ROUTLEDGE

THE ASHGATE RESEARCH COMPANION *to*

MILITARY ETHICS

Edited by

JAMES TURNER JOHNSON AND ERIC D. PATTERSON

Justice, International Law and Global Security Series

ASHGATE
RESEARCH
COMPANION

THE ASHGATE RESEARCH COMPANION TO MILITARY ETHICS

This is an exceptional book: rich in content and highly relevant in a world where the ethics of military action grow ever more complex. I will have a copy on my shelf as soon as it is published and I will ensure that it is a key point of reference for the students I teach. I cannot recommend it highly enough.

Peter Lee, University of Portsmouth and RAF College Cranwell, UK

This is an exquisite and provocative collection of contemporary thinking about military ethics. Besides distinguished academics, the editors also include writers with an authentic orientation towards military realities, something too often omitted in works of this type. Positively a 'must have' volume for anyone interested in the indispensable role ethics play in modern conflicts.

Maj. Gen. Charles J. Dunlap, Jr., USAF (Ret.), Duke Law School, USA

Justice, International Law and Global Security

Series Editor: Howard M. Hensel

As the global community enters the 21st century, it is confronted with a wide variety of both traditional and non-traditional challenges to its security and even survival, as well as unprecedented opportunities for global socio-economic development. International law will play a major role as the international community attempts to address these challenges and opportunities while, simultaneously attempting to create a just and secure global order capable of protecting and promoting the common good of the whole of mankind.

The Ashgate Series on *Justice, International Law and Global Security* is designed to encourage and highlight analytical, scholarly works that focus on the ways in which international law contributes to the management of a wide variety of contemporary challenges and opportunities, while, simultaneously, helping to promote global justice and security.

Recent titles in the series (continued at the back of the book)

Shaping US Military Law
Governing a Constitutional Military
Joshua E. Kastenberg
ISBN: 978-1-4724-1910-1

Visions of Peace
Asia and The West
Edited by Takashi Shogimen and Vicki A. Spencer
ISBN: 978-1-4094-2870-1

The Law of War
Ingrid Detter
ISBN: 978-1-4094-6495-2

Peace Operations and Restorative Justice
Groundwork for Post-conflict Regeneration
Peter Reddy
ISBN: 978-1-4094-2989-0

Ethics and the Use of Force
Just War in Historical Perspective
James Turner Johnson
ISBN: 978-1-4094-1857-3

The Ashgate Research Companion to Military Ethics

Edited by

JAMES TURNER JOHNSON

Rutgers University, USA

and

ERIC D. PATTERSON

Regent University, USA

Routledge
Taylor & Francis Group
LONDON AND NEW YORK

First published 2015 by Ashgate Publishing

Published 2016 by Routledge
2 Park Square, Milton Park, Abingdon, Oxon OX14 4RN
711 Third Avenue, New York, NY 10017, USA

Routledge is an imprint of the Taylor & Francis Group, an informa business

British Library Cataloguing in Publication Data
A catalogue record for this book is available from the British Library

Library of Congress Cataloging-in-Publication Data
Johnson, James Turner.
The Ashgate research companion to military ethics / by James Turner Johnson and Eric D. Patterson.
pages cm. -- (Justice, international law and global security)
Includes bibliographical references and index.
ISBN 978-1-4724-1628-5 (hardback)
1. Military ethics. 2. Just war doctrine. 3. War--Moral and ethical aspects. I. Patterson, Eric, 1971- II. Title.

U22.J65 2015
172'.42--dc23

2014030475

ISBN 9781472416285 (hbk)
ISBN 9781315613246 (ebk)

Contents

PART II: RIGHT CONDUCT IN THE USE OF MILITARY FORCE

This page has been left blank intentionally

List of Figures and Tables

Figures

Tables

This page has been left blank intentionally

List of Contributors

The Editors

James Turner Johnson (also author of Chapter 23) is Distinguished Professor in the Department of Religion at Rutgers University—The State University of New Jersey (USA). A former Guggenheim, Rockefeller, and National Endowment for the Humanities Fellow, he is the author of ten books, including *Just War Tradition and the Restraint of War* (Princeton University Press 1981) and *The Holy War Idea in Western and Islamic Traditions* (Pennsylvania State University Press 1997 and editor or co-editor of five more, including (with John Kelsay) *Cross, Crescent, and Sword* (Greenwood Press 1990) and *Just War and Jihad* (Greenwood Press 1991). His most recent books are *Ethics and the Use of Force* (Ashgate 2011) and *Sovereignty: Moral and Historical Perspectives* (Georgetown University Press 2014). He served for nine years as founding Co-Editor of the *Journal of Military Ethics*. He received a Ph.D. with distinction from Princeton University in 1968.

Eric D. Patterson (also author of Chapter 25) is Professor of Government and Dean of the Robertson School of Government at Regent University (Virginia Beach, Virginia) and Research Fellow at Georgetown University's Berkley Center for Religion, Peace, & World Affairs, where he previously served as Associate Director for four years. His civilian government experience includes service as a White House Fellow and two periods working at the State Department's Bureau of Political-Military Affairs. He is the author or editor of eleven books, including *Ending Wars Well: Just War Thinking and Post-Conflict* (Yale University Press 2012), *Ethics Beyond War's End* (Georgetown University Press 2012), and *Politics in a Religious World: Toward a Religiously Literate U.S. Foreign Policy* (Continuum 2011). He routinely speaks for United States Government audiences, including at the National War College, Naval Postgraduate School, Naval War College, Armed Forces Chaplains Center, the three U.S. military academies, and various combatant commands. He is a unit commander in the Texas Air National Guard and deployed to Southwest Asia in 2011. He received a Ph.D. in Political Science from the University of California, Santa Barbara, in 2008.

Chapter Authors

Nigel Biggar (Chapter 28) is Regius Professor of Moral and Pastoral Theology, Christ Church, Oxford University (UK). His books include *In Defence of War* (Oxford University Press 2013), *Religious Voices in Public Places* (Oxford University Press 2009), and (as co-editor) *Burying the Past: Making Peace and Doing Justice after Civil Conflict* (Georgetown University Press 2001, 2003) and *The Revival of Natural Law* (Ashgate 2000). He received a Ph.D. from the University of Chicago.

Laurie R. Blank (Chapter 17) is Clinical Professor of Law and Director of the International Humanitarian Law Clinic at Emory University School of Law, where she teaches international humanitarian law and works directly with students to provide assistance to international tribunals, militaries, and non-governmental organizations on key issues in humanitarian law. She is the co-author of *International Law and Armed Conflict: Fundamental Principles and Contemporary Challenges in the Law of War* (Aspen 2013) and numerous articles on the law of armed conflict. Previously, Professor Blank worked in the Rule of Law Program at the United States Institute of Peace, directing a multi-year project on New Actors in the Implementation and Enforcement of International Humanitarian Law. Professor Blank received an A.B. in Politics from Princeton University, an M.A. in International Relations from The Paul H. Nitze School of Advanced International Studies (SAIS) at The Johns Hopkins University, and a J.D. from New York University School of Law.

Torkel Brekke (Chapter 31) is Professor in the History of Religions and South Asian studies at the University of Oslo. The main focus of his work is the political role of religion. He has published extensively on the ethics of war in South Asian traditions. His most recent books are *Fundamentalism: Prophecy and Protest in an Age of Globalization* (Cambridge University Press 2012) and (with Vladimir Tikhonov) *Buddhism and Violence: Buddhism and Militarism in Modern Asia* (Routledge 2012).

Davis Brown (Chapter 3) is Assistant Professor of Political Science and Director of the Legal Studies Program at Maryville University, St. Louis, Missouri (USA). An attorney and former U.S. Air Force Judge Advocate, he also serves as an NGO Delegate to the International Criminal Court. Among his publications is a book, *The Sword, the Cross, and the Eagle: The American Just War Tradition* (Rowman & Littlefield 2008). He received a Ph.D. in Political Science from the University of Virginia.

Daniel R. Brunstetter (Chapter 2) is Associate Professor of Political Science in the School of Social Sciences at the University of California, Irvine, California (USA), where he also serves as Faculty Director of Study Abroad. He received the inaugural University of California President's Award for Outstanding Leadership in 2010. He also received a Chateaubriand Fellowship for study at the Ecole des Hautes Etudes en Sciences Sociales (Paris, France) in 2005–6 and has received grants from the Albert and Elain Borchard Foundation and the Andrew W. Mellon Foundation. His publications include articles in *Ethics & International Affairs*, the *Journal of Military Ethics*, the *Review of International Studies*, *Raisons Politiques*, and the *Journal of Political Ideologies* as well as a book, *Tensions of Modernity: Las Casas and his Legacy in the French Enlightenment* (Routledge 2012). He received a Ph.D. from the University of California, Davis, in 2005.

J. Daryl Charles (Chapter 9) teaches in the Honors Program and the Department of Religion and Philosophy at Berry College (USA). He previously taught at Taylor University and Union University, directed the Bryan College Institute for Critical Thought & Practice, and served as 2003/4 Visiting Fellow, Institute for Faith & Learning, Baylor University, and as 2007/8 William E. Simon Visiting Fellow in Religion and Public Life, James Madison Program, Princeton University. He is author, co-author or co-editor of 14 books, including *America's Wars: A Just War Perspective* (forthcoming), *The Just War Tradition: An Introduction* (ISI 2012), *War, Peace, and Christianity* (Crossway 2010), *Retrieving the Natural Law* (Eerdmans 2008), and *Between Pacifism and Jihad: Just War and Christian Tradition* (InterVarsity 2005). In addition to the ethics of war and peace, his research interests include natural law, criminal-justice ethics,

bioethics, religion and society, and the ethics of humanitarian intervention. Before entering the classroom, Charles did public policy work in Washington, D.C.

Darrell Cole (Chapter 8) is Associate Professor of Religion at Drew University (USA) and Chair of the Department of Comparative Religion. He teaches courses in professional and religious ethics. He is the author most recently of "Torture and Just War," *The Journal of Religious Ethics* 40.1 (March 2012). His forthcoming works include *Just War and the Ethics of Espionage* (Routledge 2014) and "Responsibility and Limitation: The Early Christian Church and War," in *Faith, Violence and War*, volume 39 of the *Religious and Public Life Series* (Transaction 2014).

James L. Cook (Chapter 16) has been Permanent Professor and Head of the Department of Philosophy at the US Air Force Academy since 2002, when he was confirmed by the U.S. Senate. An active-duty colonel, he has served in NATO, at the Pentagon, and as senior U.S. advisor to the National Military Academy of Afghanistan. His most recent work addresses the ethics of cyberwar in the *Journal of Military Ethics* and forthcoming volumes from Oxford University Press and Routledge. He earned his doctorate in philosophy *magna cum laude* from the Universität-Heidelberg.

Martin L. Cook (Chapter 4) is the Admiral James Bond Stockdale Professor of Professional Military Ethics at the United States Naval War College. He previously served as Professor of Philosophy and Deputy Department Head, Department of Philosophy, at the United States Air Force Academy, Professor of Ethics and Elihu Root Chair of Military Studies at the United States Army War College, and as a tenured member of the faculty at Santa Clara University, California. He serves as co-editor of *The Journal of Military Ethics* and is a member of the editorial boards of *Parameters*, the scholarly journal of the U.S. Army War College, and *The Journal of Military Medical Ethics*. He is author of three books, including *The Moral Warrior: Ethics and Service in the US Military* (State University of New York Press 2003) and *Issues in Military Ethics: To Support and Defend the Constitution* (State University of New York Press 2013), co-author of a fourth, and of more than 45 scholarly articles. He has lectured on topics of military ethics in the United Kingdom, Australia, Singapore, France, The Netherlands, Hong Kong, Colombia, Ecuador, Sweden, and Norway. He received a B.A. from the University of Illinois *summa cum laude* and an M.A. and Ph.D. from the University of Chicago.

Timothy J. Demy (Chapter 26) is Professor of Military Ethics at the United States Naval War College, Newport, Rhode Island (USA). Prior to this appointment he served as a U.S. Navy chaplain for 27 years. He is author or editor of more than 20 books, of which the most recent (with J. Daryl Charles) is *War, Peace, and Christianity* (Crossway 2011). He also serves as the American Managing Editor of the *Journal of Military Ethics*. He received a Th.D. from Dallas Theological Seminary and a Ph.D. from Salve Regina University.

Paul Gilbert (Chapter 24) is Emeritus Professor of Philosophy at the University of Hull, where he was previously Head of Humanities. His most recent publications include *New Terror, New Wars* (Edinburgh University Press 2003), *The World, the Flesh and the Subject* (with Kathleen Lennon, Edinburgh University Press 2005), *Cultural Identity and Political Ethics* (Edinburgh University Press 2010) and *An Introduction to Metaphilosophy* (with Soren Overgaard and Stephen Burwood, Cambridge University Press 2013).

Luke Glanville (Chapter 7) is a fellow in the Department of International Relations at the Australian National University. He is the author of *Sovereignty and the Responsibility to Protect: A New History* (University of Chicago Press 2014) as well as articles on ethics, politics, and law regarding international efforts to protect the vulnerable in numerous journals including *International Studies Quarterly*, *European Journal of International Relations*, *Human Rights Law Review*, and *Studies in Christian Ethics*. He is co-editor of the journal *Global Responsibility to Protect*.

Amos N. Guiora (Chapter 13) is Professor of Law and Director of the Center for Global Justice at the S.J. Quinney College of Law, the University of Utah (USA). He has received grants from the Stuart Family Foundation and Earhart Foundation and was awarded a Senior Specialist Fulbright Fellowship for The Netherlands in 2008. Earlier he served for 19 years in the Israeli Defense Forces, holding a number of senior commands including Commander of the IDF School of Military Law and Legal Advisor to the Gaza Strip; he retired from the IDF with the rank of Lieutenant Colonel. He is the author of 10 books, including *Targeted Killing and the Law* (Oxford University Press 2013), *Legitimate Target: A Criteria-Based Approach to Targeted Killing* (Oxford University Press 2013), *Global Perspectives on Counterterrorism* (Aspen Publishers 2007 and 2011), and *Constitutional Limits on Coercive Interrogation* (Oxford University Press 2008). He also has lectured widely and is the author of numerous articles.

Howard M. Hensel (Chapter 12) has served as a professor at the United States Air War College since 1986. In addition to his teaching responsibilities there he has also served in various leadership positions, including the Director of Strategy, Director of International Security Studies, and Director of Soviet Studies. He received his B.A. from Texas A&M University and M.A. and Ph.D. from the University of Virginia. Before joining the faculty of the Air War College, he served on the faculty of the Air Command and Staff College, the Monterey Institute of International Studies, the Naval Postgraduate School, the University of Virginia, and the Marine Command and Staff College. He is the author or editor of nine books and over 40 articles and book chapters focusing on various aspects of international relations, political philosophy, international humanitarian law, Soviet foreign/military policy, military history, and strategy.

John Kelsay (Chapter 29) is Distinguished Research Professor in the Department of religion at The Florida State University, Tallahassee, Florida (USA). His books include *Arguing the Just War in Islam* (Harvard University Press 2007) and *Islam and War* (Westminster/John Knox Press 1993). He has edited (with James Turner Johnson) *Cross, Crescent, and Sword* (Greenwood Press 1990) and *Just War and Jihad* (Greenwood Press 1991). A former General Editor of *The Journal of Religious Ethics*, he currently serves as Editor of *Soundings: An Interdisciplinary Journal*. He received a Ph.D. from the University of Virginia.

Ping-cheung Lo (Chapter 30) is Professor in the Department of Religion and Philosophy and Director of the Centre for Applied Ethics at Hong Kong Baptist University, where he has been teaching since 1990. Recent publications on Chinese military ethics appear in the *Journal of Religious Ethics* 40.3 (September 2012) and the *Journal of Military Ethics* 11.3 (August 2012). He is co-editor of *Chinese Just War Ethics: Origin, Development, and Dissent* (forthcoming from Routledge). He earned a Ph.D. in Philosophy at State University of New York at Buffalo (1982) and a Ph.D. in Religious Studies at Yale University (1990).

George R. Lucas, *Jr.* (Chapter 18) recently retired from the Distinguished Chair in Ethics in the Vice Admiral James B. Stockdale Center for Ethical Leadership at the U.S. Naval Academy and is currently Professor of Ethics and Public Policy at the Graduate School of Public Policy at the Naval Postgraduate School in Monterey, California. He has taught at Georgetown University, Emory University, Randolph-Macon College, the French Military Academy (Saint-Cyr), and the Catholic University of Leuven in Belgium. He works in the fields of applied moral philosophy and military ethics and has written on such topics as irregular and hybrid warfare, cyber conflict, military and professional ethics, and ethical challenges of emerging military technologies. His most recent book is *Anthropologists in Arms: The Ethics of Military Anthropology* (AltaMira Press 2009). Two others, *Military Ethics: What Everyone Needs to Know* (Oxford University Press) and an edited volume, the *Routledge Handbook on Military Ethics,* will both be published in 2015.

Bård Mæland (Chapter 22) is Professor of Systematic Theology at the School of Mission and Theology, Stavanger, Norway, where he has served as the Rector (President) since 2010. He previously served as a chaplain to the Norwegian Military Academy and as a staff chaplain and senior researcher to the Chaplaincy of the Norwegian Armed Forces. His time in the military also included a deployment to South Lebanon as part of UNIFIL in 1996. Mæland's publications include *Enduring Military Boredom: From 1750 to the Present* (Palgrave Macmillan 2009, with Paul Otto Brunstad), *Skadeskutt idealisme/Wounded Idealism* (Eide Forlag 2004), a study on moral attitudes among young Norwegian officers serving in KFOR in Kosovo 2000–2, and *Rewarding Encounters: Islam and the Comparative Theologies of Kenneth Cragg and Wilfred Cantwell Smith* (Melisende 2003). He earned his Dr.theol. degree from the Norwegian School of Theology, Oslo, in 2001. Mæland is also the founding editor (with James Turner Johnson) of the *Journal of Military Ethics* (Routledge), where he served as an Editor-in-Chief with Johnson 2002–9.

Mary Manjikian (Chapter 5) is Associate Dean of the Robertson School of Government at Regent University (USA). She previously served as a U.S. Foreign Service officer in The Netherlands, Russia, and Bulgaria and a Fulbright Scholar at Durham University's Institute of Advanced Study. Her publications include *Apocalypse and Post-Politics: The Romance of the End* (Lexington Books 2012), *Threat Talk: Comparative Politics of Internet Addiction in China and the US* (Ashgate 2012), and *Securitization of Property Squatting in Western Europe* (Routledge 2013). Her work has also appeared in *International Studies Quarterly*, *International Journal of Intelligence and Counterintelligence*, *Intelligence and National Security*, and the *International Feminist Journal of Politics*. She holds a Ph.D. from the University of Michigan.

Brian Orend (Chapter 10) is Director of International Studies and Professor of Philosophy at the University of Waterloo in Canada. He has also taught at Columbia University and the University of Lund in Sweden, where he was recently Distinguished Visiting Professor of Human Rights. His research and speaking efforts concentrate on three areas: the ethics of war and peace (especially post-war reconstruction), human rights, and happiness. He is the author of six books, including *Human Rights: Concept and Context* (Broadview 2002), *Introduction to International Studies* (Oxford 2013), and *The Morality of War* (2nd edition, Broadview 2013). His Ph.D. is from Columbia University.

Pauletta Otis (Chapter 14) is currently teaching for the U.S. Marine Corps at Miramar and Pendleton, California. She was previously Professor of Security Studies at Marine Corps University, Quantico, Virginia. Her experience includes work with the U.S. military chaplains, the Defense Intelligence Agency, the Pew Forum, and as Professor of International

Studies at Colorado State University. She received the Joint Civilian Commendation Award for service to the Joint Chief of Staff, Department of Defense, in 2012. Recent publications include "Religion in the US Military" in Ron Hassner, ed., *Religion in the Military Worldwide* (Cambridge University Press 2014), "Religion in the Time(s) of War" in Eric Patterson, ed., *Ethics at War's End* **(**Georgetown University Press 2012) "Anthropology and Arms Control," in Paul Viotti, ed., *Arms Control* (ABC Clio Press 2012); and "The Religious Factor in Military Leadership," in Paolo Tripodi, ed., *Aspects of Leadership: Ethics, Law and Spirituality* (USMC 2013).

Keith Pavlischek (Chapter 6) retired as a Colonel in the United States Marine Corps in 2007 after 30 years of active and reserve service. Following his retirement he was a Senior Fellow at the Ethics and Public Policy Center, a Washington, D.C. think tank. More recently he served in Afghanistan as a civilian adviser to the U.S. military. He is the author of *John Courtney Murray and the Dilemma of Religious Toleration* (Thomas Jefferson University Press 1994) and numerous articles and book chapters including "Just and Unjust War in an Age of Terrorism" (*Intercollegiate Review*), "The Ethics of Counterinsurgency" and "Proportionality in Warfare" (*The New Atlantis*), and "Reinhold Niebuhr, Christian Realism and Just War Theory" in *Christianity and Power Politics Today: Christian Realism and Contemporary Political Dilemmas*, ed. Eric Patterson (Palgrave Macmillan 2008). He received a Ph.D. from the University of Pittsburgh.

Gregory M. Reichberg (Chapter 1) is Research Professor at the Peace Research Institute Oslo (PRIO), where he specializes in the history of ethical thinking about war and peace. He heads the Research School on Peace and Conflict (a consortium for doctoral students based at the University of Oslo) and is currently writing a monograph, *War and Peace in the Ethics of Thomas Aquinas.* He is co-editor of *Religion, War and Ethics: A Sourcebook of Textual Traditions* (Cambridge University Press 2014), *World Religions and Norms of War* (United Nations University 2009), *The Ethics of War: Classic and Contemporary Readings* (Blackwell 2006), *Ethics, Nationalism, Just War*: *Medieval and Contemporary Perspectives* (Catholic University of America Press 2007), and *The Classics of Western Philosophy: A Reader's Guide* (Blackwell 2003). Reichberg previously taught at Fordham University and the Catholic University of America. He holds a Ph.D. in philosophy from Emory University.

Carla L. Reyes is an adjunct professor of law at Northwest University in Kirkland, Washington, and an associate at the legal firm of Perkins Coie LLP in Seattle. She has published various scholarly pieces on international law, including "War Crimes" in *International Crime and Justice* (Cambridge University Press 2011) with Noah Weisbord. She earned her J.D., *magna cum laude*, and LL.M. in International and Comparative Law in 2009 from Duke University School of Law. She also holds a Master of Public Policy from the Terry Sanford School of Public Policy at Duke.

Paul Robinson (Chapter 15) is a professor in the Graduate School of Public and International Affairs at the University of Ottawa. He is the author and editor of numerous works on military history and military ethics, including *Ethics Education in the Military* (Ashgate 2008) and *Military Honour and the Conduct of War: From Ancient Greece to Iraq* (Routledge 2006).

John Sawicki, CSSP (Chapter 20) is Assistant Professor of Political Science in the College of Liberal Arts and Director of the Center for International Relations at Duquesne University (USA). He is also an adjunct professor in the Program on Terrorism and Security Studies

at the George C. Marshall Center, Garmisch-Partenkirchen, Germany. A Roman Catholic priest, he received a Ph.D. from the Fletcher School of Law and Diplomacy, Tufts University.

Henrik Syse (Chapter 19) is Senior Researcher at the Peace Research Institute Oslo (PRIO) and chief co-editor with Martin L. Cook of the *Journal of Military Ethics*. He previously taught as Associate Professor at the University of Oslo and the Norwegian Defense University College and is currently a lecturer at Bjørknes College and the Norwegian Business School (BI). He has also served as Head of Corporate Governance for the Norwegian Central Bank Investment Management. His publications include *The Ethics of War: Classic and Contemporary Readings*, co-edited with Gregory Reichberg and Endre Begby (Blackwell 2006), *Natural Law, Religion, and Rights* (St. Augustine's Press 2007), and *Religion, War, and Ethics: A Sourcebook of Textual Traditions*, co-edited with Gregory Reichberg (Cambridge University Press 2014). He holds a B.A. from the University of Oslo, an M.A. in political theory from Boston College, and a Ph.D. in moral philosophy from the University of Oslo.

David Whetham (Chapter 21) is a senior lecturer in the Defence Studies Department of King's College London, based at the Joint Services Command and Staff College, where he coordinates or delivers the military ethics component of courses for between 2,000 and 3,000 British and international officers a year. In Spring 2011 he was a Visiting Fellow at the Stockdale Center for Ethical Leadership at the United States Naval Academy, Annapolis, Maryland, and in 2009, he was a Visiting Fellow with the Centre for Defence Leadership and Ethics at the Australian Defence College in Canberra. He is also a regular visiting lecturer in military ethics at the Baltic Defence College, the Military Academy in Belgrade and for the Royal Brunei Armed Forces. His publications include *Ethics, Law and Military Operations* (Palgrave 2010), and *Just Wars and Moral Victories* (Brill 2009); he has edited, with Andrea Ellner and Paul Robinson, *When Soldiers Say No: Selective Conscientious Objection in the Modern Military* (Ashgate 2014).

Robert E. Williams, Jr. (Chapter 11) is Professor of Political Science at Pepperdine University (USA). He has published articles and book chapters on just war theory, human rights, arms control, and the American theologian Reinhold Niebuhr. In addition, he is co-author, with Dan Caldwell, of *Seeking Security in an Insecure World* (2nd edition, Rowman & Littlefield 2011) and co-editor, with Paul Viotti, of *Arms Control: History, Theory, and Policy* (2 vols, Praeger Security International 2012). Williams earned a B.A. from Abilene Christian University, an M.A. from the Johns Hopkins University School of Advanced International Studies and a Ph.D. from the University of Virginia.

This page has been left blank intentionally

Acknowledgements

The editors are grateful for the superior assistance in the copy-editing and formatting phase of this volume provided by Alise Krapane and Linda Waits-Kamau, both graduate students in the Robertson School of Government at Regent University.

We also wish to express our appreciation to all the contributors to this volume for making it thoughtful, robust, and trans-disciplinary.

Finally, recognizing that this academic endeavor, for all its importance, is intimately tied to real-world military operations that are a matter of life and death, we intend this collection to honor those involved in armed conflict who while fulfilling their duties exercise restraint, demonstrate regard for human life and property, and make every reasonable effort to advance peace and security within the boundaries of armed conflict.

This page has been left blank intentionally

General Introduction: Identifying and Framing the Issues

The Editors

The *Ashgate Research Companion to Military Ethics* aims to provide a comprehensive and authoritative state-of-the-art review of thinking on major issues in military ethics. The field of military ethics is both broad and diverse, involving scholars from a variety of academic disciplines including philosophical and religious ethics, international relations and other aspect of the study of political science and government, history, and sociology, but also reflecting the interests and contributions of serving and retired military professionals, legal professionals who deal with military law and the law of armed conflicts, and members of the diplomatic and policy communities concerned with military and security affairs. The organization of this book, the topics addressed, and the backgrounds of the authors of the chapters reflect this breadth and diversity, and as a whole the volume seeks to serve the needs of professionals and students in all these areas which collectively have helped to define the field of military ethics.

This volume is organized, as the Table of Contents shows, around three major perspectives on the use of military force: that of the decision whether to use military force in a given context, that of the matter of right conduct in the use of such force, and that of ethical responsibilities beyond the end of an armed conflict. This corresponds to the familiar structure of just war thought, where these three perspectives appear as the categories of *jus ad bellum*, *jus in bello*, and the new category of the *jus post bellum*, respectively. The choice to organize this volume in this way reflects the influence and use of various forms of the just war idea in the development of thinking on military ethics, which have been pervasive if not universal. The aim in defining the particular chapters in each of these sections, though, is not to follow the internal criteria employed in just war reasoning but rather to respond to present-day moral challenges connected to the use of military force. Thus Part I includes chapters on the impact of international law on the decision to use military force, the role of the military in such a decision, and particular issues including preemptive use of military force, the challenges of asymmetric warfare involving non-state actors, the implications of the responsibility to protect doctrine, and military ethics in thinking about nuclear and other weapons of mass destruction, though it also looks back at historical just war tradition and at recent moral argument on the decision to use military force. Similarly, Part II includes chapters exploring a variety of moral and legal frames applied to conduct in the use of military force and then turns to pressing issues raised in contemporary armed conflicts: terrorism again, this time in terms of right conduct in dealing with it, the ethical implications of unmanned aerial vehicles (UAVs) and other new military technologies, bombing of so-called dual-use targets, cyber warfare, targeted killing as a means of war, and the proper treatment of prisoners and detainees, as well as chapters dealing with ethics in contemporary

warfare in terms of familiar just war categories: the relation between the justice of a war and right conduct in war plus chapters on noncombatant immunity and proportionality in contemporary armed conflict.

Part III, in turn, includes chapters focused specifically on major ethical issues having to do with a good end to armed conflict: the restoration of order, conciliation between and among former enemies, transitional justice and war crimes tribunals in restoring justice after a conflict, and a chapter reflecting on the linkage between the decision to use armed force in a given case, how that force is employed during the conflict, and bringing the conflict to a good end.

Finally, since the main focus of this book is on military ethics within the frame of Western experience and ways of thinking, Part IV provides a brief overview of the perspectives of three other major cultures—the Islamic, the Chinese, and the Indian—on the use of military force.

There is some overlap among the chapters of this volume, and that is intentional: it reflects the fact that the ethical issues encountered in the concerns of military ethics are not discrete but related to one another in various ways, and it also reflects the diversity of perspectives found across the field of military ethics.

As this summary of the contents of this volume shows, it aims overall to address major ethical issues in contemporary uses of armed force and, at the same time, to connect contemporary ethical reflection to the broad Western historical experience of the use of force and to the debates found there over how to think morally about the use of armed force. Military ethics, as it has developed as a distinct field of reflection, policy, action and institutionalization, has been a particularly Western concern, and this volume reflects that reality. There are at least two reasons for this Western concern. The first is that contemporary military ethics is nested within two millennia of reflection, in the Greco-Roman and Christian traditions, on the ethics of war. Hence, discussions of "just cause," "legitimate authority," and "noncombatant immunity" are rooted in centuries of inter-textual dialogue between ancients (e.g., Cicero and Augustine), medievals (e.g., the canonists and Aquinas), early moderns (e.g., Vitoria, Suarez, Grotius), and contemporaries (e.g., Ramsey, Walzer, Elshtain, Rawls, as well as authors of chapters in this volume). Reflection on this deep history of dialogue is apparent in many chapters in this work. The second reason for this Western orientation derives from the interplay of just war theorizing with real-world political developments, primarily in Europe, but also later in the United States and other former British colonies. This theorizing became international law, what the chapters of this book refer to variously as the "law of armed conflict," the "war convention," "the law of war," and "international humanitarian law." More specifically, the legal principles of sovereignty and non-intervention, formal provision for the protection of civilians and those *hors de combat*, and legal prohibitions on certain types of weapons via international covenants are not only rooted in just war thinking but are the basis for customary and positive international law in the form of the Geneva, Hague, Genocide and other conventions. Because nearly every country in the world has formally committed to these treaties and corresponding documents (i.e., the UN Charter and the like), these Western-inspired principles are now global in reach.

At the same time, though, other major cultural systems in the world have developed their own conceptions of the right use of military force, proper conduct in the use of such force, and obligations after a military conflict is ended. In the globalized world of the present day awareness of similarities and differences between Western approaches and those of other major cultures is essential. This is why we think it important to examine the treatment of ethics and war in the Islamic, Chinese, and Indian traditions. The ethical debates associated with these three cultures have developed along their own trajectories and through different stages, although each has encountered and interacted with Western mores in the past, whether it was Europe's reaction to the Muslim invasion of the eighth

century, later interactions and conflict between Europe and the Ottoman Empire, or Western imperialism in India and the Far East. Each of these three chapters provides a window into the specific cultural tradition it addresses, showing the connection between that tradition and current understandings of right and wrong in warfare, while at the same time indicating where there is common ground with Western conceptions and where there may be important differences. We also believe these chapters advance knowledge about these traditions.

Finally, a comment on the historical context of this volume, particularly for readers of a younger generation. Each generation writes about the ethics of war in dialogue, at least in part, with its own immediate historical experience in mind. Hence, those who began to do formal "military ethics" in the early 1980s had the "good war" (World War II) with its "greatest generation" to contrast with all of the moral and strategic disappointments of Vietnam; they drew lessons from Western vengefulness (the draconian Versailles Treaty) and Western appeasement (Munich); they created and applied strategic concepts like "containment" and "the domino theory"; their leaders remembered a pre-atomic age, and all were faced daily with the Soviet colossus and a seemingly never-ending arms race founded on mutually assured destruction, informed by an ideological rivalry that had lasted a half-century and seemed destined to continue in perpetuity. Context mattered for that generation of military ethical thinking, and in the era of Watergate, *Apocalypse Now*, My Lai, Western pessimism, and Communist machinations it is no wonder that military officers and ethicists began to seek to re-emphasize values, both on and off the battlefield. That was the era of the recovery of the just war tradition in mainstream ethics, particularly in the work of Paul Ramsey and Michael Walzer. It is also the context for the very first meeting of what has since become the International Society for Military Ethics (ISME) in 1982, focused entirely on professional ethics and officership, with presentations on "Ethics and Military Professionalism," "Morality and the Military Profession: Some Problems and Tentative Solutions," "Values and the Professional Soldier," and "Beyond Duty, Honor, Country: Practical Ethical Precepts for the Military Professional."[1]

In contrast to that Cold War era literature, the contributors to this volume are writing against a post-Cold War backdrop characterized by two general trends made possible by the dissolution of the Communist bloc and the end of bipolar global affairs. The first is the decade of gross atrocity and genocide, with corresponding debates over armed humanitarian intervention, that we associate primarily with Bosnia and Rwanda, but also link with the grotesque civil wars in Sudan and the former Zaire (now the Democratic Republic of Congo), Somalia, East Timor, and elsewhere. Rather than traditional inter-state wars, these conflicts were fought within national borders along sectarian and ethnic lines, defying old categories such as the "nation-state" as well as the standard of non-intervention. Indeed, the customary principle of sovereignty came into direct conflict with the principle of humanity elucidated in UN Charter and the Universal Declaration of Human Rights.

The second trend is associated with the 9/11 attacks, transnational terrorism associated with radical militant Islamism, and the global response to it. On the one hand, our contributors have witnessed religiously inspired non-state actors attacking Western targets in Saudi Arabia (Khobar Towers), Yemen (USS *Cole*), and the U.S. embassies in Kenya and Tanzania, as well as cities including New York, Washington, Madrid, London, and others. On the other hand, the contributors have also witnessed the West's response in places like Afghanistan, Iraq, Somalia, Pakistan, and Yemen, raising a host of issues that were not on the military ethics agenda 20 years ago, including de-radicalization, drones, cyber warfare, and detainees in the "global war on terrorism." The reader will find references, both explicit

1 The International Society for Military Ethics was founded as the Joint Services Conference on Professional Military Ethics in 1982. Archives of its papers are available at: http://isme.tamu.edu.

and implicit, to this context throughout these chapters, because it has influenced the shape of Western militaries and ethical thinking from the Bosnia intervention to today. It is our hope that the reflection in these pages will not only record today's state of the discipline but spur the next generation of military ethics thinkers and leaders in what is in its very nature a continuing process of reflection and debate.

As noted earlier, an important aspect of recent debate over military ethics has been its use of the idea of just war. Yet it is also important to note that conceptions and uses of this idea have varied significantly. The volume begins with a chapter on the coalescence and content of the idea of just war in its classic expression in thought from the mid-twelfth century to the era of the Thirty Years War; it includes references to the thought on war of such major figures as Thomas Aquinas, Francisco de Vitoria, and Hugo Grotius, but also to the work of many others. Though this chapter does not discuss it, the tradition of just war also reflects the influence of the chivalric code on the conception of what is variously called the *loi d'armes*, the law of war, rendered in Latin as *jus in bello*. After Grotius, though, for roughly three centuries the idea of just war effectively ceased to be developed by moralists but, rather, was transformed into the idea of the "law of nations" by such thinkers as Pufendorf, Wolff, and Vattel. If one looks for concrete expressions of the older idea of just war during the period from the early seventeenth century until the mid-twentieth, these appear in the form of the "laws and customs" of nations—that is, of Western nations, the "civilized" world. In this period the moral focus shifted to how to end war as such, as for example in the "Perpetual Peace" conceptions that developed from the late seventeenth century into the era of the Enlightenment and in the growth of pacifist movements of various sorts.

An effort to recover the idea of just war did not appear until the era of the debates over nuclear deterrence and the Vietnam War—the same period in which "military ethics" began to develop as a discrete field of reflection. But the pioneers in this recovery, most prominently Paul Ramsey and Michael Walzer, did not seek to recover the earlier classic idea of just war; rather, they reinvented the idea of just war on terms prominent in the intellectual debates of their own times. Walzer, after all, described his purpose in these words: "I want to recapture the just war for political and moral theory" (Walzer 1977, xiv). He did not say he wanted to recapture the just war tradition in its classic historical expression. And in fact as he developed his argument he depended heavily on what he called "the legalist paradigm," that is, international law relating to war, thus in some sense reversing the process that had turned early modern thinking on just war into the "law of nations." Ramsey, for his part, defined his conception of just war in terms of a focus on the requirements of Christian love of neighbor, which was the major theme in his own field of Christian ethics when he wrote. The conceptions of just war they defined—each significantly different from the other—were distinctive and have been important for the subsequent development of just war thinking, but they are different in major ways from the classic conception of just war. Most subsequent religious ethical thinking about war reflects Ramsey, while virtually all recent philosophical ethical thinking about war takes its beginning from Walzer, though the particular concerns and methods of analytic philosophy have taken the philosophical debate in its own directions. Another major strain in recent conceptions of just war takes its lead from the specific provisions of law, both international and domestic. Along with such essentially theoretical work there has also been an investigation of the historical development of the classical conception of just war both in itself and as a basis for contemporary moral reasoning, an effort in which one of the editors of this volume, James Turner Johnson, has been a leading figure. And building on it all has been the recent development of reflection on what has come to be called *jus post bellum*, the ethics of dealing with the aftermath of armed conflict—an effort in which the other editor of the current volume, Eric Patterson, has had a leading role. Various chapters in this volume represent each of these ways of

approaching and conceiving ethics in relation to the use of military force. Interposed in all of this, moreover, is reflection arising from the experience of military service, the context from which attention to military ethics first began. For military ethics is not an abstract academic discipline but rather one that has to do directly with the ethical demands placed on those with responsibilities involving the use of military force, from the highest civilian leadership through the chain of command to the serving warrior in the context of the various kinds of combat characteristic of contemporary warfare. The resulting debate over military ethics is thus a rich soup, and readers should not attempt to boil it down into one simple ingredient but rather should seek to learn from the very diversity found in it. This volume is aimed to assist this process.

Reference

Walzer, M., 1977. *Just and unjust wars*. New York: Basic Books.

This page has been left blank intentionally

PART I
The Choice Whether to Use Military Force

This page has been left blank intentionally

Introduction to Part I

The Editors

Military ethics as a distinct field, as noted in the General Introduction to this volume, has its chief origins in the efforts of a relatively small number of professional officers serving in the various branches of the U.S. military during the late 1970s and 1980s to reflect on the ethics of the military profession. This stage in the development of military ethics is well illustrated by a book widely recognized as a classic in the field, Malham Wakin's *War, Morality, and the Military Profession* (Wakin 1986) and by the establishment of an *ad hoc* grouping of serving officers from across the various American military branches into what they named JSCOPE: the Joint Services Committee on Professional Ethics, with annual meetings that very quickly drew serving professionals in NATO militaries, and gradually other militaries as well, into ongoing discussions of military ethics as a form of professional ethics. This growth stimulated the development of interest in professional military ethics in these other societies, and it also had the effect of enlarging the field beyond its original boundaries, engaging broader historical and contemporary reflection on ethics and war, drawing the participation of civilians from the public policy arena and academics from various disciplines, and transforming JSCOPE into ISME, the International Society of Military Ethics. But to the immediate point of this section of the present volume, this broader engagement had the effect of enlarging the scope of military ethics from its earlier focus on moral behavior in war to include moral concerns over the decision to initiate the use of military force. The ethics of the war decision now forms a part of military ethics, whereas a generation ago it did not.

The chapters which follow in the present section approach this matter on the model described above for the book as a whole: the first four chapters address the ethics of the decision to use military force from four distinct perspectives: that of just war thinking in Chapter 1, that of certain trajectories in recent moral argument in Chapter 2, that of international law in Chapter 3, and that of the serving military professional in Chapter 4. Subsequent chapters examine four special problems that have presented themselves with particular urgency in recent debate.

The first of these, in Chapter 5, is the question of preemptive use of military force in a context in which both moral argument and international law seek to limit use of such force to a state's self-defense. Defining the right to use military force in terms of self-defense inherently raises the question of preemption: the first major historical theorist to define this right explicitly in terms of self-defense, Hugo Grotius, was also the first one to raise the possibility of the use of armed force preemptively against an attack that has not yet been launched but is clearly imminent. The test he applied was what has since come to be described as that of "the upraised sword": "The danger must be immediate, and, as it were, at the point of happening. If my assailant seizes a weapons with an obvious intention of killing me, I admit too that I have a right to prevent the crime" (*On the Law of War and Peace*, Book Two, Chapter 1, section 5; Grotius 1949, 73). International law on preemptive use of

force generally reaches back to the *Caroline* affair of 1837, when British and Canadian forces crossed the border to destroy a vessel (the *Caroline*) that was ostensibly bringing weapons to rebel forces in Canada. The critical issue was the definition of what counts as self-defense. But advances in military technology have raised this question in newer and newer forms, eroding older understandings of the distinction between preemptive self-defense (permitted) and preventive war (not allowed) and adding new dimensions to thinking about these two forms of the use of force. Chapter 5 approaches this issue from the perspective of recent debate, exploring in particular what preemption allows when an avowed enemy possesses weapons of mass destruction.

Chapter 6 turns to the question of the right of using military force against acts of terrorism by non-state actors, and the limits of that right. This chapter approaches its subject through the more general frame of the special problems of asymmetric warfare and the difference between such warfare and the typical framing of warfare as state-against-state conflict in both moral discussions and law. Because the phenomenon of terrorism by non-state actors is a complex and multifaceted one, meaning that an ethical response to it is also inevitably complex and multifaceted, this chapter shows how considerations of the right of military response are interconnected with the nature of that response: the choice to use military force is inevitably linked to the parameters for right conduct in the use of such force, and each bears implications for the other.

Chapter 7 addresses a matter that dates specifically to the 2001 report of the *ad hoc* International Commission on Intervention and State Sovereignty (ICISS), issued under the title, *The Responsibility To Protect* (ICISS 2001). This report specifically addressed the question of the obligation of military intervention across international borders in cases of serious and ongoing violations of fundamental human rights: "the question of when, if ever, it is appropriate for a state to take coercive—and particularly military—action, against another state for the purpose of protecting people at risk in that other state" (ICISS 2001, VII). It concluded by stipulating that there is such a right, and indeed a responsibility—the "responsibility to protect"—while laying down parameters for such intervention. The report occasioned substantial policy debate, with strong voices both supporting and rejecting the report's conclusions, including whether such a "responsibility to protect" should be allowed in international law and if, so, whether the ICISS report's parameters were adequate. This debate was brought to an end, at least for the present, by two paragraphs in the Outcome document of the 2005 World Summit (paragraphs 138 and 139), which shifted the focus to the obligation of each state to protect its population against major threats to fundamental human rights and the right of outside intervention for this purpose as limited to response for a request for help by the state in question or, if such a state should "manifestly fail to protect" its population, in response to an authorization by the UN Security Council. Chapter 7 analyzes the concept of the "responsibility to protect" from its origin through the subsequent debate to its current definition.

Finally, Chapter 8 addresses an issue that has loomed large in military policy and in ethical reflection since the late 1950s, when it was cast in terms of nuclear deterrence strategy in the ongoing strategic tension between the United States and the Soviet Union and their respective allies, to the present, where a major focus has been the possibility of terrorist groups acquiring and using nuclear, chemical, and/or biological weapons against the United States and other Western countries. This chapter examines the contours of the ethical debates, linking arguments advanced in the earlier context to the circumstances of the new context.

References

Grotius, H., 1949. *On the law of war and peace*. Roslyn, NY: Walter J. Black, Inc.

International Commission on Intervention and State Sovereignty, 2001. *The responsibility to protect*. Ottawa, Ontario, Canada: International Development Research Centre.

United Nations World Summit, 2005. *Outcome* document. [online] Available at: http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N [Accessed 7/21/2012].

Wakin, M., 1986. *War, morality, and the military profession*. Boulder, CO: Westview Press.

This page has been left blank intentionally

The Decision to Use Military Force in Classical Just War Thinking

Gregory M. Reichberg

Abstract

Contemporary moral reflection on armed force is heavily indebted to the pioneering work of medieval theorists: canon lawyers such as Gratian and Innocent IV, as well as theologians such as Alexander of Hales and Thomas Aquinas. This chapter traces out their thought on ethical decision-making about war. They emphasized how leaders who were entrusted with oversight of the common good (the possessors of legitimate authority) could rightly resort to armed force only to rectify an egregious wrong (just cause) and under condition that their ultimate aim was to promote the well-being of the political community (right intention). Since the common good was conceived of in moral terms—the collective life of virtue—those who led their polities to war were expected to be virtuous themselves. Thomas Aquinas, in particular, emphasized how the initiation of war should flow from a choice which, on the part of the leader, is inwardly regulated by the appropriate virtues. By the same token, the obedience which is due to these leaders on the part of the citizenry must likewise be tempered by virtue.

The Historical Context: Development of Classical Just War Thinking

Classical just war thinking can be traced to the political doctrine of Saint Augustine as it was reproduced in compendia such as Gratian's *Decretum* and commented upon by the Latin canon lawyers of the twelfth and thirteenth centuries. Under the impetus of Alexander of Hales (ca. 1185–1245) and Saint Thomas Aquinas (ca. 1225–74) just war subsequently become a regular topic of investigation for Christian theologians. The most ample developments in this field occurred in the sixteenth and seventeenth centuries, when a series of Spanish scholastics—most prominently Francisco de Vitoria (ca. 1492–1546), Luis de Molina (1535–1600), and Francisco Suarez (1548–1617) discussed the ethics of armed force in light of problems posed by the newly discovered Americas and the Spanish conquest of this territory. The classical period in just war thought culminated with the *De jure belli ac pacis* of Hugo Grotius (1583–1645). The Dutch jurist made ample use of the earlier sources, and applied them systematically to a comprehensive range of issues, *ad bellum* and *in bello*.

Political Power and the Justified Use of Armed Force

In Latin Christendom of the Middle Ages political power was nowhere near as centralized as it is today. Many of the tasks that we associate with civil government did not yet exist or were handled by authorities outside of the civil sphere (for instance, educational institutions were established and managed by the Church). Civil government had three main functions: collection of taxes, maintenance of a judiciary, and provision of security against internal and external armed threats. As the third function indicates, managing a military force was one of the primary tasks expected of princes and kings. Integral to their very office, acquittal of this function was an obligation they assumed upon becoming rulers. Consequently when medieval thinkers discussed the obligations of political leadership they also assessed the moral dimensions of decision-making about war.

In reflecting upon the moral aspects of armed force, the medieval theorists (theologians and Church lawyers) borrowed heavily from patterns of thought they had inherited from the jurists of ancient Rome. Drawing a rather sharp distinction between force used in self-defense, on the one hand (which was allowed to any private individual or group under threat), and the employment of force by individuals or groups operating on the authority of a supreme prince on the other, these jurists had supposed that the first was to be regulated by private civil law (with rules concerning necessity, immediacy, proportionality, and the like) while the second was under the regulation of public law (which stipulated the conditions that should be met in declaring and prosecuting war). Thus when Thomas Aquinas provided a seminal treatment of these topics in the Second Part of his *Summa of Theology* (ca. 1270) he followed the Roman jurists in separating the analysis of licit self-defense (q. 67) from the earlier account (q. 40) of public engagement in war. It was tacitly understood that the rules governing the one were of a different nature from the rules governing the other.

No special authority was required for a resort to force in self-defense (or to protect children or other third parties from similar harm)—anyone could avail himself of such measures under conditions of urgency—but the scope of what could be done was severely limited. Such force could only be exercised in the heat of the moment—with only very narrow provision for preemptive action and to the exclusion of *ex post facto* punishment. The degree and type of force used was to be measured in strict proportion to the attack in progress; going beyond what was needed to repel such an attack would be considered illicit. This teaching was summed up in the Decretist gloss "Qui repellere possunt" (*resist injury*), where the anonymous author wrote (ca. 1200) that

> *if … someone returns violence, this should be done with the assumption that it is for defense, rather than for revenge … and only if the first attacker intends to strike once more … And this is what I understand when it is said that force may be resisted "on the spot" (incontinenti) … [and that] self-defense [should] be exercised in moderation (cum moderamine). (Reichberg, Syse, and Begby 2006, 110)*[1]

The force used on behalf of public authority by armies in war was assumed to be of a very different nature. This was reflected in the authoritative teaching of Pope Innocent IV who (ca. 1250) explicitly contrasted war (*bellum*) to defense (*defensio*). The first required proper jurisdiction (it "can only be declared by a prince who does not have a superior"[2]) and could

1 For more ample discussion on the bounds of self-defense under medieval canon law, see Reichberg (2005, especially 354–61).

2 "On the Restitution of Spoils" cited in Reichberg, Syse, and Begby (2006, 150).

justifiably extend well beyond "repelling violence by violence."[3] In other words, the scope of what could permissibly be done was much wider for such use of force than for that allowed to a private individual or group. In no wise limited to assuming a purely defensive posture, for the medieval theorists war was viewed as a legitimate means of redressing a grave wrong. The wrong in question might be situated well in the past (for instance a seizure of territory that for one reason or another had gone unopposed), and the remedy for this wrongdoing could include the imposition of punishment (e.g., destruction of enemy property, execution of the "guilty," or deposition of defeated princes), the employment of preventive measures (e.g., tearing down enemy defenses), the reclaiming of lost property, the taking of prisoners, and other such remedies (all of which were grouped under the heading of "just cause"). War, on this understanding, had an offensive character.[4] Initiated against adversaries *ad extra* it brought into play a set of juridical effects that applied neither to self-defense nor to the exercise of law enforcement *ad intra* within the domestic setting.

But compensating for this broadening of what could be done by and in war was a considerable narrowing of the authority condition. As was indicated above, the decision to resort to armed force was taken to be the exclusive prerogative of the highest level of civil authority—the supreme prince or king. Lower authorities could assume this function only by delegation from the supreme ruler. Exercise of such authority was a matter of right that followed upon the possession of proper jurisdiction. But since this right existed for the benefit of the civil community, the exercise of military leadership was also viewed as an obligation, and for this reason princes were expected to acquire the moral virtues that would equip them to fulfill their military duties promptly and in consonance with the needs of the common good. Hence there arose a didactic literature on the moral formation of princes, of which Aquinas's short treatise, *De regno* (On Kingship), offers a fine exemplification.

Just War Criteria

In assessing the moral aspects of decision-making about war the medieval authors often compiled lists of criteria that enabled them to differentiate licit from illicit employments of armed force. Thus, in his "Quaestio de bello" (*Summa theologiae* II-II, q. 40, written ca. 1270; translation in Reichberg, Syse, and Begby 2006, 176–7), Thomas Aquinas famously states that a war will be just only when three requirements are met, namely that (1) it is conducted with the authorization of a prince (*auctoritas principis*), (2) for a just cause (*causa justa*), and (3) with a right intention (*recta intentio*). In setting down these elements, Aquinas was dependent on earlier lists which had been compiled by his predecessors. Raymond of Peñafort (ca. 1180–1275), for instance, maintained that the justice of a war was to be evaluated according

3 See the decretal glosses reproduced in Reichberg, Syse, and Begby (2006, 150–52).

4 Thus, in the sixteenth century, in his *De jure belli* the Spanish just war theorist Francisco de Vitoria placed these measures under the label of "offensive" rather than "defensive war" (for the relevant passages see Reichberg, Syse, and Begby 2006, 309–10). The latter label he narrowly construed as "repelling violence by violence," while under former he encompassed the military response to a wider set of injustices. On this conception, war should only be *initiated* in order to right a prior wrong. The wrong in question need not itself have the character of war; it might consist in other forms of violence or repression ("widespread human rights violations" as we would say today). Some rationales for offensive war were excluded by Vitoria, for instance territorial aggrandizement ("aggression" in today's parlance).

to five conditions that follow (in italics):[5] *person* (that those who shed blood in war should be seculars, not clerics), *object* (namely the recovery of property or defense of the homeland), *cause* (that the war be fought out of necessity to secure peace), *state of mind* (out of piety, justice, and obedience, not hatred, revenge, or greed), and *authorization* (of the Church or a prince). Alexander of Hales, for his part, and writing around the same time, set down six criteria which enable us to distinguish a just from an unjust war, namely: "authority, state of mind, intention, condition, desert, and cause"[6] (Reichberg, Syse, and Begby 2006, 158–9). He further explained how "authorization" and "state of mind" apply to the person who declares war, "intention" and "condition" to those fighting the war, "desert" to the one who is warred upon, and "cause" to the person for whom the war is fought.

Against the background of these two lists it is striking how Aquinas took special care to advance the much simplified classification of legitimate authority, just cause, and right intention. Apart from princely authority (like Alexander he placed it at the head of his list) it is difficult to ascertain in what measure Thomas sought to replicate the vocabulary of his eminent predecessors. "Just cause" seems to combine Raymond's *res* and *causa*. "Right intention" seems closely aligned with Raymond's *animus*, as well as with Alexander's *justum affectum* and *debita intentio*. At any event, this much is beyond doubt: the elegant simplicity of Aquinas's classification—allied with the later adoption of his *Summa theologiae* as the principal textbook for Catholic theology—assured its enormous influence in the centuries to come.

Unstated in Aquinas's account was the supposition that, taken separately, princely authority, just cause, and right intention are necessary but not sufficient causes of a just war. Such a war can arise only from the conjunction of all three conditions. But these were not thought to be necessary in quite the same way, or to the same degree. *Just cause* is clearly preeminent, as it provides the very reason or ground for resorting to war. *Princely authority* indicates who may initiate a just war, while *right intention* names how such a war should be carried out. Were it not for just cause there would be no reason to stipulate the other two requirements, while just cause is intelligible on its own. As such it functions as the *sine qua non* of a just war. Moreover, the other two conditions can be set aside under some limited circumstances. Aquinas acknowledges for instance a right of rebellion against tyrannical rule (ST II-II, q. 42, a. 2; Reichberg, Syse, and Begby 2006, 185–6);[7] those resorting to such measures will by definition not be possessed of supreme princely authority. Right intention, similarly, may be left out of consideration when judgments are made *post bellum* on restitution due for wrongful war. In this vein Suarez maintained[8] that agents possessed of just cause who nonetheless violate the demands of charity in their prosecution of a war are not obligated to make restitution for the ensuing damages. Inversely, however, restitution would certainly be due if one proceeded to war without just cause. More broadly, should

5 *Persona*, *res*, *causa*, *animus*, and *auctoritas* (§17, pp. 184–5; in Reichberg, Syse, and Begby 2006, 134–5). Raymond's five conditions reproduce verbatim an earlier list from the decretist gloss "*Qui repellere possunt*" (apropos the definition of just war in Isidore's *Etymologies*) that had explained how war can be *unjust* in five ways: "either because of the *person*, if they are ecclesiastic persons, who are not permitted to shed blood … Because of the *object*: thus if it is not for the recovery of property or for the defense of the country … By reason of the *cause*: thus, if the fight is by choice, not by necessity … It is unjust because of the *state of mind*: thus if it is undertaken with the intention of revenge … It is equally unjust if it is initiated without the *authorization of the prince*" (Reichberg, Syse, and Begby 2006, 113).

6 *Auctoritas*, *affectum*, *intentio*, *conditio*, *meritum*, *causa*.

7 The right in question is far from unrestricted and will apply in the most egregious of circumstances. For further discussion, in light of Aquinas's various treatments of this theme, see Reichberg (2012, 347–52).

8 See his *Disputatio de bello* 4.8–9 in Reichberg, Syse, and Begby (2006, 352).

this central condition go unfulfilled, under no circumstances whatsoever could the war be deemed just.

Legitimate Authority to Wage War

If just cause is the condition *sine qua non* of a just war, it is likewise true that under ordinary circumstances legitimate authority is essential for decision-making about war. On the classical account, only persons with the requisite authority are permitted to engage the polity on a course of war. While counselors might provide advice, assisting the prince in his *ante bellum* deliberations, he alone was entitled to render a decision that would be binding upon his subordinates, thereby calling them into action.

Thomas Aquinas employed several different terms to describe the *auctoritas* which is needed for a just war (Reichberg 2012). In "Quaestio de bello," a. 1, this authority is initially characterized as pertaining to the "prince" (*princeps*). Several lines later it is termed "legitimate" (*legitima*),[9] which suggests how more is at stake than de facto possession of power. To be legitimate, princely power must be acquired and exercised in accordance with the rule of law. Finally, in a parallel passage within the same sequence of *quaestiones*, competence to decide on war is attributed to the "public" (*publica*) authority.[10] The discourse thereby shifts from the person of the prince to the underlying subject of this competence—the political community—which acts through its leadership to protect the common good.

Whereas the authorization of a prince had appeared last on Raymond of Peñafort's earlier list of just-war requirements, Aquinas moved it to the top of his own, but without stating his rationale for this choice. One interpretation[11] holds that he did so to indicate how the sovereign alone is competent to determine just cause in concrete cases. In this sense legitimate authority stands as a formal precondition of just cause. On an alternative interpretation, it could be said that Aquinas placed princely authority at the head of his list because it is the most visible mark of a just war. A nominal definition of the subject to be investigated thereby emerges from this first requirement. The authorization of a prince is what distinguishes the phenomenon termed "war" from the other manifestations of violence—brawling (*rixa*), civil insurrection (*seditio*) and the like—that Aquinas intended to examine in the same sequence of questions.

Aquinas proposed two arguments why special authority is needed for war-making, one based on the juridical principle "no higher redress" (just war becomes operative only in the absence of established judicial procedures) and the other on the need for coordinated

9 *A propos* the condition of right intention, the term *legitima* was borrowed from Augustine's *Contra Faustum*, xxii.20 (cited in ST II-II, q. 40, a. 1, ad 1; Reichberg, Syse, and Begby 2006, 177) where he wrote that "no one can take to the sword without the command or acquiescence of a superior or legitimate power" (*superiori aut legitima potestate*).

10 "In order for a war to be just, it must be carried out by authority of the public power (*auctoritate publicae potestatis*), as said above" (ST II-II, q. 41, a. 1, ad 3; Reichberg, Syse, and Begby 2006, 178, with reference to q. 40, a. 1). The term "public authority" was expressly used in *De regno* (also titled *De regimine principum*), Bk. 1, Ch. 6 (translation in Aquinas 1938, 58), where Aquinas writes that tyrants may be removed only by "auctoritate publica," and not by the private presumption of the few.

11 See Johnson (2013), who advances this interpretation of Aquinas as evidence that the US Catholic Bishops in their 1983 pastoral letter, *The Challenge of Peace*, departed from the traditional teaching when they gave precedence to just cause (putting it before legitimate authority) in their list of just war requirements.

command—namely that defense of the common good requires a chain of command with the prince at its head.

The "no higher redress" argument[12] is framed normatively around the idea of temporal jurisdiction. It builds on the premise that war-making will be ruled out as a procedure for achieving justice between two parties whenever *de jure* their dispute can be adjudicated by a superior with authority over them both. For this reason (second premise), private individuals are prohibited from waging war. Hence the conclusion: solely those who have no temporal superior—namely princes—are permitted to initiate war.[13] This was not an original argument in Aquinas's day. His brief statement was meant to sum up a reasoning that had been more amply developed by his predecessors when they had sought to explain why the medieval feud (*faida*)—a practice whereby private individuals had employed violence to avenge perceived wrongs—should no longer be allowed.

And whereas Aquinas had left undefined who among princes was entitled to resort to force against external enemies, his confrère William of Rennes, writing several years prior (ca. 1250) made clear that this mandate does not pertain to all princes whatsoever: only those having no superior, such as a king or emperor, can provide the needed authorization. And in opposition to the exponents of Roman law, the legists, who had maintained the primacy of the emperor in declarations of war, William emphasized that the emperor as such enjoyed no special status within this domain: "when a king has a [just] cause of war against the emperor, or vice versa … neither one nor the other is obliged to seek justice by judicial means, since neither of them has a superior" (Reichberg, Syse, and Begby 2006, 137). Princes without a superior were thus all on an equal footing, and could, in the presence of a just cause, resort to force against their peers.

William nonetheless added a restriction. In the event that an offending prince offered suitable satisfaction for his commission of a wrong, the counter-party would sin if he spurned this offer and thereby proceeded to war. This was an expression of what Raymond and other medieval lawyers termed *necessitas* (Reichberg, Syse, and Begby 2006, 134). In contrast to the domestic sphere, where expressions of regret and offers of restitution may result in the reduction of a sentence but ordinarily do not excuse the criminal from punishment altogether, in the sphere of war, by reason of its wider depredations, an offending prince's acquiescence to legitimate demands and his offers of restitution (including payment of damages) William considered sufficient to nullify any resort to war by the aggrieved counter-party. Refusal to accept an offer made in good faith—in line with the reasonable judgment of good men—would show that in going to war the prince in question did not fulfill the condition of necessity. To prosecute war in its absence showed his wrongful intention, even though he might be in possession of a just cause.

12 ST II-II, q. 40, a. 1: "It is not the business of a private individual to resort to war, because he can pursue his right before the judgment of his superior" (Reichberg, Syse, and Begby 2006, 177).

13 Later in this same passage (II-II, q. 40. a. 1) Aquinas applies legitimate authority on two levels: "as they [princes] licitly defend against internal disturbers [of the peace] by resorting to the material sword in order to punish these malefactors, according to the words of the Apostle (Romans 13:4) 'He beareth not the sword in vain: for he is God's minister, an avenger to execute wrath upon him that doth evil'; so too, they use the sword of war to protect the polity from external enemies" (Reichberg, Syse, and Begby 2006, 177). The fact that Aquinas here refers to two swords, internal and external, prompted his commentator Cajetan (ca. 1530) to observe that the term *prince*, as employed in this article, does not unequivocally designate the *supremus princeps*, for in Aquinas's day it was understood the internal sword might be legitimately exercised also by lower princes and judges (Cajetan, cited in Reichberg, Syse, and Begby 2006, 242). Consequently, in the context of Aquinas's "Quaestio de bello" (q. 40), the term *sovereign* should not be used to render *princeps*, as it would remove from article 1 a textual ambiguity that was later astutely noticed by Cajetan.

Aquinas's second argument for legitimate authority[14]—the need for coordinated command—is framed by him on the basis not of right, but of efficacy. Victory in war will be most assured when it proceeds as the effect of a unified force, "for many persons acting together can pull a load which could not be pulled by each one taking his part separately and acting individually" (*De regno*, Bk. 1, Ch. 3; Aquinas 1938, 43). As the collective activity of a multitude-in-arms, engagement in war depends on a chain-of-command that can be set in motion and effectively coordinated only by a unitary first agent. Mobilization for such a task cannot be done by the initiative of private persons, otherwise disorder and defeat would likely result.

That princes alone should occupy the office of supreme command, "calling the multitude to action as happens in wars," Aquinas deduces from their principal duty which is "to care for the polity." While all upright citizens should act for the promotion of the common good, this they do mainly by carrying out their own limited tasks. By contrast, deciding on matters that impact the entire community is proper to those who have been entrusted with oversight of the common good; first and foremost this role falls to "princes," the term used in Aquinas's day to signify the holders of executive power within polities. In overseeing their respective realms, princes, in addition to the normal tasks associated with governance, must also provide effective protection against internal disturbers of the peace. Likewise princes must adopt measures to safeguard against attacks launched by external enemies. To this dual end of protection, princes are thereby accorded the power of the sword. Failure to exercise this office of protection could lead to their deposition.

Aquinas is very sparing in the details. While authorization to administer punishment is mentioned in passing (citing Romans 13:4, "He beareth not the sword in vain"), this theme is related not so much to external war as it is to the repression of internal criminality. Moreover, in this passage, the "sword of war" is closely tied to the idea of defense. The supposition that the authority condition was formulated by Aquinas for the special case of offensive war (using force to seek satisfaction, by punishment and other means, for past wrongs) is within the logic of the first argument ("no higher redress") although Aquinas never paused to give it express mention. This interpretation was first advanced by Cajetan,[15] (in Reichberg, Syse, and Begby 2006, 241–5), who reasoned that self-defense, being a right even of private individuals, does not require for its legitimacy an appeal to the authority of a prince;[16] by default, legitimate authority stands as a requirement for any resort to offensive war.

While Cajetan's interpretation is consistent with Aquinas's first argument for legitimate authority, it misconstrues the thrust of the second argument, wherein the Angelic Doctor had shown that in war there must be a unitary source for the chain of command. By employing

14 ST II-II, q. 40, a. 1: "Moreover it is not the business of a private person to summon together the multitude, as must be done in wartime. Since care of the polity is entrusted to princes, protecting the common weal of the cities, kingdoms or provinces that lie under their authority is a task that pertains to them" (Reichberg, Syse, and Begby 2006, 177).

15 "Cajetan" is the nickname of Thomas de Vio (1468–1534), an Italian Dominican, whose Commentary on Aquinas's *Summa of Theology* circulated widely in the centuries that followed. In this commentary, he offered a detailed treatment of legitimate war-making authority, the first of Aquinas's three requirements of a just war (for translation of the relevant passages, see Reichberg, Syse, and Begby 2006, 241–5).

16 Cajetan in ST II-II, q. 40, a. states: "In order to ascertain the authority needed to wage war, it should be understood that this is not a discussion of defensive war, namely when someone makes a war in defense against a war made on himself; for any people has a natural right to do this. But here the concern is with declaring [i.e., offensive] war: what authority is required for this?" (Reichberg, Syse, and Begby 2006, 242).

the verbs "protect" and "defend"[17] at this juncture, Aquinas thereby signaled how forcible *defense* against enemy attack was his principal concern. The *coordinated* response of an army repulsing an invasion, the defense in question referred not to the individual initiative of singular agents acting alone or in small groups, but to the corporate agency of an army. Cajetan, by contrast, framed the issue of legitimate authority in terms of a binary dichotomy whereby the necessity of such authority for public *offensive* war stood in contrast to its irrelevance for the exercise of *private self-defense*. In so doing he failed to see how Aquinas was chiefly concerned with a third case, namely a polity's engagement in *defensive war*.

Whereas for the Roman jurists the idea of legitimate defense had applied to private individuals only, for Aquinas it came to designate a special, more restricted type of public war. In contrast to *bellum offensivum*, defensive war would be under the more stringent conditions imposed by proportionality and immediacy. This would subsequently lead Vitoria and Molina to deny any necessary connection between the *causa belli* and the adversary's subjective guilt: defense against wrongful attack, apart from any ulterior aim of punishment, could be a valid reason for waging "limited" public war.[18]

Having shown the necessity of supreme leadership within the political community, Aquinas subsequently elucidated how the common good which is this leadership's chief objective is inseparable from "living together well" (*ad bene vivendum*): "[f]or friendship unites good men, preserves and promotes virtue" (*De regno*, Bk. 1, Ch. 10; Aquinas 1938, 78).[19]

To frame this consideration, Aquinas notes how the union of men in the bond of peace is a precondition for any virtuous collective action: "for just as a man can do nothing well unless unity within his members be presupposed, so a multitude of men which lacks the unity of peace is hindered from virtuous action by the fact that it fights against itself" (*De regno*, Bk. 2, Ch. 4; Aquinas 1938, 103, translation modified). The unity of the political community is imperiled from *within* when some of its members transgress the bounds of justice and in so doing disturb the security of their neighbors. But this unity can also be endangered from *without* by the attack of enemies. Guardians of unity, princes must take measures to combat both sorts of dissolution; thus against internal threats they impose penal sanctions to protect the polity against violations of justice, and against external threats they assemble their armies to ward off attack. "It would be useless, in effect, to prevent internal dangers if the multitude could not also be defended (*defendi*) against threats which arise externally" (*De regno*, Bk. 1, Ch. 3; Aquinas 1938, 105).

A dual charge is accordingly laid on princes *a propos* the use of force: to punish wrongdoing *ad intra* and to fend off aggression *ad extra*. Both measures are undertaken in order to safeguard unity; their purpose is to secure peace. Peace *qua* security is not however a final goal. The prince is called to apply diligent effort toward establishing peace so that the assembled multitude will live together in mutual enjoyment of virtue. The due order has it that just war is directed to peace, and peace itself should be intended for the sake of communal virtue.

17 In ST II-II, q. 40, a. 1 (Reichberg, Syse, and Begby 2006, 177), it is said that provinces are "protected" (*tueri*) by their respective princes, who "licitly defend" (*licite defendant*) their lands from internal and external harm. Defense is likewise the point of reference in the parallel text of the *De regno*, Bk. 1, Ch. 15 (Aquinas 1938, 105).

18 This is particularly visible in Vitoria's account of defensive war waged against the American Indians. For discussion of the relevant passages see Reichberg (2013).

19 Here Aquinas further explains how friendship binds citizens to each other, and citizens to their rulers. Tyrants, by contrast, cannot gain the friendship of citizens; consequently they seek to undermine the bond of friendship between citizens whenever possible (chapter 3).

Since for Aquinas the civic peace is thus ordered to the collective life of virtue, those who lead their polities to war—princes—ought to be virtuous themselves, and their initiation of war should flow from a choice which is inwardly regulated by the appropriate virtues. By the same token, the obedience which is due to these leaders on the part of the citizenry must itself be tempered by virtue. Consequently, defense of the homeland (*patria*, *respublica*, or *civitas*) cannot, on this understanding, be erected as a self-contained absolute. Precisely insofar as it is a *mediate* good which is defined by its further reference to virtue, the temporal peace of the multitude cannot justify protective actions that would be inconsistent with the demands of virtue. Consequently, the very nature of peace implies that those who would command military action for its sake will acquire the relevant virtues.

Aquinas and the Moral Virtues of Military Command

Aquinas was alone among the classical just war thinkers to develop an account of military decision-making in close synergy with a broader teaching on the moral virtues. This was an extension of his insight that just war requires an upright intention, a perspective inherited from Augustine that was pushed to the margins of subsequent just war theorizing, even in such scholastic luminaries as Vitoria and Suarez.

I have shown elsewhere how Aquinas took care to set his theory of just war within a systematic treatment of the virtues (see Reichberg 2011). His aim was to understand the military calling in relation to the virtues that render it an acceptable practice in human life, and inversely, to indicate what vices are especially to be avoided. The idea, in other words, was to examine the moral dispositions that ought to be cultivated by persons who in one way or another were engaged in war. On the one hand, rank-and-file soldiers would be expected to acquire the virtues of courage[20] and obedience;[21] on the other hand he enjoined commanders to acquire virtues of sound judgment such as military (Reichberg 2010b) and regnative prudence.[22]

The designation of a special military mode of prudence cannot be found in Aristotle. Nor was *prudentia militaris* a standard turn of phrase in the Roman military manuals that circulated widely in Latin Christendom during the thirteenth century. These texts employed the nomenclature of military art (*ars*) or science (*scientia*), rather than of military prudence. Aquinas seems to have picked up the expression "prudentia militaris" from *De affectibus* (On the Emotions), a text that medieval scholarship had erroneously attributed to the Peripatetic philosopher Andronicus of Rhodes. The term appears in a list of different kinds of prudence, but without further elaboration. Since *prudentia militaris* represented an uncommon usage, it is understandable that Aquinas would have felt compelled to justify it by explaining why precisely leadership in the "things of war" ought to be categorized under the moral heading of prudence, not art. Unlike our modern usage, whereas prudence can designate cleverness and even cunning, for Aquinas and his contemporaries this term designated an ability to make decisions that combined intelligence and moral uprightness. Prudence, as he understood it, presupposes rectitude of the will. Hence among the intellectual virtues, prudence alone has the singular status of also being a moral virtue, i.e., a virtue assuring right volition in relation to one's judgments about actions to be performed.

20 For an account of this virtue, see Reichberg (2010a).
21 The specifics I discuss in Reichberg (2012, 366–9).
22 For an analysis of the military significance of regnative prudence, see Reichberg (2012, 364–6).

Aquinas initially showed some uncertainty whether there should be designated a specifically military form of prudence. Standing against this attribution was the part played by technical competence in generalship; a competence that can be mastered by the perverse and upright alike. An avid reader of the Old Testament Book of Job, Aquinas was well aware that all manner of evil—including defeat on the battlefield—could befall the just man. Inversely, he did not deny that victory could sometimes be achieved by perfidious means. But on his reasoned account this moral ambivalence does not remove generalship from the sphere of moral virtue, because on Aquinas's understanding, victory is not the *nec sum ultra* of generalship. Beyond this particular result, he emphasized how generalship has an essential ordination to the common good. This ordination must take precedence over, and thereby subordinate to itself, the technical ("artistic" in Aquinas's terminology) skills that the general will have acquired in the course of his military training.

Where Aristotle had spoken of *victory*, Aquinas refers instead to the *common good* as the specifying goal of the general's art (Reichberg 2010b, 270). This enables him to reach a novel conclusion. Ordered to an overarching end—the well-being of the entire political community—military command requires full-fledged moral prudence. Inversely, the lower military skills (horsemanship, archery, building fortifications, etc.) directed as they are to narrow, more limited goals, may adequately be described under the heading of art. Thus, on his understanding, military professionals—exemplified in his discourse by the figure of the general—are expected to be comprehensively good people. This is entailed by the essential link which exists between their professional role and service to the common good. This service requires that they be more than skilled technicians of their craft. Or, to put the same point differently, the very end of the military calling demands that technical skills be ordained to a good higher than victory. The coordination of these technical skills with the more comprehensive end of human society is the central task of prudence. And to carry out this coordination, prudence in turn depends on the full complement of moral virtues—for the egregious lack of any one virtue would conduce to choices harmful to the common good.

The above review of Aquinas's teaching on *prudentia* shows that when he placed the things of war under this heading, he committed himself to a thick moral conception of military command. This is of a piece with his overarching supposition that just war is exercised by the prince for the benefit of the common good. Inversely, had Aquinas categorized military leadership under the heading of *art*, morality would have applied to it in an extrinsic manner only. A general who ordered the commission of atrocities, or who waged war for a manifestly evil purpose, could still be deemed a habile commander if he successfully led his troops to victory, even though, on moral grounds, he must be deemed a bad man. But to assert that military command is indeed an instance of *prudence* is for him equivalent to saying that morality is intrinsic to this practice, such that any willful misconduct—by direct intention or negligence—on the part of the general would evince a faulty command. In such a case not only is he to be rightly condemned *qua* man, but more to the point, his competence *qua* commander would be called into question.

References

Aquinas, T., 1938. *On the governance of rulers* [*De regno*], revised edition. Translated by G.B. Phelan. Toronto: Pontifical Institute of Medieval Studies.

Johnson, J.T., 2013. The right to use armed force: sovereignty, responsibility, and the common good. In: A.F. Lang, Jr., C. O'Driscoll, and J. Williams, eds. *Just war: the state of the art*. Washington, D.C.: Georgetown University Press. pp.19–34.

Reichberg, G.M., 2005. Aquinas on defensive killing: a case of double-effect? *The Thomist*, 69(3), pp.341–70.

Reichberg, G.M., 2010a. Aquinas on battlefield courage. *The Thomist*, 74(3), pp.337–68.

Reichberg, G.M., 2010b. Thomas Aquinas on military prudence. *Journal of Military Ethics*, 9(3), pp.261–74.

Reichberg, G.M., 2011. Aquinas' moral typology of peace and war. *Review of Metaphysics*, 64(3), pp.467–87.

Reichberg, G.M., 2012. Legitimate authority: Aquinas's first requirement of a just war. *The Thomist*, 76(3), pp.337–69.

Reichberg, G.M., 2013. Culpability and punishment in classical theories of just war. In: A.F. Lang, Jr., C. O'Driscoll, and J. Williams, eds. *Just war: the state of the art*. Washington, D.C.: Georgetown University Press. pp.157–80.

Reichberg, G.M., Syse, H. and Begby, E. eds., 2006. *The ethics of war: classic and contemporary readings*. Oxford: Blackwell.

This page has been left blank intentionally

The Decision to Use Military Force in Recent Moral Argument

Daniel R. Brunstetter

Abstract

In this chapter, I delineate three central moral frameworks from which arguments for the use for force can be garnered—the just-war doctrine, the Responsibility to Protect norm, and a framework to govern the use of limited force—*jus ad vim*. Taking the United States' use of force since the fall of the Berlin Wall—ranging from acts short of war (limited air strikes, drone strikes, and no-fly zones) to full-scale war for the sake of regime change—as an illustrative case study, I elucidate the renegotiation of the just-war doctrine, the emergence of the Responsibility to Protect norm, as well as highlighting the need for a framework of *jus ad vim*.

Introduction

When one thinks about recent moral arguments over use of military force, the major U.S.-led interventions in Afghanistan (2001) and Iraq (2003) immediately come to mind. In both cases, the level of force deemed legitimate was that of *war*. However, war has not always been the morally justified level of force in response to acts of aggression or perceived threats. Indeed, in both the Afghanistan and Iraq cases, lower levels of force, such as limited missile strikes, targeted killings of key leaders, and no-fly zones were potential options, or even tried. But more importantly, the decision to use force, broadly speaking, has never been only about whether to wage war, but implies thinking through the strategic and moral dilemmas posed by alternative levels of force that might be used instead of or before "letting loose the dogs of war." Not only do statesmen need to ask "when is it justified to use force?" and "for what purpose?" they also need to determine what *level of force* is morally justifiable.

In this chapter, I delineate three central moral frameworks from which arguments for the use for force can be garnered—the just-war doctrine, the Responsibility to Protect (R2P) norm, and a framework calibrated to the use of limited force—*jus ad vim*. I then turn to the United States as a case study to discern the evolving significance of these frameworks. The use of force by the United States is an illustrative case because of the diversity of force it has used since the fall of the Berlin Wall, which includes establishing no-fly zones, limited missile strikes, Special Forces raids, targeted killings with drones, air campaigns for humanitarian purposes, just war in self-defense, and preventive war. Examining the decisions to use *some*

level of force elucidates the diverse interpretations of the just-war doctrine and R2P—as well as highlighting the need for a framework of *jus ad vim*.

Three Moral Frameworks Guiding the Use of Military Force

In this section, I identify and briefly discuss three moral frameworks to evaluate the decision to use lethal force: the principles of just war, the norm of R2P, and the theory of *jus ad vim*. U.S. presidents have frequently employed the principles of just war, with varying interpretations, while the emerging norm of R2P has come to serve, albeit inconsistently, the framing of Western responses to recent humanitarian crises. The emergence of *jus ad vim* in academic scholarship reveals the call for a more calibrated moral language that focuses on the moral dilemmas associated with limited force.

The Principles of Just War

The principles of just war have consistently influenced the way statesmen think about the relationship between war and ethics in the post-Cold War era. For example, all U.S. presidents since the end of the Cold War have referenced the language of just war in one form or another (Kelsay 2013; Brunstetter 2014). The principles can be divided into three main categories. The criteria of *jus ad bellum* govern the decision to go to war; the principles of *jus in bello* regulate conduct in war; and the *jus post bellum* regulates postwar conduct. Specific listings of these criteria in recent debate vary from commentator to commentator, but in U.S. policy circles, the formulation of *jus ad bellum* and *jus in bello* found in the U.S. Catholic Bishops' 1983 pastoral letter, *The Challenge of Peace* (National Conference of Catholic Bishops 1983), restated and slightly revised in their 1993 statement, *The Harvest of Justice is Sown in Peace* (National Conference of Catholic Bishops 1993), has been highly influential. (The category of *jus post bellum* is more recent.) Broadly following the terminology found there, the *jus ad bellum* includes the conditions of just cause, right authority, right intention, proportionality, last resort, and reasonable hope of success, while *jus in bello* is defined by the conditions of discrimination (called distinction in the usage of the law of armed conflicts) and proportionality of means. Most scholars refer to these principles as part of the just-war tradition, what Alex Bellamy calls "a two-thousand-year-old conversation about the legitimacy of war" (Bellamy 2006, 2). The principles, Bellamy goes on to explain, are "only a 'theory' in the very loosest sense. The tradition is fragmented, comprising many different sub-traditions … none of which prevail over the others" (Bellamy 2006, 4).

That being said, statesmen find moral purchase in these principles and sometimes act as if there existed an agreed-upon just-war doctrine that guides decision making about the use of force. Thus, the principles have been portrayed as a checklist that needs to be satisfied if war is to be justifiable (White 2010), as well as a moral framework that provides guidance "to all those involved in war, from the highest to the lowest level" (Fisher 2011, 4). Michael Walzer goes as far as claiming the "triumph" of just-war principles insofar as they influence the decisions of political and military leaders (Walzer 2004). However, while there may exist a generally agreed-upon language to deliberate the use of force, "not all the criteria generally recognized today as part of the just war idea," as James Turner Johnson argues, "have the same character or the same priority" (Johnson 2013, 43). Moreover, the meaning of the principles has changed over time. Their political and moral significance is, as Cian O'Driscoll explains, "an inheritance that must be interpreted and re-interpreted,