

Morally Heterogeneous Wars

Saba Bazargan

Department of Philosophy
UC San Diego

Abstract

According to “epistemic-based contingent pacifism” a) there are virtually no wars which we know to be just, and b) it is morally impermissible to wage a war unless we know that the war is just. Thus it follows that there is no war which we are morally permitted to wage. The first claim (a) seems to follow from widespread disagreement among just war theorists over which wars, historically, have been just. I will argue, however, that a source of our inability to confidently distinguish just from unjust wars lies in how we evaluate “morally heterogeneous” wars—i.e., wars with just and unjust aims. Specifically, the practice of reaching a univocal evaluation of a morally heterogeneous war as a whole by aggregating the evaluations of that war’s just and unjust aims is wrongheaded, because it undermines the action-guiding character of *jus ad bellum*. We ought instead to adopt what I call the “disaggregate approach” to *jus ad bellum*, according to which we evaluate the various aims of a war individually, without aggregating them into an evaluation of the war as a whole. Adopting this approach will eliminate a source of our disagreement over which wars have been just, and will *ipso facto* eliminate a basis for epistemic-based contingent pacifism.

Epistemic-Based Contingent Pacifism

According to war-based absolute pacifists there are no circumstances in which waging a war is morally permissible. Because war is necessarily wrong

on this view, it's wrong-making features cannot be what war *tends* to involve, such as wanton destruction and misery. Rather, if absolute pacifism is correct, then even the morally best possible war is unjust. According to *conditional* pacifism, which is a slightly less radical prohibition on war, it is permissible to wage a war only if no non-combatants are killed or maimed.¹ Though some wars might still be permissible given conditional pacifism, it would presumably proscribe all the major military conflicts of the past hundred years.

Both absolute and conditional pacifism are mistaken moral doctrines. Often it is said that they are mistaken because they are fanciful: expecting *universal* compliance with these doctrines is utopian, and *partial* compliance with these doctrines will lead to moral disaster since those who violate them will remain unopposed. But the problem with these types of pacifism is, as I see it, more basic than this: absolute and conditional pacifism are based on moral principles that are themselves manifestly wrong when applied to contexts outside of war. Most people think that it is permissible to kill one to save a hundred or a thousand; the onus is on the proponents of absolute and conditional pacifism to explain why things are different in war.

There are, however, more moderate and defensible versions of war-based pacifism. According to *contingent pacifism*, for any given war with just aims it is exceedingly unlikely that it is morally permissible to wage that war. This is not to say that a morally permissible war is merely a conceptual possibility. But such wars are so rare, contingent pacifists argue, that it does not make sense to regard war-making as a licit governmental policy or function. There is a useful analogy here with terrorism. Presumably there are very rare occasions in which resorting to acts of terrorism is morally permissible or obligatory. But we should not conclude from this that we ought to have government-funded and trained terrorists standing by to bomb

¹ Robert L. Holmes rejects consequentialist arguments in favor of killing innocents and claims that if the actions necessary for waging war cannot be justified, then the war itself cannot be justified (1989, p. 181). This combination commits him to conditional pacifism.

cafes. Indeed, the very existence of a ‘Department of Terrorism’ would engender a resort to such acts more often than would be morally permitted. A similar argument, contingent pacifists maintain, applies to war; though there are rare circumstances in which a resort to war is morally justified, we should not institutionalize this option for doing so would make things go worse in the long run.

Elsewhere I distinguish between two types of contingent pacifism—proportionality-based and epistemic-based contingent pacifism.² According to proportionality-based contingent pacifism, virtually every war with just aims is unjust in toto because it violates the constraint of proportionality: the harms the war imposes on those who are not morally liable to be harmed are too great relative to the relevant evils averted by the achievement of the war’s just aims. This is because the constraint of proportionality is very difficult to meet; it is permissible to kill a non-liable person only when doing so is necessary to save *many* others—so many that virtually any war with just aims will fail to meet the proportionality constraint.

The problem, though, is that proportionality-based contingent pacifists need an argument to show that the constraint of proportionality is as strong as they think it is. Because no such argument is in the offering, I turn to the second kind of contingent pacifism.³

According to *epistemic-based* contingent pacifism, our inability to reliably assess the morality of wars, combined with the devastating harmfulness of unjust wars, requires that we err on the side of caution by adopting strong presumptions against warfare—even if these presumption disallow, on

² See Bazargan, Saba “Varieties of Contingent Pacifism”, forthcoming in “How We Fight”, Oxford University Press, eds. Helen Frowe & Gerald Lang.

³ Jeff McMahan has recently argued that the restriction on killing cannot be as stringent as the proportionality-based contingent pacifist thinks it is, since it is (he argues) inconsistent with accepted standards of risk-imposition. But I argue in See Bazargan, Saba “Varieties of Contingent Pacifism”, forthcoming in “How We Fight”, Oxford University Press, eds. Helen Frowe & Gerald Lang that McMahan’s argument is unsound.

occasion, waging just wars. More precisely, epistemic-based contingent pacifism consists of two claims: 1) for any war, we do not know whether that war is just or unjust, and 2) it is morally impermissible to wage a war if we do not know whether that war is just. Thus it follows that there is virtually no war which we are morally permitted to wage.

Why believe (1)? John Keegan wrote that “during the 5,600 years of written history, fourteen thousand six hundred wars have been recorded” (2001, p. 26). His methodology aside, it remains a source of embarrassment that many just war theorists—including myself—are hard-pressed to provide, among these wars, a *single*, unequivocal example of a just war. And even when some of us are able to do so, there is little agreement among just war theorists regarding which wars are just.⁴ There are undoubtedly numerous reasons why just war theorists shy away from judging actual wars, not the least of which is that many just war theorists do not have the background in history required to make confident moral evaluation of wars, which ineluctably turn on non-moral facts.⁵ But the fact remains that we seem unable to assess with any confidence which wars are just.⁶

Why believe (2)? Against the claim that it is morally impermissible to wage a war if we do not know whether that war is just, it might be argued that abiding by this prohibition would allow significant evils to occur, by prohibiting us from waging *just* wars. Ideally we would wage wars only when they are just – but this option is not epistemically open to us, since we are

⁴ Jeff McMahan makes this point: “Even the acknowledged experts—the theorists of the just war—disagree among themselves about the justice of virtually every war” (McMahan, *Killing in War*, 2009, p. 120).

⁵ Larry May makes this point: “It may be that there are true just war experts out there—that is, people who have exemplary knowledge of the theory *and* the facts, but I do not know of any such people in the history of the just war tradition” (May 2011, p. 101).

⁶ For more on our inability to reliably determine which wars are unjust, with a special emphasis on the Second World War, see (Rodin, *The Problem with Prevention*, 2007).

unable to determine reliably which wars are just. So we are left with either waging just and unjust wars, or with waging no wars at all. And the epistemic-based contingent pacifism will argue that the former option would make things worse in the long run.

Note that the epistemic-based contingent pacifists do not hold that we will always be mistaken when we judge a war to be just. If there were a way to wage only just wars, then doing so would be morally permissible. (This is why epistemic-based contingent pacifism is a version of contingent pacifism). Rather, the claim is that, in general, our assessments of wars yield too many false positives—so many, that the evil of the unjust wars we wage will outweigh the good achieved by the just wars waged.

But why believe that waging both just and unjust wars will make things worse than waging no wars at all? This claim seems to problematically presume that it is worse to fight an unjust war than it is to refrain from fighting a just war. But the epistemic-based contingent pacifist need not make this assumption. Rather, things go worse if we fight both just and unjust wars than they would if we fought no wars at all, *because most wars are unjust*. And *this* presumption is indeed well-founded. For even if we know nothing about a candidate war, we know enough to know that more likely than not it is unjust. We know this because it is possible for both sides in a war to be unjust, but it is presumably impossible for both sides in a war to be just. It follows from this that in all probability more than 50% of the wars that have been and will be fought are unjust. This is why we should believe that waging both just and unjust wars will make things worse than waging no wars at all. (Of course, one might maintain that the wars *we* fight are *not* likely to be unjust. But the epistemic-based contingent pacifist would regard this confidence as hubris once we consider that there is no consensus even among just war theorists over which wars are just).

The ultimate purpose of this paper is to undermine epistemic-based contingent pacifism⁷—though the bulk of the argumentation will consist in

⁷ I focus on this version of pacifism since it is more defensible than absolute or conditional pacifism, and since proportionality-based contingent pacifists have not

arguing for a particular framework for the evaluation of wars with just and unjust aims. Epistemic-based contingent pacifists, as I have explained, capitalize on our inability to reach consensus regarding which wars have been just. But I will argue that a prevalent source of the uncertainty we face when determining whether a war is just is simply not relevant to the determination of whether the application of military violence is permissible.

In my view we have difficulty identifying just wars not simply because there is disagreement over the moral and non-moral facts, but because *jus ad bellum*, as a framework for evaluating wars, is ill-suited for the evaluation of what I call “morally heterogeneous wars”. These are wars that include both just and unjust aims, where the achievement of the unjust aims is not instrumental to the achievement of the just aims.⁸ Take, for example, the US-led war against the Taliban in Afghanistan following the 9/11 terrorist attacks. Some of this war’s aims were arguably unjust—such as extending American political influence throughout the Mideast by overthrowing hostile regimes. And some of this war’s ultimate aims were arguably just—such as the aim of neutralizing terrorist bases preparing for attacks against American civilians. Was this war, then, just or unjust?

Because we have no framework for evaluating morally heterogeneous wars, and because so many wars are morally heterogeneous, efforts to provide unequivocal examples of just wars are handicapped. It is no surprise, then, that epistemic-based contingent pacifism might seem tempting—the claim that we cannot distinguish between just and unjust wars is partly a result of our inability to evaluate morally heterogeneous wars. But I will argue that any attempt to formulate a univocal “up-or- down” verdict of a morally heterogeneous war is procrustean. Such judgments, I will argue, fail to be action-guiding, in that they do not reveal whether it is morally permissible to

offered a positive argument in favor of the more stringent version of the proportionality constraint presumed by their theory.

⁸ Jeff McMahan similarly writes that it unclear how the just and unjust elements or phases of a war “can be aggregated to yield an overall judgment of a war as a whole” (McMahan, *Just Cause for War*, [2005](#), p. 20).

wage the war under evaluation. This is problematic since the very purpose of *jus ad bellum* is to be action-guiding in this way. I make these arguments in “The Aggregate Approach” and “The Inviolable Approach”.

In my view, we ought to abandon the notion that a morally heterogeneous war is a proper object of moral evaluation. Insofar as we are interested in determining when the use of military violence is just, we ought to limit the object of moral evaluation to the ultimate *aims* composing a war without attempting to aggregate these several judgments into a univocal *ad bellum* judgment of the war. I make this argument in “The Disaggregate Approach”. I conclude, in “Epistemic-Based Contingent Pacifism, Redux”, that so long as we as can reliably identify just *aims* we can avoid the implications of epistemic-based contingent pacifism—even if we cannot reliably identify which wars are just. Before I begin, I will do some scene-setting by presenting a conceptual framework for the subsequent discussion.

Preliminaries

A war must have a *just cause* in order for that war to satisfy *jus ad bellum*, where a just cause is an aim or set of aims of sufficient moral importance to provide a necessary element for the justification of the resort to war. It is important to distinguish a *just cause* from the *just cause criterion*.⁹ Much confusion is the result of conflating these concepts. As I will use it, the *object* of “just cause” is a set of aims in a war. If a war’s aims constitute a just cause then *the war* satisfies the just cause criterion.

What sort of an aim constitutes a just cause? As I will use it, “just cause” will refer to a particular sort of *ultimate aim*. The ultimate aims of a war explain the resort to war—it is in order to achieve the ultimate aims that a

⁹ It is also important not to confuse a just cause with a *casus belli*. The *casus belli* is the act which provides the just cause. For example, defense against a foreign invasion is a paradigmatic just cause for war, whereas the invasion itself is the war’s *casus belli*. For more on this distinction, see (Toner 2010, p. 92).

government wages that war. The *subsidiary aims* of a war are those aims instrumental to the achievement of the war's ultimate aims¹⁰. An ultimate aim constitutes a just cause if and only if the aim is of a type which can be permissibly pursued through the application of military force. I will remain largely agnostic regarding what determines whether an aim is of this type, to ensure that my principal claims in this paper are compatible with a variety of accounts of just war (though on my view an ultimate aim is just if the foreign

state or non-state actor serving as the target of the aim is morally liable to the intended harms and deprivations in which the achievement of the ultimate aim consists). There are unobjectionable examples of an ultimate aims that fails to serve as a just cause. For example, the aim of ethnic cleansing is an unjust ultimate aim, since it cannot be pursued through military means no matter how few people are killed in the process.

We cannot infer that it is morally permissible to pursue an ultimate aim from the fact that it constitutes a just cause. This is because the ultimate aim must also satisfy the other conditions of *jus ad bellum*, such as the proportionality and necessity constraints. That is, the means to the achievement of the ultimate aim cannot be disproportionately harmful relative to the relevant evils averted by achieving that aim—and there cannot be available some other peaceful and less harmful means to the achievement of that aim. Though the presence of an aim that constitutes a just cause is not sufficient to satisfy *jus ad bellum*, it is necessary—for without such an aim, there is no relevant moral good to justify the harms wrought in the war.¹¹

¹⁰ I'm borrowing this terminology from an earlier work [See Bazargan, Saba "The Permissibility of Aiding and Abetting Unjust Wars", *Journal of Moral Philosophy*, 8 (2011) [513–529]. All the aims I mention throughout this are ultimate aims unless stated otherwise.

¹¹ Some just war theorists fold the necessity and proportionality conditions into the just cause criterion—they reject the view that the just cause criterion is merely a *necessary* condition for satisfying *jus ad bellum*. See, for example, (Steinhoff 2007, p.

I will call an ultimate aim that constitutes a just cause *and* which satisfies the constraints of proportionality and necessity (along with any other relevant conditions of *jus ad bellum*) a “just ultimate aim”. An aim that fails to satisfy all the relevant conditions of *jus ad bellum* is an unjust ultimate aim. It is possible for there to be a war with multiple just causes which only *together* succeed in satisfying the proportionality constraint, on the grounds that each of the ultimate aims, on its own, is insufficiently important to justify a resort to war. In this case, each aim satisfies the proportionality constraint and constitutes a just ultimate aim *only if* the aims are pursued together. I will say more about these sorts of cases later on.

Of course, some just ultimate aims can only be achieved by unjust means. A war in which this is the case is *not* a morally heterogeneous war. Rather, a morally heterogeneous war is one in which achieving the war’s unjust ultimate aims are *unnecessary* for the achievement of the war’s just ultimate aims. It is more or less clear how to reach an all-things-considered judgment of a just ultimate aim which can only be achieved through unjust means—we pit the evil in which *pursuing* the unjust ultimate aim consists, against the instrumental good of *accomplishing* that aim. Since the former is necessary for the latter, the unjust means—even if it is intrinsically unjust—might be justified all-thing-considered if the achievement of the ultimate aim is sufficiently good.

Regardless of whether we think this sort of reasoning *is successful* in justifying, on occasion, the pursuit of a just ultimate aim by unjust means, we at least have a framework by which to evaluate such aims. But morally heterogeneous wars present a unique problem for *jus ad bellum*. This is because accomplishing the unjust ultimate aims is, by hypothesis, *unnecessary* for accomplishing the war’s just ultimate aims. Thus we cannot justify the inclusion of the war’s unjust ultimate aims by adverting to the war’s just ultimate aims.

25), and (O’Brien 1981, p. 81). This is not the position I take, though I believe that everything I say can be translated into the terms of those who treat the necessity and proportionality conditions as internal to the just cause criterion.

I will argue that attempts to formulate univocal evaluations of morally heterogeneous war cannot succeed. I will consider two different approaches to formulating such an evaluation. On what I call the “aggregate approach” to *jus ad bellum*, we weigh the just and unjust ultimate aims of a war against one another, thereby reaching a verdict on the war in toto. On what I call the “inviolable approach” to *jus ad bellum*, if a war includes any unjust aim, no matter how minor, the war is unjust in toto. I take this latter approach to be a non-starter—but the reason *why* it fails is essentially the same reason why the aggregate approach fails—they are not relevantly action-guiding. Finally, I will argue in favor of what I call the “disaggregate approach” to *jus ad bellum*, according to which we should refrain, altogether, from formulating univocal assessments of morally heterogeneous wars. I will then draw some lessons for epistemic-based contingent pacifism.

The Aggregate Approach

One way to reach a univocal *ad bellum* judgment of a morally heterogeneous war is to weigh the war’s unjust ultimate aims against its just ultimate aims. The war satisfies *jus ad bellum* if the relevant evil averted by achieving the war’s just aims is sufficiently greater than the evil consisting in and resulting from pursuing and achieving the war’s unjust aims.¹² This is:

The Aggregative Account of Jus as Bellum

A morally heterogeneous war satisfies *jus ad bellum* only if the value of its just ultimate aims is sufficiently greater than the disvalue of its unjust ultimate aims.

Given the aggregative account, determining whether a war satisfies *jus ad bellum* necessitates assessing the (dis)value of all of its ultimate aims. We

¹² Not *all* averted evils will be weighed. Suppose that one of the evils averted by achieving the war’s just aims is a worldwide economic recession that the war prevents by stimulating economic activity. This does count in favor of the war. See: (Hurka, *Proportionality in the Morality of War*, 2005).

determine the value of an ultimate aim by quantifying the value obtaining in the states of affairs produced by pursuing and achieving that aim. If the unjust ultimate aims are assigned a disvalue too high relative to the value assigned to the war's just aims, then the war fails to satisfy *jus ad bellum*.

It is important to contrast this calculation—which I will call “the just aim calculation”—with the proportionality calculation which is used to determine whether a war satisfies the proportionality constraint. The purpose of the proportionality constraint in *jus ad bellum* is to determine whether the moral costs committed in furtherance of an ultimate aim or a set of ultimate aims are worth the relevant moral benefits. But the purpose of the just aim calculation is to compare the overall moral costs of some ultimate aims with the overall moral benefits of other ultimate aims. Whereas we run the proportionality calculation in order to help settle which of the war's ultimate aims are just, we run the *just aim* calculation *after* we have settled which of the war's ultimate aims (if any) are just. The just aim calculation gauges the badness of the ultimate aims we have already identified as unjust against the goodness of the ultimate aims we have already identified as just, in order to determine whether the goodness of the just aims sufficiently outweighs the badness of the war's unjust aims.

The aggregative account in general and the just aim calculation specifically obviously borrow from a consequentialist method of evaluation insofar as we are evaluating each aim by quantifying the value and disvalue obtaining in the states of affairs produced by pursuing and achieving that aim. But it is sometimes said that *jus ad bellum* consists at least partly of deontological restrictions on the resort to war. James Turner Johnson writes that the just cause criterion, the condition of right intention, and the condition of proper authority constitutes deontological criteria for satisfying *jus ad bellum* (2001, p. 42). And David Rodin writes that “in contrast to consequentialist approaches, the just war theory presents a more deontological set of guidelines for assessing the justice of engaging in war” (*The Ethics of Asymmetric War*, 2006, p. 157). Thus one might worry that a consequentialist method of evaluating the aims of a war might force us to ignore the moral features of actions (and thus of aims) canonically emphasized in deontological accounts of morality—such as the intrinsic value

of the act committed, the moral relevance of intentions, the intrinsic value of rights, the distinction between doing and allowing, agent-centered restrictions and permissions, etc. But this worry is unfounded. These morally relevant features can be included in a suitably sophisticated consequentialist axiology,¹³ thus ensuring that the just aim calculation is sensitive to these features.

Assigning values to aims in accordance with the just aim calculation is only the first step in determining whether a morally heterogeneous war satisfies *jus ad bellum*. According to the aggregative account, such a war satisfies *jus ad bellum* only if the aggregate value of the war's just ultimate aims is *sufficiently greater* than the aggregate disvalue of the war's just ultimate aims. By filling in what counts as "sufficiently greater", we can distinguish between various versions of the aggregative account. (I will use "aggregative approach" to refer to any aggregative account.)

The Strong Aggregative Account

A morally heterogeneous war satisfies *jus ad bellum* only if the disvalue of its unjust ultimate aims is comparatively and absolutely minor.

The disvalue of a war's unjust ultimate aims is *comparatively* minor if its weight is swamped by the value of the war's just aims, and it is *absolutely* minor if its disvalue is not substantial in and of itself. This aggregative account is 'strong' in that it is harder for a morally heterogeneous war to satisfy *jus ad bellum* than it is on this account:

The Weak Aggregative Account

A morally heterogeneous war satisfies *jus ad bellum* only if the value of its just ultimate aims outweighs the value of its unjust ultimate aims.

¹³ For more on the possibility of 'consequentializing' moral theories, see especially (Dreier 1993); (Louise 2004); (Portmore 2007).

On the strong aggregative account, it is possible for a war to make things better from an impartial perspective and still fail to be just. Consider a war which has both the aim of stopping a foreign regime from committing a genocide and the aim of annexing all of the enemy's resource-rich territory. Though the just aim (we can suppose) averts an evil greater than the one its unjust aim causes, the aim of annexing the enemy's territory is a substantial wrong in of itself. Thus the war violates *jus ad bellum* according to the strong aggregative account. According to the weak aggregative account, however, such a war would be just, presuming that both stopping a genocide and unjustly annexing enemy territory makes things impartially better relative to the option of doing neither.

There are a host of morally heterogeneous wars, however, on which both versions of the aggregative approach would yield the same verdict. Consider the following example. Suppose a neighboring country unjustly invades ours—our country pursues the just aim of self-defense. However, a group of misguided civilians from our country, without authorization or support from our government, illegally crosses the border and privately embarks on a campaign of terror killing innocent civilians randomly. The terrorists are caught by the neighboring country, fairly tried, and sentenced to prison. Despite this, the convicts have come to be regarded by the people of our country as national heroes. Our government adopts the ultimate aim of freeing the incarcerated civilian nationals, even though they have been legitimately tried and convicted of wrongful terrorist acts. We can suppose that this ultimate aim is unjust. Thus our war is now morally heterogeneous—it has a just aim and an unjust aim.

The war satisfies the just cause criterion according to the weak aggregative account, since the war's just aims avert an evil substantially greater than the one which the war's unjust aim causes. And the war satisfies the just cause criterion on the strong aggregative account, since the aim of forcibly retrieving the civilians is comparatively and absolutely minor. Both versions of the aggregative account, then, would regard this war as just in toto.

There are two problems with the aggregative approach, both of which a proponent might address in a single response. The first problem is this:

The Relevance Problem

It is unclear why the fact that a gratuitously unjust ultimate aim is *minor* is relevant to thinking that its presence in an otherwise just war is compatible with satisfying *jus ad bellum*.

One might initially think that an overwhelmingly just war with a minor unjust aim—such as the defensive war which includes the unjust aim of forcibly freeing the terrorists—is just in toto because *not* going to war on that occasion would be morally catastrophic. This makes it seem as if we ought to tolerate the unjust aim, given the alternative. But since this unjust aim is not subsidiary to the war's just aim, the relevant alternative to fighting the war isn't limited to the possibility of fighting no war at all—rather, the alternatives cover a range of possibilities, including that of engaging in self-defense without forcibly retrieving the terrorists. Determining whether the war satisfies *jus ad bellum* by comparing the evil associated with the unjust aim to the evil associated with failing to achieve the just aim, is *arbitrary*. A supporter of the aggregative approach needs to provide reasons why this comparison is morally relevant to determining whether the war satisfies *jus ad bellum*. The most natural reason—that we cannot achieve the just aim without the unjust aim—is absent, since, by hypothesis, pursuing the former without the latter is a live option.¹⁴

The second problem with the aggregative approach is that it's unclear how we ought to square the claim that a war satisfies *jus ad bellum*, with the claim that one of the aims in the war is unjust. If we claim that it is morally

¹⁴ Clearly, we cannot dissolve the relevance problem and thereby salvage the aggregative approach by adopting *non-maximizing* versions of consequentialism, such as *satisficing* or *progressive* consequentialism. A permission to refrain from doing what makes things go best does not entail a permission to commit unproductive harms. For more on satisficing consequentialism, which requires only that we make things go sufficiently better (rather than best) see (Slote and Pettit 1984). For more on progressive consequentialism, which requires only that we make things better relative to the *status quo ante*, see (Jamieson and Elliot 2009).

impermissible to pursue the unjust aims of a war that satisfies *jus ad bellum*, then it is unclear what moral work is being done by the claim that the war satisfies *jus ad bellum*. I will call this:

The Compatibility Problem

If it is impermissible to wage the ultimate unjust aims in a morally heterogeneous war which satisfies *jus ad bellum*, then the function of the claim that the war satisfies *jus ad bellum* is unclear.

A defender of the aggregative approach might try to dissolve both the Relevance and Compatibility problems by grounding the aggregative approach in a claim about the *purpose* of *jus ad bellum*:

The Predominance Account of Jus ad Bellum (PA)

The purpose of *jus ad bellum* is to determine whether the war's aims *predominantly* satisfy the just cause criterion. This is why a morally heterogeneous war satisfies *jus ad bellum* only if the value of its just ultimate aims is sufficiently greater than the disvalue of its unjust ultimate aims.

This dissolves the Relevance Problem; the fact that the disvalue of a gratuitously unjust ultimate aim is *small* is relevant to thinking that its presence in an otherwise just war is compatible with satisfying *jus ad bellum*, because the purpose of *jus ad bellum* is to tell us whether the ultimate aims of a war are *predominantly* just.

PA also helps dissolve the Compatibility Problem. To see how it does so, consider the following analogy. Suppose a person (call her "J") wants to gain admittance into heaven, which requires leading a life that is, on the whole, morally commendable. We are in charge of deciding whether she is to be admitted. We do so by comparing the relevant goods she has brought about with the relevant harms. If it turns out that the former swamps the latter, we will reach the verdict that she has, in general, lead a morally commendable life, and ought to be granted admittance to heaven. In the same way that it is perfectly consistent to claim that she ought to be admitted even though she culpably committed a morally wrongful act (*x*), it

is also perfectly consistent to claim that a war is just in toto, even though it includes a minor unjust ultimate aim. And in the same way that the claim that J ought to be admitted does not imply that she was *permitted* to commit x , the claim that the war satisfies *jus ad bellum* does not imply that the government is permitted to pursue the war's unjust aims.

The upshot is that we can simultaneously claim all of the following: 1) a war satisfies the just cause criterion, 2) the war includes a gratuitously unjust ultimate aim, and 3) it is impermissible to pursue the unjust aim. These claims are compatible because, on PA, *jus ad bellum* is a claim about whether the aims of a war are *for the most part* just. Thus it seems that PA can neatly solve both the relevance problem and the compatibility problem in a single strike—by grounding the aggregative approach in a claim regarding the purpose of *jus ad bellum*.

But PA comes at a significant cost. It fundamentally changes the role that *jus ad bellum* plays in its governance of our actions in the context of war. Specifically, if PA is correct, then *jus ad bellum* fails to be relevantly *action-guiding* in that we cannot infer the permissibility of waging a war from the fact that it is predominantly just.

To understand why this is so, consider J again, who is attempting to gain admittance into heaven. She is considering committing x —a single, morally wrongful act. She recognizes that committing x is not so bad as to subsequently warrant a negative evaluation of her life in toto. But this clearly does not countenance committing x since it is, *ex hypothesi*, a wrongful act. Since the positive *general* evaluation of her life is compatible with a negative *specific* evaluation of x , the general evaluation cannot serve as a guide to whether she ought to commit x . In this respect a positive general evaluation of a set of acts is not action-guiding, in that we cannot infer from it the permissibility of committing all the acts in that set. The individual evaluations of the constituent acts are doing all the work when it comes to determining what J should and shouldn't do. The aggregative general evaluation, though perhaps relevant to assessing her *character*, cannot serve as a guide for her conduct, since the aggregative assessment obfuscates the moral status of the constituent acts.

Similarly, *jus ad bellum* fails to be action-guiding if PA is correct—from the fact that a war satisfies *jus ad bellum*, we cannot infer that we ought to pursue that war's aims. In the same way that a general evaluation of J's life is not action-guiding with respect to the acts composing her life, an aggregative approach to the evaluation of the aims composing a war is not action-guiding with respect to those aims. From the fact a morally heterogeneous war is predominantly just and therefore (according to PA) satisfies *jus ad bellum*, we cannot infer that pursuing the aims composing that war is morally permissible. PA fails what might be called:

The Action-Guiding Constraint of Jus Ad Bellum

Any account of just war must be comprehensively action-guiding in the following sense: if a war is unjust then we ought to cease pursuing that war's aims, and if a war is just then it is permissible to continue pursuing that war's aims.¹⁵

One might argue that perhaps *jus ad bellum* judgments need not be *comprehensively* action-guiding, in that it is enough if, from a positive *ad bellum* judgment, we can infer that *most* of the war's aims are just. But we cannot infer even this, since a predominantly just war might have many minor unjust aims, and one major just aim. Perhaps, then, it is enough if we can infer, from the fact that a war is just, that it is permissible to continue pursuing some *subset* of that war's aims. But this inference is not informative, since many if not most wars are morally heterogeneous—all of these wars have some aims that can be permissibly pursued. If PA is correct, all we can infer from the claim that a war is just is that the war makes things better relative to waging no war at all on that occasion—but as we have seen, even a thorough-going consequentialist would deny that this shows it is permissible to wage that war.

¹⁵ It is possible, however, for there to be unjust wars that are nonetheless justified. See (McMahan, *Just Cause for War*, 2005). I'm putting aside such cases here, though the action-guiding constraint could be re-worded appropriately: "if a war is unjust (and if it isn't justified) then we ought to cease pursuing that war's aims."

Alternatively, one might argue that given an aggregative approach to *jus ad bellum*, we do not need the action guiding constraint. After all, on the aggregative approach, the individual evaluations of the aims of a war serve as the ‘inputs’ yielding the evaluation of the war in toto—and these inputs are action-guiding, in that they tell us, for each aim, whether we should pursue it. But this is just to abandon the notion that a univocal *ad bellum* judgment of a war should be comprehensively action-guiding with respect to its constituent aims. Indeed, it is unclear what work is being done by the univocal evaluation on this view—it seems to be one moral judgment too many. This leaves us, again, with the Compatibility problem.

There is another respect in which PA fails the action-guiding constraint. It not only unnecessarily obfuscates the constituent aims of wars which have just and unjust aims fought simultaneously, but also does so for wars which have aims the moral status of which *change over time*. Consider the Iran-Iraq war which lasted from 1980 to 1988. Iraq, under Saddam Hussein, launched an unprovoked invasion of Iran in September of 1980, in the midst of the chaos following Iran’s revolution. Iraq had two ultimate aims: to prevent the spread of Iran’s revolutionary fervor to Iraq’s long-suppressed Shia-majority, and to gain control over Iran’s natural resources (specifically those in Khuzestan) as well as the Arvand River waterway. Iran had, at first, just one ultimate aim: to repel Iraq’s attack (indeed, at the time, the war was known in Iran as “the Imposed War”). By 1982 the tide had turned: an Iranian counter-offensive recovered all the territory lost to Iraq, forcing Hussein to withdraw all his forces. On June 20th, 1982, he announced willingness to accept a ceasefire based on the *status quo antebellum* border.¹⁶ But the day after Hussein offered the cease-fire, Ayatollah Khomeini rejected it, announcing in a speech that Iran would invade Iraq with the goal of establishing an Islamic Shia republic.¹⁷ (This decision was made despite the objection from Iran’s Prime Minister, Foreign Minister, President, and Army

¹⁶ (Karsh, *The Iran-Iraq War 1980–1988*, 2002, p. 36)

¹⁷ (Karsh, p. 36)

Chief of Staff.¹⁸) The offensive was ultimately unsuccessful. The war dragged on until 1988, at which point Iran accepted the terms of U.N. Security Council Resolution 598, which were the same terms offered by Hussein in 1982—after half a million lives had been lost on both sides.

Suppose that Iran's defense against Iraq's invasion constituted a just aim. And suppose that Iran's counter-invasion of Iraq in 1982 constituted an unjust aim. (In both cases, we can set aside whether illegitimate regimes have a right to self-defense against what would otherwise be a bloodless invasion). Did Iran's war satisfy *jus ad bellum*?

If we accept PA, we are forced to answer that Iran's war was unjust, since the counter-invasion of Iraq, with the aim of overthrowing the Iraqi government, was no minor unjust aim. Yet this answer conceals the fact that for the first two years of the war, Iran's defense against Iraq's invasion was just. PA needlessly conceals the *diachronic* moral heterogeneity of a war: from the fact that the war against Iraq was unjust we cannot infer that Iran ought not to have gone to war in self-defense. When the Iran- Iraq war began we could say that Iran's war was just. But by 1988, an attempt to evaluate the war as a diachronic whole would force us to conclude that the war as a whole was unjust—despite that it began as a just war.

Of course, we could just say that the war started off just and then became unjust. This is the sort of solution that Jeff McMahan seems to prefer: "It is possible that a war can begin without a just cause but become just when a just cause arises during the course of the fighting and takes over as the goal of the war. When this happens, it would be absurd to say that an unjust war has concluded and a new, just war has begun. Rather, one and the same war may cease to be unjust and become just..." (Just Cause for War, 2005, p. 2). McMahan's solution, thought intuitively appealing and seemingly benign, is radically revisionary. It abandons the notion that a war as a whole is the object of *jus ad bellum*, in favor of the view that temporal segments of a war are the objects of *jus ad bellum*. Thus an implication of McMahan's

¹⁸ (Karsh, p. 38)

suggestion is that it is wrongheaded to ask whether a *war* is just or unjust; there is no answer to this question, as is evident in the case he describes as well as in the case of the Iran-Iraq war. Instead, we ought to ask whether a war-at-a-time is just or unjust. On this view, the object of *jus ad bellum* is not a *war*, but rather (we might say) a *war_t*.

McMahan's implicit suggestion that the object of *jus ad bellum* is not the war as a whole, but temporal segments of a war is on the right track; he just doesn't go far enough. Why does the *serial* pursuit of just and unjust aims, but not its *simultaneous* pursuit, warrant an account of *jus ad bellum* that indexes *ad bellum* judgments to the different aims of the war? When faced with the prospect of a war with aims that change over time, McMahan suggests that, in effect, the object of *jus ad bellum* ought to be the-part-of-the-war-when-aim-one-is-pursued and the-part-of-the-war-when-aim-two-is-pursued. By parity of reasoning it seems that, when faced with the prospect of a war with different aims pursued simultaneously, the object of *jus ad bellum* ought to be the-part-of-the-war-*where*-aim-one-is-pursued, and the-part-of-the-war-*where*-aim-two-is-pursued. It seems ad hoc to carve up the war temporally, but not spatially.

If we take this extra step—if we admit that there is no spatially and temporally neutral *ad bellum* evaluation of a war in toto—then we have, in effect, abandoned the practice of morally evaluating wars in toto in favor of morally evaluating the aims of wars individually.

The upshot is that PA is incompatible with a fundamental purpose of the Just War tradition: to develop a theory that serves as a moral guide for determining what wars ought to be fought. If we abandon PA, then there is no way to defend the aggregative approach against the Compatibility and Relevance problems. It is evident, then, that we need an alternative to the aggregative approach for evaluating morally heterogeneous wars.

The Inviolable Approach

Instead of attempting to weigh a morally heterogeneous war's just aims against its unjust aims, we might adopt the view that a single unjust

ultimate aim, no matter how minor, is enough make the war unjust in toto. I'll call this:

The Inviolable Account of Jus ad Bellum (IA)

Every morally heterogeneous war is unjust in toto at the level of *jus ad bellum*.

IA, it seems to me, is clearly a non-starter. But the *reason why* IA is a non-starter is not obvious. It might be tempting to think IA is a non-starter because its proponents are committed to a kind of deontological absolutism, since the presence of any unjust aim, no matter how minor, precludes the possibility of satisfying jus ad bellum. But there actually *consequentialist* reasons for thinking that the presence of any gratuitously unjust aims in an otherwise just war is morally impermissible. For any morally heterogeneous war Ψ , there is available an alternative war— Ψ^* which includes all of Ψ 's just aims but none of its unjust aims. That is, for any morally heterogeneous war Ψ , the state or non-state actor waging Ψ has the option of pursuing Ψ^* instead. By *reductio*, if waging Ψ^* were not an option, then this must be either because Ψ 's unjust aims are necessary for the achievement of its just aims – in which case Ψ is not a morally heterogeneous war—or because the state or non-state actor is literally forced to pursue the unjust aims, in which case the war cannot properly be called theirs. Given the option of waging Ψ^* , it is impermissible to pursue Ψ since the latter involves committing unnecessary harms—not only those in which the achievement of the gratuitously unjust ultimate aim consists, but also those harms committed in furtherance of that ultimate aim. In this respect, IA can be grounded in a broadly *negative* consequentialist concern for refraining from inflicting unnecessary suffering and deprivation on others—especially those who are not morally liable to be attacked, such as most civilians. (This is the same sort of reasoning motivating the *jus ad bellum* constraint of necessity).

It might also be tempting to claim that IA is a non-starter on the grounds that, if it is correct, we are forced to evaluate paradigmatically just wars, such as the Allies' war against the Axis in WWII, as unjust. But this argument begs the question against its supporters who might, after all, be

contingent pacifists in that they believe we have to raise the bar significantly on what counts as a just war.

Instead, the problem with IA is that if it is correct, we can infer very little from the claim that a war is unjust. It might be a war with all and only egregiously unjust aims, or it might be a war in which all the aims are just, save one minor unjust aim. This account of *jus ad bellum*, and the resultant theory of just war in general, is of dubious value to us since it fails to make morally *useful ad bellum* distinctions. For example, we want to be able to distinguish, at the level of *jus ad bellum*, between the Allied war against the Axis powers, and the Axis's war against the Allies. But if IA is correct, both would be categorized as unjust wars, simply. This is problematic; by lumping both unjust wars and predominantly just wars into the same category, IA fails to be action-guiding: from the fact that a war is unjust we cannot infer that we ought to cease fighting, since the unjust war might be predominantly just. All we can infer is that not all of the ultimate aims in the war are just. Of course, we could resort to the individual evaluations of the constituent aims to tell us what to do, but then it is unclear what the purpose is of a univocal *ad bellum* judgment under IA. (This is what I called the "compatibility problem").

Hence IA is problematic for reasons mirroring why PA was problematic. PA was flawed in that its *positive jus ad bellum* verdicts fail to be action guiding vis-à-vis the wars ultimate aims. IA, on the other hand, is flawed in that its *negative jus ad bellum* verdicts fail to be action guiding vis-à-vis the wars ultimate aims. That is, PA, like IA fails what I called "the action-guiding constraint" of *jus ad bellum*. Again, we have to resort to pronouncing individual judgments on each of the war's constituent aims—leaving the univocal *ad bellum* judgment superfluous.

The Disaggregate Approach

It seems, then, that both IA and PA are wrongheaded approaches to *jus ad bellum*—they both result in accounts of *jus ad bellum* that fail to be action-

guiding. Is there any place, then, for an *ad bellum* evaluation of a war in toto? According to

The Disaggregate Approach to Jus ad Bellum (DA)

We ought to abandon the practice of morally evaluating each war in toto, and instead confine our moral evaluations to the individual ultimate aims of wars.

On this view, we ought to evaluate the ultimate aims of wars (by determining whether they meet the conditions of just cause, proportionality, necessity, etc.) without taking the further step of compiling these evaluations into an evaluation of the war overall.

DA dissolves the problem of evaluating morally heterogeneous wars by denying that such a war should be evaluated in toto. But one might argue that DA risks reproducing the problem at the level of a war's ultimate aims. That is: what happens when a *single ultimate aim* is composed of just and unjust aims? Suppose, for example, that a government articulates one of its ultimate aims as that of annexing two distinct territories in the country that it is attacking. And suppose that the government has a right to one of these territories but not the other. How do we determine whether this aim is just or unjust, given that it is composed of distinct, instrumentally unrelated aims? The answer is that we ought to reject the government's articulation of this aim. The purported single ultimate aim actually consists of two ultimate aims.

But suppose, alternatively, that annexing one of the territories is instrumental to annexing the other. In this case, one of the government's ultimate aims serves simultaneously as a subsidiary aim. But this does not present a problem either—it is possible for two ultimate aims to overlap by sharing subsidiary aims. In the case described, the overlap is wholly inclusive with respect to one of the ultimate aims. Clearly a moral evaluation of one will have *implications* for the moral evaluation of the other. But this is no reason to think that we ought to compile a single moral evaluation of all the ultimate aims in a war.

It should be clear, then, that DA does not entail a radically ‘atomistic’ moral evaluation of the ultimate aims in a war according to which each evaluation occurs in a vacuum, independently of all the other evaluations. Ultimate aims can, of course, causally interact. Pursuing one ultimate aim can make it easier—or harder—to pursue another. And even if two ultimate aims are causally independent of one another, the ultimate aims might still interact in other ways to make the pursuit of one ultimate aim morally better or worse given the pursuit of another ultimate aim. Given something like G. E. Moore’s ‘principle of organic unities’ or Shelly Kagan’s notion of contextual interaction, it is possible for an ultimate aim to be unjust on its own, but become just when pursued with other aims, even if they do not causally interact (Kagan 1988). Similarly, as McMahan, and Tom Hurka have argued, the presence of one just cause—such as resisting aggression—can license the pursuit of what McMahan calls “conditional just causes”, such as disarmament and deterrence, the pursuit of which would have been impermissible absent the presence of the independent just cause. “A merely conditional just cause”, McMahan writes, “cannot help satisfy the just cause condition; if one has only conditional just causes, one is not permitted to fight. But once another, independent just cause is present, a conditional cause can become a legitimate goal of war and can contribute to its justification—for example, by helping to make it proportionate...” (McMahan and McKim, *The Just War and the Gulf War*, 1993, pp. 503–506).¹⁹

But the fact that we cannot evaluate each of the war’s aims independently of one another does not imply that DA is mistaken. That is, the fact that the moral status of the ultimate aims in a war depend on one another does not imply that the proper object of *jus ad bellum* is the war as a whole—i.e., the event consisting partly in the combination of all of the war’s ultimate aims. Instead, the lesson here is simply that our action-guiding moral evaluation of ultimate aims ought to take into consideration the other aims that are being pursued. Perhaps the interdependence of these evaluations is partly what has led just war theorists to conclude mistakenly that a single evaluation of all

¹⁹ Hurka writes in supports of McMahan’s early view in (Hurka, *Liability and Just Cause*, 2007, p. 19).

these aims is necessary. But we can admit that an evaluation of an ultimate aim in a war will depend on our evaluation of the other ultimate aims in that war while denying that we must pronounce a single moral verdict on all of the aims in a war.²⁰

The just war tradition has endured substantial revision in the past decade. I believe that we ought to add the following revision—we ought to cease morally evaluating *wars*, and instead confine our evaluations to the individual ultimate aims that compose wars, without taking the further step of compiling these disparate evaluations into an evaluation of the war as a whole.

Epistemic-Based Contingent Pacifism, Redux

We are now in a position to see why our inability to identify any wars as just does not lead to a version of epistemic-based contingent pacifism. A reason why we have been unable to identify just wars is that there *are no just morally heterogeneous wars*. This is not because these wars are unjust—but rather, because a war in toto is not apt as an object of moral evaluation. Once we recognize that there is neither any way nor any need to reconcile, at the level of *jus ad bellum*, the just and unjust aims of a morally heterogeneous war, a central premise of epistemic-based contingent pacifism—that we cannot distinguish just wars from unjust wars—becomes irrelevant to assessing whether we are permitted to resort to military violence. This is because we do not need to determine whether a *war* is just in order to determine whether it is morally permissible to pursue a given

²⁰ It should be noted that even if DA is correct, it can be appropriate to say that a war is just if all its ultimate aims are just—or that the war is unjust if all its aims are unjust. In this case we can make claims that *look like ad bellum* judgments when the war is morally *homogenous*. But these claims won't be genuine ad bellum judgments of the war in toto, given DA. Rather, the claim that a morally homogenous wars is just or unjust, is merely *an abbreviation* of the judgment that each of the war's aims is just or unjust.

military aim. Thus whatever appeal epistemic-based contingent pacifism has resulting from our inability to distinguish just wars from unjust wars, is undermined substantially by adopting DA—which we have independent reasons to do (or so I have argued).

One might point out that given DA, epistemic-based contingent pacifism is a non-starter since it concerns *wars* rather than *aims*. But note that even if we recast epistemic-based contingent pacifism in terms of *aims* rather than *wars*, it fails since the first premise is false: 1) for any military *aim*, we do not know whether that aim is just or unjust, and 2) it is morally impermissible to pursue a military aim if we do not know whether that war is just. Even if we are unable to identify a single just war among the (supposedly) 14,600 that have been fought in recorded history, this does not mean that we should accept epistemic based contingent pacifism. So long as we are able to identify just *aims*, then epistemic-based contingent pacifism is mistaken.

2013

sbazargan@ucsd.edu

Acknowledgments

This paper was written with the support of funds from the Hellman Foundation. I would also like to thank Cecile Fabre for comments on an earlier draft.

References

- Bazargan, Saba (2011). The Permissibility of Aiding and Abetting Unjust Wars. *Journal of Moral Philosophy*, 8 513–529.
- Dreier, J. (1993). Structures of normative theories. *The Monist*, 76, 22–40.
- Holmes, R. L. (1989). *On war and morality*. Princeton: Princeton University Press.

- Hurka, T. (2007). Liability and just cause. *Ethics & International Affairs*, 21(2), 199–218.
- Hurka, T. (2005). Proportionality in the morality of war. *Philosophy & Public Affairs*, 33, 34–66.
- Jamieson, D., & Elliot, R. (2009). Progressive consequentialism. *Philosophical Perspectives*, 23, 241–251.
- Johnson, J. T. (2001). *Morality and contemporary warfare*. New Haven: Yale University Press.
- Kagan, S. (1988). The additive fallacy. *Ethics*, 99(1), 5–31.
- Karsh, E. (2002). *The Iran-Iraq War 1980-1988*. UK: Osprey Publishing.
- Keegan, J. (2001). *War and our world* (1st ed.). New York: Vintage.
- Louise, J. (2004). Relativity of value and the consequentialist umbrella. *Philosophical Quarterly*, 54(217), 518–536.
- May, L. (2011). Contingent pacifism and the moral risks of participating in war. *Public Affairs Quarterly*, 25(2), 95–112.
- McMahan, J. (2005). Just cause for war. *Ethics & International Affairs*, 19, 1–21. McMahan, J. (2009). *Killing in war*. USA: Oxford University Press.
- McMahan, J., & McKim, R. (1993). The just war and the gulf war. *Canadian Journal of Philosophy*, 23(4), 501–541.
- O'Brien, W. (1981). *The conduct of just and limited war*. New York: Praeger.
- Portmore, D. W. (2007). Consequentializing moral theories. *Pacific Philosophical Quarterly*, 88, 39–73.
- Rodin, D. (2006). The ethics of asymmetric war. In R. Sorabji (Ed.), *The ethics of war: Shared problems in different traditions* (pp. 153–168). Aldershot Hants: Ashgate.
- Rodin, D. (2007). The problem with prevention. In H. Shue & D. Rodin (Eds.), *Preemption: Military action and moral justification* (pp. 143–170). Oxford: Oxford University Press.

Slote, M., & Pettit, P. (1984). Satisficing consequentialism. *Proceedings of the Aristotelian Society*, 58, 139–163.

Steinhoff, U. (2007). *On the ethics of war and terrorism*. Oxford: Oxford University Press.

Toner, C. (2010). The logical structure of just war theory. *Journal of Ethics*, 14(2), 81–102.