

War: Essays in Political Philosophy

Larry May, ed.

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There is a long-standing set of criteria thoughtful leaders have used to help determine when engaging in war is the right thing to do. The criteria have also been long debated, and Larry May's collection of fifteen original essays makes an excellent contribution to the discourse. Historical background is provided by Gregory Reichberg's "Jus ad Bellum" and Nicholas Rengger's "The Jus in Bello in Historical and Philosophical Perspective," both of which are astutely concise descriptions of just war philosophical development from the western perspective. Most just war literature readily available to western analysts has produced by western thinkers, and international legal standards on war have been promulgated primarily through western interactions. But the rich Islamic tradition of just war jurisprudence and philoso-

phy could have been included. The ninth-century scholar al-Shaybani, for instance, wrote about the rules of war and has been called “the Hugo Grotius of Islam.”

Al-Farabi, the father of Islamic political philosophy, directly addresses the justice of war (although significantly the best he will say of any war is that it is not unjust), and many of his tenth-century principles are consistent with western thinking; the lack of discrimination between military targets and civilians is unjust in both traditions, for example. In his *Selected Aphorisms*, al-Farabi identifies innocents as illegitimate targets and even hints that forcibly drafted soldiers might be considered “innocents” when the war’s cause is unjust, thereby intertwining the *ad bellum* principle of just cause with the *in bello* principle of discrimination (*Political Writings: “Selected Aphorisms” and Other Texts*, trans. Charles Butterworth [Cornell University Press: 2002]). Thomas Hurka shares al-Farabi’s idea of interdependence. His superb essay, “Proportionality and Necessity,” poses questions such as: “How many enemy soldiers can be sacrificed to save one of our own soldiers’ lives?” According to him, the right number differs according to the necessity and who is doing the calculating; in other words, *jus ad bellum* and *jus in bello* influence each other.

The collection’s “Initiating War” segment investigates several just cause possibilities: punishment (Jeff McMahan, “Aggression and Punishment”), human rights violations (Cindy Holder, “Responding to Humanitarian Crises”), and democracy-building (James Bohman, “War and Democracy”). No cause has seemed more universally just than a nation’s right to defend itself; however, Larry May’s “The Principle of Just Cause” adeptly argues that violations of a nation’s territory that do no harm to the people may not be sufficient for claims of self-defense. Starting from the premise that the moral justifiability of personal self-defense does not transfer to the national level, David Lefkowitz’s “Collateral Damage” extends the logic to justify collateral damage only if those bearing the risk agree to it.

The “Bush Doctrine” altered preemptive just war criteria on the grounds that preempting a nuclear attack cannot wait until the traditional requirements of certainty and imminence are met. Steven P. Lee’s “Weapons of Mass Destruction: Are They Morally Special?” fine-tunes the definition of WMDs by separating nuclear, chemical, and biological forms, convincingly arguing that better preemptive policy options open up when the weapons’ characteristics are considered more discretely.

In the “Waging War” segment is Michael Davis’ “Justifying Torture as an Act of War,” a consideration of a public official’s “discretion to disobey”

laws against torture when such activity may produce information that might avert some horrendous event. The ever-present risk that it will neither prevent the event nor be excused is referred to as “moral luck” (p. 201). This is not an extraordinary idea; the international legal system’s “law of disregard” concerning humanitarian intervention is similar. It acknowledges that there may be conditions so heinous that fundamental morality requires that the inviolable principle of national sovereignty be disregarded. Importantly, however, both the torturer and the intervener must be so convinced of the necessity of acting that they are willing to pay a terrible price if “moral luck” turns out not to be on their side. Of the utility that torture may provide, Davis says: “To claim the right to mistreat people simply because it is useful to us is to claim an absolute, arbitrary power over them, a power no rational person would grant another ...” (p. 203).

Many soldiers, however, might willingly grant such power in defense of their country; perhaps even now American soldiers could be said to have implicitly granted that power, having enlisted knowing that other Americans have been tortured. But is not the willingness to endure torture categorically different from the willingness to torture? This warrants further inquiry. But just how frighteningly easy it can be for average people to become torturers has already been well documented by Hannah Arendt, some American guards at Abu Ghraib, and others. Davis speaks to this concern with his admonition that a society that allows torture requires skilled torturers, which, in turn, requires torture schools. Imagining the effect that this might have on a society, Davis writes: “The moral cost of trying to save Paris by torturing one fanatic bomber is therefore much higher than it may at first seem” (p. 202).

An interesting essay by Marilyn Friedman, “On Terrorism: Definition, Defense, and Women,” compares women in intensely subordinate societies to citizens of totalitarian states and asks whether those female terrorists should be exempt from moral responsibility. An ethical quandary results: To female repressors, exempting such women may validate the idea that women are incapable of the same moral responsibilities as men, while refusing to exempt them assigns penalties for acts over which they have no choice.

Four essays deal with conditions after the war, *jus post bellum*. Trudy Govier’s “War’s Aftermath: The Challenges of Reconciliation” draws on lessons learned from South African and Rwandan reconciliation commissions in an essay well worth a policymaker’s read. Christopher Wellman’s “Amnesties and International Law” insightfully addresses the pros and cons of amnesties, especially for transitional governments with questionable legitimacy, using Iraq as a case in point. Vengeance is something that could interfere with sound amnesty decisions, and this issue is insightfully ana-

lyzed in Nancy Sherman's "Revenge and Demonization" on atrocities of the kind played out in Haditha and My Lai.

Rounding out the collection is David Luban's "War Crimes: The Law of Hell," which explores the distinction between violent crime and war. Although many violent non-state actors are gangsters, pirates, or terrorists, Luban reminds us that some, like Afghanistan warlords, possess legitimacy as local public authorities; should they therefore be accountable under the laws of war? Luban also offers an incisive justification of the laws of war and war crimes trials: "[S]taging war crimes trials is an expressive act planting law's flag in contested moral terrain" (p. 287).

That idea applies to this superb collection of essays as a whole – together, they plant both law's flag and reason's banner in contested moral and political terrain. The essays confront a wide variety of popular assumptions about the relationship between justice and war, meaningfully furthering the academic and professional policy discourse. Since this is a highly nuanced exploration of just war, it is recommended for upper-level undergraduates, higher academicians, and policymakers.

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