

# MORAL DIMENSIONS OF WARFARE

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## ABSTRACT\*\*

*Historically, wars have killed millions of innocent human beings, displaced many more, and destroyed countries. These wars have been fought to change regimes, appease political interests, defend countries, eliminate terrorism, propagate religions, and plunder other countries' resources. Killing without justification is morally wrong. However, in the face of aggression, use of force is permitted in "self-defense" or "with the authorization of the UNSC" to respond to breaches of international peace. But the most pressing question is whether war is ever justified. This question demands a discussion of the nature and purpose of war, the inevitable deaths of innocent people, and the immoral reasons to fight wars.*

*The battle of narratives aims to justify the shedding of innocent blood. Realists say "anything goes" and everything is acceptable, if advantageous to national interests. This sounds cruel and morally wrong, but reveals superpowers' true colors and the state of our world. On the other hand, just war theory, the approach accepted by the international community, posits that innocent people must not be directly targeted. However, unintentional collateral damage is allowed if it is undertaken as a last resort and is proportional to the benefits achieved. But the practices of aggressors do not match this approach; the benefits achieved are not proportional to the harm caused, and they are almost never held accountable for their war crimes. In contrast, pacifists claim that it is the duty of every human being not to kill innocent people even in self-defense.*

*So, this paper explores the morality of waging a war and of spilling the blood of innocents by using the alternative approaches of a classical triple division. It will deconstruct the popular narratives and attempt to determine which arguments are morally strong. It will also determine whether the morality of contemporary warfare can be judged using the perspectives of alternative approaches, and whether just war theory can still stand as an adequate and morally acceptable approach.*

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## I. INTRODUCTION

*If strategic advocates propose that success can be attained only by violating noncombatant immunity, the moral judgment is simple: there is no justifiable war that is pursued by murderous conduct. A more complex decision arises when the proposal is that standards of proportionality must be loosened to achieve success. The nature of the proportionality criterion is that it is inherently open to revision; a claim that is too tightly drawn and should be revised in the name of a competing norm cannot be instantly rejected. But continuous, incremental relaxation of standards of proportionality can yield simply another version of “must win”.<sup>1</sup>*

- Bryan J. Hehir, 1999

Today, while the precision of weapons might have improved,<sup>2</sup> we continuously see in modern warfare increased casualties of noncombatant, innocent people and the destruction and destabilization of countries due to greed, disrespect for humanitarian law, and the national interests of superpowers in oil<sup>3</sup> and regime change.<sup>4</sup> It can be understood that, to bend the will of a targeted state, more suffering and destruction must be inflicted upon the native population. So, the pressing question here is whether the morality of contemporary warfare can be judged by using perspectives of alternative approaches, or whether just war theory can still stand as an adequate and morally acceptable approach.

There are two groups within the just war tradition. The first group tries to justify modern warfare, such as the invasion of Iraq, the global War against Terrorism, the war against non-state actors and regime change, as just wars.<sup>5</sup> The second group in just war theory argues that since these wars did not satisfy the moral and legal requirements of *jus ad bellum* and *jus in bello*,

1. JEFFREY L. GINGRAS & TOMISLAV Z. RUBY, MORALITY IN MODERN AERIAL WARFARE 1 (2000).

2. See Andre Barrinha & Luis Da Vinha, *Dealing with Risk: Precision Strikes and Interventionism in the Obama Administration*, in PRECISION STRIKE WARFARE AND INTERNATIONAL INTERVENTION: STRATEGIC, ETHICO-LEGAL AND DECISIONAL IMPLICATIONS 17, 19 (Mike Aaronson et al. eds., 2015).

3. *US Military Envisions Broad Defence of Syrian Oilfields*, ALJAZEERA (Oct. 29, 2019), <https://www.aljazeera.com/news/2019/10/military-envisions-broad-defence-syrian-oilfields-191029093044989.html> (demonstrating an instance of a war with interest in oil).

4. Miriam Valverde, *Why Tulsi Gabbard Calls the War in Syria a ‘Regime Change War,’* POLITIFACT (Oct. 16, 2019), <https://www.politifact.com/truth-o-meter/article/2019/oct/16/why-tulsi-gabbard-calls-war-syria-regime-change-wa/> (demonstrating a war with interest in regime change); see also Krishnadev Calamur, *The Trump Administration Appears to Embrace Regime Change in Syria*, THE ATLANTIC (Apr. 6, 2017, 3:01 PM), <https://www.theatlantic.com/international/archive/2017/04/us-syria-policy/522117/>.

5. See DAVID K. CHAN, BEYOND JUST WAR: A VIRTUE ETHICS APPROACH 1-5 (2012).

they are unjustified.<sup>6</sup> Further, pacifists claim that no wars—at present, past, or future—can justify the moral requirements of just war theory; therefore, no war can be legitimate.<sup>7</sup> Even so, the traditional approach of just war theory stands as the prevalent paradigm in the international community. But this has been exploited by political leaders to justify their inexcusable wars.<sup>8</sup> There is no reason to suggest or argue that the present paradigm is flawless and cannot be refined. Therefore, this paper will try to evaluate the different aspects of warfare under *jus ad bellum* and *jus in bello* in comparison with the alternative approaches of warfare to assess the morality of waging warfare in a traditional way.

There are a number of approaches to assessing the ethics of fighting an armed conflict and the morality of waging war. Realism says that morality does not apply to wars, and any war for national interest can be waged.<sup>9</sup> Pacifism claims that no war is justified,<sup>10</sup> it promotes peace by establishing the perpetual conditions of peace.<sup>11</sup> Just war theory, in its traditional approach, applies morality and international law to the decision to go to war and to the conduct of war.<sup>12</sup> Crusadism declares that war can be waged to promote values.<sup>13</sup> Militarism believes that war is not a regrettable necessity; therefore, international problems should only be solved through military means.<sup>14</sup> Finally, defensism states that war is justified only for defensive purposes.<sup>15</sup>

In the conduct of warfare, when thinking about noncombatant immunity, eight views dominate the conversation:

- 1) extreme realism says, “Anything goes”;
- 2) moderate realism says, “Any attack that has military value is permissible”;
- 3) the principle of necessity says, “Any military necessary attack is permissible”;
- 4) the principle of proportionality says, “Any attack that is militarily valuable and whose negative effects are proportional to the positive value of the military goal is permissible”;
- 5) the principle of limited noncombatant immunity says, “Combatants may be attacked, but non-combatants may not be intentionally

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6. *Id.*

7. *Id.*

8. *Id.*

9. STEVEN P. LEE, *ETHICS AND WAR: AN INTRODUCTION* 15 (2012).

10. DUANE L. CADY, *FROM WARISM TO PACIFISM: A MORAL CONTINUUM* 68 (2d ed. 2010).

11. See NIGEL DOWER, *THE ETHICS OF WAR AND PEACE* 146 (2009).

12. *ROUTLEDGE HANDBOOK OF ETHICS AND WAR* (Fritz Allhoff, Nicholas G. Evans & Adam Henschke eds., 2013).

13. DOWER, *supra* note 11, at 9.

14. Carl Mirra, *Countering Militarism Through Peace Education*, in *ENCYCLOPEDIA OF PEACE EDUCATION* (Monisha Bajaj ed., 2008), [https://www.tc.columbia.edu/epe/epe-entries/Mirra\\_ch11\\_22feb08.pdf](https://www.tc.columbia.edu/epe/epe-entries/Mirra_ch11_22feb08.pdf).

15. DOWER, *supra* note 11, at 9.

killed or injured unless doing so has significant military value”; 6) the principle of noncombatant immunity with a supreme emergency exception says, “Combatants may be attacked, but non-combatants may not be intentionally killed or injured except in supreme emergencies”; 7) the principle of strong noncombatant immunity says, “Combatants may be attacked, but non-combatants may not be intentionally killed or injured”; and 8) pacifism says, “Neither combatants nor noncombatants may be intentionally killed or injured.”<sup>16</sup>

However, the standard triple classification only includes realist, just war theory, and pacifist approaches because most of the elements of the other approaches are, to a large extent, covered by this classical triple division.<sup>17</sup> To evaluate the classical triple division reasonably, this paper is divided into three sections. Section 1 will discuss realism, dealing with the notions of smokescreens under realism, its considerations with regard to international relations, and its relationship with other human beings. Then, Section 2 will set out the traditional approach of just war theory, exploring in detail morality in the elements and requirements of *jus ad bellum*,<sup>18</sup> *jus in bello*,<sup>19</sup> and *jus post bellum*. Thereafter, Section 3 will discuss pacifism. Specifically, virtue pacifism, consequentialist pacifism, and deontological pacifism will be discussed with regard to their moral arguments in waging and fighting wars.

## II. REALISM

Realism in warfare is similar to realism in international relations, which states that there is no ethical relationship “between states” or “between human beings.”<sup>20</sup> Therefore, realists believe that a state can go to war without having to justify it with just cause. They claim that, in reality, aggressive states go to war to serve their national interest<sup>21</sup> and out of a lust for power.<sup>22</sup> These interests can include the desire to acquire a targeted country’s natural resources or to destabilize the targeted country.<sup>23</sup> To realists, even if aggression threatens world peace and security, it is acceptable

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16. STEPHEN NATHANSON, *TERRORISM AND THE ETHICS OF WAR* 110-13 (2010).

17. DOWER, *supra* note 11, at 9.

18. This discussion includes the notions of competent authority, just cause, right intention, last resort, and the wider principle of proportionality.

19. This discussion includes the principles of narrow proportionality, discrimination/distinction, and military necessity.

20. DOWER, *supra* note 11, at 11-12.

21. *Id.*

22. DAVID FISHER, *MORALITY AND WAR: CAN WAR BE JUST IN THE TWENTY-FIRST CENTURY?* 17 (2011).

23. DOWER, *supra* note 11, at 29.

so long as it serves the purposes of the national interest of an aggressor.<sup>24</sup> Realists assume that in practical terms this is the harsh truth being followed. During the conduct of such warfare, realists believe that anything can be employed to “compel[] your enemy to do your will.”<sup>25</sup> Hans Morgenthau, Reinhold Niebuhr, Sir Herbert Butterfield, and Kenneth Waltz are some of the most renowned realists who have believed that nation-states go to war for their national interests and not for justifiable reasons.<sup>26</sup>

For realists, reality is self-centered and murderous, devoid of moral requirements. In this world, “anything goes.”<sup>27</sup> Realists reject the application of concepts of morality, such as justice, and instead advocate for national interests of power and security in egoistic and selfish terms. From a realist perspective, a state is only concerned with its own interests and not concerned about peace or the general welfare of any other state. Take the United Nations (U.N.), for example. Of course, the U.N. exists as an organization, but it is seen by realists as a mere association of countries and not as a supreme government over all countries.<sup>28</sup> Only powerful countries, such as the permanent five (and particularly the US), can have their way in the U.N. Because there is no supreme authority, weak states are insecure and “vulnerable to attacks and encroachments of [other countries].”<sup>29</sup> In this selfish environment, a state can only rely on itself to protect its national security and interests.

The example above furthers the realist view that concepts of morality are inapplicable to foreign affairs<sup>30</sup> Applying just war concepts to foreign affairs is only wishful and idealistic; it does not go hand in hand with the harsh reality of the way of this world.<sup>31</sup> Realists give a realistic picture of how the world works; they do not see how the world should be.<sup>32</sup> As the realist approach lacks moral condemnation and allows everything for national interests and power reasons, it cannot condemn terrorism, such as the 9/11 attacks and other terrible acts of violence.<sup>33</sup>

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24. *Id.*

25. Matt Killingsworth, *Old and New Wars*, in *ISSUES IN 21ST CENTURY WORLD POLITICS* 125, 128 (Mark Beeson & Nick Bisley eds., 1st ed. 2010); *see also* DOWER, *supra* note 11, at 31.

26. DOWER, *supra* note 11, at 29.

27. BRIAN OREND, *THE MORALITY OF WAR* 251-52 (Robert M. Martin ed., 2d ed. 2013) (emphasis omitted).

28. *Id.* at 253.

29. *Id.*

30. FISHER, *supra* note 22, at 20-21; OREND, *supra* note 27, at 252.

31. OREND, *supra* note 27, at 254.

32. FISHER, *supra* note 22, at 18.

33. NATHANSON, *supra* note 16, at 116.

However, the moral and ethical concepts of just war doctrines have been applied in foreign relations and war policies for more than a century.<sup>34</sup> In response to realist arguments, Professor Brian Orend argues that people's morality and ethics are applicable, reflected in foreign policies, and are forced by people onto their governments.<sup>35</sup> For example, in the 1800's, the UK, for moral reasons, fought for antislavery laws around the globe, even though it went against its national interest of keeping the import costs of sugar and cotton low.<sup>36</sup> Thus, how is it possible to even imagine that realists are right to say that morality is inapplicable to wars when the rest of the world has been seeing the application and adoption of just war doctrines in foreign relations and international law?

Moreover, the concept of the realist necessity is ill-founded.<sup>37</sup> Among realists, necessity means that going to war is necessary to defend the existence of a state.<sup>38</sup> But political theorist Michael Walzer established that the existence of any state is very rarely threatened.<sup>39</sup> So, deciding to go to war is more a free choice than a necessity, even by the standards of the realist approach.

Prescriptive realists emphasize that a state may find itself sucker-punched, or taken advantage of, for being "too moral" or nice, which in turn poses a significant threat to the state.<sup>40</sup> Accordingly, when deciding for its own peace and security, a state should not worry about the legality of its actions or the requirements of international law.<sup>41</sup> This approach also claims that the world would be a better and more peaceful place if wars were never waged on moral grounds, such as the Christian Crusades.<sup>42</sup> So, if the guiding light is the maximization of states' own interests, keeping aside all moral reasoning, there will be no unnecessary bloodshed, fewer casualties, and more peace.<sup>43</sup>

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34. OREND, *supra* note 27, at 255.

35. *Id.* at 254-55.

36. *Id.* at 254.

37. *Id.* at 256.

38. *Id.* at 254.

39. *Id.* at 256 (discussing Walzer's work when evaluating alternatives to realism).

40. *Id.* at 258.

41. See AARON FICHTELBERG, *LAW AT THE VANISHING POINT: A PHILOSOPHICAL ANALYSIS OF INTERNATIONAL LAW* 173 (2008).

42. OREND, *supra* note 27, at 258.

43. *Id.* at 258-59.

### A. Smokescreens

However, realists can claim false just cause for aggression only as a strategy. From this viewpoint, a realist who claims moral justification is either using it as a smokescreen or delusion. In delusional cases, a leader believes he is guided by moral values when in fact he is guided by his own national interest. Because, even if there are moral reasons in such cases, there are still pressing national interests that are on their own capable of motivating war.<sup>44</sup> By contrast, in smokescreen cases, the real agendas and reasons for waging war to appease national interests are not acknowledged in public. Instead, moral justification is used as a legal basis for aggression.<sup>45</sup> It can therefore be argued that those who use smokescreens are not realists in a real sense; if they really believe that what they are doing is right, they would not use a just war theory narrative to justify their actions. A need to publicly justify their actions by another approach also tells us that realist beliefs are not acceptable in themselves by realists, and they are acting hypocritically.

### B. International Relations

Some realists are realists in warfare but not in international relations.<sup>46</sup> For example, such a person believes that waging a war for national interests is fine, but the same aggressive state is bound by international laws in terms of international relations.<sup>47</sup> But such beliefs are oxymoronic because the same laws that govern international relations restrict all states from waging wars without justifiable cause.<sup>48</sup> These beliefs are also hypocritical. On one hand, realists may allow their own states to wage wars on others for purposes of national interests. On the other hand, they will not allow other states to engage in similar aggression, citing a lack of a justifiable cause and calling it a blatant violation of international law. In response, realists would say that they only believe in supporting their national interests and not the national interests of enemy states. But, if the whole world were to adopt a realist approach—where every state is justified in waging wars to suit their own national interests—there would be wars everywhere. Only powerful states would benefit from such a situation; weaker states would be constantly raided for their resources.

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44. DOWER, *supra* note 11, at 17.

45. *Id.*

46. See FISHER, *supra* note 22, at 27 (describing partial realism).

47. DOWER, *supra* note 11, at 11-12.

48. U.N. Charter arts. 2, ¶ 4, 41-49, & 51.

### C. Relationship with Other Human Beings

Warfare realists believe there should be no distinction between combatants and noncombatants, as long as they are acting on the enemy side.<sup>49</sup> Such realists want no moral or ethical code during the conduct of warfare but demand ethical behavior from other human beings during their everyday relationships.<sup>50</sup> This includes economic and financial relations.

Nevertheless, apart from the acute moral and logical constraints on realism, the realist perspective gives us a glimpse of how the real world works. It explains a lot about how wars are waged by superpowers under the false pretenses of just cause.

## III. JUST WAR THEORY

Today, the narrative of just war theory is adopted and accepted by the international community as the applicable law for waging wars<sup>51</sup>—its present form captured in the U.N. Charter<sup>52</sup> and the Hague<sup>53</sup> and Geneva Conventions.<sup>54</sup>

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49. DOWER, *supra* note 11, at 12.

50. FISHER, *supra* note 22, at 27; DOWER, *supra* note 11, at 12.

51. See Alexander Moseley, *Just War Theory*, INTERNET ENCYC. OF PHIL., iep.utm.edu/justwar/ (last visited Oct. 13, 4:51 PM).

52. U.N. Charter.

53. Convention for the Pacific Settlement of International Disputes (Hague, I), July 29, 1899, 32 Stat. 1779; Convention for the Laws and Customs of War on Land (Hague, II), July 29, 1899, 32 Stat. 1803; Convention for the Adaptation of Maritime Warfare of Principles of Geneva Convention of 1864 (Hague, III), July 29, 1899, 32 Stat. 1827; Convention for Prohibiting Launching of Projectiles and Explosives from Balloons (Hague, IV, 1), July 29, 1899, 32 Stat. 1839; Convention for the Pacific Settlement of International Disputes (Hague, I), October 18, 1907, 36 Stat. 2199; Convention for the Limitation of Employment of Force for Recovery of Contract Debts (Hague, II), October 18, 1907, 36 Stat. 2241; Convention for the Opening of Hostilities (Hague, III), October 18, 1907, 36 Stat. 2259; Convention for the Laws and Customs of War on Land (Hague, IV), October 18, 1907, 36 Stat. 2277.

54. Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31 [hereinafter Geneva Convention I]; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Aug. 12, 1949, 6 U.S.T. 3217, 75 U.N.T.S. 85 [hereinafter Geneva Convention II]; Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135 [hereinafter Geneva Convention III]; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287 [hereinafter Geneva Convention IV]; see also Protocol Additional to Geneva Convention of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), June 8, 1977, 1125 U.N.T.S. 3 [hereinafter Additional Protocol I, Geneva Convention 1977]; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), June 8, 1977, 1125 U.N.T.S. 609 [hereinafter Additional Protocol II, Geneva Convention 1977]; Protocol additional to the Geneva Conventions of 12 August 1949, and Relating to the Adoption of an Additional

Just war theory emerged from Christian values, natural law, the wisdom of classical philosophers, and Roman law, to protect the innocent from wrong or to right a wrong.<sup>55</sup> It includes contributions from the Church, Saint Augustine, Marcus Tullius Cicero, Thomas Aquinas from the teachings of Aristotle, Francisco de Vitoria, Francisco Suárez, Hugo Grotius, John Ford, Paul Ramsey, and many others. For Augustine, “just wars are defined as those which avenge injuries, if some nation or state against whom one is waging war has neglected to punish a wrong committed by its citizens, or to return something that was wrongly taken.”<sup>56</sup> He said that sometimes it is necessary to wage wars, but a wise man must lament the choice to resort to warfare.<sup>57</sup> Aquinas added that a just war needs “authority, just cause, and right intention.”<sup>58</sup> By adopting natural law principles, de Vitoria laid down guidelines about the conduct of fighting a war to reduce the suffering of human beings.<sup>59</sup> Ford and Ramsey theorized upon the morality of using nuclear weapons.<sup>60</sup>

Just war theory also comprises *jus ad bellum*, *jus in bello*, and *jus post bellum*.<sup>61</sup> Currently, *jus ad bellum*—the criteria for waging a war—is enshrined in the U.N. Charter,<sup>62</sup> and *jus in bello*—the conditions for the conduct of warfare—is manifested in the Hague<sup>63</sup> and Geneva<sup>64</sup> Conventions. *Jus ad bellum* requires a morally right justification for going to a war, such as fighting in self-defense.<sup>65</sup> It also has other prerequisites including legitimate authority, last resort, reasonable chance of success, and proportionality.<sup>66</sup> By contrast, *jus in bello* is concerned about the morally

Distinctive Emblem (Protocol III), December 8, 2005, 2404 U.N.T.S. 261 [hereinafter Additional Protocol III, Geneva Convention 2005].

55. FISHER, *supra* note 22, at 64-65.

56. Cian O’Driscoll, *The Historical Just War Tradition*, in THE OXFORD HANDBOOK OF INT’L POL. THEORY 209, 210 (Chris Brown & Robyn Eckersley eds., 2018).

57. DANIEL H. SHUBIN, THE GOSPEL OF THE PRINCE OF PEACE: A TREATISE ON CHRISTIAN PACIFISM 87 (2014).

58. CIAN O’DRISCOLL, VICTORY: THE TRIUMPH AND TRAGEDY OF JUST WAR 79 (2020).

59. See REUBEN E. BRIGETY II, ETHICS, TECHNOLOGY AND THE AMERICAN WAY OF WAR: CRUISE MISSILES AND US SECURITY POLICY 29 (2007).

60. John C. Ford, *The Morality of Obliteration Bombing*, in WAR AND MORALITY 261 (Richard A. Wasserstrom ed., 1970), <http://theahi.org/wp-content/uploads/2013/10/Ford-Morality-of-Obliteration-Bombing.pdf>; Richard B. Miller, *Love, Intention, and Proportion: Paul Ramsey on the Morality of Nuclear Deterrence*, 16 J. OF RELIGIOUS ETHICS 201 (1988).

61. Helen Frowe & Gerald Lang, *Introduction* to HOW WE FIGHT: ETHICS IN WAR, at xiii (Helen Frowe & Gerald Lang eds., 2014).

62. U.N. Charter.

63. See sources cited *supra* note 53.

64. See sources cited *supra* note 54.

65. See Frowe & Lang, *supra* note 61, at xv.

66. *Id.* at xiii–xv.

right conduct of war, such as the principle of discrimination, which prohibits intentional targeting of noncombatants.<sup>67</sup> In comparison, *jus post bellum* is a novel addition<sup>68</sup> that is considerate of the situation after the war, including duties on the victorious toward the defeated.<sup>69</sup>

#### A. Competent Authority

The competent authority criterion “determines who is primarily responsible for judging whether the other criteria are met.”<sup>70</sup> According to Aquinas, a ruler of a country has the competent authority to wage a war.<sup>71</sup> He said:

A private individual may not declare war; for he can have recourse to the judgment of a superior to safeguard his rights. Nor has he the right to mobilize the people which is necessary in war. But since responsibility for public affairs is entrusted to the rulers, it is they who are charged with the defence of a city, realm or province, subject to them.<sup>72</sup>

This rules out the legality of private wars, such as those waged in the Middle Ages and those that are still fought in the Middle East— wars waged by non-state actors, jihadi groups, terrorists, and private organizations without the authority of the ruler of state.

#### B. Just Cause

Some theorists believe that just cause only allows wars in self-defense, while others include wars to defend the innocent and to prevent unjust deaths as just causes.<sup>73</sup> De Vitoria explained that a religious cause, a cause to enlarge an empire or its resources, and personal glory are not just causes to wage a war.<sup>74</sup> Grotius added that wars are permissibly waged “to exact punishment not only for injuries affecting immediately themselves or their

67. Steve Viner, *The Moral Foundations of the Jus Ad Bellum / Jus In Bello Distinction*, in *ROUTLEDGE HANDBOOK OF ETHICS AND WAR*, *supra* note 12, at 49.

68. Frowe & Lang, *supra* note 61, at xiii.

69. Emily Pollard, *The Place of Jus Post Bellum in Just War Considerations*, in *ROUTLEDGE HANDBOOK OF ETHICS AND WAR*, *supra* note 12, at 93.

70. JOHN W. LANGO, *THE ETHICS OF ARMED CONFLICT* 192 (2014) (emphasis omitted).

71. *Thomas Aquinas*, in *FROM IRENAEUS TO GROTIUS: A SOURCEBOOK IN CHRISTIAN POLITICAL THOUGHT* 354 (Oliver O’Donovan & Joan Lockwood O’Donovan eds., 1999).

72. *Id.*

73. See FISHER, *supra* note 22, at 69-70.

74. *Id.* (discussing De Vitoria’s view of what constitutes a just cause).

own subjects, but for gross violations of the law of nature and of nations, done to other states and subjects.”<sup>75</sup>

In keeping with De Vitoria and Grotius, the present form of just cause, inscribed in the U.N. Charter, prohibits all resort to the use of force, except for self-defense<sup>76</sup> or, with the authorization of the UNSC, in situations of threat to the peace and security of the world.<sup>77</sup> A crucial question in just cause, therefore, is whether both sides of a war can have justice on their side. What if both sides claim to have just cause? It is believed that a just war cannot be fought if both sides have just cause. De Vitoria established that “[i]f it is agreed that both parties have right and justice on their side, they cannot lawfully fight each other, either offensively or defensively.”<sup>78</sup>

A critic of self-defense, David Rodin provides a pacifistic argument that, just as it is unacceptable in domestic life to use lethal force on a sleeping attacker, it is similarly unjust to allow for the targeting of sleeping soldiers in war.<sup>79</sup> However, it is pertinent to note that an individual attack is an isolated event, whereas a war is a series of events. As explained by David Fisher, an expert on War Studies: if an individual attacker is asleep, he can be apprehended and thus no longer pose a threat. In comparison, the fact that a soldier is sleeping does not mean that the threat to a country has ceased; the sleeping soldier will resume fighting when he wakes up. Therefore, killing a sleeping soldier cannot be equated with the killing of a sleeping individual attacker.<sup>80</sup>

### C. Right Intention

Under just cause, the right intention to fight a war is to establish peace and rectify a wrong.<sup>81</sup> Aquinas believed though that “even if a war is declared by a legitimate authority and for a just cause,” it may nevertheless

75. HUGO GROTIUS, ON THE LAW OF WAR AND PEACE 247 (Archibald Colin Campbell trans., Jazybee Verlag 2017) (1625).

76. U.N. Charter art. 51.

77. U.N. Charter arts. 39-51; LANGO, *supra* note 70, at 22-33.

78. Diego Panizza, *Political Theory and Jurisprudence in Gentili's De Iure Belli: The Great Debate Between "Theological" and "Humanist" Perspectives from Vitoria to Grotius*, in THE ROOTS OF INTERNATIONAL LAW/L'ES FONDAMENTS DU DROIT INTERNATIONAL: LIBER AMICORUM PETER HAGGENMACHER 211, 219 (Pierre-Marie Dupuy & Vincent Chetail eds., 2013) (citing Francisco de Vitoria, *On the Law of War*, in VITORIA: POLITICAL WRITINGS 313 (Anthony Pagden & Jeremy Lawrance eds., 1991)).

79. FISHER, *supra* note 22, at 70-71.

80. *See id.*

81. “We wage war in order to achieve peace.” *Id.* at 72.

“be rendered unlawful by a wicked intent.”<sup>82</sup> Although a war can have a variety of motivations, the dominant intention decides its legality. Generally, greed and cruelty are seen as impermissible intentions for waging a war.<sup>83</sup> For instance, in the Iraq invasion, the just causes claimed were the alleged Iraqi involvement in the 9/11 attacks and the alleged Iraqi possession of weapons of mass destruction.<sup>84</sup> Later, it was found that Iraq had no involvement in the 9/11 attacks<sup>85</sup> and possessed no weapons of mass destruction.<sup>86</sup> The dominant intent in this war, some claim, was greed for Iraqi oil.<sup>87</sup> Similarly, in the Syrian war, the US government armed Syrian rebels<sup>88</sup> for regime change<sup>89</sup> in an effort to retain Syrian oilfields and deny the Syrian government access to Syrian oil reserves.<sup>90</sup> However, to conceal

82. CHRISTOPHER J. EBERLE, *JUSTICE AND THE JUST WAR TRADITION: HUMAN WORTH, MORAL FORMATION, AND ARMED CONFLICT* 128 (2016); FERNANDO R. TESÓN AND BAS VAN DER VOSSSEN, *DEBATING HUMANITARIAN INTERVENTION: SHOULD WE TRY TO SAVE STRANGERS?* 72 (2017).

83. FISHER, *supra* note 22, at 72.

84. See John Prados, *Rumsfeld Confirms Archive Analysis*, UNREDACTED (Feb. 8, 2011), <https://unredacted.com/2011/02/08/rumsfeld-confirms-archive-analysis/>; see also *Secret Memo by Donald Rumsfeld Proves Iraq War Started on False Pretenses*, WASHINGTON’S BLOG (Feb. 20, 2013) [hereinafter *Secret Memo*], <https://washingtomblog.com> [<https://www.globalresearch.ca/secret-memo-by-donald-rumsfeld-proves-iraq-war-started-on-false-pretenses/5323576>].

85. *Cheney Blasts Media on Al Qaeda-Iraq Link*, CNN (June 18, 2004, 06:25AM) [hereinafter *Cheney Blasts Media*], <https://edition.cnn.com/2004/ALLPOLITICS/06/18/cheney.iraq.al.queda/>.

86. Andy McSmith & Charlie Cooper, *Chilcot Report: Blair Didn’t Tell Truth About WMDs, the Deal with Bush or the Warnings of Fallout – How Britain Went to War in Iraq*, INDEP. (July 6, 2016), <https://www.independent.co.uk/news/uk/politics/chilcot-report-inquiry-tony-blair-iraq-war-weapons-of-mass-destruction-evidence-verdict-a7122361.html>.

87. *Top Republican Leaders Say Iraq War Was Really about Oil*, WASHINGTON’S BLOG (Mar. 19, 2013), <https://washingtomblog.com/2013/03/top-republican-leaders-say-iraq-war-was-really-for-oil.html> [<https://web.archive.org/web/20130320192006/https://washingtomblog.com/2013/03/top-republican-leaders-say-iraq-war-was-really-for-oil.html>]; Michael Moore, *Six Years Ago, Chuck Hagel Told the Truth About Iraq*, HUFFPOST, [https://www.huffpost.com/entry/chuck-hagel-iraq-oil\\_b\\_2414862](https://www.huffpost.com/entry/chuck-hagel-iraq-oil_b_2414862) (March 7, 2013); Antonia Juhasz, *Why the War in Iraq Was Fought for Big Oil*, CNN, <https://edition.cnn.com/2013/03/19/opinion/iraq-war-oil-juhasz/index.html> (April 15, 2013, 11:42 AM).

88. Tara McKelvey, *Arming Syrian Rebels: Where the US Went Wrong*, BBC NEWS (Oct. 10, 2015), <https://www.bbc.com/news/magazine-33997408>.

89. Nour Malas & Jay Solomon, *U.S. Blesses Syria Regime Change as Embassy Hit*, WALL ST. J. (July 12, 2011), <https://www.wsj.com/articles/SB10001424052702303812104576439713197868294>; see also Joshua Roberts, *House Approves US Arms for Syrian Rebels*, ALJAZEERA AM. (Sept. 17, 2014, 8:00 PM), <http://america.aljazeera.com/articles/2014/9/17/congress-arming-syriarebels.html>; Mark Hosenball, *Exclusive: Obama Authorizes Secret U.S. Support for Syrian Rebels*, REUTERS (Aug. 1, 2012, 2:59 PM), <https://www.reuters.com/article/us-usa-syria-obama-order/exclusive-obama-authorizes-secret-u-s-support-for-syrian-rebels-idUSBRE8701OK20120801>.

90. *US Military Envisions Broad Defence of Syrian Oilfields*, *supra* note 3.

its wicked intentions, the US claimed to be fighting for its national interests<sup>91</sup> and to deter the use of chemical weapons by the Assad regime.<sup>92</sup>

#### D. Last Resort

The last resort requirement of just war theory dictates that all viable peaceful solutions that have a reasonable chance of achieving just cause must be exhausted before the use of force is permitted.<sup>93</sup> Put another way, “every non-military option for meeting the threat in question [has] been explored, with reasonable grounds for believing that other measures will not succeed.”<sup>94</sup> The reason for this is straightforward: wars are terrible and efforts should be made to avoid them in order to reduce the suffering of humankind and the waste of resources.<sup>95</sup> Therefore, nonviolent alternatives, such as sanctions, mediation, and diplomatic negotiations, must be resorted to before using force.<sup>96</sup> However, on occasion—for example in situations of economic sanctions—innocent human beings are found to be more affected by nonviolent means than they would have been by violence.<sup>97</sup> Moreover, there is a disagreement over whether the last resort condition can ever be achieved. As Walzer notes, “[W]e can never reach lastness, or we can never know that we have reached it.”<sup>98</sup>

#### E. Principle of Proportionality

The principle of proportionality under *jus ad bellum* stipulates that the harm done by a war should not exceed the benefit achieved by that war.<sup>99</sup> In de Vitoria’s words, “Care must be taken to ensure that the evil effects of war

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91. Letter to Congressional Leaders on United States Military Operations in Syria, 2017 DAILY COMP. PRES. DOC. 244 (Apr. 8, 2017), <https://www.govinfo.gov/content/pkg/DCPD-201700244/pdf/DCPD-201700244.pdf>.

92. Remarks on United States Military Operations in Syria, 2018 DAILY COMP. PRES. DOC. 242 (Apr. 13, 2018), <https://www.govinfo.gov/content/pkg/DCPD-201800242/pdf/DCPD-201800242.pdf>.

93. Eamon Aloyo, *The Last of Last Resort* (The Hague Institute of Glob. Just., Working Paper No. 1, 2014), [https://www.thehagueinstituteforglobaljustice.org/wp-content/uploads/2015/10/Working-Paper-1-Last-Resort\\_1404750337.pdf](https://www.thehagueinstituteforglobaljustice.org/wp-content/uploads/2015/10/Working-Paper-1-Last-Resort_1404750337.pdf); see also JAMES E. WHITE, CONTEMPORARY MORAL PROBLEMS: WAR, TERRORISM, AND TORTURE 3 (3rd ed. 2009).

94. LANGO, *supra* note 70, at 136.

95. Aloyo, *supra* note 93.

96. FISHER, *supra* note 22, at 73; Aloyo, *supra* note 93; WHITE, *supra* note 93, at 3.

97. LANGO, *supra* note 70, at 136.

98. MICHAEL WALZER, ARGUING ABOUT WAR 88 (2004).

99. LANGO, *supra* note 70, at 179; Thomas Hurka, *Proportionality in the Morality of War*, 33 PHIL. & PUB. AFF. (2005), <https://www.kean.edu/~gkahn/PS4130/hurka.pdf>.

do not outweigh the possible benefits sought by waging it.”<sup>100</sup> The Geneva Convention provides that “[t]hose who plan or decide upon an attack shall . . . [r]efrain from deciding to launch any attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.”<sup>101</sup>

However, gauging the consequences of waging war is difficult. For instance, who could have known that the cost of stopping the Nazis would be fifty-five million lives,<sup>102</sup> as opposed to the five to six million<sup>103</sup> innocent lives taken by the Nazi regime? Some pacifists believe that the consequences of WWII were not justified. Others comment that this war was worth fighting for given that the alternative was a world ruled by Hitler, where many more people would have died.<sup>104</sup> Similarly, the consequences of modern British and American wars can also be seen as disproportional to the benefits they have achieved. The Iraq War, for example, was waged to destroy or capture weapons of mass destruction and to right the wrongs of 9/11.<sup>105</sup> Later, Iraq was vindicated of both of these accusations,<sup>106</sup> whereas the harm done by the war was disproportionate to the false accusations. So, with regard to the false accusations, no good was achieved.

Under pacifism, engaging in a cost-benefit analysis is necessary in order to understand the consequences of a war.<sup>107</sup> A correct analysis under proportionality, however, does not look to compare the harms of a war with the situation before the war. Instead, it is a comparison between the consequences of waging a war with the consequences of not waging a war.<sup>108</sup> For example, if a defensive war takes the lives of 3,000 people but avoids a genocide of 5,000 innocent people, then such a war is justified and proportional. Nevertheless, there is no present system that can accurately predict the consequences of waging or not waging a war.<sup>109</sup>

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100. FISHER, *supra* note 22, at 73-74 (citing Vitoria, *supra* note 78, at 315).

101. Additional Protocol I, Geneva Convention 1977, *supra* note 54, 1125 U.N.T.S. at 29.

102. DORIS L. BERGEN, *THE HOLOCAUST: A CONCISE HISTORY* 232 (2009).

103. CONWAY W. HENDERSON, *UNDERSTANDING INTERNATIONAL LAW* 258 (2010); BERGEN, *supra* note 102, at 232.

104. JAMES E. WHITE, *CONTEMPORARY MORAL PROBLEMS* 418 (9th ed. 2009).

105. Prados, *supra* note 84; *Secret Memo*, *supra* note 84.

106. *Cheney Blasts Media*, *supra* note 85; McSmith & Cooper, *supra* note 86.

107. OREND, *supra* note 27, at 279-80.

108. FISHER, *supra* note 22, at 74.

109. *See id.* at 74-76.

Another condition under the principle of proportionality is that a war should only be fought when there is a reasonable chance of success.<sup>110</sup> Arguably, this means that a weaker state with no chance of success has no right to self-defense in the face of aggression by a powerful aggressor. But of course, every victim state has the right to defend its sovereignty in the face of aggression.<sup>111</sup> So, what this rule really means is that the benefits or goals of a war must be reasonably achievable, such that no harm should be done after achieving the benefits, thereby reducing the unnecessary suffering of innocent people.<sup>112</sup>

The consequences of fighting a war under the principle of proportionality are assessed at four different levels: the political level, the strategic level, the theater level, and the tactical level.<sup>113</sup> At the political and strategic levels, the decision to go to war and strategy of military actions are made by doing a cost-benefit analysis for *jus ad bellum* to check whether the possible harm caused by the decisions is greater than the benefit achievable by it.<sup>114</sup> Political and military leaders at these levels carry the moral responsibility for the justness or unjustness of a war.<sup>115</sup> At the theater level, commanders coordinate with their military regarding strategic objectives. And at the tactical level, military actions are executed,<sup>116</sup> while considering the consequences under *jus in bello* to check the proportionality of each action.<sup>117</sup>

#### F. Principle of Discrimination

The principle of discrimination under *jus in bello* (conduct of war) requires that noncombatants are not directly targeted in a war.<sup>118</sup> The pacifist argument against this principle is that conscripted soldiers should also not be targeted because they can neither be morally blamed nor are they responsible for the war in a real sense.<sup>119</sup> In response, just war theory stipulates that this principle only protects innocent people, but soldiers are not innocent because

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110. See CARL CEULEMANS, *RELUCTANT JUSTICE: A JUST-WAR ANALYSIS OF THE INTERNATIONAL USE OF FORCE IN THE FORMER YUGOSLAVIA (1991-1995)*, at 96 (2005).

111. U.N. Charter art. 51.

112. FISHER, *supra* note 22, at 73-75.

113. *Id.* at 76.

114. *Id.* at 76-77.

115. *Id.*

116. For a discussion on the differences between narrow and wide principles of proportionality, see F.M. KAMM, *ETHICS FOR ENEMIES: TERROR, TORTURE, & WAR* 131-36 (2011).

117. FISHER, *supra* note 22, at 76-77.

118. Geneva Convention I, *supra* note 54, 6 U.S.T. at 3518; Additional Protocol II, Geneva Convention 1977, *supra* note 54, 1125 U.N.T.S. at 615.

119. FISHER, *supra* note 22, at 77-79.

they pose a threat of harm by their actions and must fight when ordered.<sup>120</sup> Therefore, targeting combatants directly and intentionally is allowed<sup>121</sup> under just war theory's conduct of war.

However, any person, including a soldier, who poses no threat of harm, such as prisoners of war and incapacitated soldiers (*hors de combat*), should not be directly targeted.<sup>122</sup> Article 41 of Additional Protocol (AP) I of the Geneva Conventions, under *jus in bello*, protects people who are no longer taking part in warfare, including prisoners of war.<sup>123</sup> Article 7 of AP II protects the wounded and sick.<sup>124</sup> Articles 9 and 12 of AP II protect medical personnel,<sup>125</sup> and Article 16 of AP II protects religious and cultural objects<sup>126</sup> from being directly targeted. Combatants posing as civilians ("perfidy") is illegal.<sup>127</sup> Similarly, using civilians as human shields is also prohibited.<sup>128</sup>

The most compelling pacifist argument against this distinction/discrimination principle is that the immunity granted to noncombatants or innocent people under just war theory is not absolute: Many innocent people die in war, whether due to collateral damage or indirect targeting.<sup>129</sup> This argument is dealt with in detail in Section 3 of this article.

### G. Principle of Military Necessity

The principle of military necessity permits "measures which are actually necessary to accomplish a legitimate military purpose and are not otherwise prohibited by international humanitarian law. In the case of an armed conflict, the only legitimate military purpose is to weaken the military

120. Jeff McMahan, *The Conditions of Liability to Preventive Attack*, in *THE ETHICS OF PREVENTIVE WAR* 121, 136-37 (Deen K. Chatterjee ed., 2013).

121. *But see* Geneva Convention I, *supra* note 54, 6 U.S.T. at 3116; Geneva Convention II, *supra* note 54, 6 U.S.T. at 3220; Geneva Convention III, 6 U.S.T. at 3318.

122. Additional Protocol I, Geneva Convention 1977, *supra* note 54, 1125 U.N.T.S. at 22.

123. *Id.*

124. Additional Protocol II, Geneva Convention 1977, *supra* note 54, 1125 U.N.T.S. at 614.

125. Additional Protocol II, Geneva Convention 1977, *supra* note 54, 1125 U.N.T.S. at 611-12.

126. *Id.* at 616.

127. Additional Protocol I, Geneva Convention 1977, *supra* note 54, 1125 U.N.T.S. at 21-22; *see also* Richard B. Jackson, *Perfidy in Non-International Armed Conflicts*, 88 INT'L L. STUD. 237 (2012), <https://digital-commons.usnwc.edu/cgi/viewcontent.cgi?article=1062&context=ils>.

128. Additional Protocol I, Geneva Convention 1977, *supra* note 54, 1125 U.N.T.S. at 26; *see also* Michael N. Schmitt, *Human Shields In International Humanitarian Law*, 47 COLUM. J. TRANSNAT'L L. 293, 301-02 (2009), <http://www.marshallcenter.org/mcpublicweb/mcdocs/files/college/hshlds-schmitt.pdf> [<https://web.archive.org/web/20191128071450/http://www.marshallcenter.org/mcpublicweb/mcdocs/files/college/hshlds-schmitt.pdf>].

129. FISHER, *supra* note 22, at 77-79.

capacity of the other parties to the conflict.”<sup>130</sup> In general, “[m]ilitary necessity . . . runs counter to humanitarian exigencies. Consequently, the purpose of humanitarian law is to strike a balance between military necessity and humanitarian exigencies.”<sup>131</sup> This principle allows innocent civilians to be hurt as collateral damage in order to achieve a military objective.<sup>132</sup> Grotius established that innocent people must be protected, except in situations that put the safety of many others at risk.<sup>133</sup> The Hague Convention agrees that the evils of war should only be curbed when military necessity permits it to be.<sup>134</sup> The International Law Commission took a similar stance while describing war crimes. It stated that plundering, devastation, destruction, the killing of innocents, and other such activities are war crimes if they are not justified by military necessity.<sup>135</sup> This means that all war crimes that can be justified by military necessity are not considered war crimes.<sup>136</sup> Therefore, the immunity and protection of innocent people are overridden by advantage to military objectives under this principle; any evil action can be justified if it contributes to achieving a military objective.

Contrary to humanitarian exigencies, this principle evaluates when it is justified to knowingly target innocent people.<sup>137</sup> All the major gross

130. Marco Sassòli et al., *Military Necessity, HOW DOES LAW PROTECT IN WAR?*, <https://casebook.icrc.org/glossary/military-necessity> (last visited Sept. 29, 2020).

131. *Id.*

132. “It is right, in virtue of collateral circumstances, to slay the innocent . . . [W]ar could not be otherwise waged against even the guilty.” MARK SOMOS, *SECULARISATION AND THE LEIDEN CIRCLE* 448 (2011).

133. “[E]xcept for reasons that are weighty and will affect the safety of many.” RICHARD SHELLY HARTIGAN, *THE FORGOTTEN VICTIM: A HISTORY OF THE CIVILIAN* 99 (1982).

134. “[T]hese provisions, the wording of which has been inspired by the desire to diminish the evils of war, as far as military requirement permit, are intended to serve as a general rule of conduct for the belligerents.” International Convention for the Laws and Customs of War on Land (Hague, IV), October 18, 1907, 36 Stat. 2277, at 632.

135. PAUL CHRISTOPHER, *THE ETHICS OF WAR & PEACE: AN INTRODUCTION TO LEGAL AND MORAL ISSUES* 158-60 (2d ed. 1999) (discussing Grotius’ view that death of innocents must be prevented).

136. Note how military necessity justifies the following list of otherwise unjustifiable conduct in war:

Violations of the laws or customs of war which include, but are not limited to, murder, ill-treatment or deportation to slave-labour or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war, of persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns, or villages, or devastation *not justified by military necessity*.

Principles of International Law Recognized in the Charter of the Nurnberg Tribunal and in the Judgment of the Tribunal, Principle VI, *Report of the International Law Commission to the General Assembly*, 5 U.N. GAOR Supp. No. 12, at 11, U.N. Doc. A/1316 (1950), reprinted in [1950] 2 Y.B. Int’l L. Comm’n 374, P 97, U.N. Doc. A/CN.4/SER.A/1950/Add.1 [hereinafter Principle VI(b)] (emphasis added).

137. CHRISTOPHER, *supra* note 135.

violations of humanitarian laws or disregard of humanitarian exigencies are justified under this principle. For instance, the atomic bombings of Hiroshima and Nagasaki by the US, which killed numerous innocent people, were justified as a necessary step to “break the will” of the Japanese people.<sup>138</sup> To borrow from author Paul Christopher, two “Moral Truths” will be used to evaluate the morality of this principle.<sup>139</sup> MT1 is: “It is wrong to intentionally harm innocent persons.”<sup>140</sup> MT2 is: “One is sometimes obligated to protect innocent persons from harm.”<sup>141</sup> One who violates MT1 is not innocent and can face harm from one seeking retribution or acting in self-defense.<sup>142</sup> Therefore, targeting enemy combatants who violate MT1 is justified by MT2; that is, to protect the innocent people of the victim state. Further, the political leaders of a victim state often have to make the decision whether to protect their own people and kill the innocent people of enemy state (MT2).<sup>143</sup>

Sheldon Cohen is of the view that soldiers cannot be expected to increase the already high risk to their lives more than is reasonable. If innocent people are present in a combat zone, soldiers should be allowed to attack indiscriminately to defend the area as if there were no innocent people there<sup>144</sup> because sometimes, enemy forces use innocent people as human shields, hindering the achievement of a military objective. For instance, military units used to hide among women and children during the Korean War.<sup>145</sup> Therefore, it is argued that it is the fault of forces that use innocent

138. RICHARD SHAPCOTT, *INTERNATIONAL ETHICS: A CRITICAL INTRODUCTION* 170 (2010).

139. CHRISTOPHER, *supra* note 135, at 162.

140. *Id.*

141. *Id.*

142. *Id.* at 162-63.

143. *Id.*

144. *Id.* at 162-64. Sheldon Cohen says,

[T]he law of war implies that soldiers are not obliged to raise their already high risks to even higher levels in order to lower further the risk to innocents in combat zones . . . . The rights of innocents are defeasible when honoring those rights would push the soldiers’ risk beyond what it is reasonable to expect any group to endure. The rule is, I suggest, that the attacker may, given the presence of innocents in a combat zone, do anything that it would be permissible to do if there were no innocents there – subject to the restrictions entailed by the principle of proportionality. This rules out discriminatory (selective) attacks on innocents but allows the indiscriminate shelling or bombing of defended areas containing innocents.

*Id.* (citing SHELDON M. COHEN, *ARMS AND JUDGMENT: LAW, MORALITY, AND THE CONDUCT OF WAR IN THE TWENTIETH CENTURY* (Routledge 2018)); *see also* Noam Zohar, *Risking and Protecting Lives: Soldiers and Opposing Civilians*, in *HOW WE FIGHT: ETHICS IN WAR*, *supra* note 61, at 155, 157.

145. LAURIE R. BLANK & GREGORY P. NOONE, *INTERNATIONAL LAW AND ARMED CONFLICT: FUNDAMENTAL PRINCIPLES AND CONTEMPORARY CHALLENGES IN THE LAW OF WAR* 565 (2d ed. 2019); *see also* ROBERT TYNES, *TOOLS OF WAR, TOOLS OF STATE: WHEN CHILDREN BECOME SOLDIERS* 76 (2018).

people as shields for any violations of humanitarian law by the other party. Otherwise, it would be impractical to defend key areas during combat.<sup>146</sup>

This moral dilemma over whether to intentionally target innocent people diminishes once two assumptions are made: one, that the lives of soldiers do not carry sanctity;<sup>147</sup> and, two, that the innocent people to be targeted are people of their own nationality.<sup>148</sup> This means that soldiers must act against innocent people of enemy nationality as if they are acting against innocent people from their own country. This is because, regardless of nationality, an innocent person is an innocent person. An innocent person of enemy nationality should not be destined for death merely because he is from another country. Moreover, the risk to soldiers' lives does not increase because they are expected to be courageous and risk their lives during wars. In response, advocates of military necessity say that soldiers do not owe a moral duty to protect innocent people of an enemy state in the same way that they have a moral duty to protect their own people, and killing innocent people from an enemy state as a military necessity means protecting their own people.<sup>149</sup> So there is no decision to choose between two innocent people of different nationalities; the real choice is between protecting one's own people or not. Soldiers do not have the moral duty to risk their lives to protect the innocent people of another country; MT2 only relates to people of the soldiers' own country.<sup>150</sup> In response, it can be argued that "all soldiers have a moral duty to refrain from intentionally harming innocents (MT1), regardless of nationality."<sup>151</sup>

Under MT1, a distinction between innocent people of one's own country and innocent people of another nationality must not be made; innocent people should simply be considered innocent people.<sup>152</sup> For example, suppose there is a US army unit stationed in a densely populated city in Iraq, which faces a larger opposing force. In this situation, military necessity allows this US unit to take the lives of innocent Iraqis to save their own lives, even if it means indiscriminate shelling of civilians. Now consider that the same unit is stationed in New York. Would the US unit consider shelling US citizens indiscriminately only to save their own lives? The soldiers' duty is not to save their own lives; rather, they have the duty to protect innocent people.

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146. CHRISTOPHER, *supra* note 135, at 164-65.

147. *Id.* at 164.

148. *Id.* at 165-66.

149. *Id.* at 164-67.

150. *Id.* at 162-63.

151. *Id.* at 165.

152. *Id.* at 165-66.

The other element of this principle is that *jus in bello* can be overridden if the military actions significantly contribute to the success of military objectives.<sup>153</sup> This means that only things that do not significantly contribute to the military objectives can violate humanitarian law. The US, for example, justified its indiscriminate and even disproportionate attacks on civilians during the Vietnam War on the grounds of military necessity due to the enemy's use of civilian populations as human shields in guerilla warfare.<sup>154</sup> Therefore, the US argued that the Vietnamese themselves were blameworthy of these violations of humanitarian law.<sup>155</sup> The main problem here is that the term "success" underlying military necessity is not properly defined. Success at the tactical level means fewer enemies on the other side, and if success can be judged at a tactical level then humanitarian exigencies are thrown away altogether. Moreover, success at the tactical level also translates into winning, and if winning is the criterion to judge right and wrong then all humanitarian laws can be violated in order to win a war. The losing side can always argue that it did what it did to win, and it will always be right,<sup>156</sup> whereas the winning side will always argue that what it did in fact contributed to its success. In both cases, anything can be done to win, even violations of all humanitarian laws.

Another main argument is that a moral wrong, such as the targeting of innocent people, is permissible if the consequence of inaction is so heinous.<sup>157</sup> This means that *jus in bello* must only be ignored when the threat posed is so huge that it threatens the existence of a state, that is, under a "supreme emergency."<sup>158</sup> Walzer therefore believes that military necessity is merely a political necessity because supreme emergencies cannot exist at

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153. *Id.* at 167-68.

154. ROBERT L. HOLMES, ON WAR AND MORALITY 105 (1989); CHRISTOPHER, *supra* note 135, at 169.

155. THOMAS HURKA, DRAWING MORALS: ESSAYS IN ETHICAL THEORY 249 (2011). According to Paul Ramsey, "To draw any other conclusion would be like, at the nuclear level, granting an enemy immunity from attack because he had the shrewdness to locate his missile bases in the heart of his cities." PAUL RAMSEY, THE JUST WAR: FORCE AND POLITICAL RESPONSIBILITY 508 (2002); *see also* CHRISTOPHER, *supra* note 135, at 169.

156. "In situations of deadly conflict, particularly where a weaker party is threatened with annihilation or enslavement by a stronger one, the argument for resort to atrocities can be powerful, and the dilemma acute." CHRISTOPHER, *supra* note 135, at 171 (quoting Thomas Nagel, *War and Massacre*, 1 PHIL. & PUB. AFF. 123, 143 (1972)).

157. CHRISTOPHER, *supra* note 135, at 172.

158. *Id.* at 172-73. Walzer says that *jus in bello* must be respected "until the heaven falls." Richard D. White Jr., *Military Ethics*, in HANDBOOK OF ADMINISTRATIVE ETHICS 629, 634 (Terry L. Cooper ed., 2d ed. 2001) (citing to Walzer when discussing recent scholarship on morality and war).

a tactical level.<sup>159</sup> Therefore, international humanitarian law (“IHL”) should be violated at a tactical level.<sup>160</sup> However, his interpretation is too restrictive and makes IHL the absolute inviolable law.

Instead, a better interpretation would be that the lives of innocent people can only be justified in situations that are grave enough.<sup>161</sup> The decision to invoke military necessity must be a political one and not a military one to reduce its abuse at the tactical level.<sup>162</sup> States declaring a military necessity in such situations must be “willing to exchange the same number of [innocent] lives of their own citizens”.<sup>163</sup> The use of the principle of military necessity must not disregard other humanitarian exigencies. The military action taken must be necessary to achieve military objectives such that intentionally targeting innocent people is “truly a last resort and sufficient” when weighed against the outcome of actions,<sup>164</sup> and the state is willing to sacrifice the same number of its own innocent people for the same objective. As such, the military necessity should be a political decision and not a tactical one.<sup>165</sup>

#### *H. Jus Post Bellum*

To right a wrong, and to ensure a war is just, just war theory provides comprehensive guidelines regarding decisions to go to war (*jus ad bellum*),<sup>166</sup> and regarding the conduct of wars (*jus in bello*).<sup>167</sup> So a separate check has emerged in modern times: *jus post bellum*, which considers the situation after the war and the duties of the victorious toward the defeated.<sup>168</sup> The *jus post bellum* condition requires political leaders and rulers of states to ensure a robust plan regarding the aftermath of a war to restore peace and to right the wrongs of a war, such as by rebuilding a country.<sup>169</sup> These new conditions under just war theory are being developed because contemporary military operations leave colossal destruction and devastation behind them, which

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159. Walzer considers “military necessity” as “political necessity.” CHRISTOPHER, *supra* note 135, at 173.

160. C. A. J. Coady, *Terrorism*, in THE ROUTLEDGE COMPANION TO SOCIAL AND POLITICAL PHILOSOPHY 777, 785 (Gerald Gaus & Fred D’Agostino eds., 2013).

161. CHRISTOPHER, *supra* note 135, at 173.

162. *Id.*

163. *Id.* at 173-74.

164. *Id.* at 174.

165. *Id.*

166. Allen Buchanan, *A Richer Jus ad Bellum*, in THE OXFORD HANDBOOK OF ETHICS OF WAR 167, 167 (Seth Lazar & Helen Frowe eds., 2018).

167. IAN HENDERSON, THE CONTEMPORARY LAW OF TARGETING 3 (2009).

168. Pollard, *supra* note 69.

169. *Id.*

nullify any good they achieved. For instance, the good achieved by waging war in Iraq and Syria is nothing compared to the resulting displacement of millions of innocent people,<sup>170</sup> millions more refugees,<sup>171</sup> the deaths of hundreds of thousands of people,<sup>172</sup> the destruction of property,<sup>173</sup> and the destabilization of the region.<sup>174</sup> Therefore, it is the responsibility of a decision maker who wages a war to consider the *jus post bellum* requirements, such as resettling affected people and restoring peace in the region, after a war is over.<sup>175</sup>

#### IV. PACIFISM

The pacifist approach demands that there should be no wars and that war can never be justified.<sup>176</sup> Basically, it is an antiwar approach that promotes peace and rejects all kinds of war.<sup>177</sup> There are two subgroups within pacifism: principled or deontological pacifism and contingent pacifism.<sup>178</sup> Principled pacifism is not based on the consequences of war, but rather, it is an obligation to reject killing any human being or fighting a war.<sup>179</sup> By contrast, contingent pacifism claims that war should not be fought because the consequences of war are worse than the consequences of not fighting a war.<sup>180</sup> In a way, pacifists can also be described as cosmopolitans because, like cosmopolitans, pacifists promote peace and avoid any form of fighting.<sup>181</sup>

170. “Over 5.6 million people have fled Syria since 2011, seeking safety in Lebanon, Turkey, Jordan and beyond. Millions more are displaced inside Syria and, as war continues, hope is fading fast.” *Syria Emergency*, UNHCR, <https://www.unhcr.org/syria-emergency.html> (last visited Oct. 3, 2020, 11:33 PM).

171. As of October 3, 2020, 5.6 million (5,565,954) Syrian refugees are hosted in Turkey, Lebanon, Jordan, Iraq, Egypt, and other North African countries. *Syria Regional Refugee Response*, UNHCR, <https://data2.unhcr.org/en/situations/syria> (last visited Oct. 3, 2020, 11:35 PM).

172. “More than 500,000 people have died since the war began.” SYRIAN REFUGEE FUND, <https://syriarelieff.charity.org/?> [<https://web.archive.org/web/20190728000011/https://syriarelieff.charity.org/>].

173. Ameen Najjar, *Damage Caused by the Syrian Civil War: What the Data Say*, TOWARDS DATA SCIENCE (June 27, 2018), <https://towardsdatascience.com/damage-caused-by-the-syrian-civil-war-what-the-data-say-ebad5796fca8>.

174. Philip Issa, *Syrian Civil War: Five Ways the Conflict Has Changed the World*, INDEP. (Mar. 13, 2016, 4:44 PM), <https://www.independent.co.uk/news/world/middle-east/syrian-civil-war-isis-how-it-changed-the-world-refugee-crisis-a6928796.html>.

175. FISHER, *supra* note 22, at 79-80.

176. DOWER, *supra* note 11, at 13.

177. *Id.*

178. *Id.*

179. *Id.*

180. *Id.*

181. *Id.*

One criticism of pacifists is that they enjoy the security provided by others and act as “free riders” when they choose not to fight.<sup>182</sup> Such behavior for moral reasons reduces the state’s resources to thwart aggression and diminishes its morality among the general public to fight back against any aggression.<sup>183</sup> However, it is naïve to assume that pacifists have not paid anything and acted like free riders by choosing nonviolent recourses to warfare. Throughout history, pacifists have acted in civil disobedience and have even paid their price, for example, in the form of jail time in the fight for a better and peaceful world.<sup>184</sup>

Some pacifists rely on religious scriptures for nonviolent alternatives to wars. This includes relying on Christian and Buddhist holy books. For instance, in the New Testament, Jesus refused to use force to resist his arrest.<sup>185</sup> However, just war theory has also been historically associated with the Church, and the Church does not believe that pacifist theories of warfare emanate from the New Testament.<sup>186</sup>

There are three kinds of pacifism: virtue pacifism (“VP”), consequentialist pacifism (“CP”), and deontological pacifism (“DP”). VP believes that killing human beings is at odds with the excellence and flourishing of humanity, CP maintains that the benefits of fighting cannot outweigh the costs of fighting, and DP claims that killing other human beings is unacceptable, and war is unjust because it violates morality and justice.<sup>187</sup> Each of these will be discussed in turn.

### A. *Virtue Pacifism*

Virtue pacifists,<sup>188</sup> like Aristotle, rely on the belief that all human beings must strive harder to develop inherent competences—physical, mental, and social—to the fullest.<sup>189</sup> These virtues are praised by society because they are achieved by habitual constant conditioning, are difficult to achieve, have higher morality, are corrective in nature, and are beneficial for society and

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182. MARK J. ALLMAN, WHO WOULD JESUS KILL? WAR, PEACE, AND THE CHRISTIAN TRADITION 97 (2008).

183. OREND, *supra* note 27, at 275.

184. *Id.*

185. Joseph D. Galgalo, *Christian Responses to Terror in Kenya*, in CHRISTIAN RESPONSES TO TERRORISM: THE KENYAN EXPERIENCE 33, 40 (Gordon L. Heath & David K. Tarus eds., 2017).

186. OREND, *supra* note 27, at 274.

187. *Id.*

188. Virtue pacifists rely on virtue philosophers and religious teachings. See Joseph B. Onyango Okello, *A Pacifist Response to Terrorism*, in CHRISTIAN RESPONSES TO TERRORISM: THE KENYAN EXPERIENCE, *supra* note 185, at 50, 59-60.

189. OREND, *supra* note 27, at 275; see also Aristotle, PURSUIT OF HAPPINESS, <https://www.pursuit-of-happiness.org/history-of-happiness/aristotle/> (last visited Nov. 10, 2019).

oneself.<sup>190</sup> Examples of these virtues include Greek cardinals of “wisdom, courage, moderation, and justice,” and Christian teachings on “honesty, helpfulness, forgiveness, pleasantness, consistency, tolerance, modesty, [and] thoughtfulness.”<sup>191</sup> Warfare is not praiseworthy under VP because it promotes the opposites of these virtues, such as corruption, pain, suffering, torture, violence, killing, and bloodshed, all of which are at odds with the ideals of life.<sup>192</sup> Therefore, war is seen by virtue pacifists as the opposite of love and life because it gives so little and takes so much.

The problem with VP is that it is utopian and unrealistic.<sup>193</sup> It relies on the hope that everyone else, including nations and states, will take a pacifistic approach in cooperation with one another and that an aggressor will be moved by pacifists’ moral reasoning. The most notable problem of the pacifistic approach is that it does not defend its own people from any aggression.<sup>194</sup> Critics of pacifism argue that it takes more courage to fight in the face of aggression than to do nothing, choose a peaceful recourse, and leave your people unguarded.<sup>195</sup> Just war theorists believe that there can be situations where the existence of one’s own people is at stake by aggression, and where fighting can be considered just, prudent, and moral, for example when fighting in self-defense or in the face of genocide.<sup>196</sup>

In response, pacifists argue that nonviolent tactics of warfare such as economic and diplomatic sanctions, trade embargoes, civil disobedience, resistance, noncooperation, and strikes can be equally efficient as fighting defensive warfare to expel an aggressor and to defend one’s own people, with less violence and damage.<sup>197</sup> For instance, how would an occupier rule an aggressed land when its people will not cooperate in running businesses, paying bills, or conducting open transportation and trade, coupled with international boycotts of trade and diplomacy against an aggressor? Gene Sharp has compiled a toolkit of such nonviolent tactics to ward off any act of aggression:

general strike, sit-down strike, industry strike, go-slow and work to rule . . .  
economic boycotts, consumers’ boycott, traders boycott, rent refusal,  
international economic embargo and social boycott . . . boycott of

190. See OREND, *supra* note 27, at 275.

191. *Id.* at 275-76.

192. *Id.* at 276.

193. *Id.*

194. ALLMAN, *supra* note 182, at 121; see also J. ANGELO CORLETT, TERRORISM: A PHILOSOPHICAL ANALYSIS 19 (2003); see also JYOTSNA SREENIVASAN, UTOPIAS IN AMERICAN HISTORY 297 (2008).

195. OREND, *supra* note 27, at 276.

196. *Id.* at 276-77.

197. *Id.* at 277.

government employment, boycott of elections, revenue refusal, civil disobedience and mutiny . . . sit-ins, reverse strikes, non-violent obstruction, non-violent invasion and parallel government.<sup>198</sup>

However, John Rawls writes that such anti-aggression tactics are ineffective and “unworldly” because they are dependent on the virtues of an aggressor.<sup>199</sup> Moreover, these tactics may act efficiently against a corrupt native regime as a form of rebellion,<sup>200</sup> but they are useless against evil aggressors. For instance, what if the aggressor chooses to commit genocide against the native population to settle his own people? What if he only wishes to loot all the resources of a targeted state? In such circumstances, civil disobedience and nonviolent protests will only act as a surrender against such aggression. Therefore, Walzer sees pacifism as a “disguised form of surrender” and an ineffective way to repel aggressions.<sup>201</sup>

In response to accusations of an unworldly and inefficient approach to fight aggression, pacifists quote examples of successful instances of nonviolent responses to aggression.<sup>202</sup> For instance, pacifists claim that Mahatma Gandhi used pacifist tactics of civil disobedience and nonviolent protests to thwart the imperial British Raj,<sup>203</sup> resulting in the independence of India in 1947.<sup>204</sup> Similarly, Martin Luther King used peaceful civil rights campaigns that helped African Americans to acquire their deserved rights.<sup>205</sup> Likewise, Scandinavian countries like Sweden and Norway used peaceful protests and noncooperation to effectively fight the Nazis.<sup>206</sup>

However, it can be argued that these instances do not provide a full picture of what happened during these instances that helped to effectively defeat aggression. For instance, this narrative conveniently skips other factors, such as the ending of British rule in Hindustan (India) and the

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198. Brian Orend, *War and Terrorism*, in THE ROUTLEDGE HANDBOOK OF GLOBAL ETHICS 98, 100 (Darrel Moellendorf & Heather Widdows eds., 2015); OREND, *supra* note 27, at 277.

199. OREND, *supra* note 27, at 277 (presenting Rawls’ criticisms of pacifism).

200. John Rawls, *The Sense of Justice, Evidence and Idealism*, in JOHN RAWLS: CRITICAL ASSESSMENTS OF LEADING POLITICAL PHILOSOPHERS 424 (Chandran Kukathas ed., 2003).

201. Orend, *supra* note 198, at 101 (citing MICHAEL WALZER, JUST AND UNJUST WARS: A MORAL ARGUMENT WITH HISTORICAL ILLUSTRATIONS 334-35 (1977)).

202. OREND, *supra* note 27, at 278.

203. EBOO PATEL, SACRED GROUND: PLURALISM, PREJUDICE, AND THE PROMISE OF AMERICA 150 (2012); *see also* *Pacifism*, in COLONIALISM: AN INTERNATIONAL, SOCIAL, CULTURAL, AND POLITICAL ENCYCLOPEDIA 449, 450 (Melvin E. Page & Penny M. Sonnenburg eds., 2003).

204. OREND, *supra* note 27, at 278; *see also* Ronald J. Sider, *Pacifism*, in ENCYCLOPEDIA OF MODERN POLITICAL THOUGHT 611, 612 (Gregory Claeys ed., 2013).

205. OREND, *supra* note 27, at 278.

206. *Id.*

exhaustion of British forces and resources from fighting World War II.<sup>207</sup> Likewise, the Nazis were not defeated by peaceful protests; they were defeated by the use of defensive forces against them. Hitler did not respond to peaceful protests in Scandinavian countries because he had already conquered those lands.<sup>208</sup> He was instead aiming to invade other countries such as Britain, America, and the Soviet Union, and he did not see peaceful protests as much of a threat against his aggressive regime.<sup>209</sup> Therefore, while resorting to peaceful forms of protest can still be seen as brave and coordinated hindrances against aggression, it cannot be seen as an effective way to fight off aggression. Of course pacifism is the right choice under ideal situations and in a utopian world, where everyone is wise, there are unlimited resources, everyone is on the same page, and everything is coordinated.<sup>210</sup> But the reality is “the world is not ideal.”<sup>211</sup> There are evil regimes and there are aggressors who invade countries to gain wealth and power. Therefore, it is only prudent to fight back against aggression and to defend one’s own people and resources, until an ideal world is formed or developed.

### *B. Consequentialist Pacifism*

Unlike VP and DP, CP is not concerned with people’s personal traits; rather, as its name suggests, CP is focused on the results/consequences of wars/actions.<sup>212</sup> At its core, CP sees war as not an option because the benefits achieved by war can never outweigh its horrific consequences.<sup>213</sup> It bases its formulations on the fact that wars in general create massacres, the killing of innocent people, and the destruction of property, and it takes away the happiness and pleasure of life.<sup>214</sup> Therefore, due to its destructive consequential nature, one should never resort to war. This approach undertakes a cost–benefit analysis of fighting a war and concludes that the benefits of fighting a war can never outweigh the benefits of not doing so.<sup>215</sup>

However, to have a more realistic cost–benefit analysis, the comparators should not be the cost and benefits of the situations before and after a war.

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207. MOHINDER SINGH PANNU, PARTNERS OF BRITISH RULE: LIBERATORS OR COLLABORATORS? 398 (2005); see also Sajid Ali & Iffat Farah, *Schooling in Pakistan*, in GOING TO SCHOOL IN SOUTH ASIA 143, 143 (Amita Gupta ed., 2007).

208. OREND, *supra* note 27, at 278.

209. *Id.*

210. *Id.* at 279.

211. *Id.*

212. RICHARD NORMAN, ETHICS, KILLING AND WAR 75 (1995).

213. *Id.*

214. OREND, *supra* note 27, at 279-80.

215. *Id.*

Instead, the after-effects, including the costs, devastation, destruction, and benefits, of not fighting a war should be weighed against fighting a defensive war. Of course, if we imagine a situation where there is a war and then another situation where there is no war, then the costs and harms of fighting a war will always be higher than not fighting a war. But in a real-world scenario, the situation for an attacked state is different. For instance, if there is aggression on a state, what are the costs of fighting a defensive war and not fighting any war against aggression? Not fighting in such a situation will allow the aggressor to benefit from all the resources of the invaded country and will act as a surrender, where an aggressor can even carry out genocide. The leadership of a free country has a responsibility to guard its people and resources from aggression and genocide and to secure the right of its people to self-govern. Surrendering in the face of any aggression takes away all such safeguards, rights, and security. Therefore, in such a situation, a moral and prudent leadership will not choose to surrender the interests of its people, especially when the risks of genocide and the plundering of all resources are probable outcomes. Just war theory asserts that it is the core duty of a state to protect its own people from aggression and from serious violations of human rights, even if that requires the use of force.<sup>216</sup>

A rule to not fight any aggressor also makes it easier for aggressors to conquer more land and to resort to warfare. This means that, if more states choose to not fight aggression in self-defense, there will be more aggression in the world because aggressive states will see a nonfighting attitude as a weakness and will use it to loot all the resources of any country that chooses to act on pacifist narratives. While the pacifist approach will ensure less bloodshed because there will be no fighting due to surrenders, there will be a lot of human rights violations, the plundering of national resources, and the conquering of lands. This, in turn, will greatly affect the peace of the world, where hard-earned money and resources will be subject to defenseless systems.

To prove that war is bad, pacifists also cite the horror of the history of warfare. For example, they give instances of the deaths of millions of innocent people who died during the world wars.<sup>217</sup> During these wars, many of our ancestors died, vast national resources were used, and the private property and livelihoods of millions more innocent people were destroyed. Critics of pacifism in response say that things would have been a lot worse if aggressors like the Nazis, fascist Italy, and Imperial Japan were not stopped

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216. U.N. Charter art. 51; *see also* OREND, *supra* note 27, at 282.

217. LINDEN PEACH, *PACIFISM, PEACE AND MODERN WELSH WRITING* 46 (Kirsti Bohata & Daniel G. Williams eds., 2019).

with force.<sup>218</sup> The consequence of defensive wars against such aggressors is not ideal, but it ensured the maintenance of democracy, peoples' right to choose their leaders, the development of the United Nations, respect for human rights, and the development of robust international laws.<sup>219</sup>

Yes, indeed it can be argued that the consequences of world wars that killed millions and destroyed countries were far greater than the benefits we have achieved from them. But, if all the states had resorted to a pacifistic approach of surrendering to Nazis, the modern world would have been ruled by Hitler and his successors. Can we imagine a world where there is only one regime, the Nazi regime, ruled by Hitler, the most aggressive and evil man in the history of mankind? For the sake of argument, if there was a global pacifistic approach to wars, where everyone surrendered in the face of aggressions, then any aggressor would be able to rule the whole world by resorting to the use of force or would be easily able to plunder all the resources of other countries. On the other hand, from a realist perspective, this is precisely what superpowers have done throughout history, and what they continue to do in the present.

Another core principle of CP is that killing is not allowed in wars because it disrespects human beings. Killing another human being causes suffering, not only to the one person killed but also to the victim's friends and family in form of loss of companionship, loss of livelihood, and loss of future experiences.<sup>220</sup> Therefore, the core question for CP is what should a state do in a situation where an aggressor chooses to invade? An absolute consequentialist pacifist would say that because killing and wars are bad, a state should surrender. But this position raises more questions. If a state surrenders in the face of aggression, how can it defend its own people and resources from aggressors, and how do we choose who will rule the state? If a pacifistic approach is applied, any aggressor can plunder the resources of any state, kill all of its people, rule the invaded state, and even settle his own people there.

Critics ask whether consequentialist pacifists would agree to wars if the consequences of fighting created less destruction and killing than not fighting.<sup>221</sup> For instance, suppose there is an aggression, the attacked state applies CP, and, as a consequence, 30,000 innocent people are killed by the aggressor. Now imagine, in the same aggression, the attacked state instead applies just war theory and uses defensive force to defend its people; the aggressors are repelled but, as a consequence, only 10,000 people (innocents

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218. OREND, *supra* note 27, at 281.

219. *Id.*

220. *Id.* at 282.

221. *Id.* at 283.

and soldiers) die. In this example, would consequentialist pacifists allow war? Critics of CP use WWII as an example and theorize that “[h]ad the Allies confronted Hitler after Austria, it wouldn’t have taken so long, later, to defeat Germany. Appeasement made the war longer and more destructive.”<sup>222</sup> For this example, it is assumed that most consequentialist pacifists would agree to the use of force in situations where the costs and benefits of fighting a war are less severe than the consequences of not fighting a war.<sup>223</sup> But this agreement directly conflicts with the absolute pacifism narrative, where killing anyone under any circumstances is not permissible.

### C. Deontological Pacifism

At the core of their morality, deontologists have duties, responsibilities, obligations, and rights.<sup>224</sup> By duties, DP refers to the behavior of human beings that is demanded or permitted.<sup>225</sup> To them, “the very activity of war-fighting violates a foremost duty of morality,” the duty not to kill other human beings.<sup>226</sup> Therefore, DP sees war as an unjust activity that can never be justified.<sup>227</sup> Diplomacy, mediation, sanctions, and other nonviolent recourses of dispute resolution are seen by DP as alternatives to warfare. It asserts the following main arguments: 1) for moral reasons, any human being in general should not be killed, 2) killing even an aggressor violates their human rights, 3) there can be innocent aggressors, and killing an innocent aggressor should not be allowed, and 4) war always kills innocent people.<sup>228</sup>

#### 1. Killing Any Human Being

Robert Holmes says that war violates the “foremost duty of morality,” that is, “the duty not to kill other human beings.”<sup>229</sup> In normal circumstances, this statement speaks to the morality of every reasonable human being, but what about life-threatening situations in which person A tries to kill person B and poses a serious threat to the life of B? Or what about a situation where person C tries to kill several thousand people in a terrorist attack and poses a

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222. *Id.*

223. *Id.* at 282.

224. BARRY L. PADGETT, PROFESSIONAL MORALITY AND GUILTY BYSTANDING: MERTON’S CONJECTURES AND THE VALUE OF WORK 19 (2009).

225. LEE, *supra* note 9, at 24-25.

226. OREND, *supra* note 27, at 283 (emphasis omitted).

227. BRIAN OREND, WAR AND INTERNATIONAL JUSTICE: A KANTIAN PERSPECTIVE 153 (2000).

228. OREND, *supra* note 27, at 284-89.

229. OREND, *supra* note 27, at 153.

threat to the lives of many people? In such circumstances, just war theorists would say that using force to stop the aggression and threat posed by A and C is reasonable and morally justifiable. However, the law enforcement bodies should first try to disarm A and C, if the circumstances allow, but using force that even takes the lives of A and C to protect B and thousands of people is justifiable when a swift and efficient response is needed. This is because if no action is taken to stop A and C, the lives of many innocent people will be lost.

Anscombe bifurcates this situation as a dilemma between “the blood of the innocent” and “the blood of the guilty.”<sup>230</sup> If the victims are not allowed to use force to defend their lives, innocent people will lose everything, and the aggressors will not lose anything. Jan Narveson says that third parties such as law enforcement agents are allowed to act on behalf of innocent people because victims are not always capable of defending themselves, which should not strip them of their right to justice.<sup>231</sup> By contrast, the victim is also morally right in choosing to resort to lethal force because the aggressor is forcing the victim to choose between their own life and the aggressor’s life. In a right mind, one will always choose one’s own life, especially when one is a victim.<sup>232</sup>

## 2. Killing Aggressors

DP asserts that even killing aggressors violates their human rights. The core principle of aggression (“CPA”) under just war theory maintains that “the commission of aggression by the aggressor A against the victim V entitles V, and/or any third-party vindicator T, acting on behalf of V, to employ all necessary means to stop A, including lethal force, provided that such means do not themselves violate human rights.”<sup>233</sup> DP here argues that allowing V to take life by using lethal force against A violates A’s human rights (such as the right to life). It further argues that the just war CPA is just a representation of the notion that “two wrongs make a right,” even though “[a]n eye for an eye leaves us all blind.”<sup>234</sup>

In response, critics of DP say that human rights are not absolute, and they change in accordance with the changing circumstances.<sup>235</sup> Person A forfeits his rights when he uses lethal force or when he commences aggression against V, thereby losing A’s right to be treated as he should have

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230. *Id.* (quoting G.E.M. Anscombe).

231. OREND, *supra* note 27, at 285.

232. *Id.* at 284-86.

233. OREND, *supra* note 227, at 179 (emphasis omitted).

234. OREND, *supra* note 27, at 286.

235. *Id.*

been treated in normal circumstances. Therefore, due to this forfeiture, using lethal force against A, if necessary, does not violate any of A's human rights. However, if A is disarmed before he has carried out any aggression and is put into custody, all his rights will be restored, but he will still face the consequences, such as jail time/fine. Furthermore, critics of DP maintain that not allowing a victim V to defend himself is unfair because V loses everything in this attack, and A fulfills his desire to kill V, which is not an acceptable human behavior.<sup>236</sup> The four elements of "responsibility, reasonableness, fairness, and implicit entitlement all unite together" in just war theory to establish that: 1) V can use lethal force if needed to defend himself; 2) it is unfair to not allow V to defend himself; 3) V does no wrong by defending himself; and 4) only A is responsible for all the blame in this situation.<sup>237</sup>

### 3. Killing Innocent Aggressors

DP as a response to the A and V examples and the "blood of the guilty" argument asks: What if the aggressor is innocent? Would a victim still be allowed to use lethal force in defense?<sup>238</sup> For instance, unknown to person D, a mentally ill person C, compelled by his illness, attacks D with lethal force. In this situation, C is innocent and this attack is out of his control. If in response, D kills C in defensive use of force, 1) D kills an innocent person and 2) C has justification for his aggression. Critics of DP maintain that in this situation, D is still allowed to kill this innocent person, C, because D cannot possibly be expected to know C's mental condition, and D has probable cause and excuse to defend herself. Now stretch this example of an innocent aggressor to innocent soldiers, where soldiers have moral feeling that their actions are wrong but are compelled by hierarchical rules of the military to follow orders, otherwise they will face the consequences. In this situation, conscripted soldiers are innocent and can hardly be blamed for waging a war because they are controlled, trained, and directed by political leaders. DP argues that killing an innocent soldier is wrong.<sup>239</sup>

By contrast, just war theorists posit that soldiers still use lethal force and pose a danger to the lives and property of people; therefore, victims still have the right to defend themselves.<sup>240</sup> First, it is pertinent to note that targeting soldiers (who are armed and trained to kill) is justified, and they can never

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236. *Id.*

237. *Id.* at 286-87 (emphasis omitted).

238. *Id.* at 287.

239. *See id.*

240. *Id.*

be seen as equivalent to innocent unarmed civilians. It is possible that a soldier disagrees with the cause of a war and is only acting as a conscript out of compulsion. Nonetheless, he still chooses to participate in this war, which does not absolve him from being targeted. Therefore, just war theorists do not categorize fighting soldiers as innocent people, but only nonparticipating unarmed civilians can be seen as innocent people who cannot be targeted directly during armed conflicts.<sup>241</sup> Helen Brocklehurst sees child soldiers as the closest innocent soldier example, having been manipulated by adults into taking arms to fight wars.<sup>242</sup> So, should the use of defensive force allow the killing of innocent child soldiers? Since the targeting and use of innocent children in war is considered immoral, just war theory places the use of child soldiers as a war crime.<sup>243</sup>

By far the strongest argument of DP is that war commits an immoral act by killing innocent people.<sup>244</sup> DP asserts that, whether a war is fought for just cause or not, it always inevitably kills numerous innocent people.<sup>245</sup> In DP, it is the duty of every human being to never kill an innocent or nonaggressive human being.<sup>246</sup> Wars kill innocent people who have not done anything wrong and have not posed threat to anyone else.<sup>247</sup> Just war theory sees such people as innocent people too and imposes the principle of discrimination to avoid the direct targeting of such people.<sup>248</sup> However, Holmes argues that, in the history of warfare, this principle of discrimination in *jus ad bellum* of just war theory has never been truly justified because innocent people have always died during wars and will continue to do so.<sup>249</sup> Holmes adds that there has never been a war in history that has not spilled the blood of innocent people, and there will be no war in the future that will not do so.<sup>250</sup> Therefore, just wars should never be permitted because they have always caused, and will always cause, injustice by spilling the blood of

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241. *Id.* at 287-88.

242. *Id.* at 288.

243. *Id.*

244. The notion of innocent people here refers to unarmed and nonparticipating innocent civilians.

245. OREND, *supra* note 27, at 288-89.

246. *Id.*

247. *Id.* at 289.

248. *Id.* at 112-13; *see also* Geneva Convention IV, *supra* note 54, 6 U.S.T. at 3518; Additional Protocol II, Geneva Convention 1977, *supra* note 54, 1125 U.N.T.S. at 615.

249. OREND, *supra* note 27, at 289.

250. *Id.*

the innocent people.<sup>251</sup> This also means that just wars can never be fought by just means.<sup>252</sup>

In response, the doctrine of double effect in just war theory stipulates that the harming of innocent civilians is not intended by the defensive use of force, and such collateral damage is proportionate to the right of a victim state to defend its sovereignty against aggression.<sup>253</sup> However, both sides in a war should take due care and must not directly target innocent people.<sup>254</sup> By contrast, it is unfair to expect a victim state to stand down in the face of aggression, which would cause a greater death toll of innocent people. Further, if civilians are harmed by undue care and direct targeting, the immunity of innocent people will give rise to war crimes, where belligerents can be held accountable for their crimes under the *jus in bello* principles of just war theory. The moral problem here is that DP is trying to see this issue from a bottom-up perspective, by first measuring the effects of the conduct of a war, and then analyzing the justness of the warfare. If the conduct is not fine, the cause is unacceptable for DP. Conversely, just war theory first sees the justness or unjustness of warfare, and then sees its conduct: both of these requirements should be correct, fair, and just.

Moreover, it will be unjust and unfair to strip the right of any victim state to resist aggression on the basis that it would cause the death of civilians because not defending its own people, state, and sovereignty would result in an even greater loss for victim state, i.e., the loss of sovereignty, human rights, resources, and innocent people's lives.<sup>255</sup> Consequently, the just war theory narrative on this issue is that killing innocent people is impermissible, unless 1) the war is fought for just reasons, 2) innocent people are not directly targeted, and 3) the harm caused to innocent people is proportionate to the good it has achieved.<sup>256</sup>

In conclusion, the duty not to kill any person under DP is violable in circumstances of self-defense, or in situations where an aggressor puts the lives of other people in danger by a lethal threat. The duty not to violate the human rights of an aggressor is not violated when a victim or third party chooses to use lethal force against an aggressor.<sup>257</sup> The duty to never kill any

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251. *Id.*

252. *Id.*

253. WILLIAM H. SHAW, UTILITARIANISM AND THE ETHICS OF WAR 134 (2016).

254. Geneva Convention IV, *supra* note 54, 6 U.S.T. at 3518; Additional Protocol II, Geneva Convention 1977, *supra* note 54, 1125 U.N.T.S. at 615.

255. OREND, *supra* note 27, at 291.

256. *Id.*

257. An aggressor chooses to forfeit his rights when he chooses to use lethal force and put the lives of other people in danger, due to the elements of "responsibility, reasonableness, fairness, and implicit entitlement." OREND, *supra* note 27, at 286-87.

innocent person during war is not violated when the war is fought for just reasons, innocent people are not targeted directly, and the laws of *jus in bello* are adhered to.

## V. CONCLUSION

The goal of this paper was to evaluate the morality of the classical triple division of different approaches to warfare: the realist approach, the just war theory approach, and the pacifist approach. This paper considered many arguments from each alternative in considerable detail. But the arguments posed by pacifism and realism in most of the aspects of war, especially regarding *jus ad bellum*, are not as strong as arguments from just war theory.

First, this paper agrees that in this harsh world there is a need to be more cautious, but it does not believe that the mere risk of getting sucker-punched for sticking to moral reasons justifies selfish behavior to gain power and wealth, which amounts to waging war on innocent people.

Second, the idea that the realist approach of acting selfishly is better disposed to create peace than just war reasons is also ill-suited because acting immorally for personal gain has a higher chance of creating conflicts than acting for just and moral reasons. For instance, if a person is acting amorally for personal gain and self-interest, lying and stealing serve him well. But, if all people started to steal for selfish reasons, an immoral society would have chaos and increased conflicts. The same is true for selfish states acting for their personal interest. For example, if a state chooses to invade a weak and innocent country to loot its resources and for the national interest of gaining wealth, the chances are that war will break out. Countless innocent people would then die to fulfill the ambitions of a realist country. This, in turn, would not encourage or ensure global peace but instead would create chaos and bloodshed. By contrast, the international law of using force, such as a prohibition on using force except in self-defense, ensures that there will be less bloodshed and more peace. A realist approach to waging wars is therefore not a harsh reality of this world; instead, it is the way of powerful aggressive states. It justifies the aggression of superpowers and promotes aggression.<sup>258</sup>

Third, if we analyze aggression and warfare over the course of history, wars were not mostly waged for just, moral, or religious reasons, such as claimed by realists. Instead, they were caused by aggressive, selfish states who wanted to acquire more wealth and land. For instance, Hitler wanted to rule more land, the UK colonized the world for resources and power, and the US is waging wars to acquire oil reserves. But, if we apply morality, none

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258. *Id.* at 260.

of these wars were justified or allowed in accordance with the international laws of using force or in accordance with the just war doctrine. Instead, they are fought for realist reasons.

Lastly, the realist way of warfare puts everyone at odds with their highly contained personal ethical commitments. For instance, if all calculations and considerations of national interest are matched, genocide, rape, slavery, torture, the killing of innocents, looting, and even bombing a state's own people are justified under the realist approach.<sup>259</sup> If "anything goes" for the sake of securing the national interest, then every imaginable evil is justified; and, if there is no integrity left, no one—even a realist state's own people—is safe from violence and injustice. By contrast, if morality is not applicable, then there is no right and there is no wrong, and the powerful can prey on the weak.

However, the realist approach does help us to understand the way powerful aggressive states act and how they do not equate moral reasons in their considerations. They choose to act in accordance with their national interests of maximizing wealth, control, and power. The problem is that the realist approach favors and legitimizes the works of powerful states, such as China, Russia, ancient Athens, and contemporary America, that prey on weak states and choose to do whatever they want.<sup>260</sup> But there are exceptions, where even the most powerful states expect moral and justifiable responses when dealing with the world. In a way, they are hypocritical, wanting to act in one way when it suits their interest and in another when it does not suit them. A realist approach can benefit a small number of powerful states to acquire wealth and power at the cost of millions of innocent lives and the destabilization and destruction of countries. In comparison, just war doctrines and moral ways of dealing can ensure the peace and security of the world.

Contrary to other alternatives, pacifism has higher moral grounds and good intentions, specifically not wanting innocent people to suffer, but it benefits aggressors by asking people to surrender, and it does not allow rulers to protect their own people. Pacifism is also too optimistic because it supposes ideal situations where everyone cooperates and executes actions with a pacifistic approach. The reality is bitter and cruel, where powerful states prey on the weak to plunder their resources. Pacifism does suggest alternatives to the use of force, such as the use of economic sanctions, but their effectiveness is questionable and even counterproductive<sup>261</sup> in the majority of instances. This paper believes that pacifism is impractical, yet it

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259. *Id.* at 262.

260. *Id.* at 262-63.

261. Counterproductive because they cause more suffering to innocent people.

is still crucial to hold pacifistic ideals in this world because a peaceful, violence-free world is what everyone should aim for—a world where there is no cruelty and where innocent people do not die for the greed of the powerful. Holding to these ideals can also help us shape our future moral guidelines for the conduct and decision to resort to warfare.

Just war theory stands in the middle of these alternative approaches. This paper believes that using force in self-defense or with UNSC authorization is morally acceptable when the benefits achieved by a war are proportional to its costs. For example, if aggression can cause more harm than using force to defend people, then such use of defensive force is morally right. On the other hand, a victim state should not be stripped of the right to defend its sovereignty, its own people, and its resources.

However, just war theory also has its own weaknesses. For example, there is still a failure to prosecute aggression in warfare.<sup>262</sup> Moreover, just war theory posits that, if the outcome of not taking any action is heinous, then a moral wrong considered not permissible can be allowed.<sup>263</sup> This means that all war crimes are not war crimes if they can be justified by military necessity.<sup>264</sup> Therefore, the immunity and protection of innocent people is overridden by an advantage to military objectives under this principle; where any evil action can be justified if it contributes to achieving a military objective. All *jus in bello* requirements can be overridden if the military actions significantly contribute to the success of military objectives. In other words, only things that do not significantly contribute to the military objectives can violate humanitarian laws. This moral dilemma of intentionally targeting innocent people or saving soldiers' lives under military necessity diminishes once two of the assumptions are made: one, that the lives of soldiers do not carry sanctity; and, two, that the innocent people to be targeted are people of the state's own nationality.

Therefore, a better interpretation of military necessity in just war theory should be that the lives of innocent people can only be justified in situations grave enough that would even allow putting the lives of the state's own (innocent) people at risk in a similar situation as its own country. Yet, the decision to invoke military necessity must be a political one and not a military one, to reduce its abuse at the tactical level. States declaring military necessity in such situations must be willing to exchange the same number of innocent

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262. Michael J. Struett, *War Crimes Trials and the Just War Tradition*, in *ETHICS, AUTHORITY, AND WAR: NON-STATE ACTORS AND THE JUST WAR TRADITION* 101, 103 (Eric A. Heinze & Brent J. Steele eds., 2009).

263. CHRISTOPHER, *supra* note 135, at 172.

264. *See supra* note 136.

lives of its own people.<sup>265</sup> Furthermore, the use of the principle of military necessity must, in all instances, not disregard other humanitarian exigencies. The military actions taken must be necessary to achieve military objectives such that intentionally targeting innocent people is truly a last resort and sufficient when weighed against the outcome of the action. Further, the state must be willing to sacrifice the same number of its own innocent people for the same objective. Ultimately, the decision then to invoke military necessity should be a political decision and not a tactical one.<sup>266</sup>

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265. CHRISTOPHER, *supra* note 135, at 173-74.

266. *Id.* at 174.