

PROPORTIONALITY AND NECESSITY

1. Consequence Conditions

Just war theory, the traditional theory of the morality of war, is not a consequentialist theory, since it does not say a war or act in war is permissible whenever it has the best consequences. On the contrary, its *jus ad bellum* component, which concerns the morality of resorting to war, says a war with the best overall outcome can be wrong if it lacks a just cause, that is, will not produce a good of one of the few types, such as resisting aggression or preventing genocide, that alone can justify war. It can likewise forbid a war that is not declared by a competent authority or fought with a right intention. Similarly, the theory's *jus in bello* component, which concerns the morality of waging war, contains a discrimination condition that can forbid military tactics with the best outcome if they target civilians rather than only soldiers. In all these ways the theory is deontological rather than consequentialist.

But just war theory does not ignore the consequences of war and would not be credible if it did: a morally crucial fact about war is that it causes death and destruction. The theory therefore contains several conditions that forbid choices concerning war if their consequences are in some way unacceptable. The *jus ad bellum* insists that a war must have a *reasonable hope of success* in achieving its just cause and other relevant benefits; if it does not, its destructiveness is to no purpose and the war is wrong. A further, *proportionality* condition says that even if a war does achieve relevant benefits, it is wrong if the destruction it causes is excessive, or out of proportion to, those benefits. And a *last resort* condition forbids war if its benefits, though significant, could have been achieved by less destructive means such as diplomacy. The *jus in bello* contains

conditions parallel to these last two. An *in bello proportionality* condition says an act in war is wrong if the harm it causes, especially to civilians, is out of proportion to its military benefits, while a *necessity* condition forbids acts that cause unnecessary harm, because the same benefits could have been achieved by less harmful means.

These *consequence conditions*, as I will call them, have been central to recent moral debates about particular wars. Before the 1991 Gulf War some critics said it would be disproportionate, because it would result in a wider Middle East conflagration. Many objected that the Iraq War of 2003 was not a last resort, because any weapons of mass destruction Saddam Hussein had could just as well be eliminated by UN inspections. And a common critique of Israel's anti-terrorist operations in the Palestinian territories is that they have caused disproportionate harm to Palestinian civilians.

Just war theory could interpret these conditions in a consequentialist way, so that, for example, a war is proportionate if the total of all its benefits, of whatever type and however caused, is even slightly greater than its total harms, and a last resort if its net benefits minus harms are even slightly better than any alternative's. And indeed some of the theory's proponents have interpreted it this way.¹ Then the theory, while not as a whole consequentialist, because it contains just cause, discrimination, and other non-consequentialist conditions, mimics consequentialism in how it assesses a war's results.

But this interpretation is neither most intuitive nor truest to how the conditions have usually been understood. A more attractive reading departs from consequentialism, first, by distinguishing among types of benefit and harm, saying only some are relevant to the assessment of a war or act in war while others are not. Second, it distinguishes among causal processes,

saying benefits and harms with one kind of causal history can count toward the assessment of a war or act while the same benefits or harms with another history cannot. Finally, it does not always weigh benefits and harms equally but gives more weight to harms an act directly causes than to any benefits it produces. In all three respects the resulting theory assesses consequences in a deontological way.

Before elaborating these points, we need to say something about the mutual relations of the conditions. The hope-of-success condition, though often presented as a separate condition in the *jus ad bellum*, can actually be subsumed under the proportionality condition. If a war has little or no chance of achieving relevant goods, then its destructiveness is out of proportion to its expected benefits and the war is wrong. But in each branch of the theory the proportionality and necessity conditions – the last resort condition is really an *ad bellum* necessity condition – are independent. A war can be proportionate, because the destruction it will cause is tolerable compared to its benefits, but not a last resort, because the same benefits could be achieved by less destructive means. Or it can be a last resort, because it is the only way of achieving certain goods, but disproportionate, because it will cause excessive harm compared to those goods.

At the same time, the necessity conditions are derivative from the proportionality conditions, because they are comparative versions of them. To assess the proportionality of a given war we identify its relevant benefits and harms and then subtract the latter from the former to arrive at its net effect: only if that is sufficiently positive is the war permitted. Applying the last resort condition would be easy if there were some alternative that would achieve all the same goods; then the only question would be whether that alternative was less destructive. But often the alternatives to war will not achieve all the same goods, or not all to the same degree, and

sometimes they risk additional harms. For example, if we try to reverse an aggression by diplomacy and fail, that may give the aggressor time to strengthen its military, making the eventual war more bloody. We must therefore do a separate proportionality assessment for each alternative to war, subtracting its relevant harms from benefits, and count the war as a last resort only if its net effect is better than that of any alternative. To put it slightly differently, we must determine whether the additional benefits of war, compared to its alternatives, justify its additional harms, and make a similar assessment for particular acts in war under the *in bello* necessity condition. So in each branch of the theory the proportionality condition considers the relevant benefits and harms of a war or act considered on its own, while the necessity condition compares the result of that calculation with the results of similar calculations for relevant alternatives, allowing a choice only when its balance of benefits to harms is better than that of any alternative.

Though the proportionality conditions are not comparative in the same way as the necessity conditions, they still involve a comparison. They require us to identify the benefits and harms a war will cause, which requires comparing the situation that will result from the war with the situation that would have obtained had it not been fought. Imagine that a war to remove a brutal dictator will cause 10,000 deaths among his country's civilians, but that if he remained in power he would kill 100,000 civilians. The relevant fact about the war is not that it will kill 10,000; it is that it will result in a net saving of 90,000. But what is the baseline situation with which this comparison is made?

The simplest view is that the baseline is whatever a nation would have done had it not fought the war or, better, if the just cause for the war had not arisen. But this view is problematic at at least two points. Imagine that a nation is contemplating a war that has a trivial just cause and

will be immensely destructive, but that if it does not fight this war it will fight another even more destructive war with no just cause. The fact that the second war will have an even worse result surely cannot make the first war proportionate, and to exclude this implication we must consider only alternatives that do not involve the nation's doing something morally wrong. Now imagine that two nations are contemplating the same war, with the same just cause and same level of destruction. If the first nation does not fight the war, it will spend the money the war would cost on welfare programs that will significantly benefit its poor. If the second does not fight, it will spend the money on tax breaks for the rich, which while not strictly forbidden will be much less beneficial. If the proportionality assessment considers just what a nation would otherwise do, the first nation's war will be less likely to be proportionate. That seems wrong: why should a nation's doing more good in its activities outside war make its resorting to war less permissible? To avoid this implication, we should compare the net effect of war with that of the least beneficial alternative that is morally permitted: then the two nations in our example will have their option of war compared with the same baseline, which is now not purely factual but at two points moralized.²

2. Relevant Benefits

Given this baseline, the first step in assessing the proportionality and then the necessity of a war or act in war is identifying its relevant benefits. Consequentialism counts benefits of all types, but just war theory seems not to, holding that some types of good are as types irrelevant. Imagine that a war will give pleasure to our soldiers, who are bored with training and eager for real combat. Their pleasure is undeniably good but seems here morally irrelevant: the case for war

cannot be stronger given this kind of effect. Or imagine that a war will stimulate more profound art than would otherwise be created; that too seems irrelevant to its justification. It may be objected that these benefits are too trivial to count seriously in a proportionality calculation, but others are more significant. Imagine that our nation's and indeed the world's economy is in a recession, and that war would end that recession, as World War II ended the depression of the 1930s. The economic benefits the war will produce here are significant, but they again seem incapable of justifying war. An otherwise disproportionate conflict cannot become proportionate because it will boost GDP.

Which types of benefit are relevant, then? They clearly include those in a war's just causes. If the war will prevent aggression or major rights-violations by a government, the goods thereby achieved count uncontroversially against the harm the war will cause. And some very restrictive versions of just war theory say they are the only goods that count. In determining whether a war is proportionate and a last resort, we weigh the harm it will cause against only those benefits involved in its initial just causes.

But most versions of the theory are less restrictive, because they recognize what have been called "conditional" just causes. Unlike "independent" just causes such as resisting aggression, merely conditional ones cannot on their own supply a just cause; if one has only conditional just causes, one is not permitted to fight. But once some other, independent just cause is present, conditional causes become legitimate goals of war and can contribute to its justification, in particular by helping to make it proportionate and a last resort.³ Three main such causes have been recognized: forcibly disarming an aggressor, deterring future aggression, and preventing humanitarian wrongs that, though serious, do not mount to the level of an independent just cause.

On most versions of just war theory, the mere fact that a nation has weapons it may or even is likely to use aggressively at some time in the future is no justification for war against it now; *pace* the Bush Doctrine, merely preventive war is wrong. But once a nation has committed aggression, forcibly disarming it to prevent it from doing so again becomes on most views a legitimate goal of war and can even justify continuing the war after its initial goals have been achieved. It is widely held that in World War II the Allies were permitted to forcibly disarm Germany and Japan after their aggressions had been reversed. Many likewise hold that in 1991 the UN coalition was permitted to send troops into Iraq after liberating Kuwait, in order to eliminate Iraq's weapons of mass destruction; that is why, when they chose not to, they were also permitted to write conditions about disarmament into the ceasefire agreement that ended the war.

A similar point applies to deterrence. The mere fact that war against a nation will deter future aggressors cannot justify war, but once there is another, independent just cause, deterrence becomes a relevant benefit of war and can play a vital role in its justification. Argentina's invasion of the Falklands in 1982 gave Britain a just cause for war, but given the islands' sparse population and remoteness from Britain that cause may have been insufficient to outweigh the harms of war in a proportionality calculation. But in justifying her resort to war British Prime Minister Thatcher also cited the need to resist aggression wherever it occurs, which was in effect to appeal to deterrence. And deterrence may have done more to make the war proportionate than its initial just cause did. Something similar applies to the last resort condition. In the lead-up to the Gulf War, some nations sought a negotiated Iraqi withdrawal from Kuwait, but it was evident that any such solution would require concessions to Iraq, for example, about some disputed islands on the Iraq-Kuwait border. The United States and its closest allies vigorously opposed the negotiations,

saying there must be “no rewards for aggression.” For them the conditional just cause of deterrence made diplomacy unacceptable when it might otherwise have been the morally preferable alternative.

The final type of conditional just cause is illustrated by the 2001 Afghanistan War. While the Taliban government’s oppression of the Afghan people, and especially of Afghan women, was serious, I think most would deny that it constituted an independent just cause; a war fought only to liberate Afghan women would have been wrong. But once the Taliban provided an independent just cause by harbouring terrorists, the fact that war against them would end their oppression became for many an additional relevant benefit that counted toward its proportionality.⁴

A less restrictive view, then, counts as relevant benefits the goods in both a war’s independent and its conditional just causes. What weighs against the war’s destructiveness is not just its initial justifying goal but also its potential to prevent future wars by disarming and deterring would-be aggressors and to correct lesser humanitarian wrongs. And there may be further relevant benefits. Imagine that in 1990 Saddam Hussein conquered Saudi Arabia as well as Kuwait and used the resulting control of their oil supplies to drive up the world oil price, causing significant harm to the world economy. I think many will say that preventing that economic harm would then have been a relevant benefit, making the case for war against Saddam stronger than if his aggression had not affected the oil price. But how can that be if preventing an economic recession is not a relevant benefit? How can economic goods count in the one case but not the other? The answer may lie in how the goods are produced.

When war lifts an economy out of recession, the benefit results from a means to the war’s just cause: in order to reverse an aggression, say, we invest money in military production, and the

resulting increase in industrial activity boosts our economy. But in the Saddam example the benefit results from the achievement of the war's just cause itself: it is the ending of Saddam's occupations of Kuwait and Saudi Arabia that prevents the increase in the world oil price. So it may be that economic goods count when they are causally downstream from a war's just cause, but not when they result only from a means to that cause. This suggestion may be confirmed by a diplomatic example. In the years immediately after its end, it looked as if the Gulf War might contribute to resolving the Israeli-Palestinian conflict, through the Oslo Accords it helped make possible. But I think most would deny that this was a relevant benefit of the war: one could not fight Iraq in order to bring peace to Palestine. And the reason may again be that the benefit resulted from a means to the war's just cause rather than from that cause itself. In order to expel Iraq from Kuwait, the United States assembled an international coalition including both western and Arab states and with Israel as an unofficial partner, and the contacts that coalition involved helped stimulate the Oslo process. But now imagine that the 2003 Iraq War had, by ending Iraq's payments to the families of Palestinian suicide bombers, reduced the level of suicide bombing and so stimulated an Israeli-Palestinian settlement. Here it seems the settlement would be a relevant benefit, because ending support for terrorism is a legitimate goal of war.

It may therefore be that some goods are relevant benefits when they are causally downstream from a war's just cause but not when they result only from the means to that cause. Not all goods allow this treatment, however. If a nation's citizens get pleasure from its military victory, that seems irrelevant to the war's justification even if the pleasure results from the nation's achieving a just cause. But if it holds for even some goods, the just war conditions depart even further from consequentialism: not only do they exclude some types of good as types, they

count others only when they result from one causal process rather than another.

The restrictions on relevant goods we have identified also bear on the last resort condition. Any time a nation fights a war, it could have spent the money the war cost in some other way, which could have had better consequences. For example, rather than fight the Gulf War the United States could have spent the billions of dollars it cost on development aid to Africa, which might well have produced greater benefits. For consequentialism this makes the war morally wrong, but it does not do so for just war theory. The reason is that the benefits of development aid, no matter how great, are of the wrong type to be relevant to assessing the Gulf War. They are not involved in the war's just causes, either independent or conditional, nor are they causally downstream from those causes, and they therefore cannot make development aid a morally mandatory alternative to war. For last-resort purposes, the relevant alternatives to a war are only alternative ways of achieving the war's benefits, not policies that produce benefits of some totally different type.

These issues about relevant benefits also bear on the *in bello* proportionality condition. Its legal formulations require only that the damage an act in war will cause not be excessive "in relation to the concrete and direct military advantage anticipated," with no further explanation of how "military advantage" is to be understood.⁵ But if an act in war is justified it surely can only be because it contributes to the war's relevant benefits, which means those in the war's independent and conditional just causes, and perhaps others causally downstream from them. But then any other benefits are irrelevant to *in bello* proportionality: an otherwise disproportionate tactic cannot become proportionate because it will please soldiers or have economic benefits, for example by testing a technology with civilian applications. Just as these benefits cannot count in

assessing a war as a whole, so they cannot count in assessing acts within it.

It also follows that what counts as a proportionate tactic varies with the magnitude of a war's benefits, and in particular with the moral significance of its just causes. A level of harm to civilians that would be permissible in war against a genocidal enemy such as Nazi Germany would not be permissible in the Falklands or Kosovo War. That seems intuitively right and even undeniable, but it contradicts the widespread assumption that the *jus ad bellum* and *jus in bello* are independent. It is commonly held that a nation may be morally wrong in its resort to war but fight the war entirely in accordance with the *in bello* rules. This is possible for the discrimination condition, if that permits both sides to target enemy soldiers, but it is not true of the *in bello* proportionality and necessity conditions. If they permit acts in war only when their relevant benefits outweigh their relevant harms, and an aggressor can produce no relevant benefits because it has no just cause, then no acts by that nation's soldiers can be proportionate or necessary. The *in bello* conditions are not independent of the *jus ad bellum* but depend crucially on the latter's specification of relevant benefits.

3. Relevant Harms

Having identified relevant benefits, the next task in assessing proportionality or necessity is to identify relevant harms. Here again some types may be excluded as types. For example, if an aggressor nation's citizens will be saddened by its defeat, that does not count at all against a war to reverse its aggression. But there seem to be many fewer such exclusions than in the case of benefits. If a war will cause pain to soldiers who do not want to fight, prevent the creation of great art, or harm the world's economy, these evils seem all to count fully against the war's

benefits, and to do so whether they result from the war's just cause or not. While many types of benefit are irrelevant to the justification of war, most types of harm are relevant.

The more important exclusions of harms concern their causal histories, and in particular the role of other agents' choices in those histories. Consider first the deaths of enemy soldiers. The *jus in bello* seems to give these deaths very little weight. Its necessity condition forbids killing enemy soldiers wantonly or to no purpose, and this is not a trivial restriction. It can, for example, justify the ban on explosive bullets: once a soldier has been hit by gunfire he is effectively disabled, making any further harm to him unnecessary. But if killing an enemy soldier will produce even a small benefit, it seems to be permitted. If killing a hundred or even a thousand enemy soldiers is necessary to save one of our soldiers, it is on standard military views not disproportionate. (In the movie *Saving Private Ryan* there is surely no number of German soldiers such that Tom Hanks must be careful not to kill more than that number while saving Ryan.) It is less clear how far this discounting of enemy soldiers' deaths carries over into the *jus ad bellum*. On many views the fact that a war will kill enemy soldiers counts more than trivially against its proportionality, but on most it counts much less than if the war will kill enemy civilians. This is reflected in popular criticisms of the Gulf and Iraq Wars, which focus much more on the number of Iraqi civilians killed than on the number of Iraqi soldiers; the latter are often barely mentioned. So in both branches of just war theory enemy soldiers' deaths have significantly discounted weight as harms, and the same is true to some extent for our soldiers. Imagine that to prevent terrorist attacks that will predictably kill 10,000 of our civilians we must fight a war that will kill 15,000 of our soldiers. I think most will say this war is permitted, implying that soldiers' deaths in general count less than civilians'.

This discounting of soldiers' deaths again distinguishes just war theory from consequentialism, which ignores the causal histories of harms. It is also connected to the discrimination condition in the *jus in bello*, which permits soldiers on each side to target enemy soldiers but not civilians. Different justifications have been proposed for this permission, but the one I find most plausible is most clearly available given volunteer militaries on the two sides. Then we can say that by voluntarily entering military service, soldiers on each side freely took on the status of soldiers and thereby freely accepted that they may permissibly be killed in the course of war. More specifically, by volunteering they gave up their right not to be killed by particular people in particular circumstances, namely enemy soldiers in a declared war, and so made their killing in those circumstances not unjust. Their situation is like that of boxers who, in agreeing to a bout, permit each other to do in the ring what would be forbidden as assault outside it. This explains not only why targeting them in war is not wrong, but also why their deaths count less in assessing a war or act for proportionality or necessity: by making their deaths not unjust they themselves gave them less weight. In the case of our soldiers there are competing moral considerations. Our nation owes them special concern just as citizens, and may also have undertaken when they enlisted to safeguard their lives so far as possible. But even here there is an initial discount resulting from their initial decision to take up the soldier's role.⁶

This justification applies most clearly when soldiers are full volunteers, but often they are not. They may be conscripts, or have enlisted only because of lies told to them by their government or because they had no acceptable career alternatives. Are their deaths still discounted, or discounted as much? A hardline view says they are. Even though not fully voluntary, their enlistment was voluntary to some degree: the conscripts could have fled the

country or gone to jail. And its being voluntary to that degree is sufficient to give them the same moral status as full volunteers. They are likewise legitimate targets during war, and their deaths likewise have minimal weight against our soldiers' deaths. But a softline view adjusts soldiers' moral standing by the degree of voluntariness of their enlistment. If they are conscripts they may be legitimate targets while actively fighting, but not when sleeping in barracks far behind the front lines, and their deaths have more weight against the benefits of war than the deaths of full volunteers. A war with a comparatively minor just cause, such as the Falklands War, might not be proportionate if fought against conscripts though it would be if fought against volunteers. In the Gulf War the Iraqi troops defending Kuwait were largely teenage conscripts; on the softline view this obliged the UN coalition facing them to accept greater risks to its own troops than if the troops opposing them were Republican Guards.

On the view just described, the moral weight of soldiers' deaths is diminished by choices they made in the past, and the same can be true of non-soldiers. Imagine that some enemy civilians install themselves as voluntary shields around a military target, hoping to deter attacks on it. Their deaths still have some moral weight. If we can attack either this target or another of equal military value that lacks shields, we should attack the one without shields. But if the civilians placed themselves near the target, that surely discounts their deaths to some extent, so attacking it may be proportionate where it would not be if their proximity were not their choice. Or imagine that if we win a war with a just cause some terrorists on the other side will launch suicide attacks on our civilians. Setting aside the civilians' deaths for a moment, can it count against the war's proportionality that it will result in the suicide bombers' deaths? The answer is surely no, and the obvious explanation is that by themselves choosing their deaths the bombers took the

responsibility for them on themselves and removed it from us.

In all these cases harm to a person is discounted because of his own wrongful choices, but can it also be discounted because of others' choices? Imagine that, losing on the battlefield, enemy troops retreat into a city where our pursuing them will inevitably cause civilian deaths. In assessing that pursuit for *in bello* proportionality, do we count the resulting civilian deaths fully against our act or can we discount them partly as the enemy's responsibility for bringing the civilians into the line of fire? International law seems to say we cannot. It forbids using civilians as involuntary shields, which the enemy troops in effect are doing. But it also says that one side's violating its legal obligations does not release the other side from its obligations, which suggests that our proportionality assessment should remain unchanged. Not everyone accepts this view, however; for example, the U.S. military seems not to. When a battle in the Iraq War moved into the city of Nasiriyah after Iraqi forces retreated there, the commander of a U.S. artillery battalion firing on the city "placed responsibility for any civilian deaths on the Iraqi soldiers who drew the marines into the populated areas," saying "'we will engage the enemy wherever he is.'"⁷

The same issue arises in the example of suicide bombers. If they kill civilians after we win an otherwise just war, do the resulting deaths count fully against our resort to war or are they partly discounted as due to the bombers' wrongful acts? And it is a pervasive issue in wars against guerilla or insurgent forces, whose common tactic is to hide among a civilian population. The Viet Cong used this tactic in the Vietnam War, as do Hamas, Hezbollah, and other opponents of Israel today. One view says their use of this tactic makes no moral difference: the forces fighting them must count any resulting civilian deaths fully against their own acts. But some commentators on the Vietnam War say the main responsibility for civilian deaths lay with the Viet Cong and not the

U.S.;⁸ similarly, defenders of Israel say if Hezbollah locates rocket launchers in Lebanese towns, the deaths that result when Israel eliminates the launchers are attributable to Hezbollah.

In thinking about this issue we must not assume that the assignment of responsibility is zero-sum: a harm can be both wholly one agent's fault and wholly another's. The issue is just whether an enemy's having wrongfully contributed to a harm reduces somewhat that harm's weight in our assessments of proportionality and necessity. That said, the issue is a difficult one. It is not one where there are clear or uncontroversial judgements about particular cases; on the contrary, there are sharp disagreements about examples such as the Vietnam War and Israel's attack on Hezbollah. Nor do abstract principles tell decisively in favour of either view. On the one hand, one wants to say that we must take the world as we find it and not ignore features of our choice situation because we disapprove of how they came about. If an act of ours will kill civilians, that is the morally salient fact and far more important than the precise reason why it will do so. On the other hand, one wants to say that agents should not be morally protected by their bad characters: that they have performed or will perform seriously wrong acts should not make tactics against them impermissible that would be permissible if they were less grossly immoral. At the same time, the issue is vitally important for current moral debates about particular wars. At the bottom of these debates is a disagreement about how far, if at all, the harms an act of ours will cause are discounted if they also depend on others' wrongful choices.

4. Weighing Benefits Against Harms

Having identified relevant benefits and harms, just war theory must weigh the two against each other. Consequentialism does so by giving them equal moral weight, so an act can be right

even though its benefits are only slightly greater than its harms. But deontological moralities are much more restrictive. If they do not contain absolute prohibitions against acts of direct harming such as killing the innocent, they allow these acts only in extreme cases, where their benefits are not just somewhat but vastly greater. Thus they allow killing an innocent person not to save just two other innocents, as consequentialism would, but only to save a hundred or a thousand, and in so doing they weigh harms much more heavily than benefits. As an instance of deontology, just war theory follows this line, but in two different ways at two different points.

When deontological views forbid acts of direct harming, they understand the directness at issue using either or both of two distinctions. The first says it is morally worse to cause harm by what one actively does than merely to allow harm to happen by not acting to prevent it; thus it is worse to kill than merely to allow to die. The second says it is worse to cause harm intending it as one's end or as a means to one's end than to do so merely foreseeing that the harm will result; thus aiming at harm is worse. These two distinctions are independent of each other. One can actively cause harm while not intending but only foreseeing it, and one can allow a harm because one wants it as an end or means, for example, allow someone to die because one wants to inherit her wealth.

Of these two distinctions, the second, between intending and merely foreseeing harm, is the more important in just war theory. When the discrimination condition forbids targeting civilians, it on most readings forbids acts that intend serious harm to civilians as an end or a means, while not in the same way forbidding acts that merely foresee civilian harm, as when bombing a legitimate military target unavoidably kills civilians living nearby. Some versions of the theory are absolutist, forbidding the targeting of civilians in any circumstances whatever. But

others allow such targeting when it is necessary to avert an absolute catastrophe, or in conditions of “supreme emergency.” Michael Walzer thinks these conditions were present in the early stages of World War II, when the only way available to fight the massive evil of a Nazi victory was to bomb German cities. But he denies that they were present when the U.S. bombed Hiroshima and Nagasaki, even if doing so saved, as President Truman argued, many thousands of lives.⁹ In this case the lives saved were primarily soldiers’, which may be discounted by their voluntary enlistment. But many just war theorists would take a similar view of civilian lives. Imagine that the only way to save 100,000 of our civilians’ lives from terrorist attacks is by bombing another country’s cities and intentionally killing 10,000 of its citizens. Many just war theorists would say this bombing is wrong, thereby giving the harms an act intentionally causes much more weight than its benefits.

The theory gives rather less weight to the other distinction, between doing and allowing, since it often allows active doings that cause significant harm to civilians. But it still seems to make some use of this distinction, and to count the harms a doing causes somewhat more than its benefits. This is, however, not always easy to see.

Consider a trade-off between different civilian lives, as when a war to prevent our civilians from being killed in terrorist attacks will inevitably kill some civilians in an enemy country; this was the case in the Afghanistan War. The simplest versions of consequentialism weigh all lives equally and will forbid this war if it takes just one more life than it saves. But most adherents of just war theory start from a different position. They say a nation is permitted and even required to weigh its own citizens’ interests more heavily than non-citizens’. When deciding trade, immigration, and other policies, it should look primarily to the effects on its own people. Does

this view transfer to the case of war, so there too a nation may care more about its own citizens' good? I think it does, but only in a significantly weakened form. Whereas a nation may be permitted to save its own citizens from a natural disaster rather than save up to n times as many foreign citizens, it may not be permitted to save its citizens from terrorism if that will involve its killing n times as many foreigners. Even if some national preference is allowed in the second case, the degree allowed is less. But then the doing/allowing distinction is doing some work, making harms that result from a doing count more against its benefits than they would if the harms were merely allowed.

Now consider a trade-off between soldiers' and civilians' lives, as when a tactic that reduces the risk of death for our soldiers increases the risk for enemy civilians. (The intense bombing of Iraq at the start of the Gulf War had this effect, as did the Kosovo War policy of flying NATO planes only above 15,000 feet, where they were safe from anti-aircraft fire but from where their bombing was inevitably less accurate.) Here the baseline trade-offs are harder to determine. On the one hand, our soldiers are soldiers, and by entering military service have surrendered their right not to be killed in war as enemy civilians have not. On the other hand our soldiers are *ours*; they are citizens of our nation and deserve extra consideration as such. It is hard to determine exactly how these considerations weigh against each other; perhaps they roughly balance each other, so the baseline weights of the two groups are roughly the same. But then the fact that a tactic will actively kill enemy civilians can boost that harm's moral weight, making the civilian deaths count somewhat more. While our military would be permitted to save $n + 1$ of its soldiers rather than save n enemy civilians, it must be saving rather more than $n + 1$ of its soldiers to be justified in killing n civilians.

These initial trade-offs have all involved lives, which are goods of the same general type, but just war theory must also weigh goods of different types. Consider the commonly accepted just cause of resisting aggression. An aggressor may, if successful, kill or imprison citizens of the victim nation; if so, preventing those wrongs is one justification for military self-defence. But sometimes the aggressor has no such aim. If not resisted, it will merely absorb the victim nation's territory and replace its government, with no further rights-violations to follow. In this case all that is threatened is the political self-determination of the nation's citizens. How much harm is permitted to protect that?

Some philosophers argue that none is, and that war against merely political aggression is always disproportionate and wrong: though political rights are important, they are not nearly as important as the right to life and may not be protected by taking life.¹⁰ This is a radical argument, and would make many widely accepted wars wrong. But there are several responses to it. First, by threatening to kill the victim nation's citizens if they resist, the aggressor brings their right to life into play and so increases the level of force they may use in self-defence. Second, a defensive war will kill mostly soldiers, and if they freely entered military service that greatly reduces the weight their deaths have in a proportionality assessment. Third, even if the war will kill some of the aggressor's civilians, it will presumably do so without intent, which again reduces those deaths' weights. And even if one person's right of political self-determination does not count much against a death, aggression threatens millions of people's self-determination, and their rights added together may justify substantially more resistance. Finally, aggression threatens not just a political right, but the right to remain secure in a cultural and political home, one to which citizens normally feel deeply attached. In the morality of self-defence an attack inside one's home has

special moral status, raising the level of defensive force one may use; and international aggression too invades a home.

These responses show, I think, that war against merely political aggression can be morally permitted, but they do not give a precise algorithm for determining when that is so. More generally, proportionality and necessity judgements can never be made with complete precision. There are, first, daunting empirical demands on these judgements. To know in advance whether a proposed war or tactic will be proportional or necessary, we need to know what consequences it will have, which before the fact we can only estimate roughly. Even after the fact, when its consequences are known, we have to compare them with various hypothetical scenarios: with the baseline situation of acting as we could otherwise permissibly have done, for the proportionality conditions, and with the results of relevant alternatives, for the necessity conditions. As merely hypothetical, these scenarios can again only be roughly estimated. And beyond these empirical challenges is the moral challenge of comparing different types of value. To reach a decisive conclusion about proportionality or necessity we must know how to weigh our soldiers' lives against those of enemy civilians, political self-determination against the lives of soldiers, economic costs against deterrence, and much more. These weightings are very difficult, and different people may make them differently, leading to different moral assessments of particular wars or actions even given an agreed-on set of facts.

That said, proportionality and necessity are not always impossible to judge; sometimes there are clear cases. For example, most believe that, despite the massive destruction that resulted, the Allies were right to fight World War II against an enemy such as Nazi Germany. It would likewise have been undeniably proportionate if a military intervention had prevented the Rwandan

genocide of 1994. On the other side, the benefits of the Iraq War – ending Saddam Hussein’s dictatorship and removing the threat of his acquiring weapons of mass destruction – seem too meagre to justify the large-scale havoc it has caused, so that war was on balance disproportionate. Nor, at least regarding the weapons issue, was it a last resort, since that benefit could have been achieved by UN inspectors. On the *in bello* side, it is hard to see the bombing inside Iraq at the start of the Gulf War as proportionate: the harm it caused Iraqi civilians seems much greater than its benefits to the coalition forces. And some of Israel’s tactics against terrorism, such as bulldozing entire streets in Palestinian towns and bombing as far into Lebanon as Beirut, seem to cause excessive harm.

Moreover, even when there are disputes about proportionality and necessity, we can identify their underlying grounds. They do not involve just conflicts among underivative moral judgements, but reflect deeper disagreements about such issues as the moral status of enemy conscripts and the significance of others’ wrongful agency. They are principled disagreements, with a more abstract philosophical basis. This may not make them easier to resolve; the underlying principles may be just as contentious. But it does illuminate them, showing where the disputants most fundamentally differ and what would be needed to bring them together.

5. Conclusion

As it must to be credible, just war theory evaluates wars and acts in war partly in light of their consequences. It does not do so, however, in a consequentialist fashion. It does not include all consequences in its assessments, holding that some types of harm and especially benefit are irrelevant as types, so they cannot count morally for or against a war or military tactic. Nor does

it include consequences regardless of how they came about. It may deem certain benefits relevant if they result in one way from a war but not if they result in another, and may discount harms if their causal history includes certain choices, for example by soldiers to enter military service or by an enemy to bring civilians into the line of fire. Nor, finally, does it weigh benefits and harms equally. If certain harms will result from what we actively do, then even if we do not intend them they count more heavily against our act than if we merely allowed them to happen. The resulting morality of war is sometimes more restrictive than consequentialism, for example when acts that will save our soldiers will kill enemy civilians. And it is sometimes more permissive, as when the same acts will kill only enemy soldiers. But it takes a distinctively deontological approach to assessing the consequences of war, as befits its overall character as a version of deontology.

Endnotes

1. See e.g. James Turner Johnson, *Morality and Contemporary Warfare* (New Haven, CN: Yale University Press, 1999), pp. 27-28.
2. On this issue see David Mellow, "Counterfactuals and the Proportionality Criterion," *Ethics and International Affairs* 20 (2006): 434-54.
3. This distinction is introduced (though using different terminology) in Jeff McMahan and Robert McKim, "The Just War and the Gulf War," *Canadian Journal of Philosophy*, 23 (1993): 501-41, pp. 502-06.
4. Given the role of these conditional just causes, an independent just cause must involve not only a good of a relevant type, such as resisting aggression, but also one above a threshold of seriousness. Otherwise goods such as disarmament and deterrence could justify war given only a trivial wrong of a relevant type, such as another nation's improperly imprisoning one of our citizens: that wrong would satisfy the just cause condition, and disarmament or deterrence could then satisfy the proportionality and last resort conditions. But surely if those goods cannot justify war on their own, they cannot do so given only a trivial wrong. We avoid that implication by requiring independent just causes to be not only of a relevant type but also above a threshold of seriousness. [CROSS-REFERENCE TO LARRY MAY'S ARTICLE?]
5. *1977 Geneva Protocol I Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts*, Art. 51 (5) (b), in *Documents on the Laws of War*, 3rd ed., ed. Adam Roberts and Richard Guelff (Oxford: Oxford University Press, 2000), p. 449.

6. This justification is surprisingly rarely given, but for hints of it see Michael Walzer, *Just and Unjust Wars* (New York: Basic Books, 1977), p. 145; and Paul Christopher, *The Ethics of War and Peace*, 2nd ed. (Upper Saddle River, NJ: Prentice-Hall, 1994), p. 126n23.

7. "Marines Wade Into Dreaded Urban Battle," *The Globe and Mail*, Mar. 25, 2003 (New York Times Service).

8. Paul Ramsey, *The Just War: Force and Political Responsibility* (New York: Scribner's, 1968), p. 437; William V. O'Brien, *The Conduct of a Just and Limited War* (New York: Praeger, 1981), p. 100.

9. Walzer, *Just and Unjust Wars*, ch. 16.

10. Richard Norman, *Ethics, Killing and War* (Cambridge: Cambridge University Press, 1995), ch. 4; David Rodin, *War and Self-Defense* (Oxford: Clarendon Press, 2002), ch. 6.