the right intention condition is too permissive to be intuitively acceptable while her alternatives to the proportionality condition are not permissive enough. Her one alternative needs to be tightened, her others to be loosened.

1 Right Intention

The right intention condition in just war theory is a mental-state condition that says resorting to war is permissible only if you do so with the right mental state, which in a strict version of the condition is an intention to achieve the war's just cause and nothing else. If the just cause is reversing an illegal aggression, you must intend to reverse that aggression and have no other goal. As the US Catholic Bishops say, "war can be legitimately intended only for the reasons set out above as a just cause."²

There are two possible objections to this strict condition. The more radical one, which Kamm mentions at the end of her discussion (128–30) and which I think she in the end favors, rejects the idea of a mental-state condition altogether. Whether resorting to war is permissible depends only on objective facts such as whether there is a just cause the war will promote and whether the harms it will cause are proportional to its benefits. It does not depend on anyone's state of mind.

The less radical objection accepts a mental-state condition but says it should be more permissive and allow some wars the strict condition forbids. Kamm develops a version of this objection, proposing a condition that requires only that "the factor that could be a just cause is or will be present regardless of one's intention, one knows this, and one acts on condition that the factor is or will be present" (119–20). Here you need not intend what is the just cause for war, let alone intend it uniquely; it's enough if you would not act unless you thought that cause was present. It must be a necessary condition of your acting but need not be a goal.³

I think Kamm is right to prefer this less strict condition, and want to illustrate it with a real-world example. In 1992, in the aftermath of the first Gulf War,

2 US Catholic Bishops, "The Challenge of Peace: God's Promise and Our Response," in Jean Bethke Elshtain, ed., *Just War Theory* (New York: New York University Press, 1992), 77–168, p. 100.

3 Kamm defends the idea that an effect can be a condition of your doing some act without your intending it in "The Doctrine of Triple Effect and Why a Rational Agent Need Not Intend the Means to His End," *Proceedings of the Aristotelian Society, Supplementary Volume 74* (2000): 21–39.

a Pentagon policy document said the US “will retain the preeminent responsibility for addressing selectively those wrongs which threaten not only our interests, but those of our allies or friends.”⁴ As I read it, this policy states two conditions for US military action. There must be some wrong to address or just cause to pursue – there is no suggestion of military action without a relevant wrong – and doing so must further the US’s interests or those of its allies. Neither condition on its own is sufficient for the US to act; both must be present.

Assuming with Kamm that something can be a condition of your acting without your intending it, there are three combinations of mental states consistent with this Pentagon policy: (1) the US intends both the just cause for a war and the furthering of its interests, (2) it intends only the just cause but has the furthering of its interests as a condition for war, and (3) it intends only the furthering of its interests but has the existence of a just cause as a condition.

The strict right intention condition condemns war in cases (1) and (3) and possibly also in (2), but I agree with Kamm that a more plausible mental-state condition allows it in all three cases, and in particular allows it in (3), where the achievement of a just cause is only a condition for acting and not something the US intends. It should be permissible to fight a war only as a means to your national self-interest so long as it is also true that you would not fight if you did not have a just cause. That lesser concern should be enough.

But I disagree with her on one point. She thinks it does not matter *why* you make the existence of a just cause a condition. She constructs an example where the fictitious Scandinavian country of Weden requires there to be a just cause before it intervenes militarily in Norway, which it wants to do for economic reasons, but requires a just cause only because it wants a pretext for intervening that will prevent its doing so from angering other countries and causing them to retaliate against it; even so, she claims, Weden’s intervention is permitted (124). To me this view is too permissive. I think that, if there is to be a mental-state condition, it should permit the Wedes to intervene only if they require a just cause because they want to avoid doing something morally wrong out of intrinsic concern for morality and not just as a means to some self-interested goal.

This point relates to something Kamm says at the start of her discussion. She says there that she will take the “right reason” condition, as she calls it, to concern only your intention in resorting to war and not your motive for having that intention, so a war to end aggression can be permitted even if your motive for aiming to stop aggression is hatred (119).

4 Quoted in Ramsey Clark, *The Fire This Time: U.S. War Crimes in the Gulf* (New York: Thunder’s Mouth Press, 1992), p. 223.

This has not at all been the view of the just war tradition. In a lucid summary published in 1960 the Jesuit Joseph McKenna said, “a war may be prosecuted legitimately only insofar as the responsible agents have a right intention. Even good acts are morally perverted if they are done with immoral motives. ... A war which is otherwise just becomes immoral if it is waged out of hatred.”⁵ Aquinas, too, in his canonical statement of the right intention condition, spoke interchangeably of intentions and motives.⁶

To me this makes sense. If there is to be a condition requiring certain mental states, surely they must be ones that are good in themselves, as mental states. Intending to pursue a just cause because you want it for its own sake meets this condition, as, I think, does the less committed state of refusing to act without a just cause because that would be wrong. In the second case you have at least a negative concern for morality for itself that is to some degree intrinsically good. But requiring a just cause only to avoid angering other countries does not meet the condition.

This is not to say Kamm is wrong about her Weden example. The Wedes may indeed be permitted to intervene in Norway when they have only self-interested concerns, but I think that if we make that judgment, it reflects the more radical view that rejects a mental-state condition altogether rather than the less radical one that accepts a weaker condition. I think that weaker condition must be a little stronger than she proposes. While it should demand only that promoting a just cause be a condition of your acting, the condition must be one you care about for its own sake rather than just as a means. It may be that even that weaker condition is too strong, because the correct view is that there should be no mental-state condition at all. That seems in the end to be Kamm’s view, and it is probably mine as well. Even so, it is useful to show, as she does, that the most plausible such condition may be more permissive than the strict one found in the traditional just war literature.

2 Proportionality: Background

The remainder of Kamm’s third chapter discusses the proportionality condition on the legitimate resort to war, which I assume no one would reject altogether. Before I take up her arguments about it, let me give some background.

5 Joseph C. McKenna, S.J., “Ethics and War: A Catholic View,” *American Political Science Review* 54 (1960): 647–58, p. 652.

6 St. Thomas Aquinas, *Summa Theologica*, trans. Fathers of the English Dominican Province, 4 vols. (Westminster, MD: Christian Classics, 1981), II-II, q. 40, a. 1.

This condition says that resorting to war is permitted only if the relevant good the war will do is proportional to, or sufficiently large compared to, the relevant evil it will cause. This raises the questions: what are the relevant goods of war and what are the relevant evils? I will set aside the question about evils, because Kamm does not discuss it and in any case I think all or almost all types of evil count against a war's proportionality. That leaves the question about goods.

One view in the literature says all the goods that will result from a war, of whatever type and however it will produce them, count in favor of its proportionality, but I think this view is too inclusive. A war can cause economic goods, as World War II did when it ended the Depression of the 1930s, but I do not think mere economic goods can count in favor of a war's proportionality; an otherwise disproportionate conflict cannot become proportionate because it will boost GDP. Nor can a war be proportionate because it will stimulate great art or give pleasure to soldiers eager for real combat.

A much stricter view says only the goods in a war's principal just cause are relevant. If the war aims to end an illegal aggression, only the goods involved in restoring the invaded nation's self-determination count towards its being proportional. But in a 1993 article co-written with Robert McKim, Jeff McMahan proposed what I still find a compelling loosening of this view. He said there are certain goods that, while not themselves just causes, can, in conjunction with something else that is a just cause, become legitimate goals of war and contribute to its proportionality. While not "independent just causes" for war, they are what can be called "conditional just aims."⁷

The first of these is disarming an aggressor. *Pace* the Bush Doctrine, the mere fact that a nation has weapons it may use aggressively in the future does not justify military action to eliminate those weapons now. Once the nation aggresses, however, its disarmament is something we may permissibly seek even after our main just cause has been achieved. Thus the Allies were permitted to disarm Germany and Japan at the end of World War II, and in 1991 the UN coalition was permitted to demand the elimination of Iraq's weapons of mass destruction as a condition of ending the Gulf War.

A second conditional aim is deterrence. While the mere fact that attacking a nation will deter would-be aggressors does not justify doing so, once a nation has committed aggression the fact that resisting it will deter others is a relevant benefit that can help make war proportionate. One of Margaret Thatcher's justifications for the 1982 Falklands War was that international security demands

7 Jeff McMahan and Robert McKim, "The Just War and the Gulf War," *Canadian Journal of Philosophy* 23 (1993): 501–41, pp. 502–06.

that aggression be resisted; this aim was also cited in the Gulf War, which it was said would introduce a New World Order in which aggression is met by a concerted response organized through the Security Council.

In defending these conditional just aims McMahan made an analogy with the morality of punishment that I have continued to use. That someone may or is likely to commit a crime in the future does not justify imprisoning him now, nor, if he is innocent, does the fact that imprisoning him will deter others. But once he has acted criminally, the facts that locking him up will prevent him from re-offending and deter others become legitimate grounds for punishing him and can lead us to punish him, at least within limits, more severely.

In war there can be a further conditional aim: preventing humanitarian wrongs that are not serious enough to on their own constitute a just cause. The Taliban's oppression of Afghan women before 2001 presumably was not serious enough to license a humanitarian war against them. But once there was another just cause for war in the Taliban's support for terrorism, the fact that war might improve the lot of Afghan women was a factor many took to count in its favor and to help make it proportionate.

On this more permissive view there are three importantly different types of good produced by war: those related to an independent just cause, which can help satisfy the just cause condition and also count toward a war's proportionality; conditional just aims, which cannot help satisfy the just cause condition but do count toward proportionality; and irrelevant goods such as economic and artistic ones, which (with some qualifications I will add later) count toward neither condition.

Though this was McMahan's view in 1993, his more recent view has been more restrictive. In particular, he has denied that anything that is not itself a just cause for a war can contribute to the war's proportionality, so there are in effect no conditional just aims. What is his ground for this stricter view?

An article Kamm discusses gave what, following a discussion of mine,⁸ she calls his "makes no sense" argument. Against the idea that a humanitarian aim such as alleviating religious oppression can contribute to a war's proportionality he wrote, "this seems to imply that *the pursuit of an end* that is insufficient to justify killing and maiming – namely, alleviating religious oppression – can contribute to the justification of an activity – war – that necessarily involves killing and maiming. And that makes no sense."⁹

8 Thomas Hurka, "Liability and Just Cause," *Ethics and International Affairs* 21 (2007): 199–218, p. 206.

9 Jeff McMahan, "Just Cause for War," *Ethics and International Affairs* 19 (2005): 1–21, p. 18.

But as so stated the argument commits what Shelly Kagan calls the “additive fallacy,” or ignores what Kamm calls the Principle of Contextual Interaction and is really the application in a deontological setting of G. E. Moore’s principle of organic unities.¹⁰ For it assumes that if a certain factor contributes nothing to the justification of war in one context, where there are no other factors favoring war, it must also contribute nothing in another context where there are such factors. But Moore’s principle shows this does not follow, and the fact that it does not follow is in fact assumed in the idea of a “conditional” just aim.

I am surprised that Kamm does not make this point against the “makes no sense” argument, given her past writings on contextual interaction, but I also do not think it has been McMahan’s main argument for his more restrictive view. That has been an argument about liability.

According to this argument, you are only a legitimate target of military force if you have made yourself liable to that force by participating in a wrongful activity. And McMahan has interpreted liability in a very strict way. You are liable to be targeted with force for purpose *X*, he has said, only if you have made yourself specifically liable with respect to *X*, normally by participating in the wrong *X* consists in preventing. Thus, if you are participating in an aggressive war that will violate right *A*, you may be targeted for the purpose of protecting *A* but not for any other purpose.

This view does not always forbid seeking disarmament or deterrence and so is not quite like the very restrictive view I mentioned above. McMahan thinks a nation can be forcibly disarmed if it is now intending or planning aggression in the future; that is like punishing someone for conspiring to commit a crime even if he has not yet committed it. And if its aggressive behavior lowers the general level of deterrence, thereby making future aggression more likely, that permits the use of force to restore the level of deterrence to what it was before, thereby canceling its bad effect, though force to improve deterrence beyond its previous level is forbidden.¹¹

My objection to this view is just that it is too restrictive to be plausible. In 1945 Germany and Japan could not intend future aggressions because they did not have functioning governments. McMahan’s more recent view therefore implies that disarming them in 1945 was wrong, but I think it was

10 Shelly Kagan, “The Additive Fallacy,” *Ethics* 99 (1988): 5–31; F. M. Kamm, *Morality, Mortality: Vol. II: Rights, Duties, and Status* (New York: Oxford University Press, 1996), pp. 51, 53–57, 73, 82–83; G. E. Moore, *Principia Ethica* (Cambridge: Cambridge University Press, 1903), pp. 27–36.

11 McMahan, “Just Cause for War,” pp. 14–15, 16–17.

perfectly permissible. His view also implies that disarming Iraq in 1991 would have been wrong unless Saddam had specific plans for future aggressions, which again I do not accept. Given Saddam's multiple past aggressions, the mere possibility of further aggressions in the future was sufficient to justify disarmament.

McMahan's view about deterrence likewise seems too restrictive. Why can we not in war aim to improve international security beyond the status quo beforehand? That was precisely the point of the New World Order talk in 1991, and his view has equally counterintuitive implications about punishment. Most crimes do not increase the likelihood of future crimes since few people ever hear of them. But if punishing a criminal a little more severely now will reduce the crime rate below what it was before his crime, why is that not permitted? Why can we not use deterrent punishment to make a crime even less frequent?

It is not that I reject McMahan's general idea of liability; I just think it should be interpreted in a less strict way. By participating in the wrongful violation of right *A*, you make yourself liable to the use of force not only to prevent that specific violation but also for some other purposes, so your liability is wider than McMahan allows. If you commit a crime, you make yourself liable to punishment not only for retribution but also to incapacitate you from re-offending and to deter others. If a nation aggresses, it makes itself liable to force not only to resist its aggression but also for further ends such as disarmament and deterrence.

The liability here is, to be sure, only somewhat wider and does not extend to all possible purposes. Soldiers who participate in an aggressive war do not make themselves liable to bombing to test the effects of new weapons, nor may prisoners be used for medical experiments against their will. There is a limit to their liability in each case that needs to be specified. I do not have a clear view about how this is to be done but tentatively suggest the following, at least for war. The independent just causes for war all involve the protection of important rights such as that of national self-determination; more specifically, they protect these rights by resisting a direct assault on them. The conditional just aims, those whose pursuit is allowed by the wider liability, also involve the protection of these rights, though by the more indirect means of disarmament and deterrence; they may also involve the protection of rights of the same general kind as ground just causes, as in the case of lesser humanitarian aims. What is not allowed is the pursuit of goods unrelated to those kinds of rights, such as economic and artistic ones.

That has been a perhaps over-long survey of the background to Kamm's discussion of proportionality. Let me turn to that now.

3 Proportionality: Kamm's First Alternatives

Kamm's target in her discussion of proportionality is the restrictive view that comes out of McMahan's "makes no sense" argument, even though, as I have noted, even more restrictive views have been held. But though she proposes some more permissive alternatives, she also raises several objections to some of the arguments I have made against McMahan.

One of these concerns the analogy with punishment. While I said that once someone has committed a crime we may punish him somewhat more severely if this will deter others, she objects that this cannot be right; a punishment that was otherwise impermissible cannot become permissible because it will boost deterrence. I take it her root appeal here is to ideas about desert. If an offender deserves a certain punishment because of his crime, he does not deserve any more than that punishment, and to punish him more in order to deter others would be to treat him unjustly (138–9).

How exactly the analogy with punishment works depends on one's precise theory of punishment, but I can think of several that support my argument. One that Kamm mentions in a footnote (162n30) says punishment may be inflicted only on wrongdoers but also only when it will do some good, so without some good effect such as deterrence, punishing even the guilty is wrong. She says she doubts I had this theory in mind but I actually published a paper some years ago defending it and would happily appeal to it here, since it clearly allows deterrence to make an otherwise impermissible punishment permissible.¹²

A second theory is retributive but at a key point not fully determinate. It does not think a given crime has a precisely specifiable deserved punishment, say, three years, four months, seven days, and sixteen hours. Instead there is only a broad band of permitted punishments, say from two to four years, all equally deserved and equally retributive. If there are no other factors favoring punishment, a moral principle forbidding unnecessary suffering requires us to punish at the bottom of this band, with a sentence of two years. But if there *are* favoring factors such as deterrence, that principle can be outweighed and the best punishment can be closer to four years.

A third theory does specify a precise deserved punishment but does not say all punishments other than that are absolutely forbidden. A somewhat less severe punishment is still good, though not ideally so, as is a somewhat more severe punishment. (Those who know them can think of Shelly Kagan's desert

12 Thomas Hurka, "Rights and Capital Punishment," *Dialogue* 21 (1982): 647–60.

mountains with two slopes running down from a peak.¹³) Without other effects such as deterrence the best punishment on balance will always be the one that is retributively best, but if there are such effects that need not be the case. The best punishment may then be somewhat more severe than the retributive ideal, with the loss in desert-value made good by the greater benefits of deterrence.

I therefore stand by the analogy with punishment, but Kamm goes on to say it is not the best analogy, which is instead self-defense. She asks us to consider a case where it is wrong to kill someone in order to stop a crime though permissible to cause him somewhat less harm, but where the only way to stop him is by killing him. Could we justify killing him in this case if doing so would deter others? She thinks not – here again deterrence cannot make killing permissible when it otherwise would not be (139–40).

But the analogy with self-defense is problematic. In civil society, or once government is instituted, none of us has the right to use force for deterrent purposes. The right to deter crimes belongs entirely to – in the natural-rights tradition it has been transferred to – the state, and we act wrongly if we take its responsibility on ourselves. So if the self-defense case is set in civil society there is another explanation why killing the criminal would be wrong, and to rule out that explanation we have to imagine the case arising in the state of nature. Even there it is hard to see how one individual's killing in self-defense could have much effect on general deterrence, but if it did, I do not see that the killing would be wrong. The issue turns again for me on the wider idea of liability. By attacking me the criminal has made himself liable to the use of force not only to prevent the immediate rights-violation he threatens but also for some related purposes, concerning the prevention of similar violations in the future. And deterrence is one form of prevention.

Having criticized some of my arguments against McMahan, Kamm then proposes a more permissive view of proportionality of her own that likewise counts deterrence as potentially justifying. If resisting nation A's aggression will kill more of A's soldiers than is proportionate, she says, but allowing the aggression will lead to a later attack on A by nation B that will kill all of the same soldiers plus some others, then resisting A's aggression now may be permissible on the ground that it is no worse for those we kill (140–1). I agree that this argument, which appeals to what she elsewhere calls the Principle of Secondary Permissibility,¹⁴ can in principle be successful, though it matters how much time will pass between our war now and the later attack by B.

13 Shelly Kagan, *The Geometry of Desert* (New York: Oxford University Press, 2012).

14 Kamm, *Morality, Mortality, Vol. II*, pp. 198, 200.

But I also think the argument has almost no real-world relevance, since the situation it describes is so unlikely. Surely at least some of those we will kill in resisting A's aggression would not be killed in the later attack on A by B, in which case the argument does not apply and the issue must be settled on other grounds.

Kamm also proposes another more permissive view of proportionality. Taking up a remark of McMahan's, she suggests that it may be impermissible to intend a good such as deterrence when fighting a war or to have them as an aim in starting it, but permissible to make their occurrence as a side-effect of the war a necessary condition for starting it. This distinction between intending a good and having it as a condition of your acting is the same one she used in discussing the right intention condition, but now put to a different purpose. And it yields a view intermediate between McMahan's and the one I have been defending: deterrence that improves how the status quo ante can count toward a war's proportionality, but only when it is not intended as a goal (142–44).

But I do not see that the distinction is relevant to what I have called the conditional just aims of war. It does not at all fit forcible disarmament, since you have to intend to disarm your enemy when, for example, you destroy his chemical weapons. And if part of what makes you think the war will be proportionate when you start it is your belief that you will disarm your enemy at its end, surely you must intend to disarm him at the start.

I also do not see that the distinction is relevant to deterrence, which after all may be a contributing reason for disarming an aggressor. It may be that would-be aggressors will be deterred only a little by knowing that any aggression they attempt will be resisted – they will not then gain anything, but they also will not lose much – but will be deterred *far more* by knowing that their military will be degraded after they lose. In this case you can surely intend that deterrent effect both when you disarm the aggressor and when you start the war.

Later Kamm backs off from this proposal about intention. She allows that it can be permissible to intend deterrence, as when a nation fighting a just war broadcasts the news of its enemy's costs so future would-be aggressors will know how substantial they are (152). The 1991 Gulf War may have been a real-world example of this kind of intending. The elder Bush assembled a larger coalition to fight the war than was needed for strictly military purposes, and one reason may have been his belief that a larger coalition would set a more effective precedent of international resistance to aggression. In that case he was intending deterrence and surely doing so permissibly.

Her later backing-off aside, she illustrates her idea that having something as a condition can be permissible where aiming at it is not by describing a Relocation Case in which bombing an arms factory will diminish the food

supply of the local community to an extent that on its own makes the bombing disproportionate, but will then induce the community to move to another area where food is plentiful and they are in fact better off. She thinks it would be impermissible for a soldier bombing the factory to aim at relocating the citizens but permissible for him to make their moving and not suffering from the loss of food a condition of his bombing (144).

This verdict on this Relocation Case is plausible, but note that the case does not involve any of the goods I have called conditional just aims, such as disarmament or deterrence. It instead involves goods of the third type, more specifically economic ones, which I said are irrelevant to proportionality. And now is the time to make a first qualification to that claim.

Consider economic goods, and imagine that fighting a war against a Middle Eastern aggressor will cause economic harm to some African countries, which have trade relations with the aggressor, but will economically benefit other African countries, which will now be able to buy cheaper oil. If only instances of economic harm count – and remember that virtually all types of evil count against a war's proportionality – then the only relevant economic effects are the harms to the first African countries, and the economic case against the war is strong.

But as I think both McMahan and Kamm recognize, that would be unreasonable. We have to weigh the war's economic harms against its economic benefits to determine its *net* economic effect, and count only any resulting *net* harm against its proportionality. Economic benefits are therefore relevant insofar as they reduce the net economic harm below what it would have been without them or even eliminate that harm entirely. But what I insist is that they are not relevant if they create a net economic benefit. That the economic benefits of a war outweigh its harms cannot help justify the war; in that sense economic, artistic, hedonic goods are irrelevant to proportionality, since a net increase in them cannot count in favor of military action.

I think something like this is going on in Kamm's Relocation Case. That a community has food is neither an independent just cause nor a conditional just aim, and that may imply that a soldier bombing the factory may not aim at their having food. But if the community's moving reduces the net collateral harm they suffer, by making up for their initial loss of food, it can reduce, perhaps to zero, that harm's moral weight against the bombing. I would argue, however, that their being *better* off as a result of moving cannot count in favor of the bombing, and it cannot do so even if the soldier makes it only a condition and not an aim of his bombing. If the other collateral harm of the bombing would make it impermissible, the fact that the community will be better off after they move cannot make the bombing right.

My main point, however, is that even if a soldier may not intend good effects on the community in the Relocation Case, that does not show that it is wrong to intend disarmament, deterrence, or the prevention of lesser humanitarian wrongs. Their being conditional just aims gives them a different status than the economic goods in the Relocation Case, which are not just aims of any kind and therefore may not be legitimate goals. In addition, the fact that the good side-effects in the Relocation Case only reduce the net bad effects of the bombing rather than count positively in its favor, so as Kamm puts it they only “defeat a defeater of acting on a good aim” (145), does not imply that disarmament, deterrence, and the prevention of humanitarian wrongs have only that limited role. As conditional just aims they can make for a relevant net benefit. What matters morally is not your mental attitude to such goods, but the kind of goods they are.

4 Proportionality: Kamm’s Final Alternative

As I said, Kamm later rejects the view that conditional aims may not be intended (152), and that rejection better fits the general tendency of her ethical writings, which has been to downplay mental-state conditions on permissibility such as the doctrine of double effect. And in a concluding discussion she proposes a different view of proportionality, one that is again intermediate between McMahan’s and mine. It allows that aims such as deterrence can count in favor of a war, but includes a restriction on their doing so that is embodied in what she calls the Asymmetrical Justification of Harm thesis and that involves, characteristically for her, facts about the causal route by which certain benefits are produced rather than about anyone’s state of mind.

The idea behind the Asymmetrical Justification thesis is that an effect such as deterrence can count in favor of a war’s proportionality if it follows causally from the harms necessary to achieve the independent just cause or is a side-effect of the process of achieving that just cause. In this case the fact that it will deter others can make an otherwise disproportionate war proportionate. But deterrence cannot contribute to a war’s proportionality if achieving it involves extra harms, that is, not just the harm n needed to achieve the independent just cause but also a further harm x needed to achieve deterrence. Deterrence cannot justify causing extra harm. If we can achieve either only the independent just cause by causing harm n or that plus deterrence by causing $n + x$, we must achieve only the independent just cause by causing n . Seeking the extra good of deterrence by causing the additional harm x would be wrong (152–55).

This is a novel and interesting proposal, but Kamm does little to argue directly for it and I am afraid I again find it counterintuitively restrictive. Most importantly, it is like McMahan's view in making forcible disarmament of an aggressor at the end of a war always wrong. In 1945 the just cause of ending German and Japanese aggression had already been achieved. Given the Asymmetrical Justification thesis, using additional force to disarm Germany and Japan then, or even threatening to do so unless they agreed to a peace treaty committing them to disarmament, was morally wrong. Likewise, in 1991 Iraq had already been expelled from Kuwait; there the thesis implies that additional force to disarm Iraq would have been wrong. But I think that in all these cases disarmament was permissible, and my confidence in that judgment is greater than my confidence in any complex causal condition on permissible acts of war.

The same holds for deterrence. Though much deterrence results as a side-effect of achieving the just cause of defeating an aggressor, I suggested earlier that one reason to disarm an aggressor after he has been defeated may be to deter others who will not want their militaries degraded should they aggress and be defeated. If it takes extra force to achieve that deterrence, that again seems to me permissible.

It seems to me permissible even if it will cause some side-effect deaths of civilians, so it involves what Kamm calls an "outweighing" rather than a merely "equivalent or compensating case" (154). The moral reasons against causing collateral civilian deaths are strong, and they may be especially strong against a vague and temporally distant good such as incapacitation or deterrence. But if disarming a defeated aggressor has a reasonably high probability of preventing future aggressions that would kill many people, I do not think the fact that it will collaterally kill a smaller number of people now must make it on balance wrong.

It is important, however, that the goods at stake in these cases are among those I have called conditional just aims. It is only for goods like these – and maybe not, I will argue shortly, for all of them – that it does not matter what causal route they come about by. For goods of the third type, which are not conditional aims, the causal route may matter. This brings me to a second qualification of my claim that goods of this type are not relevant.

Imagine that Iraq's occupation of Kuwait 1990 had resulted in a large increase in the world oil price, causing serious economic harm to African countries. It seems to me that preventing this harm, or preserving the economic good of affordable oil for African countries, *would* have been a relevant benefit of the war and *would* have contributed to its proportionality. How can this be if lifting the economy out of recession was not relevant?

My best effort to explain this difference is as follows. Preserving affordable oil for Africa is a relevant good because it results causally from the achievement of the just cause, that is, it is the ending of Iraq's occupation that causes the oil price to go down. But lifting our economy out of recession usually results from a causal means to the just cause, namely the increased industrial production the fighting of the war demands. And an economic effect of a mere means is not relevant to proportionality as a similar effect of a just cause can be.

The same view may work in another case. If the construction of the 1991 coalition had led to a resolution of the Israeli-Palestinian conflict, through the indirect co-operation between Israel and some Arab states it fostered, I do not think that would have counted toward the Gulf War's proportionality, because the coalition was only a means to the war's just cause. But if a similar resolution had followed from the 2003 War, and in particular from its ending Iraq's payments to the families of Palestinian suicide bombers and thereby reducing the incidence of such bombing, that would have counted, because ending support for terrorism was a just cause. Benefits of the third type that are causally downstream from the achievement of the just cause, this view says, count toward a war's proportionality, while ones that follow directly from a means to that cause do not.

I am by no means sure this view is correct. As Kamm notes (164–65n45) it is structurally similar to one she has applied to the trolley problem, in her Principle of Permissible Harm,¹⁵ and that I think has counterintuitive implications. The two views are not, however, identical. Hers concerns the causation of evils – it says it is more objectionable if an evil results from the means to a good you produce than if it results from the good itself – whereas mine concerns the causation of goods, and different principles may apply in these two contexts. But if the view I have proposed is correct, it means a net increase in a good of the third type such as economic growth, and not just a decrease in its net opposed evil, can count in favor of a war's proportionality if it is caused in the right way. And that is a causal condition of at least the same general type as her Asymmetrical Justification view.

There may be another condition that is even closer to her view. Consider the third kind of conditional just aim, preventing humanitarian wrongs that are not serious enough to constitute independent just causes. This aim usually requires replacing the government that has been committing the wrongs, but imagine that, instead of supporting terrorism, the Taliban had just launched a one-time aggression against a neighboring state that was serious enough to

¹⁵ Kamm, *Morality, Mortality*, Vol. II, Ch. 7.

justify resistance but not serious enough to justify regime change (I assume only serial aggression justifies regime change). Would NATO have been justified in removing the Taliban in order to improve the condition of Afghan women?

I believe they would not. More specifically, I believe that preventing lesser humanitarian wrongs by regime change is permissible only when that change is already justified by the war's independent just cause, as it arguably was in 2001 but is not in the example where the Taliban commit just one aggression. That is a claim that is close to Kamm's, because it allows the pursuit of the lesser humanitarian good only when the means to it, regime change, is already called for by an independent just cause.

But it is still not identical to her claim, because achieving the humanitarian good does not follow just from the removal of the former regime; we may need to do somewhat more to put in place a more rights-friendly successor. Kamm might not object if this does not involve causing additional harm, but what if it does? What if there are two possible successor regimes, both equally committed to non-aggression but one friendly to women's rights and the other not? May we use some force, including, if we are resisted, some killing, to help ensure that the women-friendly regime comes to power?

McMahan would probably say no, given his views about liability, and so would Kamm given her Asymmetrical Justification thesis. But my not entirely confident inclination is to say yes. There are of course issues about proportionality, but if the friendlier regime would be significantly better for a great many women and ensuring its installation would involve killing just a few resisters, it seems to me the killing would be permissible. My reason is just the wider view of liability I described above. By participating in the wrongful aggression against the neighboring country, Afghan soldiers have made themselves liable to the use of force not only to resist that aggression but also for a limited set of other ends, including disarmament, deterrence, and, I am now suggesting, the ending of lesser humanitarian wrongs.

Let me summarize. It has been a major theme of Kamm's that ethics is intricate, involving principles that draw fine distinctions, for example between different causal routes by which an outcome may be produced. My reflections on war suggest to me that there is another source of intricacy. There are not just complicated principles about when it is permissible to bring about a good at the cost of some evil; there are also different types of good that engage with these principles in different ways. There are goods connected to an independent just cause that play one moral role, conditional just aims that play another, more limited role, and goods of a third type that play a yet more limited role. It may be permissible to bring about a just cause or conditional just aim by a

certain causal route but impermissible to bring about an economic good by the same route. Some goods may count toward a moral assessment such as proportionality while others do not, or do not unless certain conditions are satisfied that are not required for the former goods. And the complexity may ramify further, with not just two or three but more different types of good, so, for example, there are differences in the moral importance of some goods I have lumped together in the third category. And we need to attend to these differences when we apply a principle like proportionality. Hard as it is to imagine, there may be more intricacies in moral heaven and earth than are dreamt of even in Frances Kamm's philosophy.