

Ending Wars

Darrel Moellendorf

The Oxford Handbook of Ethics of War

Edited by Seth Lazar and Helen Frowe

Print Publication Date: Mar 2018 Subject: Philosophy, Social and Political Philosophy

Online Publication Date: Dec 2015 DOI: 10.1093/oxfordhb/9780199943418.013.14

Abstract and Keywords

This chapter discusses the morality of ending wars. It argues that there is a distinct set of moral concerns captured by the notion of *jus ex bello*. It argues that the morality of the continued prosecution of the war is not determined by its antecedent satisfaction or violation of the requirements of *jus ad bellum*. It discusses in considerable detail an issue that has been the focus of much discussion in current debates about *jus ex bello*; namely, whether the discrepancy between the ante bellum reasonable projection of the expected moral costs of the war and the subsequent actual moral costs should change our judgment of the war's morally permissible costs. And it discusses an area of *jus ex bello* that remains underexplored in current debates, but about which there was some discussion in the modern period: namely, how to end a war that ought to be ended.

Keywords: morality, wars, *jus ex bello*, *ad bellum*, *ante bellum*, ending wars

FAR more often than not, wars are abominations from the moral point view. Massive endeavours, they consume vast amounts of resources and spew out human carnage and devastation usually for no reasons other than conquest and domination. From its inception, the just war tradition has acknowledged that even the few wars that have been just are miserable human practices contrary to the better aspects of human nature. St. Augustine observes the dehumanizing character of war as follows:

For it is the wrongdoing of the opposing party which compels the wise man to wage just wars; and this wrong-doing, even though it gave rise to no war, would still be matter of grief to man because it is man's wrong-doing. Let everyone, then, who thinks with pain on all these great evils, so horrible, so ruthless, acknowledge that this is misery. And if any one either endures or thinks of them without mental pain, this is a more miserable plight still, for he thinks himself happy because he has lost human feeling.¹

One might expect, then, that in considering the morality of ending wars little more needs to be said than that the party pursuing a just war and employing just means should end the war only when the objective has been fulfilled and that the party pursuing an unjust

Ending Wars

war should cease hostilities immediately. On reflection, however, matters turn out to be more complicated.

In discussing the morality of ending wars, I use the term '*jus ex bello*'. David Rodin who independently, and more or less simultaneously, developed similar ideas about the underappreciated moral importance of ending wars suggests the terms '*terminatio law*'² or sometimes '*jus terminatio*'.³ No settled convention in favour of one or the other usage has yet emerged. I trust that readers partial to Rodin's terminology will excuse my usage in this chapter.

With the inclusion of an account of *jus ex bello*, just war theory contains at least four different sets of concerns about the morality of war, *jus ad bellum*, *jus in bello*, *jus ex bello*, and *just post bellum*. It is tempting to think of the fundamental distinction between (p. 489) these as temporal: before, during, ending, and after the war. But David Rodin makes the plausible suggestion that 'a better way of conceiving them is as articulating moral reasons appropriate to distinctive forms of moral problem generated by different aspects of conflict'.⁴ The form of the moral problem that *jus ad bellum* addresses is whether it is permissible to initiate a war. *Jus ad bellum* maintains that it is permissible to begin a war if and only if each member of a set of conditions is satisfied. Conceptions of *jus ad bellum* vary, of course, depending on the conditions included, their interpretation, and the understanding of the parties addressed by the doctrine.

What is the moral problem addressed by *jus ex bello*? One obvious answer would seem to be whether to end a war. It has in fact long been recognized that sometimes war in pursuit of just causes either should not be initiated or should be ended short of victory. Francisco de Vitoria argued that even just wars sometimes must not be pursued:

But it is clear that one may have a right to reclaim a city or province, and yet find that right nullified by a danger of provoking greater conflict. As I have said, wars should only be waged for the common good; if the recovery of one city is bound to involve the commonwealth in greater damage, for instance the devastation of several cities, heavy casualties, or rivalry between princes and the occasion of further wars, there can be no doubt that the prince should cede his right and abstain from war.⁵

And if the excessive damage, devastation, and casualties can be reckoned only after the war has started, then the *ante bellum* determination of the justness of the war would require revision. But the distinction between the question addressed by *jus ex bello* and that addressed by *jus ad bellum* also entails that wars that should not have been started might be justly continued.

Two stylized examples support these two claims. In the first example, a powerful democratic country suffers a series of devastating terrorist attacks. Several thousand civilians are killed in closely timed incidents. The leadership of the country has credible evidence that the group perpetrating the attacks is being hosted in a country that, as the result of bloody internecine conflict, fell into the hands of a religiously fundamentalist political

Ending Wars

group that is hostile to the country attacked and that instituted a series of draconian laws against the freedom of women, the education of girls, and religious minorities. There is credible evidence that the terrorist group intends additional attacks imminently. The country attacked demands that the host country immediately close the terrorist training camps, arrest the terrorist leadership, and hand them over for trial in order to pre-empt additional imminent attacks. These demands are ignored. As a response, the country attacked and its allies initiate an aerial bombing campaign and a subsequent ground invasion, with the aim of capturing the terrorist leadership, closing the terrorist camps, and overthrowing the host government. Let's suppose this war satisfies the criteria of *jus ad bellum*.

Ten years later, a new government hostile to the previous one is in power in the invaded country. The camps have been closed, the religiously fundamentalist group has been deposed, and legal progress has been made in recognizing the rights of women and religious minorities. But the remnants of the fundamentalist group are prosecuting an effective insurgency. They are in de facto control of large swathes of the country where they have implemented their draconian system of control. And in other areas they are mounting a destabilizing terror campaign. Thousands of lives have been lost, and the attacked country and its allies have no credible strategy for victory. Now it would not seem unreasonable to question the justice of continuing the war on grounds of either proportionality or likelihood of success.

The second example is suggested in Moellendorf.⁶ The initial circumstances are as in the first example, but the attempts by the powerful democracy to achieve a diplomatic solution instead of invading were not sufficiently thoroughgoing. Although the other conditions of *jus ad bellum* were satisfied, the war failed to satisfy the condition of necessity. Once the war began, diplomatic solutions were no longer available, and a victory by the fundamentalist regime would have both secured a staging ground for future terrorist activity and strengthened the fundamentalist regime vis-à-vis internal liberation efforts. Given the lack of diplomatic alternatives and the raised stakes, it seems reasonable to conclude that continued prosecution of the war is permissible. The two stylized examples give intuitive credibility to the view that it is possible that the initial determination of the justice or injustice of a war is not determinative of the morality of a subsequent prosecution of the war.

The distinction between the *jus ad bellum* judgment of the morality of the war and the *jus ex bello* judgment of its continuation is discussed more fully in the next section. In Section 3, I turn to the issue that has been the focus of most discussion in current debates about *jus ex bello*, namely, whether the discrepancy between the *ante bellum* reasonable projection of the expected moral costs of the war and the actual moral costs should change our judgment of the war's morally permissible costs. In Section 4, I discuss an area of *jus ex bello* that remains underexplored in current debates, but about which there was some discussion in the modern period: namely, how to end a war that ought to be ended.

Ending Wars

The claim that *jus ex bello* is distinct from *jus ad bellum*, *jus in bello*, and *jus post bellum* is sometimes referred to as ‘the independence thesis’.⁷ In Moellendorf⁸ and Fabre,⁹ systematic arguments are presented for the independence thesis. In this section, I discuss the independence of *jus ex bello* from *jus ad bellum*. The latter comprises several individually necessary and jointly sufficient conditions for the permissibility of resorting to war. Certain of these conditions could be taken as either belief- or fact-sensitive. In other words, the requirement stated could depend on either objective states of affairs or reasonable beliefs about those states of affairs. Although that distinction is important for assessing whether a war is justified and attributing responsibility, it makes no difference for assessing the independence thesis.

An argument for the independence of *jus ex bello* from *jus ad bellum* goes as follows:

1. Whether resorting to war is justified depends on conditions each individually necessary and jointly sufficient.
- (p. 491) 2. Each of the aforementioned conditions also applies to the justification of continuing a war.
3. After a war begins, either the states of affairs relevant to the satisfaction of one of the aforementioned conditions, or reasonable beliefs about the states of affairs, may change, such that the truth value of one or more of the individually necessary and jointly sufficient conditions changes.
4. Therefore, the morality of continuing a war is distinct from the morality of resorting to war.

Premise 3 seems true of a set of core principles, including at least just cause, proportionality, likelihood of success, and necessity.

Suppose that, *ante bellum*, a war of regime change fails to satisfy the condition of just cause but that the continued prosecution of the war is necessary, or reasonably believed to be so, in order to protect from the imminent threat of mass atrocities a large civilian population sympathetic to the cause of regime change. The cause of the war has changed, and the new one is arguably just. Parenthetically, arguably, the identity of the war is tied to its cause, in which case this is a new war.¹⁰ Regardless, however, of whether one takes it to be a new war, each of the other conditions must be re-evaluated because the primacy of just cause among the conditions of *jus ad bellum* entails that, as the cause changes proportionality, likelihood of success and necessity must be re-evaluated.¹¹ It is possible that continuing to fight is justified even though resorting to war was not.

Alternatively, proportionality and likelihood of success could change once a war begins since the unexpected is the rule in warfare. Finally, either a war that was necessary may become unnecessary as diplomatic avenues open up, or a war that was unnecessary may become necessary as the avenues close. These considerations lend credence to the third premise and hence to the conclusion that *jus ex bello* is distinct from *jus ad bellum*.

Ending Wars

There are several possible challenges to the independence of *jus ex bello* from *jus ad bellum*. Consider first Seth Lazar's claim that 'Contra Moellendorf and Rodin, there is no principled difference between the two questions: "am I justified in taking arms?" And "am I justified in not laying my arms down?" Each reduces to the same question: is fighting justified? And this question must be asked constantly'.¹² This might be interpreted as denying the independence thesis. (But, to be fair, Lazar does not deny the importance of *jus ex bello* in that paper.) For if the question of *jus ex bello* is identical to the question of *jus ad bellum*, then perhaps these are not (in Rodin's words) 'distinctive forms of moral problem'. It is true that both *jus ad bellum* and *jus ex bello* are about whether fighting is justified, but it is false that they apply to the same kind of circumstances. *Jus ad bellum* concerns the following question: should this war be started? Meanwhile *jus ex bello* concerns a different question: should this war be continued? There is good reason to believe that the truth conditions of the answers can be different even with respect to the same war. And that is the point of the independence thesis.

An objection to the independence of *jus ex bello* from *jus ad bellum* based on Michael Walzer's views is discussed in Moellendorf.¹³ Walzer claims that resistance to aggression (p. 492) is 'always justified' and is usually 'the morally preferred response'.¹⁴ According to his view, if the war is justified to begin, it remains justified as long as the threat of aggression persists because if the other conditions of the justice of a war do not require independent satisfaction, then no changed conditions—other than a changed cause—would change the morality of the war. It is, however, implausible that the other conditions of the justice of the war do not require independent satisfaction. Such a view would permit wars when a satisfactory diplomatic solution existed or when the costs in terms of civilian lives far exceed the benefits and the prospects for victory are hopeless. The view is far too permissive of war to be morally acceptable.

Moellendorf¹⁵ claims that one conclusion entailed by the independence thesis is that a war that was unjust to initiate is not necessarily unjust to continue. This is disputed in Rodin.¹⁶ His objection is based on an analogy involving wrongfully dangling a person (the dangled) out of a window. Imagine that a person engaged in such wrongful dangling (the dangler) were to have a moral conversion and appreciate the wrongness of dangling but without being strong enough to pull in the dangled. It would be wrong for the dangler to stop dangling by letting go, even though, according to Rodin, dangling is nonetheless wrong to the dangled. This is offered, by analogy, to support the following claim: 'Prosecuting a war that fails to satisfy the requirements of *jus ad bellum* is necessarily immoral. However, it may sometimes be morally obligatory to continue to prosecute an immoral war in order to avoid the commission of even worse forms of aggravated immorality'.¹⁷ If a war fails on grounds of *jus ad bellum*—in particular due to an unjust cause—but satisfies conditions of *jus ex bello*, Rodin claims that there is a dilemma 'in which one will do wrong no matter how one acts'.¹⁸ The view is that a war that is unjust to initiate is necessarily unjust, even though it might also be unjust to end it.

Ending Wars

Although Rodin claims that there is a moral dilemma in these kinds of cases owing to our inability not to do wrong, he nonetheless (and perhaps inconsistently) claims that there is a unique course of action that we morally must not take. In considering the dangling case, he asserts that, 'although dangling you from my window is wrong (and the longer I dangle the worse it is), the one thing I morally must not do is to let go'.¹⁹ If both dangling and letting go are wrong, it is unclear how one arrives at the conclusion that one must not let go. Obviously, it is correct that the dangler morally must not let go of the dangled, but that seems to refute the claim that dangling is wrong.

One way to account for the correct judgment that the dangler must not let go is to challenge the necessary wrongness of dangling the person. Once the dangler has had the moral conversion, appreciates the wrongness of the initial dangling, and seeks to save the person dangled, the continued dangling is not necessarily wrong. Presumably, the dangler's cause of dangling before the conversion was to terrify or persecute the dangled. After the conversion, the cause of dangling is to rescue the dangled. Surely, the act of rescuing, including the continued dangling as a means of rescuing, is not wrong even though it was wrong to engage in terror-dangling. This is made clear by a change in the example. A third person (the rescuer) witnessing the dangling, prior to the conversion of the dangler, rushes to the window in an effort to save the dangled. The rescuer (p. 493) rips the dangled out of the hands of the dangler. But the rescuer is incapable of hauling in the dangled and must let him dangle while yelling for help. This rescuer's action of rescue-dangling is not wrong. If that is the case, then it seems that the original dangler's post-conversion action of rescue-dangling is also not wrong. The cause of the dangling has changed and is now just. As the action changes from a case of terror-dangling to rescue-dangling, its moral value changes. Of course, it might be correct to describe these as different acts—namely, persecution and rescue—but that only serves to make clearer the point that they have different moral values. Hence, there is no real dilemma. So also with a war that was unjust to initiate. Suppose the cause is now just (and it is arguably a new war), or that it is now likely to succeed, or that circumstances have changed to make one of the other conditions previously not satisfied now satisfied. In that case, the wrong making condition no longer exists.

The response to Rodin defeats a principled rejection of the possibility that a war that was unjust to begin could become just. The changed appraisal of the war with respect to several conditions common to the *jus ad bellum* and *jus ex bello* is discussed in more detail in both Moellendorf²⁰ and Fabre.²¹

One of the most controversial issues in the emerging debates concerning *jus ex bello* is whether the actual moral costs incurred in fighting a war provide a reason to change the moral judgment made before the war began about its budget of permissible moral costs.²² In principle, the moral costs in war are manifold, but problems of commensurability among manifold costs are vexing.²³ So, I simplify the issue by considering only killing. The debate thus far has focused mainly on the conception of proportionality appropriate to a war that has proved to be more costly than originally expected. The concept of proportionality requires that the pursuit of a just cause not exceed some budget for the

Ending Wars

moral costs. Conceptions of proportionality can vary according to how these costs are counted.²⁴ One important way in which conceptions vary is in how they weigh past moral costs, in particular whether past moral costs count in a proportionality assessment or not.

Suppose that, *ante bellum*, the realization of the just cause was correctly judged to be worth no more than 10 000 killings. Moreover, a reasonable intelligence assessment projected that the just cause could be realized by killing fewer than 10 000 people. Hence, *ante bellum*, the war was correctly judged proportional. However, the war went worse than expected, and this was not due to culpable strategic or tactical failures. Perhaps freak weather conditions made prosecution of the war less accurate than it otherwise would have been. The war is 90 per cent complete, but 10 000 people have already been killed. Now a reasonable intelligence assessment projects that the war can be won at the cost of 1000 additional killings. This is a case of what Rodin²⁵ calls 'a sunk cost dilemma', which he characterizes as follows: '[A] situation in which it is morally permissible (or obligatory) to continue with a course of action that is *in toto* and all things considered wrong, because the sufficient wrong-making features of the course of action lie in the past and the action is morally permissible (or obligatory) on a forward looking basis'.²⁶ According to Rodin, these dilemmas come in two versions. In cases such as the one under discussion, continuing to fight the war mitigates, but does not eliminate, the (p. 494) wrong-making features of the action. In other cases, in which the war did not begin with a just cause, continuing to fight the war aggravates the sufficient wrong-making feature of the war.²⁷

There is considerable controversy about whether sunk costs in warfare actually create a dilemma. One view is that continuing the war in cases like the one just described would be unjust because disproportionate²⁸; hence, there is no dilemma. The original correct moral judgment about the value of fully realizing the just cause is not revised because the pursuit of the cause has proved harder than could have been expected. In contrast, another view has it that the war in pursuit of the just cause would be proportional if the remaining 10 per cent of the goal is worth killing 1000 people.²⁹ According to this view, the past killings should be fully discounted, and the question salient to proportionality is simply about the comparison between the value of realizing the remainder of the just cause and the killings required to achieve that remainder. Rodin draws an analogy to prudential reasoning, in which overall losses can sometimes be minimized by exceeding an initial limit on costs. He concludes that moral reasoning may sometimes allow a party to war to kill more than the correctly judged *ante bellum* budget in order to improve the ratio of costs to benefits.

As a matter of prudential reasoning, taking past costs as sunk costs and thus exceeding the original reasonable cost limits is surely sometimes rational.³⁰ Consider the following. Let t be some time after the beginning of the project at which the deliberation about continuing it is occurring. Let C_t be the sum of the costs from the beginning until time t , and let C_c be the sum of the projected costs incurred from t to the completion of the project. Since the C s are costs we take them to be negative numbers. Also let B be the sum of all the benefits that accrue upon completion of the project, which we take to be a positive

Ending Wars

number. As long as $B + C_t + C_c > Ct$, then it is rational to pursue the project. In other words, as long as the net benefits of completion (the benefit minus all the costs) are greater than the costs of stopping short of completion, then it is rational to pursue the project. It can be rational to complete a project even if the net benefits are negative (even if the sum on the left side of the formula is negative) as long it would be more costly to stop (as long as the right-side number in the formula is less than the sum on the left). Rodin³¹ argues that continued pursuit of a war that exceeds the *ante bellum* correctly judged budget for securing the just cause is morally permissible if the expected net moral benefits of doing so are greater than the costs of stopping in order not to exceed the *ante bellum* limit.

McMahan³² illustrates the forward-looking approach by means of a trolley argument. Imagine a trolley rolling down a track in the direction of five people whom it will surely kill unless diverted. Using a switch, a bystander could divert the trolley to another track, where it would kill only one person. The bystander's choice then is to kill one person or allow five to die. Let's suppose that the bystander morally should kill the one to save the five. But the example need not presuppose a moral symmetry between killing and letting die. Let's assume that there is some limit on permissible killing less than five people. For the sake of the example, we stipulate that the limit is three people. In other words, it would be proportional to kill up to (but no more than) three people in order to save (p. 495) five. Imagine that when the bystander first attempts to flip the switch, there is an unexpected malfunction; the trolley is not diverted, and a small explosion caused by flipping the switch kills three innocent people in the area. As luck would have it, the bystander has sufficient time to repair the malfunction and flip the switch a second time, thereby diverting the trolley, killing one more person, but saving the five.

After the accidental explosion, the choice of the bystander can be described in forward-looking terms as either to kill one person in order to save five or not to kill one and to let five die. Since by assumption it would be proportionate to kill one person in order to save five others, the correct choice is clear. But if we take account of the three people already killed, the choice is between either killing three people and letting five die or killing four to save five. Since killing four to save five is, by assumption, disproportionate, it would be wrong to flip the switch a second time. The example does not offer a compelling reason not to take account of the three already killed. It's not a compelling defence of counting only future costs.

Looking only forward when making proportionality judgments looks very congenial to the present trend in warfare, in which long wars bleed into long military occupations. Perhaps too congenial. If we consider the case of the long war in Afghanistan, fully discounting sunk costs would require proportionality judgments only in light of future killings. That would suggest that critics of the war who invoked its cumulative costs were confused about which costs proportionality counts. It would leave us with a very significant restriction of the grounds on which a war might be criticized. Perhaps it's false that the Afghan war was disproportionate; perhaps the cumulative costs were worth the value of realizing the cause. But that's to accept the critics' charge on its own terms, not to claim

Ending Wars

that they failed to make an intelligible claim because they misused the concept of proportionality.³³

Regardless of whether one believes that fully discounting sunk costs is too permissive of current wars, there is a fundamental problem with it. The forward-looking approach is consistent with there being, in principle, no stopping point to killing.³⁴ As long as the expected disvalue of the next round of killing does not outweigh the value of completing the remaining portion of the just cause, another round of killing can be justified. Building on McMahan's trolley example, it is possible for there to be infinite iterations of switch-flipping, with the effect that the number of people killed in order to save five people becomes infinite. The concept of proportionality assumes that the good of realizing the just cause of a war is, in principle, limited. But fully discounting the sunk costs allows that, in principle, one may pursue a war whose cumulative costs have no limit. This suggests that the approach is not a conception of the proportionality of a war at all. Perhaps the advocates of fully discounting sunk costs would reply that the concept of proportionality has always only been related to future costs, but since proportionality discussions have typically focused only on whether to start a war, the forward-looking character of proportionality has not been appreciated. But, as we have seen, accepting such a conception of proportionality (if it is that) would come at the cost of significantly revising the terms according to which ongoing wars may be criticized.

(p. 496) There is another issue about the costs of a war in progress that has received little critical attention, although it is recognized in Rodin.³⁵ Rather than imagining a war that it is pushing up against its *ante bellum* proportionality budget, imagine instead the remarkable case of a war whose moral costs are thus far coming in well under budget. Suppose the war is approximately half over, with no good reason to suppose the second half to be more difficult than the first, but only 20 per cent of the killings permitted by the correct *ante bellum* budget have been committed. What does the fact that the war is under the proportionality budget entail for the permissible moral costs for the second half? One view would require revising the total permissible costs downwards to approximately 40 per cent of the original limit on grounds that killing in excess of that is presumptively unnecessary. Another view would permit 80 per cent of the total costs to be incurred in the second half of the war on grounds that the actual costs of the war should not affect the budget of morally permissible costs.

There may be reasons to criticize the moral costs of a war, even if it does not exceed its *ante bellum* correctly judged budget for moral costs. Samuel Pufendorf understood these to be reasons of humanity: '[h]umanity however requires that so far as the momentum of warfare permits, we should inflict no more suffering on an enemy than defence or vindication of our right and its future assurance requires'.³⁶ This seems generally correct. But Pufendorf's point can be made more precisely. The wrong involved in the prosecution of a war that is proportionate but that could have been fought at lower moral costs is that it involves unnecessary killings.³⁷

Ending Wars

Invoking the more precise version of Pufendorf's point, a belligerent party that pursues a strategy permissive of 80 per cent of its permitted costs accruing in the second half of the war is pursuing a strategy for ending the war that is unnecessary, even if the costs are proportional to the good of realizing the just cause. A criticism on grounds of lack of necessity in this context does not entail that the war in pursuit of the just cause is per se unnecessary. Rather, if the war could be prosecuted with substantially fewer moral costs, then the war is fought in an unnecessary manner, even if the war generally is necessary. The condition of necessity, then, can be directed at the military strategy used in pursuit of the end, rather than belligerence per se. This is a familiar concern from *jus in bello*.

There are at least two distinct questions to which *jus ex bello* responds.³⁸ One is whether to continue to fight or to end the war. The other is how to end a war that should be ended. Because the latter is an account of means, it might be thought to be covered by either *jus in bello* or *jus post bellum*. Conceptually, the distinction between the second doctrine of *jus ex bello* and these other two doctrines is straightforward. The question of how to end a war is a different from the question of how a war should be fought. The former concerns the morally appropriate strategies for the cessation of conflict. The latter concerns constraints on those who prosecute a war across all its phases. The question of how to end a war is also different from the question about the constraints that a morally justified peace places on the prosecution of the war. That question is not specific to strategies for ending a war.

The distinctiveness of the question of how a war should be ended can best be appreciated by surveying the kinds of constraints on ending a war that seem reasonable. (p. 497) Moellendorf³⁹ defends five moral principles that govern the ending of a war. The first three are closely related to one another. The first of these is the principle of all due haste, which requires ending an unjust war as quickly as is reasonably possible. The idea is simple. If a war is unjust, then, prima facie, the injustice should not be prolonged. But what is reasonable to do in ending a war depends on at least two additional principles. The second principle is the principle of injustice mitigation. This principle applies insofar as the cause of the war, which should be ended, is just. Injustice mitigation requires pursuit of the just cause while the war is being wound down. An instance of this general principle is defended in Fabre⁴⁰; sometimes, a party pursuing a just cause that cannot be won is justified in not surrendering, but instead in suing for peace in an effort to achieve more of the objective that provides the just cause for war.⁴¹ Even in the case of a war that cannot be won and morally must be brought to a close, the closing should advance justice to the extent possible consistent with the constraints of morality. The third principle is moral cost minimization, which requires that a war should be ended in a manner that minimizes the moral costs that arise in the process of ending. This includes the moral costs to civilians, to the institutions of a just and peaceful social and political life, and to the country's natural resources and vital infrastructure. Preventing certain kinds of wrongs, especially gross violations of human rights, requires priority. Such prevention may require some delays in ending a war that should be ended. The requirement to minimize costs to civilians

Ending Wars

is similar to the *jus in bello* constraints that also seek to protect civilians. But the *jus ex bello* principle governs specifically the tactics of the military drawdown and withdrawal.

Two additional principles governing the ending of wars are drawn from Lazar.⁴² One is the requirement to negotiate for peace in good faith. Thomas Hobbes is well-known for arguing that fraud is a virtue in the conduct of war.⁴³ But there is a tradition of just war theorizing that holds that there are constraints on the use of fraud even during warfare. Keeping faith with one's enemies is an important theme in Book 3 of Hugo Grotius's *The Rights of War and Peace*. Samuel Pufendorf echoes a distinction drawn by Grotius between acceptable forms of wartime deceit and unacceptable breaking of faith: 'one has equal right to use fraud and deceit against an enemy, provided one does not violate one's pledged faith. Hence one may deceive an enemy by false or fictitious stories, but never by promises or agreements'.⁴⁴

Grotius makes two arguments to support the claim that promises made to enemies, especially during peace negotiations, must be kept. One argument appeals to the right, based in natural law, which a promise creates in a promisee:

From this Society founded on Reason and Speech, arises that Obligation from a Promise, which we now treat of. And we are not to imagine that, because it is permitted to tell a Falsehood to an Enemy, or because, according to the Opinion of several, there is no Harm in it . . . we may extend such Permission to the very Words we use in treating with the Enemy. For the Obligation to Truth arises from a Cause, prior to War, and perhaps may be in some Measure annihilated by War, but a Promise of itself confers a new Right.⁴⁵

(p. 498) The right of the promisee derives, according to Grotius, from the nature of speech and reason, which he takes as constitutively aiming towards the truth. What is more, a promise that takes the form of an oath is understood by Grotius to be owed not only to the promisee but to God:

[F]or Oaths have a Power to exclude all Exceptions which may arise from the Party we deal with, because therein we treat not only with Men, but with GOD, to whom we stand obliged by our Oaths, tho' there should arise no right at all to Man. . . . In things sworn it is necessary that our Words be true in that Sense, in which we sincerely believed those to whom we swear, understand them, so that we perfectly abhor their Impiety, who scruple not to affirm, that it is as lawful to deceive Men with Oaths, as Children with Toys.⁴⁶

Grotius's second argument for keeping faith with wartime enemies rests on the good of peace made possible by the preservation of the norm to honour promises with enemies. He claims that, 'We ought to preserve our Faith for several Reasons, and amongst others, because without that we should have no Hopes of Peace'.⁴⁷ The discovery that a party has been fraudulent in the negotiating process would undermine the efforts to build trust, which are necessary to achieve a negotiated settlement short of decisive victory and defeat. The argument for negotiation in good faith extends beyond the pursuit of peace in

Ending Wars

the particular conflict to the value of a strong war convention incorporating the principle of good faith. Such a convention encourages the expectation that peace might be possible by means of negotiation. That expectation can spare civilians the hell of prolonged war.

Grotius anticipates the following objection: promises made under the duress, such as credible threats of death and destruction, cannot be binding, and because negotiations for peace are made in the context in which a failure to negotiate might bring destruction, no promises during war can be binding. The objection seems strongest when the threats are of consequences that are unjust. This would be analogous to a promise made by an individual under threat. In reply, Grotius invokes the great utility of the convention to honour wartime promises:

[W]hatever promises are made in that War, or for bringing it to a Conclusion, are so valid, that tho' they were occasioned by a fear unjustly caused, yet they cannot be made void without the Consent of him to whom the Promise was made. Because as many other Things, tho' in themselves not wholly innocent, are yet by the Law of Nations reputed just, so is Fear, which in such a War is occasioned on either Side; for it were not allowed, such Wars, that are but too frequent, could be neither moderated, nor concluded, which yet are very necessary to be done for the good of Mankind.⁴⁸

Allowing that promises made in war in response to the unjust threat of force are nonbinding would be devastating to the maintenance of a wartime norm to keep faith in negotiations because such promises are a typical feature of wartime negotiations. But (p. 499) because that convention is immensely valuable to peace efforts, even promises in war that respond to unjust threats to use force should be taken as binding.

Although there are good moral reasons for the principle of keeping faith, it might seem unreasonable to take it as an absolute requirement. A lesser evil argument suggests that the principle is defeasible.⁴⁹ Suppose the following: a party seeking negotiation has been pursuing a war to prevent genocide; by means of fraudulent negotiating a victory would be nearly certain, and the continued fighting in pursuit of the victory would be proportional. Under such extreme conditions, negotiating in bad faith seems justified. Presumably, conditions in which a compelling lesser evil argument can be made will be very rare. And if there is to be a strong war convention that incorporates the principle of good faith in peace negotiations, the instances of bad faith would have to be few.

The other relevant principle defended in Lazar⁵⁰ is that no party to a peace negotiation is morally entitled to make demands merely on the basis of advantages acquired in war. A party ending a war has no entitlements based only on success in war. If the party was not entitled to, say, the territory prior to the war, it is not entitled to it simply because it was acquired in the war. The claim rests on the familiar distinction between the just entitlement to a good and the de facto enjoyment of the good, and its general acceptance and enforcement would discourage wars in pursuit of conquest. Rodin⁵¹ rejects the principle of no war-based entitlements on the grounds that it makes negotiations impossible: 'it would also seem to imply that meaningful negotiation to end war is impermissible, since

Ending Wars

all negotiation grounds post war entitlement at least partly in war gains'.⁵² One way to press this point is to notice that, in all wars, at least one side is unjust, and often both are. When parties fighting unjustly negotiate, they are likely to make claims that are also unjust. But we want parties to pursue peace by means of negotiation so we should not criticize negotiating claims that are unjust. That view, however, is implausible because it would reduce the primary category of criticism of the negotiating stance of parties to the strategic and tactical. The charge that a party is acting ineptly in negotiations might sometimes be appropriate, but it appeals only at its own interests. Parties may also make demands that they are unjustified in making. And it is important to evaluating the claims of other parties, observers, and historians that such criticism is recognized as possible. Of course, we often want warring parties to negotiate, but we need not abandon moral criticism of their negotiating claims in order to facilitate negotiation. Parties will often have plenty of self-interested reasons to negotiate, even if they come under moral criticism for the stances they assume in negotiations.

Negotiations do not necessarily cause states to relinquish that to which they have no rights. Fabre distinguishes between a just peace and an all-things-considered-justified peace: '[a] just peace is one in which the wronged party obtains redress for the rights-violations and (justified) rights-infringements to which it was subject'.⁵³ Whereas in an all-things-considered justified peace 'the wronged party receives less than what it is owed for the sake of peace and can be reasonably expected to consent to such terms'.⁵⁴ There can be a lesser evil justification for a party to concede matters to which it is morally entitled in order to shorten a costly war that it cannot win. Insofar as that is the case, then there is reason for negotiations even when a party is being unreasonable.

(p. 500) The moral status of a war at its commencement does not determine its moral status once the fighting begins. War changes things; it can even change the moral status of the war itself. Exactly how and under what conditions this occurs requires philosophical clarity. Although there is a discussion of the morality of ending wars that goes back at least as far as early modern political philosophy, in recent debates in just war theory, the questions of whether and how to an end a war have received comparatively little attention. In so far as these are morally important questions, and distinct ones from those that have been the focus of most just war theorizing, there is reason to consider them more carefully and thoroughly. There are encouraging signs from recent debates that this is starting to occur.

Acknowledgements

I would like to thank Helen Frowe and Seth Lazar for very helpful comments on an earlier version of this chapter.

Ending Wars

Notes:

- (1.) St. Augustine, *The City of God*, bk. 19, ch. 7. In *Nicene and Post-Nicene Fathers*, First Series, vol. 2, edited by Marcus Dods, Philip Schaff, and Kevin Knight (Buffalo, NY: Christian Literature Publishing, 1887), <http://www.newadvent.org/fathers/120119.htm>.
- (2.) David Rodin, 'Two Emerging Issues of Jus Post Bellum: War Termination and the Liability of Soldiers for Crimes of Aggression', in *Jus Post Bellum Towards a Law of Transition From Conflict to Peace*, edited by Carsten Jahn and Jann K. Kleffner (The Hague: TMC Asser Press, 2008).
- (3.) David Rodin, 'The War Trap: Dilemmas of *Jus Terminatio*'. *Ethics* 125 (2015).
- (4.) Idem, 2.
- (5.) Francisco de Vitoria, 'On the Law of War', in Vitoria, *Political Writings*, edited by Anthony Pagden and Jeremy Lawrence (Cambridge: Cambridge University Press, 1991), 314, para. 33.
- (6.) Darrel Moellendorf, 'Is the War in Afghanistan Just?' *Imprints: A Journal of Analytic Socialism* 6 (2002) <http://eis.bris.ac.uk/~plcdib/imprints/moellendorf.html>.
- (7.) Bradley J. Strawser, 'Reply to Moellendorf', paper presented to Oxford Institute for Ethics of Law and Armed Conflict Conference 'Ending Wars', 30-31 August 2012.
- (8.) Darrel Moellendorf, '*Jus ex Bello*', *Journal of Political Philosophy* 16 (2008), 123-136.
- (9.) Cécile Fabre, 'War Exit', *Ethics* 125 (2015).
- (10.) For a discussion of the relationship between just cause and the identity of a war, see Darrel Moellendorf, 'Two Doctrines of *Jus ex Bello*', *Ethics* 125 (2015), 19-20.
- (11.) Jeff McMahan defends the priority of just cause in his 'Just Cause for War', *Ethics & International Affairs* 19 (2005), 1-21.
- (12.) Seth Lazar, 'Endings and Aftermath in the Ethics of War'. CSSJ Working Papers Series, No. SJ016, November 2010, http://socialjustice.politics.ox.ac.uk/materials/SJ016_Lazar_Endings&Aftermath_War.pdf, 3-4
- (13.) D. Moellendorf, 'Two Doctrines of *Jus ex Bello*'.
- (14.) Michael Walzer, *Just and Unjust Wars*, 4th ed. (New York: Basic Books, 2006), 51.
- (15.) D. Moellendorf, '*Jus ex Bello*'.
- (16.) D. Rodin, 'The War Trap'.
- (17.) Idem., 20.
- (18.) Idem, 2.

Ending Wars

- (19.) *Idem.*, 13.
- (20.) D. Moellendorf, '*Jus ex Bello*'.
- (21.) C. Fabre, 'War Exit Ethics'.
- (22.) D. Rodin, 'Two Emerging Issues of *Jus Post Bellum*'.
- (23.) Walzer suggests that these render proportionality judgments fatuous. *Arguing About War* (New Haven/London: Yale University Press, 2004), 89–90.
- (24.) The concept/conception distinction derives from John Rawls, *A Theory of Justice*, rev. ed. (Cambridge, MA: Harvard University Press, 1999), 9.
- (25.) D. Rodin, 'The War Trap'.
- (26.) *Idem.*, 12–13.
- (27.) *Idem.*, 13.
- (28.) C. Fabre, 'War Exit Ethics'; D. Moellendorf, 'Two Doctrines of *Jus ex Bello*'.
- (29.) Jeff McMahan, 'Proportionality and Time', *Ethics* 125 (2015); D. Rodin, 'Two Emerging Issues of *Jus Post Bellum*' and 'The War Trap'.
- (30.) D. Moellendorf, 'Two Doctrines of *Jus ex Bello*'.
- (31.) D. Rodin, 'The War Trap'.
- (32.) J. McMahan, 'Proportionality and Time'.
- (33.) For a discussion of the proportionality of the Afghan war see Richard W. Miller, 'The Ethics of America's Afghan War', *Ethics and International Affairs* 25 (2011), 103–132, and the responses, including Jeff McMahan, 'Proportionality in the Afghan War', *Ethics and International Affairs* 25 (2011), 143–154, and Darrel Moellendorf, '*Jus ex Bello* in Afghanistan', *Ethics and International Affairs* 25 (2011), 155–164.
- (34.) D. Moellendorf, 'Two Doctrines of *Jus ex Bello*'.
- (35.) D. Rodin, 'Two Emerging Issues of *Jus Post Bellum*'.
- (36.) Samuel Pufendorf, *On the Duty of Man and Citizen According to Natural Law*, edited by James Tully, translated by Michael Silverthorne (Cambridge: Cambridge University Press, 1991), 169.
- (37.) See also Seth Lazar, 'Necessity in Self-Defense and War', *Philosophy and Public Affairs* 40 (2012), 6. And see page 18: 'There might be several proportionate options, only one of which satisfies necessity'. The precise relationship between judgments of proportionality and necessity requires careful philosophical analysis. An intuitively plausible view is that they make different comparisons. Necessity compares the moral costs of vari-

Ending Wars

ous means, whereas proportionality compares the costs of a particular means to the value of the just cause. But Lazar takes proportionality judgments to involve comparing the harm imposed by each available option against the harm suffered by doing nothing, and he takes necessity judgments to involve pairwise comparisons of all available options to find the least harm-imposing (19). If doing nothing is an available option, then satisfying necessity will require satisfying proportionality (18). And Thomas Hurka offers a reading of the necessity requirement as a kind of proportionality requirement compared to other means of achieving the end of the war in his 'Proportionality in the Morality of War', *Philosophy and Public Affairs* 33 (2005), 37.

(38.) D. Moellendorf, 'Jus ex Bello' and 'Two Doctrines of Jus ex Bello'.

(39.) D. Moellendorf, 'Two Doctrines of Jus ex Bello'.

(40.) C. Fabre, 'War Exit' *Ethics* 125 (2015).

(41.) Idem, 6.

(42.) S. Lazar, 'Endings and Aftermath in the Ethics of War'.

(43.) Thomas Hobbes, *The Leviathan*, in *The English Works of Thomas Hobbes* vol. III, edited by Sir William Molesworth (London: Bohn, 1839-45), ch. 13, 73. http://files.libertyfund.org/files/585/Hobbes_0051-03_EBk_v6.0.pdf.

(44.) S. Pufendorf, *On the Duty of Man and Citizen*, 169.

(45.) Hugo Grotius, *The Rights of War and Peace* Bk. III, edited by Richard Tuck (Indianapolis, IN: Liberty Fund, 2005), 1535.

(46.) Idem, 1226.

(47.) Idem, 1638.

(48.) Idem, 1543-1544.

(49.) D. Moellendorf, 'Two Doctrines of Jus ex Bello'.

(50.) S. Lazar, 'Endings and Aftermath in the Ethics of War'.

(51.) D. Rodin 'The War Trap'.

(52.) Idem, 18, fn. 28.

(53.) Fabre, 'War Exit' *Ethics*, 11.

(54.) Ibid.

Darrel Moellendorf

Ending Wars

Professor Darrel Moellendorf, Goethe-Universität Frankfurt, Institut für Politikwissenschaft