

JUST-WAR THEORIES: THE BASES, INTERRELATIONS, PRIORITIES, AND FUNCTIONS OF THEIR CRITERIA

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THERE ARE at least two useful approaches to an ethical critique of the criteria of just wars. One is to start from basic ethical principles and to ask what criteria of just wars can be derived from them. The other is to start from the just-war criteria that we have inherited and to criticize them in terms of consistency, coherence, and fidelity to fundamental ethical principles and values. Within either approach we move back and forth between our practices, including our ordinary judgments, and ethical principles and theories.

An example of the first approach is John Rawls's *A Theory of Justice*, which treats just-war criteria within the context of a systematic theory of justice as fairness. Unfortunately, his treatment is very sketchy and mainly reaffirms the traditional criteria without establishing the links between them and his theory of justice.¹ Several theologians and philosophers appropriate and apply traditional just-war criteria without adequately probing their bases, interrelations, and functions. In a recent article entitled "Just War Theory: What's the Use?" James T. Johnson considers the implications and applications of this "broadly defined collection of practical principles" called just-war theory.² He takes "classic just-war theory" (which is actually more a tradition than a single theory) as normative, viewing several developments in the last three centuries as dilutions and distortions. Indeed, he uses this classic theory to expose contemporary misunderstandings of just-war criteria. But he offers few arguments for taking particular "classic" formulations as normative and for viewing later developments as decline rather than progress.

I do not intend to offer a rationalist alternative to the historicist perspective that some proponents of just-war theories have taken. Starting from our "historical deposit" of just-war criteria, now accessible in a number of fine historical studies,³ I try to determine what questions we

¹ John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University, 1971) #58.

² James T. Johnson, "Just War Theory: What's the Use?" *Worldview* 19, nos. 7-8 (July-August 1976) 41-47.

³ See Frederick H. Russell, *The Just War in the Middle Ages* (New York: Cambridge University, 1975); James T. Johnson, *Ideology, Reason and the Limitation of War* (Princeton, N.J.: Princeton University, 1975); LeRoy Brandt Walters, Jr., *Five Classic Just-War Theories: A Study in the Thought of Thomas Aquinas, Vitoria, Suarez, Gentili, and Grotius* (Ph.D. dissertation, Yale University, 1971).

need to answer in order to develop a coherent just-war theory and, indeed, to have usable criteria for policy-makers. To posit traditional criteria, without an indication of their presuppositions, grounds, interrelations, and functions, will not likely be acceptable. I shall begin with some suggestions about the way traditional just-war criteria can be explicated and defended in relation to a prima-facie duty not to injure and kill others; then I shall analyze their grounds, interrelations, priorities, and weights. Without developing a systematic just-war theory, I shall identify some of the considerations that any satisfactory theory must include.

JUST-WAR CRITERIA: THE LOGIC OF PRIMA-FACIE DUTIES

The following criteria frequently appear in comprehensive just-war theories: legitimate or competent authority, just cause, right intention, announcement of intention, last resort, reasonable hope of success, proportionality, and just conduct. All these criteria taken together, with the exception of the last one, establish the *jus ad bellum*, the right to go to war, while the last criterion focuses on the *jus in bello*, right conduct within war, and includes both intention and proportionality, which are also part of the *jus ad bellum*.

"Everyone who has inquired out of prudence, piety, or pity into the propriety of the use of force," claims Ralph Potter, "has constructed an analogue of 'the just war doctrine.'"⁴ Although his claim is too strong and sweeping, many analogues to traditional just-war criteria appear when people try to interpret and justify several forms of conduct including the use of force and disobedience to the state. They sometimes crop up as operative criteria even when one's ethical methodology appears to exclude them. Dietrich Bonhoeffer, a theologian who was put to death for his involvement in the July 20, 1944 plot to assassinate Hitler, justified tyrannicide by some of the criteria of traditional just-war and just-revolution theories despite his theological-ethical methodology that appeared to exclude rules and principles. His "operative guidelines," for which his theological-ethical methodology made no provision, included: clear evidence of serious misrule; respect for the scale of political responsibility and authority (those lower in or outside the political hierarchy should act only after others have failed); reasonable assurances of successful execution; tyrannicide as a last resort; minimal necessary force.⁵ As in many justifications of revolution or tyrannicide, Bonhoeffer found

⁴ Ralph B. Potter, Jr., *War and Moral Discourse* (Richmond, Va.: John Knox, 1969) 61. One of the best systematic examinations of just-war criteria is Potter's article "The Moral Logic of War," *McCormick Quarterly* 23 (1970) 203-33.

⁵ Larry L. Rasmussen, *Dietrich Bonhoeffer: Reality and Resistance* (New York: Abingdon, 1972), all of Part 2, but esp. pp. 145-46, 154-55.

a surrogate for the authority of the government in the political hierarchy; others have also appealed to the "lesser magistrates" and finally to the "people."

Some philosophers and theologians also dealt with disobedience and economic boycotts by appealing to analogous criteria. For example, James Luther Adams shows that "some of the most pertinent tests [for determining justified civil disobedience] are similar to those employed in the doctrine of the just war."⁶ And Paul Ramsey insists that the use of various forms of economic pressure "should conform to the ancient principles and limitations justifying a Christian in taking up any use of force." His discussion parallels his examination of just-war criteria.⁷ While Ramsey and others account for these similarities by pointing to the presence of *force* in each of these modes of conduct, Adams thinks that the similarities between the criteria for civil disobedience and war stem from the fact that both actions deviate from normal procedures.

Actually we formulate and use criteria that are analogous to those that determine whether a war is just and justified whenever we face conflicting obligations or duties, whenever it is impossible to fulfil all the claims upon us, to respect all the rights involved, or to avoid doing evil to everyone. Sometimes we confront two or more prima-facie duties or obligations, one of which we cannot fulfil without sacrificing the other(s). In this sort of dilemma we justify sacrificing one prima-facie obligation to fulfil another only when we can answer certain questions: we need to know whether we have a just cause, proper intentions, a reasonable hope of achieving the end, a reasonable balance between probable good and evil, no other courses of action that would enable us to avoid sacrificing the obligation, etc. Thus the criteria for assessing wars and several other actions are similar because war and these other actions sacrifice some prima-facie obligation(s)—a sacrifice that must be justified along certain lines suggested by the criteria. While the fact that force is used is important, it is only one of numerous human actions that stand in need of justification because they sacrifice prima-facie obligations. Just-war criteria can be illuminated by the language of prima-facie obligations and

⁶ James Luther Adams, "Civil Disobedience: Its Occasions and Limits," in *Political and Legal Obligation: Nomos XII*, ed. J. Roland Pennock and John W. Chapman (New York: Atherton, 1970) 303. Cf. James F. Childress, *Civil Disobedience and Political Obligation: A Study in Christian Social Ethics* (New Haven: Yale University, 1971) chap. 4.

⁷ Paul Ramsey, *Christian Ethics and the Sit-in* (New York: Association, 1961) 104. Cf. Paul Ramsey, *War and the Christian Conscience* (Durham, N.C.: Duke University, 1961), and *The Just War: Force and Political Responsibility* (New York: Scribner's, 1968). For an attempt to apply just-war criteria to organ transplants on the grounds that both are instances of "the controlled use of regrettable violence," see James B. Nelson, *Human Medicine* (Minneapolis: Augsburg, 1973) chap. 7.

the *content* of the particular obligations (not to injure or kill others) that the justification of war must override.

First, let us consider the notion of a prima-facie obligation or duty (which I use interchangeably in this context). W. D. Ross introduced the distinction between prima-facie and actual obligations to account for conflicts of obligations (which he thought to be "nonexistent" when fully and carefully analyzed). When two or more prima-facie obligations appear to come into conflict, we have to assess the total situation including various possible courses of actions with all their features of prima-facie rightness and wrongness to determine what we actually ought to do. The phrase "prima facie" indicates that certain features of acts that have a *tendency* to make an act right or wrong claim our attention; insofar as an act has those features, it is right or wrong. But our actual obligation depends on the act in its wholeness and entirety. For "while an act may well be *prima facie* obligatory in respect of one character and *prima facie* forbidden in virtue of another, it becomes obligatory or forbidden only in virtue of the totality of its ethically relevant characteristics."⁸ Although some prima-facie obligations are more stringent than others (e.g., non-maleficence is more stringent than beneficence), it is not possible to provide a complete ranking or a scale of stringency of obligations.

To hold that an obligation or duty is prima-facie is to claim that it always has a strong moral reason for its performance, although this reason may not always be decisive or triumph over all other reasons. If an obligation is viewed as absolute, it cannot be overridden under any circumstances; it has priority over all other obligations with which it might come into conflict. If it is viewed as relative, the rule stating it is no more than a maxim or rule of thumb that illuminates but does not prescribe what we ought to do. If it is viewed as prima-facie, it is intrinsically binding, but it does not necessarily determine one's actual obligation.

As individuals or members of institutions, we have a prima-facie duty not to injure others. Injury may mean an unwarranted or unjustified harm or violation of rights, or it may mean inflicting actual harm (e.g., shooting someone) which may or may not be warranted or justified. In the first sense, it is, of course, always wrong by definition; an obligation not to injure others wrongfully would be absolute rather than prima-facie. In the second sense, it is prima-facie. Insofar as an act injures another, it is prima-facie wrong and stands in need of justification. Although Joseph Fletcher and others imply that killing (which I am

⁸ W. D. Ross, *Foundations of Ethics* (Oxford: Clarendon, 1939) 86. Cf. Ross, *The Right and the Good* (Oxford: Clarendon, 1930) chap. 2. "Prima-facie" does not mean "apparent" in contrast to "real," for prima-facie duties are real although they are distinguished from "actual" duties.

treating for the moment under injury) is morally neutral, William Frankena rightly insists that some kinds of action (including killing) are "intrinsically wrong." For they are

always *prima facie* wrong, and they are always actually wrong when they are not justified on other moral grounds. They are not in themselves morally indifferent. They may conceivably be justified in certain situations, but they always need to be justified; and even when they are justified, there is still one moral point against them.⁹

If the Fifth (or Sixth) Commandment means "Thou shalt not kill," it is *prima-facie* rather than absolute; for the Hebrews admitted killing in self-defense, capital punishment, and war. If it means "Thou shalt not commit murder," it can then be taken as absolute, but it leaves open the question which killings are to be counted as murder.¹⁰

It is not necessary to defend Ross's intuitionism in order to hold that injury and killing are intrinsically *prima-facie* wrong. For Ross, both fall under the obligation of nonmaleficence. For Rawls, there is a "natural duty" (i.e., owed to persons generally) not to injure or harm others and not to inflict unnecessary suffering; this natural duty can be derived from the original position.¹¹ Christian theologians might derive this obligation not to injure or kill others from the norm of agape. The claim that injury and killing are *prima-facie* wrong is thus compatible with a number of philosophical and religious frameworks.

An overridden or outweighed *prima-facie* obligation continues to function in the situation and the course of action one adopts. It leaves what Robert Nozick calls "moral traces." It has "residual effects" on the agent's attitudes and actions. As A. C. Ewing suggests,

If I have a *prima facie* obligation which I cannot rightly fulfill because it is overruled by another, stronger *prima facie* obligation, it does not by any means

⁹ William K. Frankena, *Ethics* (2nd ed.; Englewood Cliffs, N.J.: Prentice-Hall, 1973) 55. Frankena holds that some kinds of acts are "intrinsically *prima facie* wrong" (55-56). In his article "The Moral Logic of War," Ralph Potter states the presumption against the use of force in two different ways. First, he states that our "common life is sustained by a strong moral and legal presumption against the use of force" (203). Second, he holds that the use of force "always involves an exception to the rule which forbids us to do harm to our neighbor *without due cause*" (206, my italics). The second statement is faulty; for if the rule forbids us to do harm without due cause, the just-war criteria are designed to establish when there is "due cause." Thus a just war is not an exception to the rule as stated; it is rather built into the rule.

¹⁰ For some of the issues, see J. J. Stamm with M. E. Andrew, *The Ten Commandments in Recent Research* (London: SCM, 1967) 98-99, which views what is prohibited as "illegal killing inimical to the community." See also Solomon Goldman, *The Ten Commandments* (Chicago: University of Chicago, 1963).

¹¹ Rawls, *A Theory of Justice* 113-14.

follow that my conduct ought to be unaffected by the former obligation. Even if I am morally bound to do something inconsistent with it, it should in many cases modify in some respect the way in which the act is performed and in almost all it should affect some subsequent action.¹²

For example, if I think that a stronger obligation requires me to break a promise, I should at least explain the situation to the promisee, ask him not to hold me to the promise, apologize for breaking it, and even try to make it up to him later. At the very least, Ewing goes on to say, the prima-facie obligation to keep the promise "should always affect our mental attitude toward the action" to the extent of evoking regret.¹³

One important difference between many Protestant and Catholic interpretations of just war appears at this point: the appropriate attitude toward a just war that overrides the prima-facie duty not to injure or kill others. In accord with their belief in the universality of sin, many Protestant theologians such as Reinhold Niebuhr insist that the decision to wage war is always "the lesser of two evils," which they understand as "moral" as well as physical evils. Thus remorse and repentance are proper responses. With St. Augustine they stress that wars should be both just and mournful.¹⁴ Many Catholic theologians, joined by some Protestants, most notably Paul Ramsey, insist that "an act of self-defense or an act of vindictive justice, although imposed by circumstances which are regrettable, is morally good." For them, "war is not the lesser of two evils, but the lesser of two goods (one of which [i.e., peace] appears, at the moment of choice, unattainable)."¹⁵ Regret may be appropriate, but not remorse.

¹² A. C. Ewing, *Second Thoughts in Moral Philosophy* (London: Routledge and Kegan Paul, 1959) 110.

¹³ Ibid. Ross says that "we do not for a moment cease to recognize a *prima facie* duty to keep our promise, and this leads us to feel, not indeed shame or repentance, but certainly compunction, for behaving as we do . . ." (*The Right and the Good* 28). For a criticism of the view that prima-facie obligations retain their tendency to be binding and thus occasion some measure of moral regret, see Maurice Mandelbaum, *The Phenomenology of Moral Experience* (Baltimore: Johns Hopkins, 1969) 79–81.

¹⁴ See Henry Paolucci, ed., *The Political Writings of St. Augustine* (Chicago: Regnery, 1962) 162–83, and Roland H. Bainton, *Christian Attitudes toward War and Peace* (New York: Abingdon, 1960) 98.

¹⁵ Joseph C. McKenna, S.J., "Ethics and War: A Catholic View," *American Political Science Review* 54 (1960) 658, cf. 650. For Ramsey's theoretical statement, see *Deeds and Rules in Christian Ethics* (New York: Scribner's 1967) 187–88. It may be useful to mention some trends in recent Catholic moral theology that are similar to the language of prima-facie duties proposed in this essay. Without going into some differences that are also important, Richard McCormick notes that some of the "proportionalists" in recent Catholic theology who have been suspicious of the language of "intrinsic evil" have adopted arguments that resemble Ross's use of prima-facie right and wrong. Such proportionalists do not hold that actions have no meaning in themselves but "only that no final assessment of rightness or wrongness can be made until more has been said of the action than that it is [for example] 'breaking a promise'" (Richard McCormick, S.J., "Notes on Moral Theology

Whether a war that justly and justifiably overrides the prima-facie duty not to injure or kill others should evoke regret or remorse may be debatable, but it not only engenders certain attitudes but other obligations as well. The traces or residual effects of the overridden prima-facie duty are extremely important, as will be clear in my discussion of just-war criteria such as right intention, proportionality, and just conduct.

Before I develop those criteria, I want to summarize and amplify some implications of the prima-facie duty not to injure or kill others; they are actually presuppositions of many just-war theories that include both *jus ad bellum* and *jus in bello*.

First, because it is prima-facie wrong to injure or kill others, such acts demand justification. There is a presumption against their justification, and anyone who tries to justify them bears a heavy burden of proof.

Second, because not all duties can be fulfilled in every situation without some sacrifices (this inability may be understood as natural or as the result of sin), it is necessary and legitimate to override some prima-facie duties. Some other duties may be more stringent and thus take priority over the duty not to injure others—for instance, the prima-facie duty to uphold justice or to protect the innocent. War thus can be a moral undertaking in some circumstances.

Third, the overridden prima-facie duties should affect the actors' attitudes and what they do in waging the war. Some ways of waging war are more compatible than others with the overridden prima-facie duties not to injure or kill others. War can be more or less humane and civilized. War and politics, or peace, are not two totally separate realms or periods.¹⁶ Both are subject to moral principles and rules, and, indeed, to many of

1977: *The Church in Dispute*, TS 38 [1978] 103). They also hold that nonmoral evils (e.g., killings) are to be avoided as far as possible, but admit that such evils may be justified in conflicts of values and disvalues. Such conflicts may give rise to regret but not to moral remorse. The proportionalists are suspicious of the language of intrinsic evil because of the way it has been used in some recent theological and magisterial literature (e.g., to hold that direct sterilization is wrong regardless of the circumstances), because it seems more at home in a deontological than a teleological setting, and because it is confusing. As I understand the debate, my argument is not as close to the position taken by the proportionalists (such as McCormick, Schüller, Janssens, and Fuchs) as to the position developed by Albert R. Di Ianni, S.M., in "The Direct/Indirect Distinction in Morals," *Thomist* 41 (1977) 350–80. Di Ianni distinguishes nonmoral evil (e.g., death) from the free causation of that evil (e.g., homicide). The latter has "at least minimal *moral* meaning in itself prior to consideration of intention and circumstances." Thus, Di Ianni construes concepts such as homicide as "bearers of a negative *moral* meaning (as intrinsically evil in a weak sense) and not merely as bearers of negative ontic or pre-moral meaning." This weak sense of "intrinsically evil" (which he also calls the prima-facie moral meaning of negative acts in the tradition of Ross) implies that the negative moral ought is always relevant but it is not always decisive. Even when an action that is prima-facie or intrinsically evil is justified in particular circumstances, it should engender "creative regret" but not guilt.

¹⁶ Paul Ramsey, *The Just War* 55, 142, 143, 475, and *passim*.

the same principles and rules. War ought to fall within many of the boundaries that are also important in peace.

Theorists and practitioners are commonly tempted to make war merely an extension of politics, so that it requires very little to justify waging war; or they are tempted to make politics and war so discontinuous that once one enters the state of war, previously important moral, political, and legal considerations become irrelevant. Two points need to be affirmed. On the one hand, war must be justified because it violates some of our prima-facie obligations, not because it is totally immoral or amoral or utterly discontinuous with politics; on the other hand, it can be more or less humane insofar as it is conducted in accord with some standards that derive from the overridden prima-facie obligations and other obligations that endure even in war. Furthermore, however much continuity there is between peace and war, peace remains the ultimate aim of a just war.

A model of war as a rule-governed activity stands in sharp contrast to a model of war as hell, which is accepted by most pacifists and by many "realists" who recognize no restraints other than proportionality. Both models are evident in the following passage from Rolf Hochhuth's play *Soldiers*:

Bishop Bell of Chichester: "We denigrate our men if we suggest that they require directives to tell them that the burning of defenseless persons is murder."
P.M. (savagely, not looking at Bell): "War is murder. The murderer is the man who fires first. That man is Hitler."

According to one view, war is hell, murder, and there is thus only the crime of war, within which anything goes, for "all's fair. . . ." According to another view, war is a game-like (not in a frivolous sense) or a rule-governed conflict, within which one may legitimately injure, kill, and destroy, but not commit war crimes such as injuring or killing defenseless persons who are noncombatants or excombatants.¹⁷ For the view that war is "total" and without limits, the only critical moral factor is the decision to wage war, and moral blameworthiness may attach to the side starting the war, sometimes even to the side firing the first shot. For the view that war is a rule-governed activity, the *jus in bello* becomes very important. Any adequate theory, however, should not concede that *jus ad bellum* is unimportant because some moral principles and rules persist in war. There is an important and irreducible difference between peace and war, and for that reason the *jus ad bellum* remains indispensable.

¹⁷ The formulation of the ideas in this paragraph is indebted to some lectures on war by Michael Walzer at Harvard University, fall 1972.

That difference, however, is not equivalent to the difference between morality and amorality or immorality.¹⁸

GROUNDS OF JUST-WAR CRITERIA

Most of the criteria traditionally associated with just-war theories emerge because war involves a conflict between prima-facie obligations (when it is just and justified) and because the overridden prima-facie obligations forbid us to injure and kill others. Many of these criteria apply in other areas, as I have suggested, because of similar conflicts between prima-facie obligations, not because the prima-facie obligations not to injure or kill others are involved at every point. Nevertheless, the content of the prima-facie obligations that are overruled in just wars certainly shapes the criteria, particularly those having to do with *jus in bello*, since the conduct of the war should be as compatible as possible with the overridden prima-facie obligations.

The first criterion of a just war is right or legitimate authority, which is really a presupposition for the rest of the criteria. In fact, it determines *who* is primarily responsible for judging whether the other criteria are met. As Quentin Quade indicates, "the principles of Just War become operative only *after* the classic political question is answered: who should do the judging?"¹⁹ Answering the authority question is a precondition for answering the others; it thus cannot be dismissed as a "secondary criterion."²⁰ After the proper authority has determined that a war is just and

¹⁸ In Paul Ramsey's thought, e.g., the emphasis is on the continuity between politics and war. Thus he concentrates on the *jus in bello*, holding that the "laws of war are only an extension, where war is the only available means, of the rules governing any use of political power." See *The Just War* 144, cf. 475. Unfortunately, this emphasis on the continuity between politics and war may be excessive, since Ramsey does not pay enough attention to the *moral* issues in crossing the line between ordinary politics and war—the *jus ad bellum*. One of Ramsey's former students, James T. Johnson, is trying to reconstruct the *jus ad bellum*. See "Toward Reconstructing the *jus ad bellum*," *Monist* 57 (1973) 461–88.

¹⁹ Quentin L. Quade, "Civil Disobedience and the State," *Worldview* 10, no. 11 (November 1967) 4–9.

²⁰ Johnson, "Just War Theory" 42. He appears to think that legitimate authority was a "secondary criterion" for St. Augustine as well, but Augustine's writings indicate that the authority of the prince or state or God's direct authorization is indispensable for just war. See Paolucci, *Political Writings of St. Augustine* 163–66 and *passim*. In his attempt to reconstruct the *jus ad bellum*, Johnson does not address this criterion except in passing, in part because of limitations of space but also because he thinks that the current *de facto* definition of right authority (wherever there is sovereignty, there is right authority) is politically workable, although it has some moral difficulties. See "Toward Reconstructing the *jus ad bellum*" 487 n. 46. Any adequate just-war theory must seriously address this question "who decides?" Even in the use of these criteria for justifying and limiting revolution, surrogates for the established authority are often found in the revolutionary elite or the "people." See also Richard Neuhaus' suggestions in Peter L. Berger and Richard J. Neuhaus, *Movement and Revolution* (Garden City, N.Y.: Doubleday, 1970) 164–78.

justified and thus overrides the prima-facie obligation not to injure and kill others, citizens, including subject-soldiers, face a different presumption. Whereas the proper authority has to confront and rebut the presumption against war, the subject-soldier now confronts the presumption that the war is just and justified because the legitimate authority has so decided in accord with established procedures.²¹ In all political orders the subject has a moral right/duty—although not a legal right—not to fight if the war is manifestly unjust. And in a democracy the citizen is ruler as well as subject and thus has a greater responsibility to apply these criteria to war. As subject, however, his presumption ought to be that the authorities, if they are legitimate and have followed proper procedures, have decided correctly.

The requirement of a *just cause* is simply the requirement that the other competing prima-facie duty or obligation be a serious and weighty one: e.g., to protect the innocent from unjust attack, to restore rights wrongfully denied, or to reestablish a just order. Because war involves overriding important prima-facie obligations not to injure or kill others, it demands the most weighty and significant reasons.

These obligations cannot, however, be overridden if there are other ways of achieving the just aim short of war. War is the *ultima ratio*, the last resort. The requirement that war be the last resort does not mean that all possible measures have to be attempted and exhausted if there is no reasonable expectation that they will be successful. Nor does it necessarily mean that the side that first resorts to armed force should be condemned.²²

Insofar as a formal *declaration* is sometimes required, it stems not only from the nature of political society, but also from the requirement that war be the last resort. Ultimata or formal declarations of war “are the last measures of persuasion short of force itself.”²³ Although a formal declaration of war may not be appropriate for various reasons, the significance of this criterion, broadly understood, should not be underestimated. Conceding that the best publicists differed on the necessity of a declaration, Francis Lieber defended it because “decent regard for mankind” and “public good faith” require that a government explain and

²¹ See John A. Rohr, *Prophets without Honor: Public Policy and the Selective Conscientious Objector* (New York: Abingdon, 1971) 98, and Ramsey, *The Just War* 98, 274–75, 360, and *passim*.

²² James T. Johnson does not emphasize the criterion of “last resort,” in part because he thinks that it tends to be understood as condemning the first use of force. See “Just War Theory” 44 and “Toward Reconstructing the *jus ad bellum*” 487 (where this criterion is not included in the reconstruction).

²³ McKenna, “Ethics and War” 650.

justify its departure from peace.²⁴ A failure to announce the intention of and the reasons for waging war is a failure to exercise the responsibility of explaining and justifying exceptional action to those involved, including the citizens of one's own country, the enemy, and third parties who have to decide how to respond. An announcement of intentions and explanation of reasons may be more appropriate than a formal declaration of war.

The requirements of *reasonable hope of success* and *proportionality* are closely related. If war has no reasonable chance of success, it is clearly imprudent. But more than a dictate of prudence is involved in the demand for a reasonable hope of success. If none of the just and serious ends, none of the other prima-facie obligations, could be realized or fulfilled through the war, a nation should reconsider its policy, which, after all, involves overriding stringent prima-facie obligations. Nevertheless, numerous qualifications are in order. This criterion applies more clearly to offensive than to defensive wars. And in any war success may be broader than "victory." As Lieber wrote of John Brown's raid, it was irrational, but it will be historical! Success could include witnessing to values as well as achieving goals; for instance, a group might engage in resistance in order to retain self-respect even in its demise. Regarding the limited Jewish resistance in Nazi Germany, some Jewish thinkers have insisted that if the holocaust comes again, Jews must not "die like sheep." Although Ralph Potter has derived the criterion of reasonable hope of success from the moral prohibition of suicide and from the fact that statesmen are stewards of a nation,²⁵ heroic acts such as falling on a grenade to save one's comrades may be fitting for individuals and suicide itself may be justifiable in some cases, particularly if it can be noble witness to some higher values in the face of certain and imminent death. Even if a nation has good reason to think that it will be defeated anyway, its vigorous resistance may preserve significant values beyond number of lives and retention of territory or sovereignty. Furthermore, what is "reasonable" depends on the situations in which actors have to make responsible decisions; retrospective judgments by others should include only what the actors could and should have foreseen. Finally, this criterion appears only to exclude totally useless, pointless, or self-indulgent warfare which reasonable people cannot expect to achieve goals or to express values. Such warfare is excluded because it cannot override

²⁴ See James F. Childress, "Francis Lieber's Interpretation of the Laws of War: General Orders No. 100 in the Context of His Life and Thought," *American Journal of Jurisprudence* 21 (1976) 34-70. This quotation comes from Lieber's "Laws and Usages of War," a lecture given at Columbia Law School, Dec. 3, 1861.

²⁵ Potter, "The Moral Logic of War" 219.

the *prima-facie* duties not to injure or kill others, duties as binding on states as on individuals.

Regarding *proportionality*, Ramsey writes:

It can never be right to resort to war, no matter how just the cause, unless a proportionality can be established between military/political objectives and their price, or unless one has reason to believe that in the end more good will be done than undone or a greater measure of evil prevented. But, of all the tests for judging whether to resort to or to participate in war, this one balancing an evil or good effect against another is open to the greatest uncertainty. This, therefore, establishes rather than removes the possibility of conscientious disagreement among prudent men.²⁶

Here too defensive measures are less restricted than offensive ones, but this criterion includes the welfare of all countries and peoples and not merely one's own country. Certainly the weight of the cause and the probability of success enter the discussion of proportionality, but the probable negative consequences must also be considered—even beyond the negative feature of injuring or killing others.

The last major criterion of the *jus ad bellum* is right or just *intention* (which along with proportionality is very important in particular battles, engagements, and acts *within* war and not merely for the war as a whole). For the war as a whole, right intention is shaped by the pursuit of a just cause. But it also encompasses motives; for example, as St. Augustine and others have insisted, hatred is ruled out. Some would hold that the dominance, if not the mere presence, of hatred vitiates the right to wage war even if there is a just cause. For example, McKenna holds that a "war which is otherwise just becomes immoral if it is waged out of hatred."²⁷ Such a contention, however, is difficult to establish; for if all the conditions of a just/justified war are met, the presence of vicious motives would not obliterate the *jus ad bellum*, although they would lead to negative judgments about the agents. Insofar as these vicious motives are expressed in disproportionate force, the infliction of unnecessary suffering, etc., one may condemn the belligerent for violating the *jus in bello*. Nevertheless, this criterion of right intention understood not merely as pursuit of a just cause but also as proper motives remains significant in part because war is conducted between public, not private, enemies. Furthermore, an attitude of regret, if not remorse, is appropriate when a *prima-facie* obligation is overridden.

Another interpretation of right intention focuses on *peace* as the object or end of war. It too bridges the *jus ad bellum* and *jus in bello*, and I shall emphasize its impact on the conduct of war. St. Augustine and

²⁶ Ramsey, *The Just War* 195.

²⁷ McKenna, "Ethics and War" 652.

many others have affirmed that peace is the ultimate object, end, or intention of war. In short, war as injury, killing, and destruction is not an end in itself but a means to another end—a just or better peace. Even apart from the justice that is sought, peace retains its moral claim during war and thus constitutes an ultimate or final objective. There is a duty to restore the “normal” state of affairs as quickly and surely as possible.

It may be dangerous, however, to stress that it is urgent to restore peace, especially if peace is defined as the absence of conflict rather than a specific set of relationships which may include conflict; for such an emphasis may engender support for a brutal and total war, which may undermine the limits set by the *jus in bello*. Paul Ramsey holds that unless there is a morality that intrinsically limits the conduct of war, “then we must simply admit that war has no limits—since these can hardly be derived from ‘peace’ as the ‘final cause’ of just wars.”²⁸ But if one does not misconstrue peace as the total absence of conflict, one can see how the prima-facie obligation not to injure or kill others persists even in the midst of war by mandating the ultimate object of peace. And through the object of peace (but not only this way) it imposes other restraints on the conduct of war. Since the aim of war is “a just peace,” John Rawls contends, “the means employed must not destroy the possibility of peace or encourage a contempt for human life that puts the safety of ourselves and of mankind in jeopardy.”²⁹ General Orders No. 100 of 1863 held that “military necessity does not include any act of hostility which makes the return to peace unnecessarily difficult.”³⁰

If peace does not require mutual goodwill, it at least requires some trust and confidence. Thus perfidy, bad faith, and treachery are ruled out in part because they are destructive of the ultimate object of peace. If they are prevalent in war, to restore and maintain peace becomes very difficult short of the total subjugation of the enemy. Acceptable ruses of war, according to one commentator on the laws of war, are “those acts which the enemy would have had reason to expect, or in any event had no reason not to expect.”³¹ Perfidy or treachery involves the betrayal of a belligerent’s confidence that is based on moral and/or legal reasons (such as the expected protection of prisoners of war). This requirement of good faith derives not only from the ultimate end of peace but also from the respect for the humanity of the enemy that is expressed in a number of prima-facie obligations.

²⁸ Ramsey, *The Just War* 152. On the dangers of an excessive emphasis on the end of peace, see Johnson, “Just War Theory” 43–44.

²⁹ Rawls, *A Theory of Justice* 379.

³⁰ See Childress, “Francis Lieber’s Interpretation of the Laws of War” 49 and 63–65.

³¹ Frits Kalshoven, *The Law of Warfare: A Summary of Its Recent History and Trends in Development* (Leiden: Sijthoff, 1973) 102.

The prima-facie obligation not to injure or kill others should also more directly affect the choice of weapons and methods to fight wars than through the ultimate object of peace. Since this prima-facie obligation is not cancelled even when it is overruled, its impact can be seen in various restrictions of the *jus in bello*.

First, the immediate object is not to kill or even to injure any particular person but to incapacitate or restrain him.³² The enemy soldier is not reduced to his role as combatant, and when he surrenders or is wounded, he ceases to be a combatant because he ceases to be a threat. He is now an excombatant. As a prisoner of war, he is entitled to certain protections. As a wounded person, he is entitled to medical treatment equal to that of one's own wounded comrades.

Second, directly to attack noncombatants is not legitimate. This principle is sound even if the distinction between combatant and noncombatant is contextual and thus is partially determined by the society and the type of war. In the gray areas, noncombatants include those persons whose functions in factories and elsewhere serve the needs of the person qua person rather than his or her role as military personnel. Thus, while food is essential for the soldier to function, it is indispensable for him as a human being. And chaplains and medical personnel primarily serve the soldier as human being even when their ministrations indirectly aid the war effort. Finally, indiscriminate methods of warfare are prohibited by this principle.

Third, the original prima-facie obligation not to injure others also excludes inflicting *unnecessary suffering*. Thus cruelty (inflicting suffering for the sake of suffering) and wanton destruction (destruction without a compelling reason) are wrong. Such acts are not essential to the war effort. Acts that appear to fall under these vague categories of "cruelty" and "wanton destruction" are not cruel or wanton if they are "necessary." The relation between military necessity and such categories is a serious problem area in the *jus in bello*.³³ At any rate, certain weapons (such as dum-dum bullets and explosive or inflammable projectiles weighing less than 400 grams) are prohibited because they are calculated to cause "unnecessary suffering" or "superfluous injury." The rationale is simple. An ordinary rifle bullet or a projectile weighing less than 400 grams is designed to incapacitate only one person. To make the bullet or projectile do more damage to that one person is to inflict suffering that is unnecessary or superfluous.³⁴ That suffering offers no military advantage. (Of

³² Cf. Ramsey, *The Just War* 397, 502, and *passim*.

³³ See Childress, "Reinhold Niebuhr's Critique of Pacifism," *Review of Politics* 36 (1974) 477-81, and "Francis Lieber's Interpretation of the Laws of War" 63-65.

³⁴ *Weapons That May Cause Unnecessary Suffering or Have Indiscriminate Effects*. Report on the Work of Experts (Geneva: International Committee of the Red Cross, 1973)

course, not all suffering that offers military advantage is necessary and justified.)

Fourth, even the indirect, incidental, or obliquely intentional effects on civilians must be justified by the principle of proportion.

I have not tried to offer an exhaustive list of the requirements of the *jus in bello*, but rather to show that some restrictions emerge from the continued pressure of the prima-facie duty not to injure or kill others even when it is overridden by the *jus ad bellum*. That duty persists and imposes restrictions indirectly through the ultimate object of peace and directly as in the protection of certain classes, avoidance of unnecessary suffering, and care for combatants who are *hors de combat*.

APPLICATION OF CRITERIA: ORDER AND PRIORITIES

Some issues of order and priorities emerged when I examined the way some criteria derive from or relate to others and especially the overridden prima-facie duty not to injure or kill others. But there are other issues also inadequately addressed by contemporary just-war theorists. I want to identify some of them without attempting to resolve them: When public officials or citizens apply these criteria to particular wars, should they apply them in any particular order? Do some criteria have more weight than others? Is a serial ordering possible?

A good place to start is with the question, what makes a war unjust and/or unjustified? Because medieval just-war theorists were mainly interested in the question whether and when Christians could participate in war, they focused on the criteria for just wars and did "not really analyse an unjust war except as a mirror image of a just war."³⁵ For different reasons, contemporary theorists also focus on just wars and neglect some of the issues that might emerge if they asked when a war is unjust and/or unjustified. How can one recognize an unjust and/or unjustified war?

Some argue that meeting each criterion is necessary for a just war; each is necessary and all are collectively sufficient. Thus the inability to meet any single criterion, such as last resort, renders a war unjust.³⁶

A second possible approach would hold that a just war must "more or less" meet or approximate the criteria. No particular criterion is absolutely necessary, but at least several must be met for a war to be just and justified. While such an approach is probably the closest to the way

12-13. The quoted passage is from the St. Petersburg Declaration of 1868. See also Morris Greenspan, *Soldier's Guide to the Laws of War* (Washington, D.C.: Public Affairs, 1969).

³⁵ Russell, *The Just War in the Middle Ages* 305.

³⁶ See Johnson, "Just War Theory" 42, 46.

citizens and policy-makers reason, it does not indicate what degree of approximation is sufficient to make a war just and justified.

A third approach would offer a serial or lexical ordering of the criteria, so that some must be met before others can even be considered. While the first approach requires that each criterion be met and the second one requires only that some be met, both apply the criteria *en bloc*. The third approach, however, might hold that "just cause" is an indispensable and fundamental criterion that must be satisfied before one can even consider proportionality. While this approach may have the same outcome as the first one, the order of consideration is important.

A fourth approach could consider all or some of the criteria as establishing prima-facie duties, which would then follow the logic already sketched in this essay.³⁷

A fifth approach could consider the criteria as "rules of thumb" or "maxims" that identify some morally relevant considerations. We do not start our reflection about war *de novo*, but rather begin with these traditional maxims that illuminate but do not prescribe what we ought to do. While a war is just and justified if it produces the greatest good, these maxims are useful in identifying relevant factors to put on the scale.

These five approaches obviously do not exhaust the possibilities; indeed, several combinations are possible. Nevertheless, they indicate some of the ambiguities in current just-war theories. Although it is possible to make some general points about the order of the criteria on the basis of the prima-facie obligations that are involved (as I tried to do in the order I employed in the preceding section), the order and weight of the criteria will finally be determined for any particular theory by substantive views of justice and other moral principles and values, modes of moral reasoning, etc. Many recent attempts to restate just-war criteria apparently consider them to be questions that policy-makers ought to consider. Without some substantive beliefs, they can say only "consider justice," "consider how much success is possible," "balance the benefits and costs," etc. Thus the criteria would constitute a formal framework for moral debates about the use of force. Perhaps because they are empty, they can serve to organize and orchestrate disputes in the public arena; even pacifists could and did use these criteria to condemn the war in Vietnam. While this function of the criteria should not be disparaged, it is hardly

³⁷ In "A Reappraisal of the Just-War Tradition," *Ethics* 84 (1974) 167-73, D. Thomas O'Connor uses Ross's language of prima-facie duty to apply to the criteria of *ius ad bellum* and *ius in bello*: "The rules of just warfare are prima facie duties because they define abstract moral obligations. Thus, a nation ought not to violate a principle of just warfare unless a more important principle takes precedence." O'Connor does not, however, try to show how the principles of just warfare are themselves derivative from certain prima-facie duties.

what traditional theorists expected; for they developed their criteria within substantive theories of justice and the common good.

Paul Ramsey prefers to translate *justum bellum* as "justified war" rather than "just war," in part because he does not think that a substantive theory of justice in relation to ends can be developed or that one side can legitimately claim justice while denying it to the other.³⁸ Such an approach fits with a formal understanding of these criteria. When a policy-maker raises these formal questions of the *jus ad bellum* and gets affirmative answers, resort to war is "justified" although we cannot say that it is "just." A procedural justification is possible even when we lack a substantive theory of justice. Ramsey is more willing to provide content for *jus in bello* at least in terms of a principle of discrimination that rules out direct attacks on noncombatants. Indeed, he says very little about *jus ad bellum*, concentrating instead on *jus in bello*.

Many classic and contemporary theorists have construed "just cause" to include last resort, reasonable chance of success, and proportionality.³⁹ A nation does not have a just cause unless these other conditions are also met. Nonetheless, one way to use the just/justified distinction is to restrict the language of "justice" to war's cause or aim and then to determine whether the war is "justified" by reference to the other criteria, including last resort, reasonable chance of success, and proportionality. While a war may be "unjust," according to this approach, when its cause does not satisfy standards of justice, it is "unjustified" when it does not meet the other criteria. It is important to emphasize, as Joel Feinberg has pointed out, that one and the same act need not be both just and justified.⁴⁰ It may be *just and unjustified* (e.g., although it renders various parties their due, it violates some other moral principles or results in terrible consequences), or it may be *unjust and justified* (e.g., an unfair act is required to prevent a disaster). Only when a war is both just and justified does a state have a *jus ad bellum*.

In addition to the distinction between justice and justification, the distinction between rights and right conduct, or between rights and their exercise, may be useful, particularly in construing the relation between *jus ad bellum* and *jus in bello*.⁴¹ For example, perhaps one side could meet most of the conditions of *jus ad bellum* but have little chance of

³⁸ Ramsey, *War and the Christian Conscience* 15, 28, 31–32.

³⁹ See Walters, *Five Classic Just-War Theories* 316–20, and William V. O'Brien, "Morality and War: The Contribution of Paul Ramsey," *Love and Society: Essays in the Ethics of Paul Ramsey*, ed. James Johnson and David Smith (Missoula, Mont.: Scholars, 1974) 181.

⁴⁰ Joel Feinberg, "On Being 'Morally Speaking a Murderer,'" in *Ethics*, ed. Judith J. Thomson and Gerald Dworkin (New York: Harper & Row, 1968) 295–97.

⁴¹ See A. I. Melden, *Rights and Right Conduct* (Oxford: Blackwell, 1959).

success without fighting the war unjustly and unfairly. We might say "You have a right to go to war, but you ought not to exercise that right." Such an approach, however, favors the established military powers. Should a theory of war make it impossible for one country (or revolutionary movement) to wage a "successful" war? Ideological bias and the tension between moral requirements and success must be confronted clearly and honestly.

Does the *jus ad bellum* establish only a right or also a duty to go to war (at least under certain circumstances)? Because the language of duty can lead to or support crusades and holy wars, it is somewhat suspect. There is no prima-facie duty to go to war (i.e., to injure and kill), but because some other prima-facie duties (e.g., to protect the innocent) may override the prima-facie duty not to injure or kill, there may be an *actual* duty to fight, especially in a situation where the language of necessity seems appropriate. To say that war stands in need of justification because it violates certain prima-facie duties is not to rule out the language of actual duty or obligation in a particular set of circumstances. To think of some wars as duties does not entail modifying or relaxing the *jus in bello*. Even a policeman who has a duty to try to stop an escaped criminal who has taken hostages still must respect certain moral and legal limits.

Finally, what degree of certitude should policy-makers and citizens have about the justice/justification of a particular war? Should they be convinced that the preponderance of the evidence indicates that the war is just/justified according to the above criteria? Or should they be convinced beyond a reasonable doubt?

This essay has attempted to show how traditional just-war criteria can be interpreted and defended in relation to a prima-facie duty not to injure and kill others. Both the notion of a prima-facie duty and the content of the duty not to injure and kill others illuminate the just-war criteria which are analogous to the criteria we use whenever we cannot fulfil all the claims upon us. An overridden prima-facie duty should continue to have an impact on the actors' attitudes and actions, for example, on the *jus in bello* which also expresses other enduring duties and obligations. Finally, I identified several unresolved issues in the application of just-war criteria, particularly their order, priorities, and weight. Theorists of just wars need to pay more attention to numerous issues including the bases, interrelations, and functions of their criteria. Otherwise they will appear merely to posit traditional criteria without foundation and coherence. Of course, such issues constitute only part of the total agenda for just-war theorists in this age. Other critical issues of relevance and application also require attention, but they cannot be adequately ad-

dressed if we are not willing to face some of the ethical, philosophical, and theological questions that war raises.⁴²

⁴² This essay has benefited from the criticisms and suggestions of several persons including Stanley Hauerwas, James Johnson, Ernest Lefever, James McCartney, Richard McCormick, Paul Ramsey, John Reeder, LeRoy Walters, and John Howard Yoder, and from general discussions of its basic ideas at the University of Chicago Divinity School, a symposium on "Concepts of Justice and Moral Obligation in Relation to War" at Princeton University, Duodecim, and the International Law of War Symposium sponsored by the United States Catholic Conference. One of the most important books on just war theory in this century appeared after this essay was written: Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic, 1977). In n. 17 above, I indicated my indebtedness to some of Walzer's lectures which served as the basis of his book. I have written a long review of *Just and Unjust Wars* for the *Bulletin of the Atomic Scientists*, forthcoming, 1978.