

Just-War Theory: A Reconceptualization

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Just-War Theory has long been the “received” answer to the question of when it would be permissible to go to war. Or perhaps it would be more proper to say that the Just-War Tradition has been the received way to go about formulating an answer. There have, after all, been divergent opinions among those calling themselves Just-War Theorists about such questions as whether initiating a war would ever be justified, and how stringent is the immunity of non-combatants from direct attack. Nevertheless, there is, among virtually all the theorists in this tradition, and despite superficial differences in formulations, a broad consensus as to what it is that makes a war justified.

It seems to me that the tradition does represent the right approach to the questions of morality and war. But the purpose of this essay is not to defend that supposition. That I leave for another day. What I want to do here is rather to make two other contributions to Just-War Theory. First, I want to look at the way Just-War Theories have come to be formulated in recent years. I believe that the theory can be reformulated in a way which would make it conceptually cleaner than it is in the most popular current formulations. Second, I want to look at the question of exactly what it is that the Just-War Theory is supposed to be evaluating. Although the answer, in one sense, is obviously “war,” that answer is ambiguous. I believe that resolution of that ambiguity together with the reformulation just mentioned can help to solve some of the problems which earlier formulations of the theory have left unresolved.

In Part I, I will discuss the currently popular formulations of the Just-War Theory and their shortcomings. In Part II, I will discuss the proper object of evaluation of the Just-War Theory. In Part III, I will reorganize the criteria. Part IV will discuss the advantages of my account of the theory over the standard account. And Part V will show how the this new account illumines what might otherwise have been a puzzling feature of the law of reprisals.

I. The Received Formulation of the Just-War Theory

Actually, the central insights of the Just-War Tradition tend to be formulated in two different ways. And curiously, these two formulations, though not incompatible, seem to run off in somewhat different directions.

The first formulation might be called the “Double Judgment” Account. It is nicely captured in one of the early chapters of Michael Walzer’s book, *Just & Unjust Wars*.¹ There Walzer writes:

The moral reality of war is divided into two parts. War is always judged twice, first with reference to the reasons states have for fighting, secondly with reference to the means they adopt....The two sorts of judgment are logically independent. ...The dualism of *jus ad bellum* and *jus in bello* is at the heart of all that is most problematic in the moral reality of war.²

To put the theory in terms of key theses, we might say that the Just-War Theory limits both the *jus ad bellum* (i.e., the right to go to war), and the *jus in bello* (i.e., what a state has the right to do in prosecuting a war):

- (1) There are times when it would be wrong to go to war; and
- (2) There are things that it would be wrong to do even in a justified war.

Of course, one might want to call such a formulation not so much a theory as a theory sketch, or a theory proposal. After all, the Just-War Theory will not really be very helpful until it gives us some detail about when exactly it is that it would be wrong to go to war or what exactly it is that would be wrong to do even in a justified war.

Nevertheless, there is some point in drawing attention to this formulation of the Just-War Theory. It brings out an important distinction between two different kinds of things which one might want to say about morality and war. This helps resolve what might be called the “Rommel dilemma.” Many people find General Erwin Rommel a generally admirable figure. But how could one possibly make a positive assessment of an officer who did everything he could to protect the Third Reich? Surely the positive assessment comes from the fact that, though Rommel was engaged in prosecuting a manifestly unjust war, he invariably and scrupulously adhered to the rules of war, and refused to obey Hitler’s orders to violate them. That is to say, the two above-mentioned judgments are (properly) separated. Then, Rommel is given a positive rating on the basis of the second, while his failure with respect to the first is, all too charitably, overlooked. This insight does not, of course, make up for the radical incompleteness of this first formulation, but we do want to make sure that, in remedying the incompleteness, we do not overlook the importance of separating the two judgments.

The second way of formulating the Just-War Theory, what might be called the “Seven-Criteria List,” seems to do just that. This list, which appears with only minor modifications in nearly all the modern treatments of

¹ New York, 1977.

² P. 21.

the Just-War Theory³ says that a war must be evaluated against the following criteria:

1. Legitimate Authority
2. Just Cause
3. Proportionality
4. Last Resort
5. Prospect of Success
6. Right Intention
7. Just Conduct

This list goes a long way towards solving the completeness problem. Of course, one would still need to know just what counts as a just cause. Are wars of self-defense the only wars which are just? Or are some of what, in more plain-speaking times, were called offensive wars also sometimes just? (The kind of wars at issue here are, for example, Tanzania's invasion of Uganda, or India's of East Bengal). But despite what remains to be done, much is already ruled out by the Seven-Criteria List—wars over trivial injustices, wars motivated by hatred or expansionism (even when precipitated by a just cause), &c. Nevertheless, the Seven-Criteria List has problems of its own.

First, by listing just means as a criterion along with just cause, proportionality, right intention and the others, the Seven-Criteria List obscures the insight of the Double Judgment Account. The fact that, as Walzer puts it, “every war can be judged twice” is completely masked. There is no way that one could guess that these two judgments are distinct, coordinate, and of equal importance by looking at the Seven-Criteria List.

Second, the list lacks organization. Lists of seven things are, to my mind, *prima facie* suspect. The world may be that complex, but if the criteria could be organized, related to one another in some way, the theory would be improved. (I will, of course, argue that it can be so organized.)

Third, there is a residual incompleteness problem, one first raised by James Childress:

There are...issues...inadequately addressed by contemporary just-war theorists...: When public officials apply these criteria to particular wars, should they apply them in any particular order? Do some criteria have more weight than others? Is a serial ordering possible?⁴

Childress lists several possible answers to these questions, but does not go farther than to make a tentative suggestion as to which of these answers

³ James F. Childress, “Just-War Criteria,” in *Moral Responsibility in Conflicts* (Baton Rouge: Louisiana State University Press, 1982); Joseph McKenna, “Ethics & War: A Catholic View,” *American Political Science Review*, 54 (1960), 647-658; John C. Murray, S.J., “The Uses of a Doctrine of the Use of Force,” in *We Hold These Truths* (New York: Sheed & Ward, 1960); National Council of Catholic Bishops, *The Challenge of Peace: God's Promise & Our Response* (Washington: United States Catholic Conference, 1983); Ralph Potter, “The Moral Logic of War,” *McCormick Quarterly*, 23 (1970), 203-223.

⁴ Childress, *op. cit.*

might be right. His list of possible answers, slightly compressed, is: (1) that the seven criteria might be individually necessary and jointly sufficient to make a war justified; (2) the criteria might just express the kinds of things to look for without being individually necessary; or (3) the criteria might just express a set of *prima facie* duties which could be outweighed by competing considerations.

For these three reasons, then, I believe that the Just-War Theory still needs work. It is, I believe, not the fundamental approach that is flawed, but the details of the formulation. In what follows, I want to reformulate the list of criteria. I think that such a fix will not only provide conceptual neatness, but answer the problems posed by Childress.

II. The Proper Object of Evaluation of the Just-War Theory

I want to begin my new conceptualization of the Just-War Theory by getting clear about just what the theory is supposed to evaluate. I said in my introduction that the answer “war” was ambiguous in a way that causes confusion. That ambiguity stems from the fact that there are two contexts in which moral judgments might be made about a war. First, an historian might want to make a judgment about a certain war taken as a whole. Thus the authors of *The Wars of America* attempt to make a moral assessment of all of America’s major wars. And similarly, some people want to say that the Viet Nam War was an unjust war. These people are making judgments of this first type. Second, a soldier, citizen, or political leader might evaluate a war as something he is being asked to engage in. That is, he might ask himself whether he can, in good conscience, fight in the war. Keeping this distinction in mind, I want to make several points.

First, moral theories are, in the first instance, guides to conduct. As such, their primary and most natural object of evaluation is an individual human action. (In saying this, I do not mean to deny that they might also be used to evaluate institutions, such as slavery, or capitalism, or imprisonment.)

Second, a war, taken as a whole (the natural object of the historian’s judgment), is neither a human action nor a human institution. It is rather a composite of human actions, what might be called a human enterprise.

Third, as a consequence of the first two points, making moral judgments about a war will be facilitated if we resolve the war into its constituent actions, and then evaluate each one. Concretely, we can ask about each legislator whether he was justified in voting for a declaration of war, about each soldier whether he was justified in going to war, about each military operation (or even each action), whether it was in accordance with the moral rules of war, &c. The point is not that half of the legislators might be justified in voting for the war, and half not, or that the legislators might be justified in voting for the war but the soldiers not justified in fighting it. The point is rather that the criteria are set up for evaluating individual actions and may go out of focus if applied to something else. Right intention is a particularly salient example. The intention of an individual political leader or

soldier can, at least in principle, be identified and evaluated. But the very concept of the intention of the United States in the Viet Nam War, for example, is obscure at best. Some people supported the war because they thought it America's obligation to protect the interests of the South Viet Nameese; other people supported the war because they thought it was in America's interest (perhaps without even giving South Viet Nam's interest a thought). There is no reason to believe that there always is a common intention for a nation taken as a whole. We can, of course, make some kind of summary of the judgments we make about the constituent actions that go to make up a war. Indeed such a summary may be useful in some contexts. But failure to keep the two kinds of judgments separate gives rise to some of the objections and puzzles that have been raised about Just-War Theory, as I hope to show shortly.

Fourth, the Double Judgment Account correctly identifies the two basic kinds of action that go into making a war, namely going to war and conducting military operations. It might be thought that "going to war" is essentially the same thing as initiating a war, and hence is something that is primarily an act of government leaders. But that is not what I want the term to mean here. Not only countries as a whole, but individual citizens of that country, go to war. Even if the war is already in progress, the individual citizen must decide whether to enter the war by enlisting. (Similarly neutral governments must sometimes decide whether to enter a war already in progress.) Going to war is thus one kind of action in need of evaluation. But going to war is only the first of the individual actions that will have to be evaluated. Once he has declared or entered a war, the individual (be he leader or soldier) will have to make a large number of decisions about how the war is to be conducted (or how he will conduct himself in the war). Hence, the second basic kind of action.

Finally, we will need a set of criteria against which we can evaluate each kind of action. I will argue below that this fact gives rise to two lists of criteria which appear quite different in the standard formulations, but which are in fact only superficially different, and which respond to exactly the same general principles.

III. A Reorganized List of the Criteria of a Just War

With these preliminary remarks out of the way, let us return to a listing of the criteria. Let us begin by reviewing the formulation of St. Thomas. In the *Summa*⁵ he raises the question whether waging war is always a sin. His answer is:

For a war to be just, three things are required: First, it requires the authority of the prince.... Second, it requires a just cause.... And third, it requires a right intention on the part of those waging the war.

⁵ Q. 40, a. 1.

Why does he list only three criteria? Or, since someone might answer that it is just because he did not think of the rest, why should we return to a formulation of the Just-War Theory like that of St. Thomas? The answer, I believe, has two parts.

First, let us consider Proportionality, Last Resort, and Prospect of Success.⁶ The first two, at least, clearly must belong to any adequate list of the criteria of a just war. How could it be justified to initiate a costly war to rectify a trivial wrong? And above all, how could it be permissible to go to war when peaceful alternatives are still available? (Prospect of Success will be left aside as a rather more complicated case.) These are legitimate criteria and they must be included in a complete list of the criteria of a just war. But I do not think that they are on a par with the three criteria listed by St. Thomas. Rather, I think that they are considerations that determine whether there is, all things considered, a Just Cause for war. In St. Thomas' own explication of the criterion of Just Cause, he concentrates on what might be called the question of Precedent Wrong. His explication is not extensive. He confines himself to quoting St. Augustine:⁷

A just wars would be one that avenges wrongs: when a nation or state has to be punished, for refusing to make amends for the wrongs inflicted by its subjects, or to restore what it has seized unjustly.

Surely the fact of such a Precedent Wrong having occurred is a necessary condition of there being a just cause for war. And, of course, one might use the words "Just Cause" to refer only to there being such a Precedent Wrong. But one might also use the same words in a broader sense. One might say that trivial Precedent Wrongs do not constitute a just cause for war. One might even say that one does not have a just cause for war when peaceful ways of righting the wrong are still available. Then, one would have brought all of the substantive criteria—Precedent Wrong (the old Just Cause), Last Resort, and Proportionality—together under one head, in contrast to the procedural criterion (Legitimate Authority) and the internal one (Right Intention). The added criteria, when properly understood, are thus seen as a commentary on, not an addition to, St. Thomas' list.⁸

The second part of my answer will be an explanation of what happened to the criterion of Just Conduct. I do not want to deny the importance of the injustices it is established to condemn. Surely there *are* limits to what can be done even in a just war. But, as I suggested earlier, the Seven-Criteria List obscures the fact that we need to divide the question of morality and war into two parts, along the lines suggested by the Double Judgment Account. That is, we must ask both whether it is ever even permissible to go to war and

⁶ The analysis of Just Cause offered in this paragraph is not novel. But it is, for some reason, not the way in which the theory is usually expressed.

⁷ *Quaest. in Heptateuch.*, l. 4, q. 10 super Ios. 8,2.

⁸ To the extent that Prospect of Success is a criterion of a just war, it also can be treated as a *sine qua non* of there being, all things considered, a just cause for war.

what it is permissible to do in war. St. Thomas is, in the first instance, offering an answer to the first of these questions. And one can answer that question without at the same time pointing out that there are limits to what one can do in a war. St. Thomas certainly believed in such limits for in the very question just cited,⁹ he discusses the permissibility of ambushes and of fighting on holy days. Although he does not object to either of these actions, he does argue in passing that breaking promises made to the enemy would be immoral. Elsewhere in the *Summa*¹⁰ he argues that there are no circumstances in which it would be permissible to kill an innocent person. Although he does not explicitly relate this issue to war, there is no reason to believe that war is exceptional in this respect.

St. Thomas does not explicitly offer any criteria for judging particular actions in war. And the modern Just-War Theorists have, I believe, said rather less than could be said on this point. Perhaps the Seven-Criteria List distracts them from the importance of this undertaking, though the problem is not left entirely undiscussed. If the List provides the standard account of the morality of going to war, perhaps the criteria of Proportionality and Discrimination (or Non-combatant Immunity) might be listed as the standard sub-criteria for resolving questions of just conduct in war. To the best of my knowledge, only William V. O'Brien¹¹ goes farther. To these two criteria, he adds a third—Prohibited Weapons and Tactics. I believe that all of this is right as far as it goes. Proportionality and Discrimination are criteria of just conduct. And there are weapons and tactics that are morally prohibited, though I do not think that this represents a *fundamental* criterion. But all of this provides less than a full account of the *jus in bello*.

I believe that we can get a fuller account of the morality of actions in a war by relying on the same set of criteria St. Thomas used to evaluate the morality of going to war. To adapt the words of St. Thomas,

To be just, an action in a war must meet three conditions: First, it must have the authority of the prince.... Second, there must be a just reason for doing it.... And third, the intention of the person performing the action must be right.

Since I am taking the general correctness of the Just-War Theory for granted in this essay, I did not defend the appropriateness of these criteria as criteria of the right to go to war. But since it is one of the contributions of this paper to suggest that these criteria are equally applicable to any particular action within a war, I want to say a word about what it would be for a particular action in a war to violate one of these criteria, and why an action which did so would be unjustified. In the process of doing so, I will show how my

⁹ At aa. 3-4.

¹⁰ IIa IIæ, Q. 64, a. 6.

¹¹ In *The Conduct of Just & Limited Wars* (Praeger, 1981), pp. 19-33.

account subsumes the insights about just conduct already current in the literature.

First, what does it mean to impose the criterion of legitimate authority on individual actions in a war? Once the war has been undertaken by the duly appointed agents of the community (whether by president, legislature, or whatever), what more authority does the soldier need? This question overlooks the existence and significance of rules of engagement, truces, and the like. As an example of a case in which the *jus ad bellum* criterion of legitimate authority is (arguably) met, while the *jus in bello* criterion of legitimate authority clearly is not, consider an incident which occurred during the Viet Nam War.

Offensive operations against North Vietnam ended on 31 October, 1968, but in accordance with the “understanding” reached in Paris, unarmed reconnaissance flights continued. When the North Vietnamese began to shoot occasionally at these planes, armed escorts were provided, and these escort planes retaliated against anti-aircraft sites that attacked American aircraft. The ROE [Rules of Engagement] limited the authority to strike back to the area south of the 19th parallel. They also required that such strikes be an immediate response to enemy aircraft or SAM/AAA (anti-aircraft artillery) sites which had actually taken aggressive action against allied planes.¹²

Many military officers resented these restrictions, believing that they imposed undue risks on the airmen who flew the reconnaissance missions and that they permitted a military buildup which would ultimately endanger the lives of American and South Vietnamese soldiers. Therefore, between November 1971 and March 1972, General John D. Lavelle, commanding officer of the Seventh Air Force, authorized some 28 missions against a variety of targets which the rules of engagement forbade him to bomb. But the war was not General Lavelle’s to conduct. Without even looking at the details of the targets, &c., we can say that his actions, because they lacked legitimate authority, were morally wrong.

Right Intention can also be applied to individual acts in war, quite independently of its application to the war as a whole. Just as an individual soldier can be evaluated with respect to why he enlisted to fight a given war, so he can be evaluated with respect to why he performed any particular action. It is possible for his intention with respect to enlistment to be fully correct (perhaps he enlisted in order to protect democracy from totalitarian aggression), and his intention with respect to a particular action in the war to be wrong. Perhaps he has come to hate the enemy and to kill them not out of necessity but out of hatred. Or perhaps he just kills one enemy soldier out of hatred or a desire for revenge. Then we might say, even if his killings are objectively justified, that he has done (or in one action did) wrong.

¹² Guenter Lewy, *America in Vietnam* (Oxford, 1978), p. 406.

Finally, Just Cause can be applied to the evaluation of each particular action. And, just as for questions of the *jus ad bellum*, so for the *jus in bello*, there are several particular questions to be asked. The first criterion of the *jus ad bellum* was Precedent Wrong. If a nation had not committed a wrong, there can be no justification to go to war against it. Similarly in the *jus in bello*. If the individual being attacked is doing nothing wrong, there is no justification for attacking him. Hence one must discriminate between legitimate (nocent) and illegitimate (innocent) targets. Non-combatants (among others) are immune from direct attack. So, as a counterpart to the criterion of Precedent Wrong we have the Principle of Discrimination and, as one of its rules, Non-combatant Immunity.

Careful thought about what is ruled out by the old *jus in bello* criterion of Proportionality reveals counterparts to both the *jus ad bellum* criteria of Proportionality and that of Last Resort.

The most straightforward way of going wrong with respect to Proportionality is by permitting excessive collateral damage. Absolute judgments of disproportionality are notoriously hard to make in any but the grossest cases. Indeed some critics of the Just-War Theory claim that this is a fatal flaw of the theory. I do not think the situation is as grim as that, though I wish someone could say more about how these calculations are to be made. One helpful suggestion was made by Prof. Joseph Boyle at the ACPA meeting in Pittsburgh a few years ago. There he suggested that the test could be made by posing the question, whether the collateral damage would still be considered acceptable if one were faced with the prospect of suffering it rather than with the opportunity to inflict it. If 2000 of one's own civilians would be an unacceptably high price to pay, then 2000 casualties is too high a death toll among civilians simpliciter, no matter what their nationality. We might call this aspect of Proportionality, the Excessive (Collateral) Damage Criterion:

One is not permitted to cause harmful side effects out of all proportion to the good one expects to gain.

This criterion seems to correspond in a straightforward way to the *jus ad bellum* criterion of Proportionality.

But there are other ways of going wrong in military operations. Imagine, for example, being assigned to destroy either of two enemy supply depots. One of the depots is located in a heavily populated area; the other, a similar depot, is located at a remote site, far from any built-up areas. Each of the two alternative courses of action would yield the same good (viz., destruction of enemy war materiel), but they yield markedly different side effects. Suppose further that the good to be achieved by the destruction of either of the depots is so great that the collateral damage which would result from attempting to destroy the depot in the city is not *per se* disproportionate to the good of destroying the depot. Surely, the choice to bomb the depot in the city rather than the depot at a remote site is morally

objectionable. Although one *might* say that the reason such an action is wrong is that it violates the criterion of Proportionality, one could not say that it did so in the manner discussed in the preceding paragraph. The operative moral rule might be stated as follows:

One may not do in a more costly way, what could equally well be done in a less costly way.

This rule corresponds to the Principle of Military Necessity, which one military publication characterizes as:

the principle which justifies measures not forbidden by international law which are indispensable for securing the prompt submission of the enemy.¹³

The principle is understood to include the condition that

the force used is no greater in effect on the enemy's personnel and property than needed to achieve his prompt submission.¹⁴

In other words, the Principle of Military Necessity is, properly speaking, the principle without which there would be no justification for any military operations at all. It is a necessary, but not a sufficient, condition for an act of war that it have some military utility. Or in other words, the Principle of Military Necessity states that actions which are not militarily necessary are not justified. But unfortunately, to many people the term "Military Necessity" suggests instead an open-ended permission. They seem to believe that military necessity is (or that the principle cites) a sufficient condition for a military operation, that the principle reads, "Actions which are militarily necessary are justified." The military manuals are explicit that

the principle of military necessity is not the 19th century German doctrine of *Kriegsraison*, asserting that military necessity could justify any measures—even in violation of the laws of war—when the necessities of the situation purportedly justified it.¹⁵

But using the term will inevitably create confusion. So perhaps instead we could call this the Unnecessary Damage Criterion. Just as the Excessive Damage Criterion corresponds to the *jus ad bellum* criterion of Proportionality, so the Unnecessary Damage Criterion seems to correspond to the criterion of Last Resort. In our example, the destructive raid on the depot near the city (with its collateral damage which there is an obligation to avoid

¹³ *Air Force Pamphlet 110-31. International Law—The Conduct of Armed Conflict and Air Operations.* 19 November 1976. Pp. 1—5-6.

¹⁴ *Ibid.*

¹⁵ *Ibid.*

if possible) was not the last resort since there was still left the less damaging, but equally effective raid on the second depot.

IV. A Solution of the Completeness Problem

Let us now return to the question of whether all the criteria must be met if a war is to be considered just. The problem that some people see here is that every war, it would seem, fails some criterion or other, but not all wars seem unjust. The Allied effort in World War II, for example, fails the old criterion of Just Conduct on account of the raids on Hamburg, Dresden, Hiroshima, &c. but many people take it, despite these problems, to be almost the paradigm of a just war. But to say that a war is just as long as it meets most of the criteria sounds unacceptably lax. Does that mean that it would be morally permissible to violate a few of the criteria as long as most of them are respected? The way out of this dilemma is to rely on the distinction between evaluating the war as a whole (i.e., as a human enterprise) and evaluating the individual actions which make it up. The answer to the question, whether all the criteria must be met, depends on which question is being asked.

When the question is about a war as a whole, then the criteria can be used as an ideal standard. If most of the criteria are met, we may say the war was just. For example, World War II (on the part of the Allies), could be called a just war, on the whole, even though the Allies should not have done some of the things they did. The reason is that they met most of the criteria. One can do the same with at least some of the other criteria. Thus one might without risking incoherence, believe any of the following things.¹⁶

- (1) The Viet Nam War was justified even though it lacked Legitimate Authority in the full sense. (I.e., it should have been preceded by a declaration of war, not just a congressional resolution.)
- (2) The Israeli preemptive attack in the Six-Day War was justified, even though Israel might have tried yet a few more diplomatic remedies. (I.e., there was a *casus belli* and the Israelis did not attack out of bellicosity; they just were insufficiently imaginative or insufficiently attentive to alternatives.)
- (3) The Argentines were justified in finally using force to evict the British from the Falklands, even though it must be admitted that the real concern of the junta was not so much rectification of an injustice as it was boosting their sagging popularity.

One could not say the same thing about Precedent Wrong, and I think one could not ordinarily do so about Proportionality either. Precedent Wrong is a *sine qua non* of the justice of a war. Proportionality is perhaps peculiar

¹⁶ I do *not* want to assert that these are, from a factual point of view, the best judgments to be made about the cases in question. All I am asserting is that there is no *moral* incoherence in asserting them.

because of its close tie to the kind and magnitude of the wrong that is being vindicated and the fact that when disproportionate damage is done, it is often the innocent who suffer.

But the fact that one can look back on a war and declare it justified on the whole, despite the fact that it violated a few of the Just-War Criteria, does not make it possible to justify one's own deliberate violation of these same criteria. When the question is whether a particular act (declaring a war, enlisting to fight one, &c.) is what is at issue, all of the criteria must be met. What reason could be given why one should do something violent when that is not a last resort? Or why should one be allowed to go ahead and wage war on one's own initiative (i.e., without legitimate authority) even though the community has not authorized it?¹⁷ Or that one should wage the war at all when one's only personal reason for doing so is hatred of the enemy? Surely anyone who violates any of the criteria is doing wrong.

The only complication arises from the fact that the various actions that make up a war are not completely independent. Let us consider some special cases.

First, consider a political leader who believes he has a just cause for war, but knows that his military officers will not wage the war justly. On the old formulation of the Just-War Theory, we would have said that such a person would be launching an unjust war, one that failed the criterion of Just Conduct. And at least in many cases, that would be the correct moral judgment. Does the new formulation yield the same result? It might at first seem that it does not force the leader to ask the question of Just Conduct at all. But there are two ways in which such a judgment might nevertheless be a consequence of the reformulated theory. First, if the danger is one of massive violations of the rights of non-combatants, it might be the case that the war would have to be judged disproportionate. There would simply (as a practical matter) be no way of waging it that would not be more costly than it was worth. A second way that a war like this could be judged immoral would be on the basis of a judgment about the leaders' complicity in the wrongdoing of others. Just-War Theory cannot be treated as though it existed in a vacuum. A leader who sends wicked men to war without at the same time taking the measures necessary to prevent them from doing more violence than is justified, he is doing something wrong, but not in a way peculiar to war. If a parent allows his children to play unsupervised at a playground, knowing that they bully the other children, but not making any effort to stop them, the parent is doing wrong in exactly the same way. What we need then, is not a modification of the Just-War Theory but an account of the ways in which one could be a culpable accomplice in the wrong-doing of others.

¹⁷ No doubt, this criterion, alone of the three, admits of exceptions since we have individual obligations that may be ignored by the political authorities. Perhaps a military officer who can use the forces under his command to prevent a massacre in a neighboring country has an obligation to do so, even against the contrary instructions of his government. But this raises a host of new questions. Even if he (and by the same reasoning) his soldiers, have a duty to help, may he order his soldiers to help? May he punish them for their refusal to obey?

Second, what about a soldier who finds himself sent to fight a war that he thinks better diplomacy could have prevented? Can we, as I believe is proper, condemn the leader who launched an, in some sense, unnecessary war without condemning every soldier who fights in it? It is not clear how this could be done on the old formulation, though I believe that it can on the new. The leader's action (launching a war) was wrong because he failed the criterion of Last Resort. The soldier, however, is permitted to take the situation as he finds it, viz., with his country already at war in an attempt to vindicate some serious wrong. For him, fighting in the war is a last resort in the sense that there is no other way for him to right the wrong. So he is justified in doing so.

Third, what about participation in a war in which unjust means are being used? On the old formulation, that sounds like participation in an unjust war, the kind of thing the conscientious soldier should refuse to do. But do we really want to say that the infantrymen of World War II should have refused to serve any longer once they became aware of the injustice of the air raids that were being conducted in prosecution of the same war effort? I think not. They are responsible for their own actions. They must make sure that they do not themselves perform any of the forbidden actions. That is, they must not themselves use biological weapons or kill innocent people. But the fact that others are using unjust means to vindicate the injustice which precipitated the war does not give them the duty to refrain altogether from participating in the vindication of the injustice. Indeed they will probably continue to have the obligation to do so. They may even acquire the obligation to be more vigorous in their use of the licit means which characterize their own efforts.

V. The Right to Take Reprisals

As a final check on the soundness of the version of the Just-War Theory which I have just sketched, I would like to point to the way in which it might be used to illumine what might otherwise be a puzzling fact about the law of reprisals.

A reprisal, as the term is used in international law, is not just any return of evil for evil. The term is restricted to a rather narrower class of actions, namely those actions, otherwise illegal, undertaken in response to violations of the laws of war on the part of others, and intended to encourage the other side to resume compliance with the laws of war.¹⁸

Air Force Pamphlet 110-31 cites the following conditions as those which must be met if a reprisal is to be undertaken:

- (1) It must respond to grave and manifestly unlawful acts...

¹⁸ Actually, the term reprisals is ambiguous. In addition to belligerent reprisals, discussed here, there are also peacetime reprisals, an example of which would be the Israeli raid on Beirut airport in 1968. From the moral point of view, peacetime reprisals are exactly like war on a very small scale.

- (2) It must be for the purpose of compelling the adversary to observe the law of armed conflict. Reprisals cannot be undertaken for revenge, spite, or punishment....
- (3) There must be reasonable notice that reprisals will be taken....
- (4) Other reasonable means to secure compliance must be attempted....
- (5) A reprisal must be directed against the personnel or property of an adversary....
- (6) A reprisal must be proportional to the original violation....
- (7) Any action taken as a reprisal must be announced as a reprisal....
- (8) It must be authorized by the political authorities....¹⁹

The correspondence between these criteria is striking:

- (1) Just Cause—Precedent Wrong
- (2) Right Intention
- (4) Last Resort
- (5) Just Cause—Discrimination (or, on the old list, Just Conduct).
- (6) Proportionality
- (8) Legitimate Authority

The only conditions of a reprisal that do not have a clear and direct counterpart in the Just-War Theory are (3) and (7). And even these might be seen as aimed at ensuring some Prospect of Success, always one of the most difficult criteria for reprisals to meet.²⁰ Now, in one sense, there is nothing especially surprising about the fact that the authors of the pamphlet track Just-War Theory. After all, the theory has been around for hundreds of years. Indeed it would be surprising if the authors had not heard of it. Thus, though they do not mention the theory, they may well have had it in mind when they listed the eight criteria.

What does require comment is the fact that the full set of Just-War Criteria, which were supposed to be *jus ad bellum* criteria, work so well for the evaluation of a certain kind of action *in war*. On the old formulation, this would be rather a queer thing. The Seven Criteria List was supposed to evaluate wars, not particular military actions within a war. But as I suggested above, all the criteria *are* relevant to particular military operations. For many routine operations, some of the criteria are relatively uninteresting (because routinely met). But criteria like Legitimate Authority and Right Intention, the ones we usually do not think of when considering the *jus in bello*, are especially important when it comes to reprisals. It is especially important (for practical reasons) that decisions about reprisals be taken only at the highest levels, because of the danger of a complete collapse of the laws of war in a

¹⁹ P. 10—4.

²⁰ For what it is worth, one might note that these also correspond rather closely to Childress' requirement that the war be declared, i.e., that it be made clear to the enemy under what conditions the war will be brought to an end.

cycle of reprisals and counter-reprisals. And it is precisely in the face of violations of the laws of war that soldiers who began the war with morally acceptable intentions are most likely to replace these intentions with vicious ones. Hence, although one can sometimes forego explicit consideration of these two criteria, in the case of reprisals they must be discussed. And the new formulation is able to take all this easily into its compass.

VI. Conclusion

What I have done here is surely rather modest. I have not attempted to offer any radical new insights on the morality of war. I hope that what I have done will, however, go some way towards improving the conceptual clarity of the Just-War Theory and towards showing how the theory can be made to answer some questions that were obscured by the theory's earlier formulations.