

# THE CASE FOR THE NONIDEAL MORALITY OF WAR: BEYOND REVISIONISM VS. TRADITIONALISM IN JUST WAR THEORY

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**ABSTRACT:** Recent discussions in Just War Theory have been framed by a polarising debate between ‘traditionalist’ and ‘revisionist’ approaches. This debate has largely overlooked the importance of an applied account of Just War Theory. The main aim of this paper is to defend the importance of this applied account and, in particular, a nonideal account of the ethics of war. I argue that the applied, nonideal morality of war is vital for a plausible and comprehensive account of Just War Theory. A subsidiary aim of the paper is to show that once we appreciate the importance of the applied, nonideal account, it becomes clear that the positions proposed by revisionists and traditionalists are, in fact, much closer than often presumed.

## I. Introduction

Recent discussions in the ethics of war have been framed by a debate between ‘traditionalist’ and ‘revisionist’ approaches to Just War Theory. The discussion has largely focused around the principles of *jus in bello* and, in particular, the principles of noncombatant immunity and the moral equality of combatants. Those seen as advocating the traditionalist approach, such as Michael Walzer and Henry Shue, have defended these principles, whereas the revisionists, such as Jeff McMahan and Cécile Fabre, have challenged them. The latter argue that, in principle at least, noncombatants can be permissibly targeted when they are liable and, conversely, the moral equality of combatants is mistaken because morally innocent combatants, such as those who make just contributions to a war, are not permissible targets.

Revisionism is widely seen as offering an individualist, reductionist account of the ‘deep morality’ of war. This account, revisionists claim, better coheres with moral judgments in other areas, most notably the ethics of individual self-defence. By contrast, traditionalism is viewed as offering a collectivist account of war that defends the conventional principles. Although not always seen in published work, the debate between the two fields has, at times, been heated. On the one hand, the revisionists see the traditionalists as philosophically weak, failing to ensure coherence between their claims about the ethics of war and plausible views about individual self-defence. On the other hand, the traditionalists see the revisionists as being engaged in a practically dangerous exercise by defending claims that could undermine weakening compliance with international humanitarian law or, conversely, they see revisionists as only tackling abstract philosophical puzzles that have little, if any, real-world applicability for the foreseeable future.

This debate has largely overlooked the applied, nonideal account of the ethics of war, which considers the contingent features of war. The main aim of this paper is to defend the importance of this nonideal account. I will argue that the nonideal account is central to a plausible

and comprehensive account of Just War Theory. More specifically, I will argue that focusing only on ideal moral principles and the deep morality of war can be too permissive and leave Just War Theory underdeveloped. A subsidiary aim of the paper is to show that the nonideal account helps to diffuse much of the polarisation of the debate between revisionists and traditionalists. I will argue that once we appreciate the existence of a nonideal account, we can see that the positions proposed by the major figures in the debate between revisionism and traditionalism are, in fact, much closer than often presumed.

The paper proceeds as follows. Section II outlines the applied, nonideal account. Section III presents two reasons for the importance of this account and section IV uses the examples of the principles of last resort and just cause for humanitarian intervention to illustrate this import. Section V argues that appreciating the role played by the nonideal account shows that the debate between revisionists and traditionalists is somewhat overblown.

Before beginning, it is important to clarify the terms used in this paper. In recent literature, revisionism and traditionalism have been given various labels. These include, on the one hand, the ‘orthodox’ approach, the ‘convention-based’ approach, and the ‘collectivist’ approach for traditionalism and, on the other, ‘individualism’ and ‘reductionism’ for revisionism. I will take ‘revisionism’ to be the view that the ethics of war is continuous with the rest of moral and political philosophy. ‘Traditionalism’ denies this: it is the view that the ethics of war differs from the rest of moral and political philosophy. ‘Reductionism’ is the view that war can be reduced to individualism.<sup>1</sup>

## II. The Applied, Nonideal Morality of War

Revisionists often present their account as primarily an account of the ‘deep morality’ of war.<sup>2</sup> This is seen as an account of the ethics of war that overlooks contingencies, such as epistemic issues, as well as those to do with noncompliance and other unintended consequences. In short, it is an account of the *necessary* features of the morality of war. In outlining their account of the deep morality of war, revisionists often contrast the deep morality of war to the ‘laws of war’. For instance, McMahan argues that *jus ad bellum* “divides into a wholly nonconventional morality of the resort to war and a set of ideal laws governing the resort to war. *Jus in bello* divides in the same way”.<sup>3</sup> The laws of war may be morally justified, according to McMahan, for practical reasons. Ultimately, though, he suggests that the laws of war should reflect deep morality.

The supposed dichotomy of the deep morality of war and the laws of war is misleading. In addition to the deep morality of war and the laws of war, there is also the *applied* morality of war. This differs from the deep morality of war since it considers various *contingent* features of war.

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<sup>1</sup> I will use the term ‘revisionism’ since it is the dominant term used in the debate. However, it is moot whether the claims of revisionists are in fact new. See Uwe Steinhoff, ‘Rights, Liability, and the Moral Equality of Combatants’, *Journal of Ethics*, 16/4 (2012): 339–66. I do not use the term the ‘orthodox’ approach to refer to traditionalism since the revisionist approach is fast becoming the new orthodoxy amongst philosophers of war. A third strand of Just War stems from the Catholic, theological tradition, but this paper focuses on contemporary analytic accounts.

<sup>2</sup> Jeff McMahan, ‘The Ethics of Killing in War’, *Ethics*, 114/4 (2004): 693–733.

<sup>3</sup> Jeff McMahan, ‘The Morality of War and the Law of War’, in David Rodin and Henry Shue (eds), *Just and Unjust Warriors: The Legal and Moral Status of Soldiers* (Oxford: Clarendon Press, 2008), 19–43, at 36. In this chapter, McMahan uses the terminology of ‘basic, first-order principles of the morality of war’ rather than ‘deep morality’.

These contingent features concern details about empirical cases and issues. As such, the applied morality of war governs far more than the laws of war. It includes the morality of institutions governing war (such as the UN Security Council) and the morality of norms and doctrines related to war (such as the responsibility to protect (R2P) and the norm against mercenary use). It also includes the rectitude of particular decisions to go to war (such as in Libya). In regard to the laws of war, the applied morality of war can offer full justification for a law, such as a justification of the prohibition of the taking of hostages in the Geneva Convention on the Treatment of Prisoners of War. Alternatively, it might offer only a pro tanto or prima facie defence of the current laws. For instance, current international law requires UN Security Council authorisation for humanitarian intervention. This might be generally justified, because, for instance, of the risks of abuse and the importance of maintaining international stability. But occasionally the applied morality of war might justify intervention without UN Security Council authorisation (e.g. NATO's 1999 intervention in Kosovo). Although these points might appear obvious, it has rarely been noted that an applied morality exists that differs from the deep morality of war and the laws of war.<sup>4</sup>

This paper focuses on a specific type of contingent feature created by the lack of compliance with moral norms and unfavourable circumstances, such as due to the fog of war, that is, the applied, *nonideal* theory of war. To explicate, nonideal theory (in the Rawlsian sense) concerns circumstances where there is not (1) full compliance with the ideal moral principles and (2) the existence of favourable circumstances in order to realise the ideal (such as historical, economic, and social conditions).<sup>5</sup> To be clear, *all* Just War Theory is an exercise in nonideal theory. Just War Theory considers cases where there is significant noncompliance with the ideal moral principles, such as when a state engages in an aggressive war or murders its own population; this is what provides the just cause for going to war. Without the target state's significant noncompliance, there would be no just cause for war, and therefore no just war. Accordingly, ideal theory *in general* (as contrasted to ideal theory about *war*) would not consider the ethics of war, since ideal theory assumes full compliance. As Mark Evans notes, "[i]n the ideal world there would be no war. Just war theory actually embraces pacifism at the ideal level, but eschews the absolute pacifist's rejection of the moral possibility of war at the nonideal level".<sup>6</sup> All accounts of Just War Theory are, then, about nonideal theory. This point is perhaps clearest in John Rawls' account of Just War Theory in *The Law of Peoples*: Rawls presents this account in Part III, which is focused

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<sup>4</sup> The only exceptions of which I am aware are Allen Buchanan, 'A Richer *Jus ad Bellum*', in Seth Lazar and Helen Frowe (eds), *The Oxford Handbook of Ethics and War* (Oxford: Oxford University Press, forthcoming); Seth Lazar, 'The Morality and Law of War', in Andrei Marmor (ed.), *The Routledge Companion to Philosophy of Law* (London: Routledge, 2012), 364–80; and Adil Ahmad Haque, 'Law and Morality at War', *Criminal Law & Philosophy*, 8/1 (2014): 79–97.

<sup>5</sup> John Rawls, *A Theory of Justice*, Revised Edition (Oxford: Oxford University Press, 1999). See, further, Zofia Stemplowska and Adam Swift, 'Ideal and Nonideal Theory', in David Estlund (ed.), *The Oxford Handbook of Political Philosophy* (Oxford: Oxford University Press, 2012), 373–89, at 375. Simmons argues that the Rawlsian account of ideal/nonideal theory is in fact all about noncompliance, either blameworthy or innocent. Simmons is probably right, but for reasons of clarity I will adopt the more well-known Rawlsian framing. A. John Simmons, 'Ideal and Nonideal Theory', *Philosophy & Public Affairs*, 38/1 (2010): 5–36.

<sup>6</sup> Mark Evans, "Introduction: Moral Theory and the Idea of a Just War", in Mark Evans (ed.), *Just War Theory: A Reappraisal* (Edinburgh: Edinburgh University Press, 2005), 1–21, at 9.

on nonideal theory.<sup>7</sup>

Notwithstanding, within nonideal theory—and Just War Theory—there are different degrees of ‘ideality’, that is, *how much* a nonideal theory reflects the lack of (1) compliance and (2) favourable circumstances. On the one hand, although still technically a matter of nonideal theory, the ‘*ideal* morality of war’ (which I suggest below is often offered by revisionists) offers an idealised account of the moral considerations related to war. More specifically, it largely assumes (2) favourable circumstances. It considers how *some* noncompliance, such as serious external aggression or the mass violations of basic human rights, could be dealt with if the circumstances were favourable. Accordingly, the ideal morality of war overlooks unfavourable circumstances, such as lacking the means to determine accurately combatants’ moral responsibility. It also overlooks (1) the degree of compliance with the more idealised moral principles, such as whether a more nuanced account of noncombatant immunity would be followed. In other words, the ideal morality of war overlooks ‘soft’ feasibility constraints, such as economic, institutional, and cultural constraints.<sup>8</sup> On the other hand, the ‘*nonideal* morality of war’ is limited by soft feasibility constraints. It focuses on both (1) noncompliance and (2) unfavourable circumstances. It considers how noncompliance, such as serious external aggression and the mass violations of basic human rights, can be dealt with in the face of (1) the likely lack of compliance with the ideal moral principles and/or (2) unfavourable (i.e. current) circumstances.

Two further clarifications are required. First, the nonideal morality of war is not the same as the *applied, ideal* morality of war. To explicate, the ideal morality of war is not simply limited to offering a general account of the principles to govern war (e.g. of noncombatant immunity). The ideal or ‘deep’ morality of war can also be applied to particular cases. It could provide a prospective account of how a particular war, such as a US intervention against Bashir al-Assad’s Syria, should ideally be fought. For instance, it might require that the US has to meet the ideal principles of *jus in bello*, which might necessitate that morally innocent combatants not be targeted. But this applied, ideal morality of war, which applies the ideal principles to particular issues and cases, differs from the nonideal morality of war, which, recall, concerns a *particular form of contingency*: noncompliance and unfavourable circumstances. Taking these contingencies into account, the nonideal morality of war offers *general* principles of *jus ad bellum* and *jus in bello*, such as the accounts of last resort and just cause considered below. It can also consider particular cases and issues. That is, there can also be a *further applied, nonideal* morality of war. For instance, this might consider how a US intervention against Assad’s Syria should be carried out, in the face of likely noncompliance and unfavourable circumstances with the ideal principles of war.

Second, the nonideal morality of war is not simply about the *regulation* of war. It also concerns potential *reforms* to the rules and institutions governing war. Take, for instance, McMahan’s idealised proposal for an international court to judge *jus ad bellum*, which would offer guidance of the justifiability of wars and so inform assessments of individual moral responsibility

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<sup>7</sup> John Rawls, *The Law of Peoples, with ‘The Idea of Public Reason Revisited’* (Cambridge, Mass: Harvard University Press, 1999).

<sup>8</sup> Holly Lawford-Smith, ‘Understanding Political Feasibility’, *Journal of Political Philosophy*, 21/3 (2013): 243–59, at 245. These contrast to ‘hard’ feasibility constraints, such as what is logically, conceptually, metaphysically, and nomologically possible, which need to be taken into account by ideal theory.

in resorting to war.<sup>9</sup> The nonideal morality of war could consider the desirability of the transition towards this court, in the face of likely unfavourable circumstances. More specifically, the purpose of nonideal theory is *to best realise the ideal principles*.<sup>10</sup> In the case of war, this might require stronger enforcement of the current rules and/or reform, such as moves towards McMahan's proposal. But it might also require the repudiation of reform, if this would be counterproductive in the face of likely unfavourable circumstances. For instance, suppose that in current circumstances attempts to put in place McMahan's proposal would be only partially successful. The court would be biased, comprising the puppets of powerful states. The biased judgments of the court would be used by these powerful states to circumvent the current laws on nonintervention, resulting in even greater harms to innocents as these states engage in mendacious interventions. Accordingly, instead of ambitious reform, in the currently unfavourable circumstances the nonideal morality of war might recommend only small, progressive amendments to the current laws of war and moves towards enforcing better the current regulation of war. This might be the way of maximising compliance with the ideal principles over the long term.

### III. The Importance of the Nonideal Morality of War

The central reason in favour of the nonideal morality of war is that the idealised principles are likely to be counter-productive if put into practice.<sup>11</sup> This is because there do not exist the appropriate circumstances to put in place the prescribed idealised principles. Consider, in this context, some of the central objections to revising the principle of noncombatant immunity to reflect the liability of noncombatants, as revisionists propose.<sup>12</sup> To start with, there do not exist the means to determine accurately noncombatant liability in war. As a result, noncombatants who are not liable could be targeted by accident if the proposed principle were adopted. In addition, propagating the revised principles could lead to the intentional killing of many more nonliable citizens. This is because combatants could increasingly view citizens as permissible targets, regardless of their liability. Similar worries are raised about the lack of appropriate circumstances and the likely noncompliance with idealised principles to govern other issues in the ethics of war, such as subsistence wars<sup>13</sup>, the use of private military and security companies<sup>14</sup>, the use of drones<sup>15</sup>,

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<sup>9</sup> Jeff McMahan, 'The Prevention of Unjust Wars', in Yitzhak Benbaji and Naomi Sussman (eds), *Reading Walzer* (London: Routledge, 2014), 233–55.

<sup>10</sup> A quick clarification: the nonideal morality of war strives to achieve ideal theory *in general*, not the ideal morality of war. The demands of ideal theory *in general*, such as the ideal rules of justice or beneficence, are of a higher order than the demands of the ideal morality *of war*. I will consider this point further in section V.

<sup>11</sup> This is the general thrust of Statman's critique of Fabre's revisionism, which he argues is potentially too permissive and too demanding. Daniel Statman, 'Fabre's Crusade for Justice: Why We Should Not Join', *Law and Philosophy*, 33/3 (2014): 337–60.

<sup>12</sup> Many of these are raised by McMahan, 'The Morality of War and the Law of War'.

<sup>13</sup> Thomas Pogge, 'Poverty and Violence', *Law, Ethics, and Philosophy*, 1 (2013): 87–111.

<sup>14</sup> James Pattison, *The Morality of Private War: The Challenge of Private Military and Security Companies* (Oxford: Oxford University Press).

<sup>15</sup> Daniel Brunstetter and Megan Braun, 'The Implications of Drones on the Just War Tradition', *Ethics & International Affairs*, 25/3 (2011): 337–58.

and military assistance provided to states and nonstate actors.<sup>16</sup>

More specifically, there are at least six ways in which the idealised principles could be counterproductive if put into practice.<sup>17</sup> (These problems will be illustrated in more detail in the next section.)

(1) The Noncompliance Problem: There will be significant culpable noncompliance with the proposed rule. Other rules might be less optimal in achieving the ideal, but be likely to achieve much greater compliance, and so be more desirable overall.

(2) The Capacity Problem: Current agents lack sufficient capacity to be able to follow the new rules. For instance, they do not possess weapons that can ensure fully precise targeting.

(3) The Epistemic Problem: There are significant epistemic limitations in determining how the rule applies, such as due to the fog of war. Significant institutional structures would need to be put in place to provide a more accurate determination of the applicability of the rule to particular circumstances. These institutional structures are unlikely to be developed in the foreseeable future.

(4) The Abuse Problem: A more permissive rule would be used by those wanting to engage in abusive actions as a means to justify and ultimately enable their actions.

(5) The Unintended Consequences Problem: A more permissive rule would lead to other unintended consequences, such as moral hazard.

(6) The Transition Costs Problem: The putting in place of a new principle or institution, even if it is feasible, would lead to significant transition costs.

These problems suggest that, on their own, ideal moral principles of war are too permissive (or restrictive) in practice. The worry with having *only* an ideal account is that the proposed rules will be insufficiently restrictive (or permissive) because they will fail to take into account notable, important features of the international system. If the proposed rules were put in place, they could potentially be disastrous for the values that the proposed rules attempt to protect. Accordingly, there needs to be a nonideal account of the ethics of war in order to reflect the hugely nonideal problems of the contemporary international system.

In a somewhat similar vein, Allen Buchanan argues that there needs to be a ‘richer’ account of Just War Theory that is not simply focused on providing objective criteria for justified acts of going to war.<sup>18</sup> In doing so, he defends the importance of considering to a greater degree the ethics of institutions and ‘directly action-guiding norms’, and in particular heuristics, which can overcome epistemic difficulties and the special incentives noted by Buchanan that are attached to the role of leader. Such heuristics, he argues, can better ensure compliance with the ideal principles than following these principles directly. My call for a nonideal morality of war takes this point further. In addition to epistemic difficulties and special incentives, we need to consider other nonideal problems. These include the lack of sufficient capacity to put in place the ideal principles, the risk of noncompliance and abuse by leaders not simply because of special incentives, the risk of noncompliance and abuse by other parties apart from leaders, and transition costs.

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<sup>16</sup> I discuss this issue in James Pattison, ‘The Ethics of Arming Rebels’, *Ethics & International Affairs*, 29/4 (2015): 451–77.

<sup>17</sup> Note that some of these problems can overlap on occasion.

<sup>18</sup> Buchanan, ‘A Richer *Jus ad Bellum*’.

It is worth highlighting in particular the need for the nonideal morality of war in the face of likely resistance to (and noncompliance with) the ideal principles of war. In order to have much influence on the wars that they hope to constrain, the principles of Just War Theory need to achieve sufficient support. They need to become norms in the sociological sense, meaning that they need to become widely expected standards of appropriate behaviour amongst states, and in turn constrain states' behaviour. How can the Just War principles do this? According to the norm-life cycle model of Martha Finnemore and Kathryn Sikkink—the leading account of norm development in International Relations (IR)—norms (such as Just War principles) go through the following process: (1) emergence, (2) cascade (i.e. being accepted), and (3) internalisation.<sup>19</sup> It seems highly unlikely that the principles of the ideal morality of war would successfully pass through this process. For instance, they would be likely to face significant contestation at the (2) cascade stage. This might be because of reasonable disagreement amongst states and other actors about the ideal principles that should govern war. These principles are likely to be the site of considerable reasonable disagreement since there are, in Rawlsian terminology, significant 'burdens of judgement' when considering the ethics of war. On Rawls's account, the burdens of judgment stem from the following sources: (a) conflicting and complex empirical and scientific evidence; (b) the relative weight of different considerations; (c) hard cases and the vagueness of concepts; (d) the influence of our life experience; (e) the difficulty of making an overall assessment, given the different normative considerations; and (f) the limited number of values that any social institution can incorporate.<sup>20</sup> Several of these burdens seem to apply—and indeed seem to be very burdensome—when considering the ethics of war.<sup>21</sup> For instance, the evidence about the case for a war is often highly contested and complex and is sometimes vague and misleading. The moral considerations are intricate, involving complex philosophical issues. And people's views are often somewhat dependent on political culture (e.g. there tends to be generally low support in Germany for wars compared to the higher degree of support for wars in the United States).

In addition, it can be expected that there will be *unreasonable* disagreement. Various states and other actors may make self-interested, biased, and uninformed judgements about the ideal principles in general and about particular cases. For instance, Russia may mendaciously reject the ideal principles of last resort and just cause for humanitarian intervention considered below since it wants to buttress a murderous ally. The worry, then, is that the principles proposed by an account of the ideal morality of war would not be accepted, given reasonable and unreasonable disagreement.

Overlooking this disagreement and attempting to put in place the ideal morality of war could be futile. Worse still, it could weaken the consensus on, and compliance with, the existing rules governing war. It is vital, then, to consider the likely compliance that the principles would achieve, in the face of reasonable and unreasonable disagreement about the ethics of war. This is,

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<sup>19</sup> Martha Finnemore and Kathryn Sikkink, 'International Norm Dynamics and Political Change', *International Organization*, 52/4: 887–917. The most sophisticated development of this model is provided by Alexander Betts and Phil Orchard (eds) *Implementation and World Politics: How International Norms Change Practice* (Oxford: Oxford University Press, 2014).

<sup>20</sup> John Rawls, *Political Liberalism*, Expanded Edition (New York: Columbia University Press, 1996).

<sup>21</sup> This is true of both the nonideal morality of war and the ideal morality of war, particularly when the latter is applied to particular cases. As such, there can be reasonable disagreement about the ideal morality of war.

by definition, a matter for the nonideal morality of war, which, recall, considers how war should be governed in the face of likely noncompliance with the ideal principles. What should the response be to the likely resistance and noncompliance with the ideal principles of war? Sometimes it may be better to seek consensus by moderating one's claims, in order to secure the effective regulation of war.<sup>22</sup> At other times, consensus might not be achievable or even mildly desirable. Instead, it might be best to persevere, trying to persuade those who might be persuaded (e.g. those who reasonably disagree) and criticising those who unreasonably disagree, with the aim of changing the situation for the better in the longer term. Which route is preferable depends on the details of the case, such as how unfavourable the circumstances are.

#### **IV. Examples of the Nonideal Account in Practice**

To help establish the case for the nonideal account, I will now present an applied, nonideal account of two principles: last resort and just cause for humanitarian intervention.

##### *Last resort*

Last resort is included in standard lists of *jus ad bellum*. Yet, on an idealised account, it is difficult to explain the importance of the principle of last resort. Indeed, revisionists often exclude it from their lists of the principles of *jus ad bellum*. For example, Eamon Aloyo argues that the principle of last resort is either morally problematic or redundant.<sup>23</sup> It is morally problematic, he argues, because last resort can require undertaking options that are more morally problematic than war. For instance, a comprehensive system of economic sanctions can be even worse than war, in terms of the harms that it causes to innocent persons. Alternatively, other options, such as diplomacy, might cause less harm but be far less effective overall in terms of tackling the crisis. On occasion, war can be the best option. Any principle of last resort, he argues, should compare the various options of responding to the crisis, without arbitrarily loading the dice against war. Accordingly, the most plausible accounts weigh all the relevant benefits and harms of the various options. Yet such accounts render last resort redundant, Aloyo argues, because the principle of necessity captures what is important about last resort, so understood. The principle of necessity (when concerned with *jus ad bellum*) requires that war be pursued only if the alternatives are likely to be even worse in terms of the relevant benefits and harms. He concludes that we should therefore jettison the principle of last resort.

This analysis, as far as an idealised account of last resort goes, is largely correct. I would add, though, that the principle of last resort also seems to concern the somewhat important moral difference between 'doing' and 'allowing' harm, so that the options that *do* more harm should generally be avoided. This could be incorporated under a principle of necessity that is sensitive to which options *do* most harm.

However, it does not follow that the principle of last resort in Just War Theory should be

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<sup>22</sup> In similar vein, Steven Lee notes that the tradition of Just War has exemplified 'tolerable divergence' by compromising the moral ideal in order to increase acceptance and compliance, *Ethics and War: An Introduction* (Cambridge: Cambridge University Press, 2012), xi–xii, 21–2.

<sup>23</sup> Eamon Aloyo, 'Just War Theory and the Last of Last Resort', *Ethics & International Affairs*, 29/2 (2015): 187–201.



jettisoned. Several nonideal considerations suggest that the principle should be retained as part of an applied, nonideal account of the ethics of war, that is, as part of Just War Theory.<sup>24</sup> Central is the fact that wars *typically* will be far more destructive than the other options. In most cases of responses to crises, war will *not* be suitable. Despite some exceptions, war will typically be unlikely to be successful at tackling the crisis and, even when successful, will cause more harm than other options. To that extent, it also tends to *do* more harm than the other options—and so be worse on the doing and allowing distinction. This is, of course, contingent; it is not a necessary truth. Sometimes, if only exceptionally, war will be more likely to be effective and do less harm. But, given the abundance of historical accounts and scholarship in IR that document the harms of war, we can reasonably *presume* that, in most cases, war will not be likely to be effective and not be likely to *do* less harm.

States and other agents will often lack sufficient epistemic capacity to be able to determine accurately the justifiability of the various options (the Epistemic Problem). It will be tricky to know, for instance, if economic sanctions are likely to be better. Such judgements require significant knowledge of the various options and, in turn, research capacity, as well as time and expertise. Many states and agents will lack the capacity to make accurate judgements (the Capacity Problem). Given that states and other agents *do* know that war is often very harmful, and that it is often the worse option, they should be very wary, without clear evidence, of overriding the presumption against going to war.

As work in IR on military intervention shows, states (and other agents) often behave in a self-interested manner rather than follow the proposed rules (the Non-Compliance Problem) and sometimes mendaciously justify their behaviour according to the prevailing norms despite failing to comply with them (the Abuse Problem).<sup>25</sup> A more permissive principle of necessity (*ad bellum*) could result in states mendaciously, but somewhat plausibly, defending their war as the best course of action when it is not. The principle of last resort, with its emphasis on not going to war, makes it harder for states to claim plausibly that their war is permissible. States have to show that they have pursued other feasible options first. It therefore makes it harder for states to go to war *in general*.<sup>26</sup> By contrast, the principle of necessity weakens the restriction on going to war.

To the extent, then, that Just War Theory is action guiding and aims to influence states, there are nonideal reasons to maintain the current principle of last resort. Although the principle of necessity captures *some* of the underlying basis of last resort, it does not follow that last resort should be jettisoned. Importantly, last resort, unlike necessity, contains a presumption against

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<sup>24</sup> I provide a fuller account of these considerations in James Pattison, ‘The Ethics of Diplomatic Criticism: The Responsibility to Protect, Just War Theory, and Presumptive Last Resort’, *European Journal of International Relations*, 21/4 (2015): 935–57..

<sup>25</sup> See, for instance, Simon Chesterman, *Just War or Just Peace? Humanitarian Intervention and International Law* (Oxford: Oxford University Press, 2001); Cristina G. Badescu and Thomas G. Weiss, ‘Misrepresenting R2P and Advancing Norms: An Alternative Spiral?’, *International Studies Perspectives*, 11/4 (2010): 354–74.

<sup>26</sup> See, further, Daniel Brunstetter’s account of the salience of last resort in the debates for the US Presidency in the 2000s, ‘Trends in Just War Thinking During the US Presidential Debates 2000–12: Genocide Prevention and the Renewed Salience of Last Resort’, *Review of International Studies*, 40/1 (2014): 77–99.

going to war.<sup>27</sup>

### *Just cause for humanitarian intervention*

Let us now consider just cause for humanitarian intervention. Most accounts of just cause for humanitarian intervention insist on a (1) quantitative and (2) qualitative restriction, so that intervention is permissible only in response to the (1) mass violation of (2) basic human rights.<sup>28</sup> However, an idealised, cosmopolitan account of just cause for humanitarian intervention might be far more permissive.

First, it might not require the quantitative restriction. Humanitarian intervention could be permissible in response to the violation of basic human rights of only a few people. Suppose, for instance, that a US-led NATO operation could intervene militarily in another state in order to save the lives of ten civilians about to be culpably killed by a government militia. The operation would use precise targeting and so not cause any collateral harm. It would seem mistaken to deny that the action would be permissible, given that it would be proportionate.

Second, just cause for humanitarian intervention might not require the qualitative restriction. In an idealised, cosmopolitan account, humanitarian intervention could be permissible in response to less serious crises, such as the overthrow of a democratically elected leader and the denial of participation rights to certain individuals. Suppose, for instance, that Brazil intervenes in a Latin American state to restore a democratically elected leader who was overthrown in a coup. If there would be very few collateral harms to innocent civilians, it would seem mistaken to deny that the intervention would be permissible, given that it would be proportionate. Accordingly, an idealised account—and particularly an idealised cosmopolitan account—could permit humanitarian intervention to tackle the small-scale violation of non-basic human rights.<sup>29</sup>

Yet this idealised account would be problematic if it was seen as the principle that should govern resort to humanitarian interventions in a policy-relevant account of Just War Theory. There are two major considerations here. First, there is already a universally accepted account of just cause for humanitarian intervention that sets the bar far higher. Namely, at the 2005 UN World Summit, with over 150 heads of state in attendance, states agreed that intervention under R2P is permissible only in response to ‘genocide, war crimes, ethnic cleansing, and crimes against humanity’. By contrast, the new, idealised principle would be unlikely to receive the agreement of many states. States might question—reasonably—whether this new principle is the ideal moral principle, since they favour a more limited principle that allows for intervention only in exceptional cases. The resulting contestation could lead to significant disputes between states and the undermining of the general consensus about just cause for humanitarian intervention. The debate about cases could regress, becoming not about the *substance* of the case but instead endless, unfruitful, and even vitriolic disputes about the principle at stake, undermining the progress in the

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<sup>27</sup> There may be further considerations still. For instance, it *might* be that there could be abuse of the current last resort principle, so that it is mendaciously used by states to justify inaction, such as when humanitarian intervention is morally required. My point is that such considerations are central to the determination of whether there should be a principle of last resort; it cannot be settled by the idealised considerations alone.

<sup>28</sup> For a survey, see section 1.4 of James Pattison, *Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene?* (Oxford: Oxford University Press, 2010).

<sup>29</sup> Indeed, this view is defended by Cécile Fabre, *Cosmopolitan War* (Oxford: Oxford University Press, 2012), 173.

debate on humanitarian intervention—and responses to mass atrocities more generally—that has occurred since the agreement in 2005.<sup>30</sup> The undermining of the consensus could therefore ultimately weaken the compliance with the responsibility to protect populations threatened with mass atrocities (the Noncompliance Problem).

Even if a new, more permissive account of just cause for humanitarian intervention could be successfully negotiated between conflicting major powers—which seems extremely unlikely even in the mid- to long-term—there are likely to be significant transition costs in the move away from the more restrictive principle of the R2P doctrine, which enjoys significant international support (the Transition Costs Problem). These costs could include significant political effort, which could be better spent elsewhere, such as on the prevention of mass atrocities agenda. The costs also include a period in which there is huge disagreement about how to react to mass atrocities, with the result of the paralysis of the UN Security Council and little action in response, thereby undermining the Council’s developing ‘habits of protection’, whereby it is increasingly attempting to address mass atrocities.<sup>31</sup> The lives cost by this transitional paralysis could far outweigh the lives saved by the new rule.

Second, humanitarian intervention tends to cause significant harm. As much of the IR literature on humanitarian intervention documents, although sometimes permissible, previous humanitarian interventions have damaged vital infrastructure and killed and maimed innocent civilians, have destabilised neighbouring states, and increased the intensity of fighting.<sup>32</sup> Accordingly, any future humanitarian intervention seems likely to cause significant harm. For humanitarian intervention to be permissible, it needs to be likely to lead to sufficient good in terms of tackling the violation of human rights to outweigh the likely harms. It is a reasonable assumption that this will be possible only in response to quantitatively and qualitatively serious situations. In less serious situations, humanitarian intervention is likely to do more harm than it prevents.

Accordingly, a notable worry about an idealised principle of just cause for humanitarian intervention is that current interveners lack the capabilities to conduct humanitarian intervention without causing significant unintended harms (the Capacity Problem). They will also often lack the means to be able to determine reliably whether there has been the violation of a few individuals’ non-basic human rights and to estimate reliably the potential negative effects of their intervention (the Epistemic Problem). There could also be significant abuse of the idealised principle, since states could use minor violations of basic human rights to justify imperialistic or self-interested interventions internationally (the Noncompliance Problem; the Abuse Problem). By contrast, the more restrictive principle of humanitarian intervention under R2P makes it much harder to present a somewhat plausible, but mendacious, justification of morally problematic intervention.<sup>33</sup>

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<sup>30</sup> See Alex J. Bellamy, ‘The Responsibility to Protect Turns Ten’, *Ethics & International Affairs*, 29/2 (2015): 161–85.

<sup>31</sup> For details of the Council’s developing ‘habits of protection’, see *ibid.*

<sup>32</sup> See, for instance, Eric. A Heinze, *Waging Humanitarian War: The Ethics, Law, and Politics of Humanitarian Intervention* (Albany: SUNY Press, 2009); Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000).

<sup>33</sup> It might be replied that such harms would be ruled out by a principle of proportionality. That is, it would be acceptable to maintain the permissive, idealised principle of just cause in the nonideal account since disproportionate responses would be prohibited by the idealised principle of proportionality. This reply fails to grasp the role of the nonideal principle of just cause. This is to act as a guide—i.e. a heuristic—to assess the circumstances in which military intervention is likely to be permissible. Central to this assessment is,

The idealised rule could also lead to moral hazard (the Unintended Consequences Problem). A common worry about humanitarian intervention is that it encourages rebels to engage in insurrection in order to receive a violent response by the government, which in turn leads to outside military intervention in support of the rebels.<sup>34</sup> If military intervention could be permissibly undertaken in response to *small-scale* violations of human rights, this incentive could apply in more cases. Only a minor response by a government on the rebels could provide just cause for external intervention. By contrast, a rule that sets the bar high for military intervention might reduce the risk of moral hazard. To be clear, I do *not* think that moral hazard is not a plausible objection to the *current* rules of intervention.<sup>35</sup> My point is that a new rule *could* be subject to this worry. But even if it would not be, the bigger point is that we cannot settle this matter without an empirical investigation into the likely effects of the moral hazard of the new rule. We need IR, then, to determine what the principle should be.

## V. The Applied, Nonideal Morality of War and the Debate between Revisionism and Traditionalism

I have defended the importance of the nonideal account and given two examples that illustrate the importance of this account. I will now argue that appreciating the importance of this account helps to diffuse much of the polarisation of the debate between revisionists and traditionalists, since the positions proposed by the major figures in the debate between revisionists and traditionalists are, in fact, much closer and to large extent (if perhaps not fully) compatible.

Revisionists often offer accounts of the idealised morality of war. For the most part, their accounts do not reflect unfavourable circumstances. To that extent, revisionism can be seen as an *ideal theory of the morality of war*. For instance, Fabre sees her account in *Cosmopolitan War* as “[u]nearthling first-best principles”.<sup>36</sup> She admits it would need to be supplemented by an account of “(morally directed) second-best principles”, where these are enshrined in law. (In doing so, she restates the supposed dichotomy between the deep morality and law of war.) To be sure, as we will see from the remarks below, revisionists *sometimes* consider the contingencies that concern unfavourable circumstances and lack of compliance with other duties. A notable example is McMahan’s chapter, ‘The Morality of War and the Law of War’, in which he offers a defence of the current conventions of international humanitarian law based on various nonideal considerations. (He sees this, though, as a moral defence of the laws of war, rather than an account of the applied, nonideal morality of war). Overall, though, revisionists tend to provide an idealised morality of war that is more abstract. Indeed, their accounts are often, but not always, about the deep morality of war. Conversely, as we will see from the remarks below, many traditionalists

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of course, the likely proportionality of the action. As such, the nonideal principle of just cause helps to provide *guidance to the likely proportionality of the action*. It gives an indication of whether military action could even be plausibly considered *in the first place*, before a more fine-grained assessment under a nonideal principle of proportionality or reasonable prospects of success.

<sup>34</sup> Alan J. Kuperman, ‘The Moral Hazard of Humanitarian Intervention: Lessons from the Balkans’, *International Studies Quarterly*, 52/1 (2008): 49–80.

<sup>35</sup> For a powerful critique of the moral hazard argument (in current circumstances), see Alex J. Bellamy and Paul D. Williams ‘On the Limits of Moral Hazard: The “Responsibility to Protect”, Armed Conflict and Mass Atrocities’, *European Journal of International Relations*, 18/3 (2012): 539–71.

<sup>36</sup> Fabre, *Cosmopolitan War*, 12.

provide an account of war that is nonideal. They are much more concerned with dealing with likely noncompliance and unfavourable circumstances, such as the lack of means to determine accurately combatants' moral responsibility. Given these features, they tend to endorse the current conventions on war, which reflect the currently best means of achieving maximum compliance with the ideal.

One can coherently accept roles for both more ideal theorising and more nonideal theorising about war. Although there are some exceptions, the mainstream view is that both ideal and nonideal theory about political philosophy are valid and important exercises and, more generally, part of the same enterprise of trying to fully understand political philosophy.<sup>37</sup> To start with, ideal theorising, *in general*, can be of significant import for the ethics of war. By abstracting out contingencies related to noncompliance and current circumstances, ideal theorising can provide useful shorthand responses to address the central dilemmas that occur in a variety of contexts. Thus, ideal theorising in general, such as about intentions or the doctrine of doing and allowing, will be of use when it comes to thinking about the applied, nonideal ethics of war, as well as other fields, such as criminal justice and global distributive justice. Ideal theorising *about the ethics of war* can also be useful when applied to particular cases and issues. It can outline, for instance, what the ideal response would be to a crisis, if circumstances were to be more favourable. This can then highlight the inadequacies of the current circumstances and even motivate the political will to change. An idealised account of war can also help to provide a blueprint for the norms and potentially the laws governing war, which, if transition costs allow, can be put in place (or at least strived towards).

Perhaps most fundamentally, an idealised account of the ethics of war can help to determine the relevant moral considerations that need to be taken into account in the nonideal morality of war. As Simmons argues, “[t]o dive into nonideal theory without an ideal theory in hand is simply to dive blind, to allow irrational free rein to the mere conviction of injustice and to eagerness for change of any sort”.<sup>38</sup> That is, it can help to provide the barometer against which to judge the nonideal. Without ideal theorising about war, it is hard, and perhaps impossible, to know how nonideal the current circumstances are and to decide between various proposals to remedy the nonideal. Ideal theorising about general moral principles provides, of course, the ultimate barometer. We can test, for instance, according to whether proposals will respect rights, promote utility, or some other measure. The ideal morality of war helps to act as shorthand to this: nonideal theorists of war can look to the ideal theory of war for a guide, without having to work out each time how what is being assessed relates to the ultimate barometers of rights, utility, or another measure. For instance, the ideal account of how war would ideally be fought can be used as the barometer against which to judge various nonideal reforms to the military, such as scrapping the draft, curtailing the hiring of mercenaries, and relying less on foreign soldiers to fight wars.

Thus, when revisionists offer an idealised account of the ethics of war, they are often engaging in a useful enterprise. My point is only that this enterprise needs be supplemented with the nonideal account of the ethics of war. It follows that the approach of the revisionists—largely ideal theorising—is compatible with the approach of those seen as traditionalists—largely nonideal theorising. To that extent, the debate is at least somewhat overblown.

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<sup>37</sup> The most notable exception to the mainstream view is Colin Farrelly, ‘Justice in Ideal Theory: A Refutation’, *Political Studies*, 55/4 (2007): 844–64.

<sup>38</sup> Simmons, ‘Ideal and Nonideal Theory’, 34.

Yet, against this, it might be replied that there is *much* more of a difference between the two camps and that this goes far beyond the difference between ideal and nonideal approaches. Thus, I will now consider—and largely reject—four potential major faultlines between revisionists and those seen as traditionalists.

### *A substantive difference*

First, it might be thought that there is a substantive difference between those seen as revisionists and traditionalists in that they strongly disagree about the principles that should currently govern war. Most notably, the claims by revisionists that the principles of noncombatant immunity and the moral equality of soldiers do not sufficiently track liability might be thought to lead to a major practical difference.

However, once we look at the remarks of revisionists when they *do* offer nonideal, applied accounts, we can see that the leading traditionalists and revisionists are in fact much closer in their substantive accounts. Most notably, despite his challenges to the principles of noncombatant immunity and the equality of combatants, McMahan defends maintaining current international humanitarian law, at least in the short term.<sup>39</sup> For instance, he argues that noncombatant immunity should be retained because if just combatants can use force against noncombatants who are liable, combatants also seem likely to use force against noncombatants who are not liable. Thus, Walzer notes that, in practice, McMahan more or less adopts the same view as he does. He thus claims that “[o]ur disagreement, at the end, may be only terminological”.<sup>40</sup>

It might be replied that there is a more of a substantive difference in relation to the issue of whether soldiers should agree in the first place to fight, particularly for unjust causes. Revisionists (and particularly McMahan) are keen to emphasise that soldiers should be very reticent about signing up to fight. Yet, again, there does not seem to be a vast difference to those seen as traditionalists. On the one hand, McMahan provides many significant caveats to the claim that soldiers should not agree to fight for unjust causes. For instance, he accepts that soldiers may face significant epistemic uncertainty and duress, and so may not be blameworthy for participation in unjust wars.<sup>41</sup> He also notes that conscientious refusal could be detrimental to fighting just wars and, in particular, to humanitarian intervention.<sup>42</sup> And he does not hold that soldiers should be punished for participating in unjust wars, in part because the lack of clear authoritative judgement on the international legality of the war in question.<sup>43</sup> Indeed, the worries about providing authoritative information about the morality of war is in significant part what prompts his proposal for an international court to judge matters of *jus ad bellum*.<sup>44</sup>

On the other, Walzer does not want to condemn those who do fight, given the significant epistemic burdens they face and socio-economic coercion. Nevertheless, he agrees that not fighting

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<sup>39</sup> McMahan, ‘The Morality of War and the Law of War’.

<sup>40</sup> Michael Walzer, ‘Response to McMahan’s Paper’, *Philosophia*, 34/1 (2006): 43–5, at 43.

<sup>41</sup> McMahan, ‘The Prevention of Unjust Wars’.

<sup>42</sup> Jeff McMahan, *Killing in War* (Oxford: Clarendon Press, 2009), 100. To be sure, he acknowledges that this will be balanced by the overall positive effects of such a policy on limiting unjust wars.

<sup>43</sup> McMahan, *Killing in War*, 190.

<sup>44</sup> McMahan, ‘The Prevention of Unjust Wars’.

in unjust wars is morally praiseworthy.<sup>45</sup> He also defends the case for conscientious objection.<sup>46</sup> Again, then, the substantive, practical differences seem small. They appear to boil down to McMahan's holding that unjust combatants can be condemned—but not punished—for fighting. But without punishment, or the case for any other form of external interference to stop soldiers fighting unjust wars (such as by a third party), this condemnation seems of little practical significance. It might be, of course, an appeal to the moral conscience of soldiers. But this does not provide much of a difference, given that Walzer holds that soldiers who choose not to fight unjust wars are morally praiseworthy, which could also be a guide to the moral conscience of soldiers.

### *Contestation over the Continuation Claim*

A second potential major difference might appear to lie with what seems to be the central claim of revisionism, that is, the ethics of war is continuous with the rest of moral and political philosophy. This is what I will call the 'Continuation Claim': the morality of war is not *sui generis*. From this, it might appear to follow that, whereas war seems to be *quantitatively* different given the scale of wrongdoing typically involved, there is not a clear *qualitative* departure from the rest of moral and political philosophy. To that extent, war is just an extension of moral and political philosophy applied to more extreme circumstances.

'Revisionist' Just War Theory is most often viewed as the acceptance of this claim (as is the case in this paper). Proponents of the Continuation Claim often go on to defend an ethics of war that draws directly on accounts of individual self-defence. However, the Continuation Claim could be defended by those who hold that collectives have significant moral weight—and even *absolute* moral weight. Their claim could be that moral and political philosophy more generally should place the collective at its heart and war should just be a continuation of this. Hence, the acceptance of the Continuation Claim does not itself lead to an individualist approach to the ethics of war and, more specifically, to the repudiation of the moral equality of soldiers and noncombatant immunity, often made by revisionists.

It helps to distinguish between strong and moderate rejections of the Continuation Claim. On the strong version, the morality of war differs fundamentally from the rest of moral and political philosophy. It is fully *sui generis*: there is no underlying coherence between the ethics of war and the rest of moral and philosophy. On the moderate version, war is extremely nonideal and so needs to be governed by a peculiar set of nonideal principles. This claim is potentially qualitative—it marks a step change in the moral principles that should govern war, from ideal to nonideal theorising. However, it holds that there is an underlying, coherent set of ideal moral principles. On this view, war needs to be governed by an appropriate set of principles given its nonideal character, but the same is true of other areas of moral and political philosophy that face high levels of noncompliance and violations of duties, including the ethics of tackling climate change, global poverty, international crime, and global health. For each of these areas, there needs to be particular principles to govern the expected high levels of noncompliance; war is no different in this regard. Thus, although the nonideal morality of war is qualitatively different to the ideal moral principles governing war, on the more moderate rejection of the Continuation Claim this does not demarcate

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<sup>45</sup> Michael Walzer, in conversation.

<sup>46</sup> Michael Walzer, *Obligations: Essays on Disobedience, War, and Citizenship*. (Cambridge, MA: Harvard University Press, 1970), 99–119.

it from the rest of moral and political philosophy, which shares similar nonideal features.

Why might one adopt the stronger rejection of the Continuation Claim? In *Ethics and War*, Steven Lee suggests that one way of understanding the view that morality is ‘*in extremis*’ (i.e. the view that the basic moral rules of war differ to those of everyday life) is that there are (at least) two separate, nonconventional moralities.<sup>47</sup> More specifically, on this view, “peacetime and the institutions of war are ‘different subjects’ to which different moral rules apply”.<sup>48</sup> Drawing on Rawls’ (anti-monist) distinction between interpersonal and institutional morality, Lee notes that war could be viewed as similar to the basic structure in Rawls’ work, that is, as an “all-embracing institutional system that determines the major life prospects of individuals, with individuals having little or no impact on their operations”, and so therefore be very different to interpersonal morality.<sup>49</sup> The rules of war could, like the rules governing the basic structure, be chosen hypothetically under a veil of ignorance. Lee suggests that, under the veil of ignorance, the rational agent would choose the standard principles of *jus in bello*, since she would “choose to be permitted to defend herself if a fighter under attack and not to be attacked at all if she were not herself fighting”.<sup>50</sup>

Although this is an interesting proposition, it does not seem to be widely reflected in the debate. As Lee notes, leading traditionalists such as Walzer and Shue do not seem to hold this view.<sup>51</sup> Instead, they appear to invoke the moderate version of the denial of the Continuation Claim. For instance, Shue argues that although morality “is all of a piece”, “the differences in the circumstances yield different specific guidelines”.<sup>52</sup> Although he does not explicitly frame it as such, the reasons he gives concern the nonideal features of war, such as epistemic problems in determining *jus ad bellum* and the anarchy of international conflict. Walzer also appears to accept this view. In his reply to McMahan in *Reading Walzer*, he argues that “[c]onventional just war theory is nothing more than the adaptation of everyday moral rules to” the reality of war, marked by “coercion, uncertainty, ignorance and much else”.<sup>53</sup> He also appears to accept the more moderate repudiation of the Continuation Claim: “[w]e might argue about whether ordinary morality provides a critical standard for the war convention. Of course, it does”.<sup>54</sup> Thus, the traditionalists’ critique is in large part about emphasising the importance of the nonideal, rather than a deeper difference about continuity with the rest of moral and political philosophy.

Nevertheless, it still might be thought that traditionalists invoke the stronger rejection of the Continuation Claim, since they hold that the ethics of war has specific moral guidelines to do with the fact that it concerns *war*. That is, war has contingent but likely features such as that it involves mass killing and the use of large armies, as well as necessary ones, such as that it involves collectives fighting each other. As such, it has different *specific* nonideal principles to other areas of moral and political philosophy. There are principles governing, for example, the treatment of

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<sup>47</sup> Lee, *Ethics and War*.

<sup>48</sup> *Ibid*, 210.

<sup>49</sup> *Ibid*, 210.

<sup>50</sup> *Ibid*, 211.

<sup>51</sup> *Ibid*, 208–10.

<sup>52</sup> Henry Shue, ‘Do We Need a “Morality of War”?’ in David Rodin and Henry Shue (eds), *Just and Unjust Warriors: The Moral and Legal Status of Soldiers* (Oxford: Oxford University Press, 2008), 87–111, at 88, 91.

<sup>53</sup> Michael Walzer, ‘Response’, in Yitzhak Benbaji and Naomi Sussmann (eds), *Reading Walzer* (London: Routledge, 2014), 328–32, at 330.

<sup>54</sup> Walzer, ‘Response to McMahan’s Paper’, 45.



prisoners of war, the democratic control of the military, the use of weapons *mala in se*, and so on. These applied, specific nonideal principles do *appear* to differ to the rules governing other areas of moral and political philosophy, which do not share the features of war. For instance, no other area of moral and political philosophy needs principles to govern collectives fighting each other. To that extent, these rules are different in that they are specified differently to rules in other fields. They are applied particularly to *war*. Yet one can accept this point and maintain that these principles cohere with the rest of moral and political philosophy. Indeed, we tend to think that other areas of moral and political philosophy, such as those that have to do with education, health, and climate change, have their own specific theories, approaches, and doctrines, even if they are all ultimately coherent and/or ultimately derive from the same underlying approach. This is compatible with the moderate repudiation of the Continuation Claim, which, recall, holds that, fundamentally, war is continuous with the rest of political philosophy, although it appears to be *sui generis* at the nonideal level.<sup>55</sup>

### *Individualism vs. collectivism*

It might also be claimed that there is a major conflict between individualism and collectivism at the heart of the debate between revisionists and traditionalists.<sup>56</sup> Yet, again, once we look to the ideal/nonideal theory distinction, we see that there is not much difference between the positions adopted by the leading proponents in the debate in Just War Theory.<sup>57</sup>

In his response to McMahan, Walzer accepts that McMahan offers a ‘perceptive’ account of individual moral responsibility.<sup>58</sup> Walzer also holds that, at the more abstract level, individual moral concerns matter. For instance, in *Just and Unjust Wars*, he notes that the rights of states ultimately derive from the rights of their individuals and that “[i]ndividual rights (to life and liberty) are the most important judgements we make about war”.<sup>59</sup> Yet, although individualised moral concerns matter for him at the abstract level (as well as collective ones), he holds that it is important to consider an account of war that is sufficiently reflective of collectivist concerns, given the collective nature of war. In response to attempts to tell the story of war in terms of individual responsibility, he argues that “[t]he story can be told, but I don’t see how it impacts on the actual course of the battles”.<sup>60</sup> The postscript to the latest edition of *Just and Unjust Wars* makes it clear

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<sup>55</sup> It follows that some of those often *perceived* to be traditionalist (e.g. those who advance the moderate rejection of the Continuation Claim) may strictly speaking be revisionist. This is because, although they hold that the morality of war is *sui generis* at the nonideal level, they accept that it is ultimately coherent. (Recall that revisionism, as defined above, is the view that the ethics of war is continuous with the rest of moral and political philosophy.)

<sup>56</sup> For instance, Frowe and Lang suggest that traditional approaches are ‘strongly collectivist’. They also note that individualism (such as that endorsed by McMahan) does not mean that ‘collectives don’t matter’. Helen Frowe and Gerald Lang, ‘Introduction’, in Helen Frowe and Gerald Lang (eds), *How We Fight* (Oxford: Oxford University Press, 2014), xiii–xxxii, at xiv–xv.

<sup>57</sup> See, in particular, their debate in *Philosophia*, 34/1.

<sup>58</sup> Walzer, ‘Response to McMahan’s Paper’.

<sup>59</sup> Walzer, *Just and Unjust Wars*, 53–4. McMahan also notes the centrality played by individual moral rights in Walzer’s account of the morality of war. Jeff McMahan, ‘The Sources and Status of Just War Principles’, *Journal of Military Ethics*, 6/2 (2007): 91–106, at 94.

<sup>60</sup> Walzer, ‘Response to McMahan’s Paper’, 45.

that this is because of nonideal considerations and, in particular, because of epistemic uncertainty and the inability to target precisely those who are liable.<sup>61</sup>

To be sure, McMahan *claims* that there are differences between his account and the traditional view.<sup>62</sup> This is because he sees the traditional view as being wedded to a strong form of moral collectivism at the more ideal level, whereby membership of a collective is determinative of the *ideal* rules of *jus in bello*. Indeed, in *Killing in War*, McMahan's main target seems to be collectivist attempts to defend the principles of the moral equality of soldiers and noncombatant immunity at the *deeper*, more fundamental level.<sup>63</sup> Such accounts can be seen as *ideal collectivist accounts of the morality of war*. Yet it is not clear that others seen as traditionalists are wedded to such a strong collectivism—they seemingly endorse collectivism for nonideal reasons. In his writings on war, Walzer is part individualist, part collectivist, and seems to be heavily influenced by wanting to address the nonideal features of war.

In fact, Walzer claims that McMahan implicitly endorses the moral import of collectives for nonideal reasons.<sup>64</sup> Walzer argues that the case of the Iraqi Republican Guard, which McMahan uses as an example of those who are liable, takes McMahan away from his commitment to individual responsibility. This is because, Walzer claims, some members of the Guard were coerced and privately opposed the war. In response, McMahan argues that he does not “accept collectivization at any level”.<sup>65</sup> Yet, he admits that members of the Iraqi Republican Guard may be treated differently on the “basis of reasonable presumptions”.<sup>66</sup> In doing so, McMahan appears to adopt implicitly a form of methodological collectivism that accepts that collective responsibility is useful, on occasion, since individual responsibility cannot be ascertained, that is, he endorses a form of nonideal collective responsibility. This does collectivise the assessment but only as part of an applied, nonideal account whereby epistemic limitations have to be acknowledged. Collectivisation seems then to be used as a useful heuristic by McMahan.

Collectivism is also present in the work of Fabre. For instance, she defends political communities' collective interest in self-determination and territorial rights, stemming from the interests of the individual members within the communities.<sup>67</sup> She also notes that borders are irrelevant to fundamental human rights, but become important for reasons of freedom of association.<sup>68</sup> In addition, she admits that following the commands of an institution can be required because of nonideal, epistemic limitations.<sup>69</sup> Similarly, Shue, who is largely seen in the debates as a traditionalist, seems to accept a form of moral individualism, at least at the deeper

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<sup>61</sup> Walzer, *Just and Unjust Wars*, 335–46.

<sup>62</sup> Jeff McMahan, ‘Killing in War: A Reply to Walzer’, *Philosophia*, 34/1 (2006): 47–51.

<sup>63</sup> McMahan, *Killing in War*. The most notable idealised collectivist accounts are presented by Christopher Kutz, ‘The Difference Uniforms Make: Collective Violence in Criminal Law and War’, *Philosophy & Public Affairs*, 33/2 (2005): 148–80 and Noam Zohar, ‘Collective War and Individualistic Ethics: Against the Constriction of “Self-Defense”’, *Political Theory*, 21/4 (1993): 606–22.

<sup>64</sup> Walzer, ‘Response to McMahan’s Paper’, 44.

<sup>65</sup> McMahan, ‘Killing in War’, 47.

<sup>66</sup> *Ibid.*, 47.

<sup>67</sup> Fabre, *Cosmopolitan War*.

<sup>68</sup> *Ibid.*, 283.

<sup>69</sup> Cécile Fabre, ‘Rights, Justice and War: A Reply’, *Law and Philosophy*, 33/ 3 (2014): 391–425, at 413–14.

level.<sup>70</sup> He presents a plausible case for retaining the traditional principles of *jus in bello*, largely based on nonideal considerations that prompt collectivism. As he notes, he and McMahan seem to agree on much; they differ only in their terminology.<sup>71</sup>

This is not to deny that traditionalists, even when asserting the importance of collectivism for seemingly nonideal reasons, often give more weight to collectives than individualists. For instance, in *Just and Unjust Wars*, Walzer famously gives some weight to communal integrity in assessing the moral permissibility of humanitarian intervention, whereas others, such as David Luban and Charles Beitz, are more sceptical of the value of communal integrity when it conflicts with individual human rights.<sup>72</sup> There are, then, important debates about the *relative* weight that should be given to individual and collective moral concerns. This might take the form, for instance, of a difference about how much value should be attached to membership of a particular group for an individual. Notwithstanding, revisionists and traditionalists seem far closer on this issue than is often appreciated.

### *Differing underlying moral philosophies*

Fourth, it might be thought that there is a major difference in relation to the importance given by revisionists to certain deontological restrictions. It might be thought that revisionists offer strict deontological prescriptions, such as against the intentional killing of the innocent and the restriction on the permissions of lesser killing.

But, again, this does not seem to provide a clear faultline between those seen as revisionists and those seen as traditionalists. If those seen as traditionalists offered ideal accounts of self-defence, they might also adopt the same deontological claims as the deontological revisionists. They might take, for instance, similar views about intentions and the doing and allowing distinction. At the nonideal level, they adopt seemingly differing accounts. But this appears to be because of the various nonideal considerations, such as the need to use collectives as a heuristic. Even then, many of the accounts of Just War Theory defended by traditionalists are seen as deontological. This is perhaps to such an extent that Just War Theory is widely seen as a deontological theory.

Moreover, framing the debate in this way unhelpfully denies the possibility of a consequentialist revisionism, which has been defended by certain theorists.<sup>73</sup> In addition, there is significant dispute between leading deontological reductionists about the moral weight that should be given to deontological principles and revisionists have changed their minds about these principles and about how they should be understood.<sup>74</sup> This framing therefore seems an imprecise

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<sup>70</sup> Shue, 'Do We Need a "Morality of War"?'.

<sup>71</sup> *Ibid.*, 106 n. 47.

<sup>72</sup> Charles R. Beitz, 'Nonintervention and Communal Integrity', *Philosophy & Public Affairs*, 9/4 (1980): 385–91; David Luban, 'The Romance of the Nation-State', *Philosophy & Public Affairs*, 9/4 (1980): 392–7.

<sup>73</sup> Walter Sinnott-Armstrong, 'Preventative War: What is it Good For?' in Henry Shue and David Rodin (eds), *Preemption: Military Action and Moral Justification* (Oxford: Oxford University Press, 2007), 202–21 and, arguably, William Shaw, *Utilitarianism and the Ethics of War* (London: Routledge, 2016).

<sup>74</sup> Jeff McMahan, 'Proportionate Defense', *Journal of Transnational Law and Policy* (2014), 23: 1–36.

base on which to locate the difference between revisionism and traditionalism.<sup>75</sup>

## VII. Conclusion

In this paper, I have defended the importance of a nonideal account of the ethics of war. I have argued that the nonideal ethics of war is important because of the potential for the idealised principles to be counterproductive. I have also argued that looking to the nonideal morality of war can show that the positions of the leading figures seen as revisionists and traditionalists are somewhat closer than is often perceived, even if not fully congruent. They largely offer idealised and nonideal approaches respectively, which can be coherent, given that ideal theory is not a rival to nonideal theory, it is simply a different form of theorising.

Recognising the idealised and nonideal starting points of many of those in the field takes much of—if not all—the sting out of the critiques of both camps. On the one hand, what lies at the heart of the force of the revisionists' critique of traditionalism is traditionalists' seemingly problematic strong form of collectivism and strong rejection of the Continuation Claim. But, as we have seen, this collectivism might be only used as a heuristic (which revisionists can—and do—endorse) and traditionalists can accept the moderate rejection of the Continuation Claim that accepts that the morality of war is, at the fundamental level, continuous with the rest of political philosophy. On the other hand, what lies at the heart of the traditionalists' critique of revisionism is the need to consider the nonideal features of war. But revisionists could—and should—apply their accounts not simply to the laws of war but to the applied, nonideal features of war.

A clear implication that follows from this analysis is that there needs to be more engagement by Just War Theory with IR scholarship, in terms of the studies of particular phenomena, cases, and IR theory. To fully appreciate the unfavourable circumstances posed by specific wars and the international system in general, IR is obviously crucial, such as the (alleged) role played by anarchy, regimes, norms, and global institutions in the international system. Similarly, when deciding between particular ethical prescriptions, their comparative feasibility is an important consideration, and to understand this it is vital to look to IR. It is important, for instance, to understand the import (or lack of it) of international norms in the construction of states' interests (as highlighted by constructivists) when determining whether a state is likely to follow a particular prescription. Without a greater degree of engagement with IR, any nonideal account of the ethics of war will lack the means by which to make informed ethical assessments.

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<sup>75</sup> It might be claimed that there are other differences between revisionists and traditionalists. For instance, Seth Lazar and Laura Valentini argue that there are underlying 'proxy battles' between revisionists and traditionalists about (1) the site of justice (i.e. whether it is individual or institutional) and (2) how much *jus in bello* should reflect feasibility constraints. Seth Lazar and Laura Valentini, 'Proxy Battles in Just War Theory: *Jus in Bello*, the Site of Justice, and Feasibility Constraints', *Oxford Studies in Political Philosophy* (Oxford: Oxford University Press, forthcoming). Space precludes considering these claims in detail here, but the debate between revisionists and traditionalists does not seem to turn on these issues. First, on the question of the site of justice, it seems likely that many revisionists and traditionalists, if pressed, would accept a mixed view, where both interpersonal and institutional moral demands are relevant. Indeed, McMahan and Fabre accept that institutional demands matter; they simply think that they are *outweighed* by the importance of following interpersonal morality. Second, it is questionable whether revisionists and traditionalists adopt differing, conflicting views on feasibility. It seems that they would instead accept, along with the mainstream view, that there are different feasibility constraints for ideal theory (only 'hard' feasibility constraints) and nonideal theory (both 'soft' and 'hard' feasibility constraints).

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