

ABSTRACT

A Just War Theory for Domestic Politics

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In this paper, I address the ethical repercussions of treating domestic politics like war and attempt to formulate a philosophical framework by which to morally evaluate political words and deeds. First, I consider the rise of the metaphor of war in American political discourse and the increasing tendency to think of politics as competitive and conflict-oriented, rather than cooperative and peaceful. I then examine the unique ethical challenges this trend presents. In the main body of the paper, I reason analogically from the just war tradition to create something like a just war theory for domestic politics, applying the distinct requirements of justice before (*jus ad bellum*), during (*jus in bello*), and after (*jus post bellum*) war to concrete ethical problems in today's public square. Most notably, my findings highlight the need to eschew moral realism in partisan battles and stop declaring war on inanimate objects or concepts (e.g., "drugs" or "terror"). They also highlight the importance of prudence and restraint in domestic politics. Hopefully this paper will spur Americans to take the moral dangers of metaphorical war-making seriously and produce some standards to help navigate those dangers.

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A JUST WAR THEORY FOR DOMESTIC POLITICS

Discerning Moral Guidelines for Warlike Politics

A Thesis Submitted to the Faculty of

Baylor University

In Partial Fulfillment of the requirements for the

Honors Program

By

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Waco, Texas

Spring 2021

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ACKNOWLEDGMENTS

First and foremost, I give thanks to my thesis director, Dr. David D. Corey. The initial idea for this paper arose from a conversation between the two of us in his Morrison Hall office. From that moment onward, Dr. Corey's feedback, criticism, and instruction were always my most necessary and valuable resources. I will remember his tutelage and friendship with great fondness and profound gratitude.

I am also grateful to Aryana Petrosky Roberts, Tyler Castle, and other associates of the American Enterprise Institute's Initiative on Faith and Public Life. They helped direct my research and hone my argument for a secondary project. Though their assistance was always incidental to my work at Baylor, it nevertheless proved formative of this thesis. I am therefore in their debt.

Finally, I express my appreciation for Eileen Bentsen and Joshua Been of the Baylor Library. They coordinated the creation of a computer program designed to supplement my thesis with quantitative research. I did not use this program in the final draft of my paper. Nevertheless, I commend them for their hard work and generosity.

To all men and women in public service, past and present, who have prioritized moral integrity and the common good over personal or partisan political success.

CHAPTER ONE

Introduction

In *The Concept of the Political*, Carl Schmitt defines politics as war by other means, cleverly inverting Clausewitz's famous formula.¹ Schmitt wrote in Germany in 1932. However, his words apply startlingly well to current domestic politics in the United States, which has become increasingly warlike. Apart from obvious instances of political violence, more numerous in recent months than in the past, studies testify to stark political divisions and partisan polarization affecting the American public.² Aggressive language and rancor permeate our media and public discourse.³ Gridlock and government shutdowns are commonplace in our Congress, while compromise is a rarity.⁴ Finally, and tellingly, the metaphor of war is almost omnipresent.⁵

¹ Clausewitz writes that war is “the continuation of policy by other means.” See Carl Schmitt, *The Concept of the Political* (University of Chicago, 2008), 33-34; Carl von Clausewitz, *On War* (Princeton: Princeton University, 1984), 87.

² “Partisan Antipathy: More Intense, More Personal,” *Pew Research Center*, 10 October 2019; “Political Polarization: 1994–2017,” *Pew Research Center*, 20 October 2017.

³ Stephen Loiaconi, “Civility crisis in American politics likely to get worse,” *WJLA*, 6 July 2018.

⁴ Derek Willis, ProRepublica, and Paul Kane, “How Congress Stopped Working,” *ProRepublica*, 5 November 2018.

⁵ David Davenport and Gordon Lloyd, *How Public Policy Became War* (Hoover, 2019), 5.

All this would be unsurprising to Schmitt. According to his philosophy, the distinction between enemy and friend, and the fight to vanquish the power of the one and advance that of the other, is at the very heart of politics. For Schmitt, it is when the gloves come off and the battle begins that politics approaches its genuine nature.

As Americans, though, we ought to think twice before adopting Schmitt's outlook. First of all, our country's founders did not envision the norm of political conduct as one of war. They saw it as one of competition, yes, but competition contained and diluted to the extent that its negative effects would hardly be felt. The end result in their eyes would be closer to an ideal of peaceful cooperation than what we have now. The founders believed conflicts between factions, which Schmitt exalts as the essence of politics, were among of the greatest dangers to a political community, and they sought to minimize their political clout as much as possible.⁶

Furthermore, Schmitt believes politics and war are amoral. Within those spheres, he believes that the goal of victory justifies any and all means. In contrast, Americans have long held that there is an extensive system of ethical norms that should be followed when making war. In the liberal and Judeo-Christian political traditions we have inherited, it is not realism or a crusader mentality, but the "just war tradition"—which holds that war is sometimes necessary but must be fought morally—that is considered the proper framework through which to view the ethics of combat.

Unfortunately, very few people have made the connection between justice in war and justice in domestic politics. War and domestic politics are genuinely distinct

⁶ James Madison, Federalist 10.

activities; one involves physical violence and the other generally does not. But the metaphor of war, so common in current political discourse, hints at some degree of similarity. When we move from one form of politics (the politics of peaceful cooperation) to another (the politics of warlike antagonism), we behave like we are in an actual state of battle. Our end changes from finding an acceptable compromise to achieving total political victory, and our means, accordingly, become more extreme.

If we make this shift in outlook without understanding the moral perils that accompany war-making, we place ourselves in an ethically compromised position. As James Childress points out: “In debating social policy through the language of war, we often forget the moral reality of war. Among other lapses, we forget important moral limits in war—both limited objectives and limited means ... [as well as] such constraints as right intention, discrimination, and proportionality, which protect the humanity of all parties in war.”⁷ Operating in this way can easily result in moral violations for the sake of political success. Whether we realize it or not, many Americans today are in danger of committing such violations.

To remedy this problem, we need to accomplish two tasks. First, we need to take an in-depth look at the two forms of politics I have distinguished: the “politics of war” and the “politics of cooperation.” This will entail answering the following questions: What are the chief characteristics of these two forms? Is the distinction between them philosophically tenable? Is it a difference of degree or of kind? And to what extent is the (domestic) politics of war really comparable to actual war? If the answer to this last

⁷ “The War Metaphor in Public Policy,” *The Leader’s Imperative* (Purdue, 2001), 181.

question is sufficient, then we will be justified in moving on to our second task, which is to reason analogically from the just war tradition to something like a just war theory for domestic politics, creating as best we can a framework of ethical restraints through which to view our present culture wars and political battles. Then we may have some standards by which to evaluate political words and deeds morally.

CHAPTER TWO

The Politics of Peaceful Cooperation and The Politics of Warlike Antagonism

Is today's rancorous, polarized, partisan politics really any different from the politics of the past? Has not politics always been warlike? When pundits lament our current levels of political division, these questions are commonly raised. They are important questions to ask, because if politics is always a fierce, winner-take-all competition, then we can scarcely expect citizens to approach politics as anything else but a war by other means. In this thesis, however, I argue that the distinction between the two forms of politics I have delineated is genuine. The politics of peace and the politics of war are different, and they demand different conduct from their participants.

First, there is a teleological difference between them. In other words, the ends of each form of politics are categorically distinct. Practitioners of the first form, the politics of peaceful cooperation, recognize that the business of the state is a common endeavor, and that it is neither realistic nor (perhaps) just to coerce an entire society toward one contested set of political outcomes. They seek not to establish a systematic framework of laws and practices in accordance with a particular ideology, but rather to reach reasonable compromises with other members of the community on issues they believe would be best served by corporate action.

Practitioners of warlike politics, on the other hand, seek to vanquish their political opponents. Compromise is undesirable for them because the issues at stake are simply too important, or because one faction believes it has a clear monopoly on justice and wisdom

that the others lack. The goal is not cooperation, or even coexistence; it is total victory, and with it the political disarmament of the enemy. For a perfect example of this attitude one need look no further than America's own President Woodrow Wilson, who wrote of political leaders: "Those who are not for truth are against it. There is here no neutrality."¹

Of course, it is true that these two forms of politics often operate concurrently and side by side. I doubt that any society has ever been exclusively cooperative or antagonistic. Probably, most individuals have engaged in both forms of politics at some point. The border line between them is thus in practice a fuzzy one, easily crossed and re-crossed, harder to pin down than the distinction between real peace and war. However, this does not mean that the line is imaginary. Moreover, societies can generally favor one form over the other. For example, it would be uncontroversial to say that the view of politics as a winner-take-all competition predominated in Nazi-era Germany. Members of a small town council, on the other hand, might view their interactions as basically cooperative.

It is relatively easy to show that the United States is currently operating under a warlike understanding of politics. Apart from the obvious—public rancor and widespread civil unrest—there is a vast quantity of sociological evidence. In 2014, Pew Research reported that Americans were seriously ideologically opposed to one another, with 92 percent of Republicans and 94 percent of Democrats more conservative and liberal than the median of their parties. Such intense polarization brought division with it. The same study said 38 percent of Democrats and 43 percent of Republicans viewed members of

¹ Woodrow Wilson, "On Religion," in *Woodrow Wilson: Essential Writings and Speeches of the Scholar-President* (NYU Press, 2006), 44.

the other party “very unfavorably.” Almost as many believed their political opponents to be “a threat to the nation’s well-being.”² In 2019, Pew conducted another study and found partisan dislikes had only increased. Today, close to half of Republicans and Democrats view each other as “close-minded” and “immoral.” Moreover, 73 percent of people profess an inability to agree with opposing partisans on “plans,” “policies,” and even “basic facts.”³ Though they do not paint a complete picture in and of themselves, these statistics suggest that Americans’ political dispositions are those of warriors.

Moreover, if it is true that the use of the war metaphor accompanies an antagonistic perspective, then its frequency in modern political discourse can also serve as evidence that Americans view politics as war by other means. In recent years, we have seen political actors “declare war” on a wide variety of abstract enemies, including

² “Political Polarization: 1994–2017,” *Pew Research Center*, 20 October 2017.

³ “Partisan Antipathy: More Intense, More Personal,” *Pew Research Center*, 10 October 2019.

crime,⁴ drugs,⁵ drunk driving,⁶ AIDS,⁷ cancer,⁸ teen pregnancy,⁹ climate change,¹⁰ and, of course, the coronavirus.¹¹ We have also seen pundits characterize political strategies and policies as veritable attacks on other Americans. Segments of the population are allegedly

⁴ Cheryl Corley, “President Johnson’s Crime Commission Report, 50 Years Later,” *NPR*, 6 October 2017, <https://www.npr.org/2017/10/06/542487124/president-johnson-s-crime-commission-report-50-years-later>.

⁵ German Lopez, “The war on drugs, explained,” *Vox*, 8 May 2016, <https://www.vox.com/2016/5/8/18089368/war-on-drugs-marijuana-cocaine-heroin-meth>.

⁶ Blaine Harden et al., “Nation’s War on Drunk Driving Is Paying Off in a Big Way,” *Washington Post*, 30 December 1982, <https://www.washingtonpost.com/archive/politics/1982/12/30/nations-war-on-drunk-driving-is-paying-off-in-a-big-way/0e262229-8a21-454b-ab5d-07a6d3adfd4d/>.

⁷ W. S. Hotchkiss, “The American Medical Association and the War on AIDS,” *Public Health Reports* 103, no. 3 (1988).

⁸ “National Cancer Act of 1971,” *NIH*, <https://www.cancer.gov/about-nci/overview/history/national-cancer-act-1971>.

⁹ Debra J. Saunders, “The US must start a campaign to stamp out teen pregnancy,” *Tampa Bay Times*, 4 October 2005, <https://www.tampabay.com/archive/1995/08/16/the-u-s-must-start-a-campaign-to-stamp-out-teen-pregnancy/>.

¹⁰ Justine Calma, “John Kerry, Arnold Schwarzenegger wage ‘World War Zero’ on climate change,” *The Verge*, 2 December 2019, <https://www.theverge.com/2019/12/2/20991784/john-kerry-schwarzenegger-climate-change-world-war-zero>.

¹¹ Maegan Vazquez, “Trump invokes Defense Production Act to expand production of hospital masks and more,” *CNN*, 18 March 2020, <https://www.cnn.com/2020/03/18/politics/trump-defense-production-act-coronavirus/index.html>.

waging “wars” against everything from women¹² to small businesses¹³ to the environment.¹⁴ And on a broad scale, many conservatives and liberals view themselves as soldiers in a pitched battle for the soul of the country termed the culture war.¹⁵ In general, since our citizens are so willing to refer to their political behavior with the language of war, it is reasonable to believe they see politics as an essentially zero-sum game.

However, this was not always the case in the United States. In fact, it may be a remarkably recent development. There is significant evidence that Americans subscribed to the cooperative vision of politics for the majority of the nation’s history. How do we know if politics has become more warlike? One metric is to trace the frequency of the war metaphor over time. Preliminary research indicates that it was extremely uncommon prior to the twentieth century. For over 140 years, it seems the word “war” was used as a metaphor by a president only twice, and both times by President Buchanan in an especially tumultuous time, on the eve of the Civil War.¹⁶

¹² Roy L. Austin and Jenni Katzman, “The Criminal Justice System’s War on Women,” *Huffington Post*, 18 July 2017, https://www.huffpost.com/entry/the-criminal-justice-system-is-part-of-the-war-on-women_b_596e4b6ae4b0a03aba855578.

¹³ Lee Habeeb and Mike Leven, “The War on Small Business,” *National Review*, 5 February 2015, <https://www.nationalreview.com/2015/02/war-small-business-lee-habeeb-mike-leven/>.

¹⁴ Michael Honda, “Republican war on the environment,” *The Hill*, 20 September 2012, <https://thehill.com/blogs/congress-blog/campaign/250733-republican-war-on-on-the-environment>.

¹⁵ James Davidson Hunter, *Culture Wars: The Struggle to Define America* (Basic Books, 1992).

¹⁶Advanced search, *The American Presidency Project*, UC Santa Barbara, <https://www.presidency.ucsb.edu/>.

This longstanding norm changed with the onset of the Great Depression. With the nation in a state of war-like emergency, the metaphor's use expanded dramatically. Under Franklin Roosevelt in particular, it became commonplace in American political rhetoric, and the change was never seriously reversed.¹⁷ Yes, we have experienced periods of increased cultural unity, such as we enjoyed during the 1950s, but that unity was fleeting and did not last.¹⁸ On the whole the war metaphor has only become more common, from Lyndon Johnson's "war on poverty" to the myriad conflicts of today. If the use of warlike language corresponds to a warlike style of politics, then our country has been engaged in the latter ever since. But the fact remains that this is a relatively recent development in our history. It is evidence that our country's political disposition is *not* intrinsically antagonistic.

David Davenport and Gordon Lloyd pick up this line of thought in their book, *How Public Policy Became War*. They argue that the executive branch has intentionally cultivated the move to the war footing in order to increase its own power. In their own words: "Presidents have discovered that declaring wars and emergencies is a way of grasping greater executive power at the expense of Congress. Rather than engaging in long-term policy development and debate, presidents can take over a field of domestic policy essentially through speeches and declarations of domestic war."¹⁹ Other political

¹⁷Advanced search, *The American Presidency Project*, UC Santa Barbara, <https://www.presidency.ucsb.edu/>.

¹⁸ Yuval Levin, *The Fractured Republic* (New York: Basic Books, 2016), 186.

¹⁹ David Davenport and Gordon Lloyd, *How Public Policy Became War* (Hoover, 2019), 6.

actors, as well as public intellectuals, commentators, and the general citizenry, seem to have fallen victim to the same temptation. But according to Davenport and Lloyd, the default form of politics in the United States should be more peaceful and cooperative. Based on evidence I have already discussed, they assert that sustained warlike politics is a modern phenomenon in America. Moreover, they assert that our country's founders designed our government to explicitly avoid the politics of war.

One common response to this claim relies on Federalist 10, the famous paper in which James Madison sets out the critical role factional conflict will play in the future United States. Madison's vision of politics as a contest of rival ambitions is held up as an example of the politics of war being enshrined in our founding documents. However, Davenport and Lloyd believe—and I agree with them—that this is a misunderstanding of the paper's true argument. There are few men in history more critical of factional conflict than Madison. In Federalist 10, he calls it a “dangerous vice” and says that “the instability, injustice, and confusion [it has] introduced into the public councils, have, in truth, been the mortal diseases under which popular governments have everywhere perished.” His goal in making ambition counter ambition is not to make American politics fundamentally warlike; on the contrary, it is to use America's size and federal structure to dilute and filter the antagonistic spirit, with the ultimate goal of preserving a disposition toward cooperative deliberation in the national government. The polarization and partisan hostility we witness today in the highest levels of our republic is exactly what Madison was trying to avoid.²⁰

²⁰ Davenport and Lloyd, 107.

In *How Public Policy Became War*, the stance Davenport and Lloyd take toward the politics of war is firmly negative.²¹ However, the question of whether antagonistic or cooperative politics is more appropriate to our current situation is not one that needs to be answered here. The goal I set out in the beginning of this chapter was to show that American politics is not intrinsically warlike, and I believe there is a strong case in favor of that proposition. Sociological data such as those cited from Pew suggest we are currently in a state of political war. Such data do not extend far into the past, but one can glimpse into the past—indeed all the way back to the beginning of the republic—by using content analysis of political speeches that contain (or do not) the war metaphor. This method shows that the war metaphor (and presumably the warlike mentality) has not always characterized our political outlook. Rather, it appears that for the majority of our history, domestic politics has been understood as a cooperative endeavor, not as a winner-take-all battle. Moreover, our founding documents provide strong evidence that our founders intended this to be the case.

All this is to say that war and peaceful cooperation really are distinct modes of politics, both in the abstract and in the particular case of the United States. Therefore, it is likely that, as is the case with actual war and peace, there are certain moral considerations that ought to be given serious weight as domestic politics shifts from “peace” to “war.”

²¹ Ibid, 14.

CHAPTER THREE

Developing Moral Standards for Political Conflict

We need to think carefully about when and how warlike politics may be conducted appropriately, especially if the antagonistic mode is optional and not always necessary. This presumes that warlike activities operate according to a coherent set of moral standards, and that these standards can be recognized and followed. In other words, it presumes that the just war tradition is a helpful paradigm through which to view war.

The just war tradition is not universally accepted; rival paradigms, particularly realism and pacifism, have many adherents. But fortunately for my argument, the United States, perhaps more than any other country, has adopted just war thought as its own and even enshrined it into most of international law.¹ Therefore, I do not consider it necessary to prove the just war tradition's aptness in this paper. Nevertheless, before reasoning analogically from just war thought to create a moral framework for domestic politics, I will pause to summarize the tradition's historical development and essential tenets.

The heart of just war thought can be expressed in a philosophical syllogism, formulated by David D. Corey and J. Daryl Charles in *The Just War Tradition: An Introduction*:

1. Wars are sometimes necessary, from both a moral and a practical standpoint.
2. Humans ought to abide by moral standards in all their actions.

¹ "Just War Theory," *Oregon State University*, https://oregonstate.edu/instruct/phl201/modules/just_war_theory/criteria_intro.html.

3. Therefore, wars must be fought according to moral standards.

The realist position, most famously represented by Thucydides and Thomas Hobbes, is that any and all actions are justified when a person's physical security is at stake.² As such, realists deny the universal applicability of moral norms and disavow the second and third points of the syllogism. Pacifists, meanwhile, believe wars are never morally necessary, disavowing the first point making the third moot. Only just war theorists accept all three parts of the syllogism and believe warriors ought to be held accountable to moral standards. The desire to discern those standards has driven all of the tradition's theorizing.³

Just war thought has a long and variegated history. Texts discussing the ethical questions involved in warfare date back at least as far as Republican Rome. The continuous tradition that we have inherited today, however, is thoroughly Christian in origin, and Augustine of Hippo is recognized as its founding father.⁴

Augustine, as a pastor and theologian during the declining days of the Roman Empire, was asked for guidance on the intersection of morality and war. Members of his flock who worked as soldiers worried that their careers were incompatible with Christ's teachings, and opponents of the faith challenged him along similar lines. In his letters to the Roman governor Boniface and Faustus the Manichaeon, Augustine declared that the use of force is not inherently evil, and that warfare can only be considered immoral

² Michael Walzer, *Just and Unjust Wars* (New York: Basic Books, 1977), 4.

³ David D. Corey and J. Daryl Charles, *The Just War Tradition: An Introduction* (Wilmington, Delaware: ISI, 2012), 5–6.

⁴ Corey and Charles, 10.

insofar as it is conducted incorrectly.⁵ He famously wrote that sin lies in “[t]he desire for harming, the cruelty of revenge, the restless and implacable mind, the savageness of revolting, the lust for dominating, and similar things,” not in shedding blood in and of itself.⁶ The distinctions he made between correctly and incorrectly conducted wars became the basis of the just war paradigm.

Throughout the Middle Ages, Christian theologians continued to grapple with questions of the morality in war. In doing so, they built on Augustine’s foundation, all the while adding more complexity and specificity to their theories. By the thirteenth century, when Thomas Aquinas laid out his three requirements for a just war, the tradition was intellectually robust and bore a meaningful resemblance to modern international law.⁷

After the Reformation, the introduction of pluralism into Christendom, and the discovery of the New World, it became increasingly difficult for just war thinkers to base their work on sectarian, religious grounds without neutering their ability to affect international law. Some Protestants, namely Martin Luther and John Calvin, did develop just war theories that were grounded in theology. For the most part, though, the Early Modern Period marked a secularization of the tradition. Even Catholic theologians, like Francisco de Vitoria from the sixteenth century, made an effort to argue from natural law rather than Christian Scripture or dogma alone. It was this secular, human rights-based collection of just war theories, represented by a train of thinkers stretching from John

⁵ Augustine, *Political Writings* (Indianapolis: Hackett, 1994), 218–219.

⁶ Augustine, 221–222.

⁷ Thomas Aquinas, *Summa Theologiae* II-II.40, <https://www.newadvent.org/summa/>; James T. Johnson, “Just War: International Law,” *Encyclopedia Britannica*, <https://www.britannica.com/topic/just-war>.

Locke to today's Michael Walzer, which was adopted by the United States and the United Nations in the twentieth century. However, the Christian nature of the tradition still endures, and for many it plays the important philosophical role of grounding the theories in a particular vision of morality.⁸

What are the essential tenets of just war thought? The accumulated wisdom of the tradition is best expressed via a series of questions corresponding to moral distinctions in warfare, listed below. They are classified according to the standard just war categories of *jus ad bellum* (justice before war), *jus in bello* (justice in war), and *just post bellum* (justice after war):

1. *Jus ad bellum*

- a. Is there a just cause?
 - i. Did the enemy commit a genuine wrong?
 - ii. Is the enemy about to commit a genuine wrong?
 - iii. Has the enemy wronged one's allies or another innocent party?
- b. Has the war been authorized by a legitimate authority?
- c. Is there right intention? Are the warriors motivated by charity or by hatred, greed, the desire for revenge, etc.?
 - i. Do the warriors want to bring about a state of peace by their actions?
- d. Has the war been publicly declared?
- e. Is declaring war a prudent choice? Is there a substantial likelihood of success?

⁸ Corey and Charles, 12–16.

- f. Will the costs of war outweigh the benefits? In other words, does the war meet a proportionality test?
- g. Is declaring war a last resort? Have all other reasonable possibilities been exhausted?

2. *Jus in bello*

- a. Is there right intention in combat?
 - i. Do the warriors' actions undermine the possibility of a future peace?
- b. Do the warriors keep the promises they make to the enemy?
- c. Do the warriors' actions meet the tests of prudence and proportionality?
- d. Are non-combatants protected from direct harm (and within reason, from collateral damage)?

3. *Jus post bellum*

- a. Are the peace terms fair, with provisions for reconciliation?
- b. Do the victorious warriors reconstruct the enemy's society unnecessarily?
- c. Do the victorious warriors exact reasonable (prudent and proportional) reparations from the enemy? Are the punishments they inflict reasonable, too?

These questions are not a simple checklist designed to yield definitive answers on the justice or injustice of particular wars or military actions. Rather, they provide a moral

framework—one that is both systematic and flexible—through which to view real-world events and come to one’s own (hopefully accurate) conclusions.⁹

In the following three chapters, I will reason analogically from the just war tradition in an attempt to create an ethical framework through which to view domestic politics. All analogies are imperfect, and the questions posed by just war thinkers cannot be perfectly transposed to cases of domestic politics. However, if the use of the war metaphor is anything to judge by, there can be genuine, substantial similarities between actual war and domestic politics, and in today’s climate they are plentiful. It is likely, therefore, that the new framework will hold genuine moral weight.

⁹ Corey and Charles, 7.

CHAPTER FOUR

Jus ad Bellum

The category of *jus ad bellum* is as old as just war thought itself, and the tradition's early works—such as Augustine's letters and Aquinas's entries in the *Summa Theologiae*—sometimes appear exclusively devoted to it.¹ *Jus ad bellum* features prominently because the justice of a given war depends foremost on the propriety of actions leading up to and including the declaration of war. If there is no just cause, for example, the war may be fought morally (*in bello*), but as a whole it will be unjust.

If America's domestic political warriors want to avoid similar injustices, they should consider what kind of *jus ad bellum* requirements might apply to such conflicts and make sure they have been satisfied. In general, political actors are quick to claim a just cause, but it is important to recognize that there are other factors to consider. I will now examine each factor in turn and consider how its logic might apply to domestic politics.

Just Cause

Just cause is the most essential *jus ad bellum* requirement, and the one whose importance is easiest to grasp. It receives an early articulation in Augustine's *City of God*, where he writes, "It is the iniquity on the part of the adversary that forces a just war upon

¹ Augustine, *Political Writings* (Indianapolis: Hackett, 1994), 220, 222; Thomas Aquinas, *Summa Theologiae* II-II.40, <https://www.newadvent.org/summa/>.

the wise man.”² In other words, since conflict is undesirable, it can only be initiated for a good reason, and this reason can only be the avenging or prevention of some genuine wrong. In military conflicts, the initial wrong need not be perpetrated against the exact country that intends to avenge it; for instance, it may have been perpetrated against one’s allies, or against some innocent third party that is not an ally but needs help nevertheless, as Francisco de Vitoria alleges in his just war account.³ It may even be a wrong that has not yet taken place but is imminent; the tradition allows for some flexibility.⁴ But the essential point is that good people do not go to war except to address a clear wrong of some kind.

At first glance, this requirement might appear overly broad. It excludes wars of conquest and sheer aggression, but what else does it not legitimate? In fact, just cause excludes a range of justifications for war that Americans might otherwise be amenable to. For one, it disallows wars fought merely to maintain a favorable balance of power. Realists traditionally argue that any potential insecurity in the international realm justifies war. In contrast, just war thinkers believe that risk is unavoidable in politics, and that any attempt to establish perfect security is unreasonable and bound to produce evil. The seventeenth-century theorist Hugo Grotius puts it this way: “A doctrine repugnant to every principle of justice” is the idea that war can be waged because of the mere “*possibility* that violence may someday be turned on us.”⁵

² Augustine, 149.

³ *Political Writings* (Cambridge, 1991), 287–290.

⁴ Hugo Grotius, *The Law of War and Peace* (Walter J. Black, 1949), 72–73.

When it comes to actual war, Americans usually reject realist arguments in favor of just war arguments. But in domestic politics, where language of war seems merely metaphorical and the moral stakes are less apparent, realism is more prevalent. Consider this quote from a 2015 article by journalist Matthew Yglesias about then-presidential candidate Hillary Clinton:

Committed Democrats and liberal-leaning interest groups are facing a reality in which any policy gains they achieve are going to come through the profligate use of executive authority, and Clinton is almost uniquely suited to deliver the goods. More than almost anyone else around, she knows where the levers of power lie, and she is comfortable pulling them, procedural niceties be damned. . . . She truly is the perfect leader for America's moment of permanent constitutional crisis: a person who cares more about results than process, who cares more about winning the battle than being well-liked, and a person who believes in asking what she can get away with rather than what would look best.⁶

For Yglesias, the right ends justify any means in the domestic political “battle,” even operating in “legal gray areas.” Throughout his article, Yglesias indicates no specific wrongs committed by Clinton’s political opponents. The only “just cause” he presents is the fact that “Democrats have almost no chance of securing a majority in the US Senate and even worse odds of securing a majority in the House.” Maintaining a favorable balance of power for his political party is all the reason he needs.

This is a clear example of domestic political realism. Far from abiding by the restrictions laid out by the just war tradition, Clinton (at least as understood by Yglesias) is comfortable engaging in warlike behavior merely to advance her own security. It is true that Yglesias does not mention physical force, but when applying metaphors of war

⁵ Grotius, 77.

⁶ “Emailgate is a political problem for Hillary Clinton, but it also reveals why she’d be an effective president,” *Vox*, <https://www.vox.com/2015/10/6/9461021/hillary-clinton-executive-power>.

to domestic politics, we may say that ignoring so-called “procedural niceties” and using “profligate . . . executive authority” to coerce other citizens is the moral equivalent of violence. Certainly such actions damage our political institutions as well as the social fabric, and they should not be taken lightly.⁷

My intention here is not to evaluate the accuracy of Yglesias’s characterization of Clinton, nor is it to accuse the political left alone of being particularly realist. I believe realism (or what often goes by the name “power politics”) is prevalent on the right as well. Rather, I want to point out the incongruity between how most Americans think about wars on foreign shores and how they view the political battles in Washington, D.C. If we believe the just war tradition is a superior moral framework to realism, perhaps we should practice it consistently in both physical and political conflict. This would mean not allowing ourselves to excuse the initiation of warlike behavior unless the enemy party has committed a genuine wrong, one that we can point to as deserving of a violent reaction. Otherwise we would be condoning the use of “force” merely to advance our own party’s security, and that is unacceptable.

Equally unacceptable in the just war tradition are wars waged for the benefit of a foreign population (what we sometimes call “humanitarian intervention”) in the absence of a wrong. Even the best intentions do not justify coercing people who do not want assistance. Vitoria was the first theorist to establish this requirement. In the sixteenth century, the Spanish crown’s supporters claimed it had the right to conquer the New World’s indigenous tribes in order to enlighten them with Christianity and improve their system of government. Vitoria, in contrast, argued that unless a population commits a

⁷ Yuval Levin, *A Time to Build* (Basic Books, 2020), 36–37.

wrong worthy of punishment or relinquishes its powers willingly, its rights to self-rule and property cannot be violated.⁸ This stance was maintained by future just war thinkers, including Michael Walzer, who writes regarding interventions, “As with individuals, so with sovereign states: there are things we cannot do to them, even for their own ostensible good.”⁹ For political actors in the US, this rules out domestic “campaigns” waged against a certain demographic under the pretext of furthering that group’s good. (The “war on smoking” is a potential, albeit controversial, example of such a campaign.)¹⁰ Unless a wrong has been committed, such behavior ought to be considered mere paternalism.

Finally, because the just war tradition requires an antecedent wrong in order for a war to be just, so too does it require that the agent committing that wrong possess moral freedom and responsibility. In other words, the just war tradition regards both sides in any conflict as possessing moral agency. This throws considerable doubt on the practice, now commonplace in the US, of declaring war on inanimate objects and abstract concepts, from poverty to drugs to the coronavirus. From the perspective of the just war tradition, waging war against something with no moral agency is impossible—that is simply not what war is. In the context of domestic politics, the practice of declaring war on objects and concepts serves an understandable set of purposes: it raises the stakes of individual policy decisions, centralizes power in executives’ hands, and encourages

⁸ Vitoria, 250–251.

⁹ Michael Walzer, *Just and Unjust Wars* (New York: Basic Books, 1977), 89.

¹⁰ Sam Chambers, “War on Smoking,” *Bloomberg*, December 2017, <https://www.bloomberg.com/quicktake/war-smoking>.

action over deliberation.¹¹ Moreover, it provides the moral clarity of dealing with “enemies,” “winners,” and “losers.” But in fact, all these purposes are morally ambiguous and potentially harmful. For example, the use of the war metaphor with respect to cancer has been shown to damage patients.¹² Such consequences, often unintended but serious nonetheless, can be avoided by restricting the use of the war metaphor to more appropriate circumstances.

We can now see that the requirement of just cause, far from being overly broad, probably illegitimizes a significant amount of what goes on in our domestic politics. What, then, does a convincing claim of just cause look like in America today? Laying out one’s good goals or defending the expediency of one’s actions is not enough. To claim just cause, the party declaring “war” must identify a genuine political wrong committed by an opposing party, one composed of human beings with moral agency.

The so-called culture war stands out as an example of a domestic political conflict with plausible just cause. Both sides can point to what they perceive as genuine wrongs committed by the other, wrongs that are unwarranted and merit coercive response. In a 2019 speech given at the University of Notre Dame, Attorney General William Barr expressed his belief that progressive secularists, who “dismiss [the traditional] idea of morality as other-worldly superstition imposed by a kill-joy clergy,” have been engaged in a “comprehensive effort to drive it from the public square ... and silence opposing

¹¹ David Davenport and Gordon Lloyd, *How Public Policy Became War* (Hoover, 2019), 10–12.

¹² “Battle metaphors for cancer can be harmful,” *Lancaster University*, 2014, <https://www.lancaster.ac.uk/news/articles/2014/battle-metaphors-for-cancer-can-be-harmful/>.

voices.” Rather than passively waiting for this effort to cease, Barr declared that religious people have a duty to defend themselves against the “forces of secularization.”¹³ Putting aside the accuracy of Barr’s beliefs, this speech provides a solid framing of just cause. According to Barr, progressive secularists have attacked religious conservatives. This attack is significant, unprovoked, and immoral. Therefore, conservatives are justified, even obligated, to respond with their domestic political weaponry.

Barr’s argument is congruent with the just war tradition. However, just cause alone does not make for a complete *jus ad bellum* case. There are other requirements, and as we will see later in this paper, the culture war may not satisfy them all so neatly.

Legitimate Authority

The legitimate authority requirement has its origins in the same texts that spawned just cause, and like just cause it has remained a pillar of the tradition ever since. In Book XXII of his work *Against Faustus the Manichaeon*, Augustine writes, “The natural order, which is suited to the peace of mortal things, requires that the authority and deliberation for undertaking war be under the control of a leader.”¹⁴ Aquinas reinforces this, listing “the authority of a sovereign” as the first of his “three things” necessary for a just war.¹⁵

¹³ “Attorney General William P. Barr Delivers Remarks to the Law School and the de Nicola Center for Ethics and Culture at the University of Notre Dame,” *US Department of Justice*, 2019, <https://www.justice.gov/opa/speech/attorney-general-william-p-barr-delivers-remarks-law-school-and-de-nicola-center-ethics>.

¹⁴ Augustine, 222.

¹⁵ *Summa* II-II.40.

For these ancient and medieval thinkers, legitimate authority was important because obedience to leaders was a matter of religious doctrine. To bypass the official political process would be to usurp an order instituted by God.¹⁶ There is also a more natural, pragmatic understanding of legitimate authority, hinted at in the passage by Augustine I have quoted above. On this understanding, the ability to declare war must be limited to standardized, institutional means because if it were not tightly controlled, deadly conflict could become frequent, and chaos and anarchy would ensue. Regardless of whether framed in religious or secular terms, the requirement's content remains the same: for a war to be just, it must be declared by a legitimate authority. Individuals or dubious organizations have no right to declare war and therefore cannot do so without upsetting the reigning system of rule and law.

In recent decades, there has been controversy aplenty about the legitimate authority requirement with regard to actual, violent conflict. Since 1945, the executive branch of the US government has brought the American military to bear against foreign targets on countless occasions, all without officially declaring war.¹⁷ Since the Constitution permits only Congress to initiate war, many people consider these actions unjust.¹⁸ Some, including former president Jimmy Carter, have even insinuated that only

¹⁶ Aquinas finds support for this stance in the Apostle Paul's Letter to the Romans: "For there is no authority except from God, and those that exist have been instituted by God. Therefore he who resists the authorities resists what God has appointed" (1B-2A Revised Standard Version).

¹⁷ Timothy McGrath, "The US is now involved in 134 wars or none, depending on your definition of 'war,'" *PRI*, 2014, <https://www.pri.org/stories/2014-09-16/us-now-involved-134-wars-or-none-depending-your-definition-war>.

¹⁸ US Const. art. I, § 8.

a unanimous vote of the UN Security Council can legitimize an initiation of war.¹⁹

Legitimate authority is a serious bone of contention in American foreign policy.

In contrast, there is little controversy when it comes to our domestic metaphorical wars. This is despite the fact that the number of conflicts our country is engaged in on its own shores is similar to the number of those being fought overseas (see Chapter Two). Some of these conflicts truly have been declared through the conventional channels of political command. For example, the fight against the Great Depression and the war on poverty were both authorized by American presidents and consented to—whether tacitly or officially—by Congress.²⁰ But many of these wars have no governmental authority backing them, and the use of the war metaphor is probably more prevalent among journalists than with political leaders. As Margaret Simons comments in a *Guardian* opinion article, it has become a genuine cliché.²¹ Americans seem to pay little attention to legitimate authority when embarking on metaphorical wars.

Part of the problem is that it is unclear exactly what counts as a legitimate authority in domestic politics. In a totalitarian state like Hobbes's *Leviathan*, it seems obvious that only the sovereign would have the power to declare war, metaphorical or otherwise. The US, however, is a democratic republic, one that is ostensibly ruled by the

¹⁹ “Just War—or a Just War?” *New York Times*, 2003, <https://www.nytimes.com/2003/03/09/opinion/just-war-or-a-just-war.html>.

²⁰ Davenport and Lloyd, 37, 58–61.

²¹ “What’s with all the war metaphors? We have war when politics fail,” 2015, <https://www.theguardian.com/commentisfree/2015/feb/17/whats-with-all-the-war-metaphors-we-have-wars-when-politics-fails>.

people. Moreover, it is host to numerous internal factions. What does legitimate authority look like in America?

On one account, it is the same in domestic politics as it is in foreign policy: only an act of Congress can authorize mobilization for war. This interpretation would disallow a great number of our metaphorical wars. The culture war in particular, as its participants are divided evenly along partisan lines, would be illegitimate according to this view, because it is the very opposite of a united national effort.

Such an interpretation is probably too restrictive. It is true that domestic political conflict bears many similarities to actual war. The moral similarities are, after all, the basis for this paper. Nevertheless, the two phenomena are not identical, and while the one can only be justified on a national scale, it may be possible that various domestic factions could legitimately practice the other. Metaphorical wars are less destructive than genuine ones, and they are political in the broadest sense. This might mean that while they are always public, they need not be *national* in nature. Only Congress can authorize actual wars, but state and local governments, non-governmental organizations, and individuals are still free to influence the public square; perhaps things like the culture war fall into the jurisdiction of the latter camp.

One could even interpret legitimate authority as binding public figures more than private ones. There is precedent for this in the just war tradition, in the works of thinkers like Aquinas and especially in Locke's *Two Treatises of Government*, where he writes that "where-ever the Power that is put in any hands for the Government of the People, and the Preservation of their Properties, is applied to other ends, ... it presently becomes

Tyranny.”²²

How could this be applied to domestic politics? One way would be to say that in a democracy like the US, politicians who represent a specific body of constituents have no authority to declare or engage in a domestic political conflict without their constituents’ say-so. This would outlaw initiation of war except in cases of a “mandate” from the people. Another, different way would be to say that legitimate authority is embodied in the institutional structure of the parties. This would mean individual Democratic or Republican politicians could not declare political wars on their own initiative; they would require their party’s approval to do so. Flagrant disregard for party platforms would then become unethical.²³

Ultimately, it is unclear exactly how the legitimate authority requirement should be applied to domestic political conflicts. What is clear is that it ought to be considered. Currently, politicians and private American citizens alike are willing to declare and embark on metaphorical crusades without deferring to or even thinking about established channels of authority. If we wish to take the just war tradition seriously as a country, such activity should no longer be accepted.

Right Intention

²² Christopher Wolfe, *Natural Law Liberalism* (Cambridge, 2006), 180; Locke (Cambridge, 1960), 448.

²³ An example of what these interpretations of legitimate authority might disallow is the activist behavior of Texas Senator Ted Cruz, who is widely disliked by both his party leaders and his constituents. R. G. Ratcliffe, “Some People Think Ted Cruz Is a Jerk. Is it Enough to Make Him Lose?” *Texas Monthly*, 2018, <https://www.texasmonthly.com/politics/ted-cruz-jerk-lose-beto-orourke/>.

The last of the three most important *jus ad bellum* requirements is right intention. The just war tradition is primarily concerned with ethics and (insofar as it is a Christian tradition) the fate of souls. Therefore, just war thinkers care deeply about the disposition of a war's participants. In the Gospels, Christ tells the disciples that "every one who is angry with his brother shall be liable to judgment" and that it is necessary for them to "[l]ove your enemies and pray for those who persecute you" (Matt. 5:22, 44 RSV). Early theologians like Augustine did not interpret this as outlawing the outward acts of violence that take place during war so much as instructing Christians to be very careful that in participating in war they do not let go of charity.²⁴ In other words, they believed a war, otherwise just in every way, could be rendered unjust if its participants (particularly its leaders) were motivated by hatred, greed, and the like, rather than a dispassionate desire to advance good and restrain evil.²⁵

For some secular thinkers, right intention is less significant than the protection of people's rights. However, Augustine and Aquinas's insights remain of the utmost importance for many just war theorists, especially those who are religious. As such, it is well worth thinking about them in the context of domestic politics.

Right intention, compared to legitimate authority and even just cause, is easy to apply to domestic political conflicts. It might even appear obvious to say that those fighting metaphorical wars in the US ought only to desire to advance the welfare of the country, not to pursue their own gain or wantonly tear people down. But anyone who has experienced battle, actual or metaphorical, knows how powerful and insidious evil

²⁴ Augustine, 221–222.

²⁵ Thomas Aquinas, *Summa* II-II.40.

desires can be, and how demanding such a maxim really is. Indeed, taking into consideration the polarization, suspicion, and rancor so prevalent in our public discourse (see Chapter Two), it seems right intention stands in need of particular emphasis.

This is especially true in the culture war, where passions are most intense—and most dangerous. David D. Corey comments upon this issue in a lecture, “The Paradox of Wars and Culture Wars.” After relating anecdotal evidence about the likelihood of culture warriors to exhibit hatred and contempt for their opponents and to assume “the absolute worst of their motives,” he explains how such behavior proves so tempting for both progressives and conservatives:

Insofar as we enter into the culture wars—and who can avoid them today?—we do so in order to advance the good and thwart the wickedness that threatens to engulf us. But in fighting, we risk gradually giving in to feelings of anger and resentment; and our “intention” may slowly shift from the love of our fellow men (enemies included) and the love of peace to a love of the conflict itself and of the *power* by means of which we fight. Again, we enter war in order to do justice, but we leave having violated the requirements of charity, in effect sacrificing a higher good for a lower one, which no one should want to do.²⁶

It is impossible to assess empirically the interior change to which Corey refers. Even the Pew data cited earlier in this paper can at best indirectly reflect it. But that does not mean it is not a real, even common, problem. As individual citizens, we know—through reflection and introspection—when we cross the line from right intention to evil intention. When that happens, we must recognize that we have violated the moral norms of the just war tradition and do our best to exorcise the selfish and impure motivations possessing us. If we cannot, we would likely do well to lay down our metaphorical swords and quit the battle for our own moral well-being.

²⁶ *Principles: From Christendom College*, n.d., <https://www.getprinciples.com/the-paradox-of-wars-and-culture-wars/>.

Public Declaration

Public declaration holds warriors responsible for officially declaring the initiation of hostilities to the enemy. In other words, a war cannot be just unless both sides are aware of their engagement in it. Though the origins of this requirement are vague (it is first mentioned by Cicero but only indirectly referenced by classical and medieval theologians), its application is straightforward.²⁷ In the context of domestic conflict, public declaration binds actors such that they can only approach politics as “war by other means” if a metaphorical war has been openly declared, or is at least widely acknowledged.

Unfortunately, it has become increasingly common to enact controversial political changes surreptitiously, without broad knowledge of what is happening—by hurriedly passing a bill before it has been thoroughly examined by all members of Congress, for example.²⁸ Even in times of conflict, such activity is suspect (see Chapter Five). It certainly should not be practiced under the pretext of peace; a public declaration of war is required.

Prudence, Proportionality, and Last Resort

The final three *jus ad bellum* requirements I examine in this paper have significant overlap, so I have combined them into one section. Prudence, proportionality,

²⁷ John Mark Mattox, *St. Augustine and the Theory of Just War* (Continuum, 2009), 78; Thomas Aquinas, *Summa* II-II.40.

²⁸ Davenport and Lloyd, 140.

and last resort are all hinted at by Augustine. In the *City of God*, he writes that Christians should never choose war but only make use of it when the enemy “forces” them to do so, and in his “Letter to Marcellinus,” he explains that good is often better served by mercy than by violence.²⁹ The implication of these statements is that an affronted party should only initiate combat if it is likely to produce good outcomes (prudent), if it is fully warranted by the offense incurred (proportional), and if it is the best of all reasonable options, just cause notwithstanding (a last resort).

Later thinkers in the tradition have codified this idea by dividing it into three distinct just war requirements. These requirements apply to metaphorical battles on the home front in almost the exact same way that they apply to actual, violent conflicts. A just cause, even one bolstered by right intention, is not enough to ensure the ethicality of declaring war. The opening of hostilities must also be prudent, proportional, and a last resort.

It can be difficult to judge whether another person’s actions are prudent or not, given probabilities are calculated subjectively. Nevertheless, a good rule of thumb is that it is unwise to fight wars when one has little to no chance of success. This may sound self-evident, but many of today’s political warriors are doing just that. Consider once more the culture war: progressives and conservatives alike have settled on the strategy of gaining power in the White House and then using executive orders to rewrite controversial policies and enact new ones.³⁰ This is an effective approach in the short

²⁹ Augustine, 149; David D. Corey and J. Daryl Charles, *The Just War Tradition: An Introduction* (Wilmington, Delaware: ISI, 2012), 58–59.

³⁰ Davenport and Lloyd, 88.

term, since it bypasses the other party's opposition in Congress, but it is unlikely to effect any lasting change. Because the parties are roughly equal in numbers, the next president is likely to be from the other side, in which case he or she can immediately undo the previous administration's changes. Donald Trump's reversal of Barack Obama's 2015 environmental regulations is a perfect example of this.³¹ Political actors need to think carefully about whether they are exercising their power constructively for a lasting goal, or if their war-making is doomed to failure and therefore purely destructive.

They also need to evaluate whether a given wrong, committed by their opponents, is worth declaring war over. We live in an age of heightened sensitivity to politics, when the slightest provocation can result in enormous outrage and retaliatory measures. The pressure to collectively "cancel" controversial individuals on social media and elsewhere is indicative of this.³² In such an age, it is important to recall the ancient wisdom of the just war tradition: not all wrongs merit an openly hostile response. In fact, to treat them all equally great could plunge society into chaos. If we do not respond to injustice with proportionality, we will never have peace, because some measure of injustice will always exist in this world. In Augustine's own words, "we are now among evils, which we must endure patiently."³³

³¹ Juliet Eilperin and Darla Cameron, "How Trump is rolling back Obama's legacy," *Washington Post*, March 2017, <https://www.washingtonpost.com/graphics/politics/trump-rolling-back-obama-rules/>.

³² Aja Romano, "Why we can't stop fighting about cancel culture," *Vox*, December 2019, <https://www.vox.com/culture/2019/12/30/20879720/what-is-cancel-culture-explained-history-debate>.

³³ Augustine, 147.

Finally, Americans should never treat politics like war unless it is the only reasonable option—a last resort. When the country’s political discourse is saturated with the metaphor of war, it is easy to forget that there are other ways to resolve conflict than coercion, but alternatives do exist. Deliberation, which relies on persuasion and compromise, is what the founders envisioned as the ideal form of political decision-making.³⁴ Unless our nation is so divided as to be totally irreconcilable, it is still a practicable option. Federalism, the practice of reserving decision-making to the smallest possible unit of governance, is another important conflict resolution tool, as collective action problems are easier to solve on the local level.³⁵ Unless these options (and others like them) have been seriously considered and deemed unreasonable, it is unjust to move to the war footing.

Conclusion

The just war tradition’s *jus ad bellum* requirements are demanding; frankly, few wars can stand up to their full scrutiny. Overall, they should prompt us to reconsider whether some of our domestic metaphorical wars should have been engaged at all, and they should certainly give us pause before we rush to declare new ones. Justice before war, however, is only part one of three major categories of justice. I will now turn to *jus in bello*, which deals with the morality of actions performed during war.

³⁴ Davenport and Lloyd, 94–97.

³⁵ Sverker C. Jagers et al., “On the preconditions for large-scale collective action,” *Ambio* 49 (2020): 1282–1296.

CHAPTER FIVE

Jus in Bello

Jus in bello refers to the ethics of actions taken by belligerents during wartime. Even if a war is just in the abstract, warriors can still be unjust if they violate moral norms. It is worth noting that while *jus ad bellum* and *jus post bellum* are of special concern to political and military leaders—the “legitimate authorities”—*jus in bello* applies primarily to the rank and file. As such, it may be the most relevant part of the just war tradition for ordinary citizens.

When *jus in bello* was first treated by Augustine, spiritual disposition and intention comprised the focus of study. Modern just war thinkers, meanwhile, have written on a wide range of specific situations and circumstances, from the morality of killing prisoners to the intricacies of conscientious disobedience. All in all, it is the broadest category in the tradition, and it would take many pages to exhaust its depths. In this chapter, I will examine its more general, abstract points, as those are the most readily applicable to domestic political conflict.

Jus ad Bellum Requirements Revisited

Jus in bello shares a number of requirements with *jus ad bellum*.¹ First, the rule of right intention applies just as much during war as it does beforehand. Augustine writes in

¹ Grotius was the first thinker in the tradition to acknowledge this. David D. Corey and J. Daryl Charles, *The Just War Tradition: An Introduction* (Wilmington, Delaware: ISI, 2012), 141.

Against Faustus the Manichaeon that the worst evils in war are not violence and the death of innocents but “[t]he desire for harming, the cruelty of revenge, the restless and implacable mind, the savageness of revolting, the lust for dominating, and similar things.”² This statement appears callous but is perfectly reasonable within the context of the Church Fathers’ moral framework, which prioritizes the disposition of the heart over external behavior. The medieval and modern thinkers that followed Augustine may not accept that framework wholeheartedly, but they generally support his belief that impure motivations on behalf of belligerents can render a war unjust, even one that began justly.³

Prudence and proportionality, like right intention, apply during war in much the same way as they do before war. Belligerents’ means must be appropriate to the ends to which they are directed, and belligerents must not commit actions that—though perhaps justified in some sense—would make a future peace unreliable or untenable. These requirements derive from one of the core assumptions of the just war tradition, which is that the ultimate goal of war ought to be justice and peace, and that violence should only be committed insofar as it brings that goal closer to fruition.⁴

What do these requirements mean for people in the thick of domestic political conflicts? For one, they mean that Americans cannot let their moral guard down when they embark on a just, metaphorical war. They must exercise constant vigilance to withstand the temptations to malice that David Corey comments on in “The Paradox of

² Augustine, *Political Writings* (Indianapolis: Hackett, 1994), 221.

³ “Just War Theory,” *Oregon State University*, https://oregonstate.edu/instruct/phl201/modules/just_war_theory/criteria_intro.html.

⁴ Corey and Charles, 57.

Wars and Culture Wars.” Moreover, political belligerents must remember their ultimate ends and direct all their actions toward them, even in the fever of battle.⁵ This is easier said than done, but it is morally imperative nonetheless.

Honesty

One *jus in bello* requirement that is particularly pertinent to domestic politics is honesty. Making false promises and breaking agreements are attractive paths to strategic advantage, paths that are often taken by modern states.⁶ The just war tradition, however, holds political actors to a higher standard. In his “Letter to Boniface,” Augustine says, “When fidelity is promised it must be kept, even to an enemy against whom war is being waged.”⁷ Aquinas concurs in the *Summa*, writing that lying and promise breaking are “always unlawful,” even during war.⁸ For these theologians, dishonesty is a violation of the Ten Commandments, which no circumstances, no matter how extreme, could justify.

Not all thinkers in the tradition share this totalistic view. Walzer, for example, believes that the threat of communal annihilation legitimates what would otherwise be

⁵ See the discussion of executive orders in “Prudence, Proportionality, and Last Resort,” Chapter Four.

⁶ A current example of this is Russia’s alleged violation of the 1987 Intermediate-range Nuclear Forces Treaty. Wesley Morgan, “Demise of US-Russia missile treaty sparks concerns of domino effect,” *Politico*, 2019, <https://www.politico.eu/article/trump-nuclear-forces-treaty-inf-demise-of-us-russia-missile-treaty-sparks-concerns-of-domino-effect/>.

⁷ Augustine, 220.

⁸ II-II.40, <https://www.newadvent.org/summa/>.

considered immoral behavior, including lying, in the name of survival.⁹ Nevertheless, the requirement of honesty is generally considered canonical, if not for absolute moral reasons, then for pragmatic ones. Whether or not dishonesty is inherently unethical, it sets a dangerous precedent. For unless states can trust one another, they will be caught in a Prisoner's Dilemma, and peaceful settlements will become unachievable. This prudential argument, most closely associated with Locke, results in a similar conclusion as Augustine and Aquinas's: lying and promise breaking in war are ultimately self-defeating and therefore (almost always, if not always) unjust.¹⁰

The implications of this requirement for political actors are clear. As tempting as it may be for those fighting domestic, metaphorical wars to lie and cheat their way to victory (itself an admittedly good end), they cannot do so without endangering their souls. Moreover, when their deceptions are inevitably uncovered, it will jeopardize what should be their ultimate goal: a just peace for the whole country.

Unfortunately, dishonesty is rife in our current politics. According to the Washington Post's Fact Checker database, the President himself made over 20,000 "false or misleading claims" within the last four years, averaging over 15 per day.¹¹ On top of

⁹ Michael Walzer, *Just and Unjust Wars* (New York: Basic Books, 1977), 254.

¹⁰ Locke, *Two Treatises of Government* (Cambridge, 1960), 318. The prudential argument for honesty is also associated with Immanuel Kant, for whom reciprocity is the essence of morality. Kant, though an important commentator on ethics and war, can be distinguished from the official tradition by his unique, deontological approach to justice.

¹¹ "Tracking all of President Trump's false or misleading claims," 9 July 2020, https://www.washingtonpost.com/graphics/politics/trump-claims-database/?utm_term=.b04b1667f114&tid=lk_inline_manual_2&itid=lk_inline_manual_3&itid=lk_inline_manual_3.

this, an atmosphere of hyper-partisanship—such as we are living in today—can pressure public figures, and even normal citizens, to espouse beliefs and slogans that they may not actually consider to be true.¹² As much as we may desire a “win” in the culture wars, we must always be sincere in our political actions. To quote an open letter penned this past year by Robert George and Cornel West, “We need the honesty and courage to express dissent—to say, ‘No, I will *not* go along’—when conscience tells us that our own ideological or political tribe has gone astray or gone too far or become fanatical and blind to integrity and the dignity of all.”¹³ The common good of the country demands it.

Treatment of Non-Combatants

The *jus in bello* requirements dealing with the treatment of non-combatants in war are well known because they have made their way into international law, including the Geneva Conventions and the US military’s rules of engagement.¹⁴ They receive some treatment by medieval writers and were clearly codified in the Early Modern Period, most notably by Vitoria and his fellow Spanish theologian, Francisco Suárez.¹⁵ In their

¹² Elizabeth Suhay, “Explaining Group Influence: The Role of Identity and Emotion in Political Conformity and Polarization,” *Political Behavior* 37 (2015): 221–251.

¹³ “To unite the country, we need honesty and courage,” *Boston Globe*, 15 July 2020, <https://www.bostonglobe.com/2020/07/15/opinion/unite-country-we-need-honesty-courage/>.

¹⁴ Daniel Wilkins and C. Dieppe, “The non-combatant status: importance and implications for medical personnel,” *BMJ Medical Health* 163 (2017): 366–370; “The Rules of Engagement,” *PBS*, <https://www.pbs.org/wgbh/pages/frontline/haditha/themes/roe.html>.

¹⁵ Corey and Charles, 75–76, 132, 136–137.

essence, the requirements state that belligerents must distinguish between enemies who pose a genuine threat to their lives and those who do not: non-combatants. Further, they must distinguish between non-combatants who are guilty of wrongdoing and those who are not; innocent non-combatants should never be directly hurt.¹⁶

Of course, it is difficult to fight a war without indirect harm coming to the innocent—often called “collateral damage.” According to the just war tradition, collateral damage is tragic and lamentable, but the people who cause it are not necessarily immoral, provided their primary actions (e.g., bombing an enemy weapons system) are militarily necessary and not in themselves evil, and provided they do not intend any of their actions’ evil side effects. This principle is known as the doctrine of double effect and comes from Aquinas’s ethics of homicide.¹⁷ Some just war thinkers criticize the doctrine for being too elastic and suggest further restrictions, such as Walzer’s requirement that those causing collateral damage do their best to minimize it, even if it means putting themselves at risk.¹⁸ However, the essence of double effect—that belligerents may only cause innocent deaths when they result from unintended side effects of their actions—remains a fundamental element of the just war tradition and modern international law.

How might these ethical requirements relate to metaphorical, political wars? Given the vague nature of political “combat,” it is difficult to apply the distinction between combatants and non-combatants in the domestic sphere. Nevertheless, it is possible to differentiate a committed culture warrior from an average American who is

¹⁶ “Just War Theory.”

¹⁷ *Summa* II-II.64.

¹⁸ 305.

not particularly political. These average Americans are too often caught up, and sometimes directly targeted, in partisan battles that they do not deserve to be involved in. This is especially true of court cases engineered for political purposes, in which the unlucky individuals or corporations selected for testing could end up receiving uncomfortable media exposure across the nation and potentially losing a great sum of money.¹⁹ Even if his or her cause is good, no American is justified in using otherwise peaceful citizens as mere pawns in a political game.

The distinction between innocent and guilty is also pertinent to domestic politics. Insofar as people are justified in embarking on a political crusade, they must be fighting against other moral agents who have committed a genuine wrong or are intent on doing so (see Chapter Four). However, a sizeable portion of those attached to the enemy's party, platform, or agenda may merely be seeking the common good and sincerely believe its cause to be the right one. These people are not guilty of any moral wrong, and therefore, though they may certainly be opposed, they should be treated with greater respect and tolerance than their less scrupulous comrades.

Ethical Means

On a general note, the doctrine of double effect disallows the use of inherently evil means to achieve good ends. In short, this implies that political warriors cannot engage in what would otherwise be considered immoral behavior to secure a victory.

¹⁹ An example of such a test case is *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*. *SCOTUSblog*, n.d., <https://www.scotusblog.com/case-files/cases/masterpiece-cakeshop-ltd-v-colorado-civil-rights-commn/>.

Lying is but one example of such behavior—others include electioneering, theft, and bribery, all of which we should likely eschew as ethically inexcusable even when legally justified by some obscure loophole.

We should also be wary of various forms of indecency that may not fall under the reach of law but are nevertheless evil. In recent years, especially since the 2016 presidential election season, brutal *ad hominem* attacks, appeals to voters' most base instincts, and shameless bragging have all become commonplace in American politics.²⁰ People on both the left and the right have lauded aspects of this development as necessary responses to injustice²¹ or as the overturning of a stifling political correctness regime.²² According to the logic of the just war tradition, however, cruelty is cruelty, pandering is pandering, and pride is pride, no matter the circumstances. If we are to take the doctrine of double effect seriously in military matters, we must apply it with equal rigor in the domestic sphere. To do less would be to abandon our principles and fall into realism (see Chapter Two).

Conclusion

²⁰ Stephen Loiaconi, "Civility crisis in American politics likely to get worse," *WJLA*, 6 July 2018.

²¹ Leila Fadel, "In These Divided Times, Is Civility Under Siege?" *NPR*, 2019, <https://www.npr.org/2019/03/12/702011061/in-these-divided-times-is-civility-under-siege>.

²² Andrew Blake, "Donald Trump 'telling it like it really, truly is' on immigration, former Ariz. governor says," *Washington Times*, 2015, <https://www.washingtontimes.com/news/2015/jul/10/jan-brewer-trump-telling-it-like-it-is-immigration/>.

All in all, the application of *jus in bello* requirements to domestic political conflict is a relatively simple matter of taking *jus ad bellum* requirements to their logical conclusions and bringing common sense morality to bear on the public square. Nevertheless it is an important step, because justice before war is only one part of a larger picture. Ethical violations committed during battle are just as dangerous as those committed beforehand. Today's political actors, who are already waging a plethora of metaphorical wars, would do well to remember that.

CHAPTER SIX

Jus post Bellum

Finally, I will discuss *jus post bellum*, the category of the just war tradition that deals with justice after hostilities conclude. Unlike *jus ad bellum* and *jus in bello*, *jus post bellum* was officially recognized only within the last few decades. According to political theorist Brian Orend, the category was ignored for so many centuries because of a temptation to conflate it with *jus ad bellum*. He explains:

[T]he ruling notion seems to be: “Look, justice after war consists of achieving the just cause which justified the start of the war to begin with. For example, if the just cause was self-defense from aggression, *jus post bellum* consists of defeating and repulsing the aggressor, successfully defending one’s community. Full stop and we’re done.”¹

On the contrary, Orend argues that ensuring justice after war is not so simple and requires special consideration. Other thinkers in the tradition find his argument persuasive, and as such I will follow their lead. In doing so, I will draw most extensively on the work of Grotius and Locke.

Punishment and Reparations

Seneca regarded the ruler who does not avenge himself to be the most virtuous. He could not say the same, however, about those who leave others un-avenged. Grotius quotes him thus:

¹ “Jus Post Bellum: The Perspective of a Just-War Theorist,” *Leiden Journal of International Law* 20 (2007): 573.

Let him be far more ready to forgive wrongs done to himself than those done to others. For just as a man is not generous who is free with other people's goods, but only the one who takes from himself what he gives to another, so I do not call a prince merciful who is lenient in a case of another's suffering.²

When innocent people have been hurt by an enemy party, and they themselves are not willing to forgive their attackers, the leaders of the righteous faction are duty-bound to mete out justice. This is the philosophical basis for the just war tradition's endorsement of punishment and reparations, as laid out by Orend.³

What are the equivalents of reparations in domestic politics? They might look like using newly won governmental power to overturn, defund, or nullify the defeated faction's policy initiatives. Depending on one's partisan standpoint, the Republican Party's attempts to repeal and replace the Affordable Care Act, if successful, would have been an example of this.⁴

They might also look like public shaming and using the media, activism, and boycotts to keep the other side down. When faced with serious moral injustice, such tactics can be justified. There is, though, the danger of a slippery slope leading to the kind of hyperactive "cancel culture" I referenced in Chapter Three. This is an important reminder that the rules of prudence and proportionality apply *post bellum* just as they do *ad bellum* and *in bello*.

² Hugo Grotius, *The Law of War and Peace* (Walter J. Black, 1949), 256.

³ 580.

⁴ Steve Benen, "On Groundhog Day, Republicans vote to repeal Obamacare," *MSNBC*, February 2016, <http://www.msnbc.com/rachel-maddow-show/groundhog-day-republicans-vote-repeal-obamacare>.

Limits on Punishment and Reparations

There are many cases in domestic politics when exacting reparations and inflicting punishment may very well do more harm than good. After a war ends, the tradition holds that the victors should not be unduly punitive. They must be just, but they must only punish, to quote Locke, “so far as calm reason and conscience dictates.”⁵ Otherwise, they exaggerate their rights and may wound their souls. The victors must also try to heal the war’s wounds and restore political health and (to the greatest possible degree) friendship between the belligerent nations.⁶ If they fail to do so, another war may break out in the future, and the victors of the first may be partly responsible. For example, the Treaty of Versailles likely contributed to the eventual breakout of World War II.

Similar logic applies in the domestic political realm. When one side or another achieves a major political victory, there is often a great temptation to vindictively “lord it over” the defeated faction. An especially famous instance of this is the Nixon administration’s “enemies list project,” which was a blatant attempt to “maximize the fact of our incumbency ... to screw our political enemies.”⁷ More recently, after his 2020

⁵ *Two Treatises of Government* (Cambridge, 1960), 312.

⁶ Orend, 580.

⁷ John Dean, “Dealing with our Political Enemies,” memorandum, August 16, 1971; Alisa Wiersma, “IRS No Stranger to High-Profile Scandals Involving Presidents, Civil Rights Leaders, Religious Groups,” *ABC News*, May 2013, <https://abcnews.go.com/Politics/irs-stranger-high-profile-scandals-involving-presidents-civil/story?id=19178460>.

impeachment trial acquittal, President Trump removed several officials who witnessed against him in an apparent act of revenge.⁸

Lenience is not always warranted after war. But in the messy world of domestic politics, lenience seems especially appropriate, since winning and losing factions must continue to live and work together regardless of a conflict's outcome. Moreover, just war theorists like Locke are adamant that only people who actively participated in the fight against the victorious faction are valid candidates for punishment. Those who did not consent to it are free and safe from retaliation.⁹ The same is true with regard to reparations—a just conqueror “cannot take the Goods of his [enemy's] Wife and Children,” for example.¹⁰ And yet, separating genuine wrongdoers from more innocent members of the enemy is difficult and often imprecise (see Chapter Five). This suggests one should err on the side of mercy for the sake of creating a lasting peace.

Reconstruction Only If Necessary

It is common for victors in war to reconstruct their defeated enemies' systems of government, setting up regimes more amenable to their influence. The reconstructions of Germany and Japan after World War II, or of the South after the American Civil War, are excellent examples of this. In domestic politics, analogous occurrences are similarly

⁸ Kyle Cheney, Natasha Bertrand, and Meredith McGraw, “Impeachment witnesses ousted amid fears of Trump revenge campaign,” *Politico*, February 2020, <https://www.politico.com/news/2020/02/07/donald-trump-pressure-impeachment-witness-alexander-vindman-111997>.

⁹ Locke, 435.

¹⁰ Locke, 437.

common. For instance, when a new president is elected, he or she will often “target” federal bureaucrats appointed by the previous administration, leading to their removal from office.¹¹

According to just war thinkers, however, reconstruction is not always legitimate. The general trend of the tradition is to permit coercion insofar as it is required to overcome the aggressors and punish the evil they have committed, but no further. For Locke, this means a victorious belligerent may be justified in destroying the defeated belligerent’s system of government if that government was responsible for war crimes.¹² But he or she has no right to install and uphold a new regime merely for his or her own benefit. In Locke’s own words, “[T]he *Government of a Conqueror*, imposed, by force, on the Subdued, against whom he had no right of War, or who joined not in the War against him, where he had right, *has no Obligation* upon them.”¹³

Domestic political actors may need to rethink their perspective on reconstruction in light of Locke’s proscription. It is true that post-election turnover in the executive branch is commonplace in the U.S., between both parties. And yet, unless a bureaucrat has committed a moral wrong against the victorious faction, justice may require that he or she be allowed to retain his or her position. (Whether the bureaucrat would want to stay in power is another question, irrelevant to this discussion.)

¹¹ Kathleen M. Doherty, David E. Lewis, and Scott Limbocker, “Executive Control and Turnover in the Senior Executive Service,” *Journal of Public Administration Research and Theory* 29 (2019): 159–174.

¹² 439.

¹³ 440.

Conclusion

A war cannot be fully just unless it is ended justly. It may be fought for a good reason and with right intention, but without fair peace terms and disinterested, prudent treatment of the defeated wrongdoers, the ensuing peace will be less than satisfactory. In fact, it might eventually lead to new conflict. These are the principal lessons of *jus post bellum* for military and political leaders. They will prove valuable assets in the domestic sphere as well, if we have the will to apply them.

CHAPTER SEVEN

Conclusion

Carl Schmitt's definition of politics as war by other means describes American politics disturbingly well. Since the Great Depression, the metaphor of war has become a staple in our public discourse. According to politicians and the media, Americans are currently engaged in wars on inanimate objects or concepts (from poverty to drugs to the coronavirus), wars on specific groups of the population (such as women and small business owners), and a grand battle for the soul of the Union called the culture war. By the year 2021, we have become a nation of conflict-hardened political soldiers, and the fighting appears unlikely to conclude anytime in the near future.

Americans today have mostly accepted the "politics as war" narrative, perhaps because it is omnipresent in the public square, perhaps because of its compelling nature. But there are two important lines of questioning that we need to pursue in order to avoid potential pitfalls that accompany it. First, we need to ask if there is another, more peaceful and cooperative way of doing politics that might not be superior to our present methods. Second, if we are still going to treat politics as a form of war, we might need to look to the just war tradition to derive from it an ethical framework by which to judge our actions.

In response to the first question, my research indicates that there is indeed another way of doing politics. Views of politics can be mapped onto a spectrum with two poles, the view of politics as peaceful cooperation and the view of politics as war. They

are philosophically distinct in that one is oriented toward domination of the opposing faction, while the other is oriented toward reasonable compromises on concrete policies. In the real world, these polar views are usually (if not always) mixed together, but this does not mean they are any less real. Moreover, the U.S. is not doomed to favor one over the other. According to my analysis of presidential rhetoric and founding American documents, the country was originally intended to manifest primarily the politics of peaceful cooperation, at least at the national level. The current prevalence of warlike politics is a modern phenomenon that began with the Great Depression, and it is possible for us to move back along the spectrum further toward the opposite pole.

What if we are to continue treating politics as war? The just war tradition—the ethical framework that the US has enshrined in international law and its own military rules of engagement—is the best system we have for evaluating the morality of actions taken before, during, and after war. Moving toward the antagonistic pole on the political spectrum does not free us from ethical constraints (not unless we are to abandon our historic philosophical and moral commitments in favor of realism). Instead, it brings us into the purview of just war thinking, now applied to domestic politics.

In order to have justice before war (*jus ad bellum*), there are five broad requirements. First, there must be a just cause; an enemy agent must commit a moral wrong against an innocent party. Second, war must be initiated by a legitimate authority through established institutional means, or else chaotic precedents would be set. Third, those initiating the conflict (especially their leaders) must have good intentions. Fourth, the war must be publicly declared. And fifth, the war must fall within the bounds of

prudence, the undertaking must be proportional in magnitude to the wrong committed, and fighting cannot begin until all reasonable, peaceful options have been exhausted.

Justice during war (*jus in bello*) is also considered essential in just war thinking. The requirements of right intention, prudence, and proportionality apply in the thick of battle as much as they do before a war begins. In addition, the tradition holds that belligerents must be faithful to their promises. Moreover, they must distinguish between combatants and non-combatants, innocent and guilty, when engaging the enemy. Finally, they may not use unethical means of warfare, even to achieve good ends.

The third category of moral requirements in the just war tradition is justice after war (*jus post bellum*). According to these conventions, victors in a war are honor-bound to establish fair peace terms, especially to prevent the outbreak of another war in the future. In addition, they may only reconstruct the enemy's government if absolutely necessary. On the other hand, they are also required to punish enemy wrongdoers and exact reparations from the losing party in order to satisfy the needs of justice.

Applying the principles of just war thinking to domestic political "wars" is a revealing process. If only a wrong committed by a moral agent can constitute a just cause, then the plethora of wars the US is waging against inanimate objects and concepts are of questionable ethicality. If a just war requires a legitimate authority, then the war metaphor ought not to be employed so freely (much to the chagrin of the lone-wolf politicians who favor it).

It is also a demanding process. Right intention places sharp limits on the kind of vicious antagonism common among culture warriors. Prudence and proportionality command us to be less idealistic and absolutist in our political expectations, and to learn

to tolerate evil without always reacting against it. The requirement of honesty means that deception is off the table. “Ends-justify-the-means” realism is even more so. Innocent citizens cannot be used against their will to accomplish political ends. Finally, the just war tradition (while allowing for legitimate punishment and exacting of reparations) prohibits any “lording it over” and unnecessary reconstruction of the enemy after hostilities conclude.

These are important and timely discoveries. As American politics seems to become more and more antagonistic every day, and therefore more and more ethically dangerous, we are in desperate need of moral guidelines that will help us navigate the public square. The just war tradition is by far the best resource available for developing such guidelines. It is already engrained in the American philosophical heritage, as well as military and international law. My research indicates that it is also readily applicable to domestic politics. It is true that just war thinking condemns much that is commonplace in today’s politics and public discourse and places strict limits on what it does not. As such, it may not be welcome by many politicians and citizens, particularly those who have vested interests in continuing our metaphorical wars for as long as possible. But it is a valuable tool nevertheless, and one that can help political actors who wish to abide by the dictates of morality do so.

This paper only begins the process of analogizing from the just war tradition to create an ethical framework for domestic politics. Several different authors suggested this project prior to the beginning of my research.¹ Now it has been started, but only the

¹ James Childress, “The War Metaphor in Public Policy,” *The Leader’s Imperative* (Purdue, 2001), 181.

groundwork has been laid; further work is essential. For instance, what the *jus ad bellum* legitimate authority requirement should entail in the domestic sphere is still far from clear. Moreover, my applications of just war principles to specific, real-world examples of political conflict are by no means definitive. Much good could come from a more rigorous analysis of the cases and other like them. Finally, there is ample room for debate about my distinction between the politics of peaceful cooperation and the politics of warlike competition, as well as debate about which of the two poles Americans gravitated toward in the past—and which they should strive for now.

The just war tradition is one of our country's most valuable intellectual treasures. Using its wisdom, we have trained our soldiers and international judges to resist evil and protect good without falling into either pacifism or cynical realism. Polarization is making our politics and public discourse increasingly warlike. This creates a tense, fraught atmosphere in which boundaries are blurred and we are tempted to abandon our moral commitments. We should use the principles of the just war tradition to help us regain ethical clarity and avoid evil. Hopefully, they will remind us that the true goal of all just wars is a just peace, and that every citizen must, in the words of Augustine, "Be a peacemaker, ... even in fighting, so that through your victory you might bring those whom you defeat to the advantages of peace."²

² Augustine, *Political Writings* (Indianapolis: Hackett, 1994), 220.

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