

Introduction

The Ethics of War after the Longest War

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As we write, it has been four months since the United States formally ended its military operations in Afghanistan. The war was a disaster in many respects. Western military planners badly misjudged their ability to achieve their objectives and the war dragged on far longer than predicted, lasting almost exactly 20 years and becoming the longest war in American history. One of the initial goals of the war was to eliminate the Taliban as a political force in Afghanistan. However, in scenes reminiscent of the end of its war in Vietnam, U.S. forces ended their war with a chaotic evacuation, as the group it had aimed to destroy retook control of most of the country. Of course, what makes failed wars like this most terrible is their human toll. In addition to failing to achieve its most lofty goals, the war in Afghanistan destroyed countless lives along the way.

Sadly, America's war in Afghanistan is emblematic of the character of all its major military engagements since September 11, 2001. In Iraq too, the U.S. led an invasion and occupation that lasted far longer than anticipated and produced overwhelming tragedy for Iraq and its neighboring countries. And in Libya, the U.S. joined NATO forces in an invasion to prevent atrocities and topple a dictatorship, but unintentionally produced a protracted civil war with vast casualties.

Additionally, recall that these wars (with the possible exception of Libya) are part of a larger war – the global war on terror. This war endures despite the end of the war in Afghanistan and will do so even if closure is ultimately found in Iraq and Libya. The threat of international terrorism by nonstate actors continues and their number has arguably increased since September 11. The war on terror is yet another endless American war.

Certainly, these catastrophes reveal the shortcomings of the political and military leaders who conceived of and executed these wars, and who are the agents of the multitude of errors that compose them. Still, those of us who work on the ethics of war face a reckoning of our own. We must admit that the toolkit that we provide to political and military leaders in

the form of conventional military ethics and law has proved inadequate for the current crises and has perhaps even contributed to these tragedies.

Consider the U.S.-led war in Afghanistan. The basic components of just war theory did not provide the guidance leaders needed to make better decisions. The war did not clearly violate the conditions of *jus ad bellum*. Unlike the debates that swirled around the decision to invade Iraq, there was a reasonable argument that the invasion of Afghanistan had a just cause. Indeed, one of the leading textbooks of military ethics treats the invasion of Afghanistan as an example of justified resistance to aggression.¹ The constraints imposed by *jus in bello* offered limits on the tactics leaders could employ in Afghanistan. These limits were sometimes transgressed and *jus in bello* was a useful resource for criticism in these cases. But an unexpected thing happened in Afghanistan (and Iraq): As the strategic challenge of winning a counterinsurgency became clearer, the conventions of *jus in bello* proved inadequate and rules of engagement were adopted that were much more restrictive. For instance, in many respects, American warfighters eventually took greater effort to avoid noncombatant casualties than conventional ethics and law require.² *Jus in bello*, while not rejected, was made redundant by the strategic necessities of this war.

This simultaneous dovetailing and divergence of military strategy and *jus in bello* brings to light a serious gap in just war thinking. Just as the experience of war in Afghanistan showed military planners that there is more to ending a war than overwhelming an opponent militarily, that same lesson needs to be embraced by just war theorists. The basic structure of just war theory is built around the assumption – the same assumption that gripped those who instigated the war in Afghanistan – that ending a war is not a strategically complex act. In the simplest terms, the assumption is that once an enemy force is sufficiently crushed, its leaders will accept political demands and peace will be achieved. The standards of *jus ad bellum* and *jus in bello* restrict mainly what political demands you can make in war and the methods used to defeat the enemy in the pursuit of those demands. The theory falls silent when there is no longer a strategic connection between increasing attacks on opposing forces and victory. For the extraordinary ethical challenges that one faces when victory is not a matter of mere destruction but of political negotiation and compromise under pressure of military action, of weaving military action together with

¹ Brian Orend, *The Morality of War*, second edition (Buffalo, NY: Broadview Press, 2013).

² Joseph Felter and Jacob Shapiro, "Limiting Civilian Casualties as Part of a Winning Strategy: The Case of Courageous Restraint," *Daedalus*, 146, no. 1 (2017), 44–58.

diplomacy, development, and economics – the very challenges that the American military faced in Afghanistan for so long – just war theory has been little help.

This problem is not solved by the inclusion of the doctrines of *jus post bellum* into just war theory. While in the last few decades there has developed a robust and influential literature in this area, *jus post bellum* presumes the end of war; it is precisely an ethic for *after* war. But the challenge in Afghanistan was how to achieve the end, how to get to a postwar situation.

Another respect in which the war in Afghanistan (and, in this case, Iraq as well) has challenged conventional military ethics and law is that it has reiterated how limited the language of just war theory is. As reflected in the mental health crisis among veterans, the toll of these disasters stretches beyond the killed and maimed, the destroyed property and livelihoods, the social and political instability. One recent study concludes that 30,177 American veterans and active-duty service members have died by suicide since 9/11, whereas 7,057 have died in military operations during the same period.³ War wounds in many ways and surviving it requires more than avoiding enemy fire. While just war theory reduces the ethics of acts in war to the simple categories of “permissible,” “impermissible,” and “excused,” the suffering characteristic of the experience of war suggests that a richer language is needed to capture the ethical realities. Too many service members fail to find solace in the “permissibility” of their actions.

In partial recognition of these problems, the scholarship on the ethics and laws of war has evolved in significant, but as yet underdeveloped ways. First, some scholars have tried to carve out new ethical and legal frameworks that bridge war and postwar, or what has been understood conventionally as *jus in bello* and *jus post bellum*. Darrel Moellendorf and David Rodin, two of the contributors to this volume, have coined the phrases *jus ex bello* and *jus terminatio*, respectively, to describe this framework. What they illuminate is that the issues of when and how to end a war are much more imbricated with how and why wars are fought – the *jus in bello* and *jus ad bellum* – than has been traditionally recognized. Second, there is now significant scholarship on the relationship between injustice manifest at *ad bellum* and *in bello* levels and the creation of longer-term threats to national security *post bellum*, especially threats of terrorism. Historical and structural injustices are increasingly seen as risks to national security

³ Jennifer Steinhauer, “Suicides Among Post-9/11 Veterans Are Four Times as High as Combat Deaths, a New Study Finds,” *The New York Times*, June 22, 2021, www.nytimes.com/2021/06/22/us/911-suicide-rate-veterans.html.

and, therefore, there are strategic as well as ethical reasons to address such injustices. Third, there is now widespread understanding that war, even war that follows the laws of armed conflict, poses a serious psychic danger to combatants that can cause them harm long after the shooting stops. The surging interest in the topic of moral injury is testament to this, and understanding this phenomenon requires deeper attention to the reasons for which wars are waged and how they are pursued. As the work of Jonathan Shay and Brett Litz et al. indicate, the experience of combatants “*post bellum*” is often deeply tied to concerns about the reasons for and methods of war.⁴

This volume bridges these usually disconnected conversations about when to go to war, how to wage war, and how to navigate the aftermath of war in ways that no current scholarship fully addresses. Unlike leading works in *jus post bellum*, this book treats the topic of ending war as part and parcel of how wars begin and how they are fought – a unique, complex problem, worthy of its own conversation. When confronting the failures of America’s war in Afghanistan and the prospect of wars without end, it is imperative not only that we address the resolution of war, but how and if a war as waged can accommodate a future peace. In this interdisciplinary volume, we bring together ten original chapters by some of the foremost thinkers and practitioners in the fields of just war theory, international relations, and military law. Not only do these essays individually advance the conversations in this area, but collectively they solidify the topic as central to the future of military ethics, law, and strategy.

The late E.O. Wilson famously said, “The real problem with humanity is the following: we have Paleolithic emotions, medieval institutions, and god-like technology.”⁵ Though his target was not war, and we might question whether emotions should be submerged in the stone ages, he captures a critical disconnect between the emotions experienced by those engaged in war, the medieval origins of just war thinking, and the profound complexities borne of the contemporary machinery – and massive destructive powers – of modern warfare.

⁴ See Jonathan Shay, *Achilles in Vietnam: Combat Trauma and the Undoing of Character* (New York: Simon and Schuster, 2010); and Brett T. Litz et al., “Moral Injury and Moral Repair in War Veterans: A Preliminary Model and Intervention Strategy,” *Clinical Psychology Review*, 29, no. 8 (2009), 695–706.

⁵ E. O. Wilson, “Debate at the Harvard Museum of Natural History” (Cambridge, MA, September 9, 2009), cited by Tristan Harris in “Our Brains Are No Match for Our Technology,” *The New York Times*, December 5, 2019, www.nytimes.com/2019/12/05/opinion/digital-technology-brain.html.

The first four chapters of this volume explore the many ways that both the precipitants for and aftermath of war find little illumination through the traditional renderings of the *jus ad bellum*, *in bello*, and *post bellum*. It is fitting that Cheyney Ryan opens the volume with a powerful exploration of the multivalent alienation felt by returning combatants. As he emphasizes, not only do soldiers experience self-alienation and self-disassociation from their pre- and postwar selves, but they also face added alienation when coming home to civil society. This suffering is intensified by the failures of public justification and responsibility for war, and it finds little balsam in the sterile and impersonal language of rights, the very language that grounds just war theory. Ryan asks us to refocus the conversation on the aftermath of war to the laments of the returning soldiers and their expressions of both grief and complaint. Among the questions Ryan poses is what it could possibly mean – not theoretically but actually – for soldiers to return home intact, spiritually and emotionally, having fought well in a good war.

Lisa Tessman continues this line of questioning in her discussion of moral injury and focuses on the discord between conventional rights-based and judicial conceptions of morality on one hand, and the lived experience of returning combatants on the other. The simple fact, as traced by the burgeoning literature on moral injury, is that soldiers frequently experience regret, shame, guilt, horror, and self-loathing, even when performing commendably under the terms and laws of combat. Tessman presents a compelling argument that we might, rightly and importantly, distinguish third-person judgments of combatants as innocent of wrongdoing from their first-person experiences of having committed some sort of moral crime, e.g., killing. This tension is at the heart both of conceptions of moral injury and the tragedy of war generally, and captures an essential element of war's tragedy, which is that would-be heroes often feel like nothing less than monstrous moral failures.

The aftermath of war for returning combatants is often its own endless war, a war within and without, lacking peace or resolution. In Chapter 3, Nancy Sherman invites reflection on how we might explore ancient Stoic philosophy to gain some purchase on this. Invoking the under-appreciated writings of Seneca on considerations of moral injury, Sherman suggests there is untapped wisdom regarding self-empathy and self-forgiveness that might rely on the same divergence examined by Lisa Tessman between first- and third-person perspectives. Inversely, perhaps, Sherman argues that the more soldiers can view themselves from the third-person viewpoint, the more they might be able to find some moral solace. It's noteworthy that

this has become a practice with struggling combat veterans, who write letters to themselves from the vantage of a benevolent supervisor.

The significance of emotions, as related to the beginning and ending of wars, applies not only to combatants but also to those who would initiate wars. Similarly, the tensions between the legalistic, medieval understanding of the *jus in bello* and *jus ad bellum* create difficulties. In Chapter 4, Nir Eisikovits provides a rich phenomenology of humiliation and the ways in which this germinates into political instability, violence, and reactionism. Wars, as waged by those in power, are inevitably personal, in some sense born of very basic feelings of displacement. One need only look at the recent posturing between Russian President Vladimir Putin and NATO to see that claims for respect by those putatively disregarded are germane to war's beginning. And while the *jus ad bellum* formally denies emotional-psychological claims, such claims seem to take the reins often. This chapter pushes us to consider further and more deeply how we might navigate the "paleolithic" elements that inevitably impact group relations and the origins of war.

Shifting from personal to more structural concerns, in Chapter 5, Colleen Murphy probes (and problematizes) the very concept of war's end and the difficulties inherent in defining the *post bellum* as such. Drawing parallels between theories of transitional justice and the just war tradition, Murphy highlights their shared aims at the creation of just peace and political stability in the face of nonideal circumstances. However, both are also confronted by the failure to reckon with the indeterminate nature of such achievements as realized, in the all-too messy real world, and the degree to which imbalances of power between victors and vanquished muddy the very definition of postwar justice. Together, these complications reveal the overly idealized ambitions of theories of just war and transitional justice. In response, Murphy proposes that we establish "moral minimums," floors that constitute the duty for *enough* justice, as opposed to *aspirational* or full-fledged justice.

In a similar vein, in Chapter 6, Alex Bellamy explores the structural dimension of endless wars with a focus on why we have seen them proliferate in the past few decades. With rich historical analysis, Bellamy debunks the popular view that the increase in protracted wars is the byproduct of American interventionism and efforts to impose a global, liberal hegemony. As Bellamy illustrates, the historical facts simply belie such explanations. Rather, the increase of intractable conflicts arises from several causes, particularly the spread of intrastate – as opposed to interstate – war on the one hand, and often opposing third-party interventions on

the other. Civil wars have long been recognized as particularly enduring, a quality exacerbated by the ways that these conflicts bleed beyond borders into both neighboring and remote states. Given this diagnostic account, Bellamy suggests leaders need, among other things, to better specify the precise goals of interventions, and better calibrate those proposed goals with a realistic assessment of the means available. Ambitious aims, coupled with modest means, create a recipe for protracted war, as exemplified in U.S. interventions in Afghanistan and Iraq.

In Chapters 7 and 8 respectively, David Rodin and Darrel Moellendorf further problematize the traditional just war framework by examining the *jus ad bellum* proportionality demand, i.e., the claim that wars may be waged only when the foreseeable harms are outweighed by the foreseeable values achieved. Protracted wars make such assessments exceedingly difficult, and these difficulties have yet to be sufficiently examined. Rodin discusses two salient problems that arise from the relationship between proportionality calculations and (extended) time. First, similar to any cost-benefit analysis for long-term investments, indeterminacy and optimism biases make any forecast that looks beyond the immediate future tenuous, if not suspect. The distant future is subject to unforeseeable changes, and our tendency is to ignore those prospects and/or assume the best. Second, long-term investments, in war as in finance, confront the fact of diminished value over time. Put simply, just as x fungible dollars invested today is worth more than x fungible dollars received ten years from now, the values received at the end of a protracted war may be far less valuable than the upfront investment. This future discounting, for Rodin, applies to both “blood and treasure,” financial investments as well as human costs. Without addressing concerns about indeterminacy and diminishing returns, proportionality calculations prove impossible.

Moellendorf engages directly with the problem of how or whether sunk costs should inform the decision to end a war. This is also a problem of proportionality assessments through time. If the *jus ad bellum* proportionality requirement is to be workable then we must presume there is some limit to the harms done in war – what Moellendorf calls the proportionality budget – in the sense that exceeding this limit would render the war unjustified on the grounds that the harms its causes are disproportionate to the good it seeks. The problem is what to do if, despite our best projections, a war turns out to be more costly than anticipated and we exhaust the proportionality budget prior to achieving the valuable ends. In this case, are we morally obligated to end the war on the grounds that all harms caused thereafter are unjustified? Or may we discount the sunk costs and

run new proportionality calculations only weighing future projected costs against the valuable ends sought? To help make progress with this dilemma, Moellendorf draws a distinction between two ways of conceiving of proportionality. In one view, the values at stake in proportionality calculations are conceived impersonally in the manner of commensurable costs and benefits. In the other view, the values at stake in proportionality calculations are composed of incommensurable values, some of which involve wrongs done to persons who are worthy of respect. Wrongs done to persons are disvalues that are incommensurable with costs such as mere expenditures of labor and money. For Moellendorf, the latter view of proportionality is less amenable to discounting sunk costs than the former and would tend to support ending wars when the initial proportionality budget has been exhausted. Moreover, this view of proportionality makes it harder to justify the resort to war because it will generate a smaller proportionality budget than the former view.

Concluding the volume, both Daniel Mauer and Daniel Philpott push the conversation from diagnosing the causes of and problems involved in endless wars toward strategies for establishing robust peace in the aftermath of lasting conflict. In keeping with Bellamy and others, both authors recognize that the majority of recent wars have involved intrastate, international struggles, which make the creation of sustainable peace particularly arduous.

Mauer targets the unique end-of-war exigencies that are endemic to contemporary wars, addressing specifically the challenges that confront military leaders, lawyers, and combatants in establishing just conduct. Mauer illustrates how the *jus in bello* offers inadequate guidance for military action in the liminal space between the cessation of open hostility and the creation of secure peace. To fill this vacuum, Mauer suggests the creation of a new military code of conduct that is carefully molded in response to the ambiguities of the transitional environment. Drawn in parallel to the values that instruct military prosecutors, this code aims to provide principled and procedural guidance for military operations that are distinct from the *jus in bello* and more amenable to the achievement of postwar peace.

In the final chapter, Philpott offers the evocative claim that we would do well to reimagine our understanding of *post bellum* operations. Beyond the rights-based, liberal conceptions that inhere in dominant forms of transitional justice, he suggests we adopt an understanding of justice as reconciliation. Drawing from the Abrahamic religious traditions, Philpott explores reconciliation as a distinct framework for peace, one in which

notions of mercy and forgiveness, for example, offer a more capacious and potentially effective avenue for establishing just peace. With a highly detailed and concrete application to the case of Iraq, Philpott illuminates how political reconciliation can both complement and supplement theories of transitional justice. Punishment, for instance, is not reduced to the juridical mathematics of exacting what is due, but is understood restoratively. Crimes are not simply violations of the law, they are more centrally a breakdown of relations. Restorative punishment responds to such crimes through the lens of healing wounds and healing relations, and punishments must be tailored to this end. In this view, if the end of war is to be both peace and justice, then we must aspire to more than the oft-shortsighted claims for rights and legalistic equality, and further address the deeper fissions and diseases that beget wars and failed relationships.

Taken together, these chapters illuminate the many gaps between conventional thinking on the ethics and laws of war, and the ways in which our understanding of war must adapt to the current realities, lest endless wars continue to devastate. Our hope is that this volume might reorient the conversation to better suit the demands of the lived experience of enduring war: sociologically, politically, militarily, and personally. Perhaps the weight of war can be better measured on scales that match its gravity, in metrics calibrated by emotion, institution, and godlike powers of destruction.