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Just Cause and ‘Right Intention’\*

*Abstract:*

I argue that the criterion of just cause is not independent of proportionality and other valid *jus ad bellum* criteria. One cannot know whether there is a just cause without knowing whether the other (valid) criteria (apart from ‘right intention’) are satisfied. The advantage of this account is that it is applicable to all wars, even to wars where nobody will be killed or where the enemy has not committed a rights violation but can be justifiably warred against anyway. This account also avoids the inefficiency of having proportionality considerations come up at two different points: in a separate criterion of just cause and in the criterion of proportionality proper. ‘Right intention’, the subjective element of the justification of a war, on the other hand, is not to be subsumed under the criterion of just cause: there can be a just cause without anybody knowing it. Conversely, however, the subjective element requires that those responsible for waging the war do know that the justifying objective conditions are fulfilled. This is in one sense more demanding than traditional just war theory; in another sense, however, it is less demanding: nobody needs to *intend* to fight for a ‘just aim’.

*Key words:*

just cause; just war theory; Kamm, Frances; McMahan, Jeff; proportionality; right intention; war

There are considerable confusions surrounding the concept of ‘just cause’ in the context of war. Furthermore, since ‘right intention’ is logically connected with just cause, these confusions surrounding the former notion also negatively affect a proper understanding of the latter. In this paper, I will try to clarify both concepts.

*I. Just Cause*

There are different ways the term ‘just cause’ is used in just war theory and political discourse. In one sense, a ‘just cause’ refers to what causes the war, to what *gives occasion* to it. As Francisco de Vitoria states: ‘There is a single and only just cause for commencing a war, namely, a wrong received.’ (Vitoria 1964: Second Relectio, § 13)

In another sense of ‘just cause’, however, the term refers to a *goal or aim one is fighting for*. Thus, Jeff McMahan states that ‘a just cause is an aim that satisfies two conditions: (1) that it may permissibly be pursued by means of war, and (2) that the

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reason why this is so is at least in part that those against whom the war is fought have made themselves morally liable to military attack' (McMahan 2009: 5). Likewise, for Frances Kamm the term refers to 'a limited set of goals, called a just cause, that would justify starting a war' (Kamm 2011: 119).

Thus, in the first sense 'just cause' refers to a *rights violation* (or at least an immoral act); and in the second sense of the term it refers to the *aim of defending against, rectifying, or punishing* said rights violation. Both uses of the term 'just cause' are problematic.

The problem with conceiving of just cause as an aim is that something can only be an aim if, in fact, somebody is aiming at it. However, if an innocent people is threatened with total annihilation by a genocidal aggressor, it seems to make perfect sense to say that the attacked people have a just cause to resort to a war of self-defence even if they are all pacifists, do *not* aim at defending themselves (nor does anybody else), and in fact do not resort to war but allow the enemy to slaughter them. To say that under these circumstances they do not *have* a just cause is just to confuse the criterion of just cause with the different one of right intention. In other words, there can *be* a just cause without anybody fighting *for* or *intending* to militarily achieve a certain just goal.<sup>1</sup>

In addition, Kamm's claim that a certain 'limited set of goals' can 'justify starting a war' is rather odd for a deontologist like Kamm: after all, a defining element of deontology is the view that the ends (by themselves) do *not* justify the means. This is, of course, also the position taken by traditional just war theory, which insists on the satisfaction of criteria like proportionality, last resort, etc.

This leads us back to the first rendering of 'just cause': why should we not just conceive of just cause as a rights violation and simultaneously accept that for the justification of a war more is needed than a mere rights violation?

There are two problems with this proposal. First, it seems implausible to say that *every*, even the mildest, rights violation is a just cause for *war*. If blogger A from state B insults innocent writer C from state D as 'untalented little pig', we would hardly consider this a just cause for war (nor would B's refusal to punish A be such a cause) – otherwise 'just cause' could hardly play a restraining function on the pursuit of war anymore and would be misplaced in just war theory (which does purport to restrain war). Second, it is not conceptually impossible to have legitimate wars *without* any prior rights violation: there could be consensual wars, for example, or wars where two parties fight over scarce resources that both of them need to survive. Instead of saying that both parties are unjustified, it is arguably also possible to say that both parties have a necessity justification (and one should at least not exclude this possibility by definitional fiat). It should also be noted that the rights violation is supposed to be one that has been committed by the party one is warring against. However, there could in principle be situations where a third party credibly threatens to commit some catastrophic crime unless A wages some restrained war against innocent B. In this case, again, there can be a necessity or lesser evil justification to engage in a war.<sup>2</sup>

Thus, both senses of 'just cause' discussed so far have serious shortcomings. There are two alternative understandings of 'just cause', however, that avoid the shortcomings just mentioned (it remains to be seen whether they both avoid other shortcomings). The one defended here is to conceive of just cause as a criterion that is *not* independent of (all the) other just war criteria. On my account, proportionality is a subcriterion of just cause;

furthermore, last resort and prospects of success are subcriteria of proportionality: whether a war is proportionate also depends on what other means are available and how likely they are to achieve the positive results the war is supposed to bring about. Thus, one can only determine whether there is a just cause by considering these other criteria.<sup>3</sup>

This account is not so different from traditional accounts. For example, the 16<sup>th</sup> and early 17<sup>th</sup> century just war theorist Francisco Suárez explains that ‘not every cause [is] sufficient to justify war, *but only those causes which are serious and commensurate with the losses that the war would occasion*. For it would be contrary to reason to inflict very grave harm because of a slight injustice’ (Suárez 1944: 816, my emphasis; compare also Cano 2006: 151 [Prima Quaestio, Sexta Conclusio]). Thus, in Suárez’ account a just cause for war is not independent of proportionality considerations; on the contrary, only by taking proportionality into account can one establish whether there is a just cause for war or not. Luis de Molina, around the same time, takes the same position, talking of ‘a just cause *in comparison to the damages that will be inflicted by the war*’ (Molina 2006: 271 [Articulus Primus, Disputatio Segunda, 50], my emphasis). He further clarifies that ‘there is a just cause for war if we take possession of that which belongs to us or is owed to us, *provided that we cannot obtain it in any other way than by the means of war*’ (Molina 2006: 247 [Articulus Primus, Disputatio Segunda, 23], my emphasis), thus connecting just cause also with the criterion of last resort: if there are less harmful means to get what others owe you, there is no just cause for war in the first place.

The second alternative, in contrast, is to claim that a just cause for war is a rights violation *of a certain kind*. That is, authors taking this route conceive of the criterion of just cause as some kind of list of acceptable aims that a war is to achieve, for example: defend the nation against an aggressor, stop a genocide, topple a tyrant, etc; or, alternatively, as a list of rights violations that a war is supposed to avert, for example: aggressive invasion, genocide, tyranny, etc. These authors regard just cause as independent of proportionality (and last resort and prospects of success). In other words, they think that only particularly important aims or particularly grave rights violations can be a just cause for war, and that there can be a just cause for war without the war being just or justified (even if the condition of right intention is satisfied): the war might still be disproportionate or not a last resort, for instance. Since war normally involves the killing of persons, these authors seem to think, a just cause must be an aim or rights violation that can *in principle* justify killing people in order to achieve the aim or stop, mitigate, or punish the rights violation.

I reject this approach for three reasons. The first reason is that war does not *necessarily* involve the killing of people, and thus such non-lethal wars can be justified even if the aims pursued in them cannot justify the killing of people. In other words, to demand that a just cause for war must be able to justify the killing of people does not do justice to wars that do *not* involve the killing of people. Such non-lethal wars simply need not be fought for aims that can justify killing people in order to have a just cause.

At this point it might be objected that the idea of a war without fatalities is unrealistic. However, first, even if there would never be any non-lethal war in the real world, this would still not undermine the conceptual point: even if there will never be a dinosaur on a ship, there is no *conceptual* impossibility for dinosaurs to be on ships. Moreover, for this reason we actually *cannot* say with certainty that there will *never* be dinosaurs on ships: the animated scenes (the ones explaining how scientists were able to create dinosaurs) in

the movie ‘Jurassic Park’ have at least some connection with science, and who knows what the future will bring. On this note, second, thanks to science and technology the debate on nonlethal warfare is *already* here – as are the prototypes of some of the weapons that could be used in such warfare, with further prototypes being developed at this very moment (see, for instance, Gross 2010: ch. 4; Allhoff et. al. 2013: Part III). Since it is a good idea for the ethics of war not to lag a step behind technological developments, the very real possibility of non-lethal warfare cannot simply be ignored or dismissed: the military most certainly does *not* dismiss it (see the United States Department of Defense Non-Lethal Weapons Program at <http://jnlwp.defense.gov/>). Third, it is not just non-lethal weapons that can make wars non-lethal. It is also possible that weapons that would normally be lethal become *ineffective* due to the enemy’s vast technological superiority. When I speak of a war here, I am of course referring to a war as a complex action, not as a historical event. The Second World War is a historical event, Britain’s war against Germany a (collective) action, and Germany’s war against Britain a different action (Steinhoff 2009: 135-136; see also McMahan 2009: 5). Now, the NATO bombing of Yugoslavia (in particular Serbia) (‘Operation Allied Force’) must certainly count as a war (even if some politicians, in view of the lack of enthusiasm of their constituency, preferred to call it a ‘police action’). But so must the Serbian resistance against the NATO forces, a resistance that included the Serbian air force and air defence, and in which Serbian MIG-29s fought NATO jets. Yet, according to the official NATO version the Serbs did not inflict lethal casualties on NATO forces. Neither, it seems, did they inflict lethal collateral damage in their fight against NATO. But then this war against NATO could have been justified (and many Serbians think it was) even if *killing* in this war would *not* have been justified. All that needed to be justified was imposing a *risk* of lethal harm on the Allied forces, but obviously that can be justified easier than the *actual* infliction of lethal harm. For these three reasons, then, the idea of a war without fatalities is *not* unrealistic.<sup>4</sup>

The second reason not to conceive a just cause as a rights violation of a certain kind, in particular, a rights violation that can *in principle* justify *killing* people, is that such a conception has the embarrassing consequence of making just causes shoot up like mushrooms and in the most unlikely places. Killing innocent people, for instance, is certainly a rights violation that can in principle justify killing the killers in self- or other-defence. Yet, in virtually all<sup>5</sup> modern wars, including those that allegedly have a just cause and are justified, innocent bystanders are ‘collaterally’ killed even by the justified side. Thus, if Noble Defender State invades Evil Genocidal State to stop the latter’s ongoing genocide of some ethnic group and in the process kills only *one* innocent bystander ‘collaterally’, then *every* state, on the account criticized here, suddenly has a just cause of war against Noble Defender State, *even* Evil Genocidal State.

To be sure, it should be noted that some authors, for example McMahan, distinguish between rights violations and rights infringements, where the former are *unjustified* and the latter *justified* transgressions against rights (McMahan 2009: 9-10). Thus, McMahan could claim that as long as the innocent bystander is killed in a justified military attack, there might have been a rights infringement, but not a rights violation.

A first problem with this account is that it is not clear why justified transgressions could not also give you a valid reason to fight back against them. Arguably, if you can save 100 innocent people only by killing one innocent person, you have a necessity

justification for killing the one, but of course the one person need not allow you to slaughter him like a sheep. It seems he is allowed to fight back; he is not under a duty to sacrifice his life for strangers. But then one would think that *if* unjustified transgressions against the right to life give rise to a just cause for war, then justified transgressions can do so too, and for exactly the same reason: they are *transgressions* against the right to life, and the persons who suffer from them need not simply accept them. (For more on this issue, see Steinhoff 2012: section 4.4; 2014a; and 2014b).

Moreover, even if we granted that justified ‘infringements’ of rights cannot give rise to a just cause, this is of very limited practical relevance since there will also be virtually no war that contains *only* justified infringements. At least at times disproportionate or unnecessary and hence unjustified force will be used, and hence the transgressions connected to such use of force will indeed be rights *violations*. Thus, the account still implies that if Noble Defender State invades Evil Genocidal State in a humanitarian intervention and in the process kills only *one* innocent bystander unjustifiably (perhaps since the force used was disproportionate or unnecessary in this case), then every state has a just cause of war against Noble Defender State, even Evil Genocidal State. In my view, this amounts to a *reductio ad absurdum* of the approach in question.

The second reason for rejecting this approach is that it is impossible to give a list of all aims or rights violations that ‘could in principle’ justify a war without in the end relying on some more general criteria. In other words, while one can indeed give some examples, in the end one has to say (or imply) things like: ‘Just causes are rights violations such that measures taken to avert, rectify or punish them can in principle, that is, under conditions that are at least possible, satisfy the criteria of proportionality, last resort, etc.’

However, this has the consequence that we end up using the criterion of proportionality (and other criteria) twice: first in order to establish, for instance, whether there are *in principle* conditions under which measures involving the killing of people are proportionate and necessary means to retaliate against a foreign power’s insulting one’s own king, and subsequently in order to establish whether this is so *in the concrete case*. What, one might wonder, is the purpose of this procedure, given that it seems to be somewhat superfluous and uneconomical? After all, the result of the second application of the criteria is decisive, not the result of the first one; and the second application by no means presupposes the first one.

It is instructive here to look at Jeff McMahan’s account, which seeks to retain just cause as a separate criterion. It is instructive not least because McMahan has provided the most elaborate defence of this stance, but also, more importantly, because such a position cannot be held coherently or without redundancy, and the shortcomings of McMahan’s own view are indicative of this.

To wit, McMahan himself actually acknowledges the point I have just made, namely, in his words, that ‘it would be uneconomical and indeed pointless to divide the work of weighing and measuring values between two requirements—for example, by having just cause stipulate that the goal of a war must be to achieve some very great good, while proportionality would require that the good be great enough to outweigh the relevant bad effects of the war’ (McMahan 2005: 3-4). Consequently – and only this is consistent – he suggests, ‘therefore, that just cause says *nothing* about considerations of scale or magnitude, but functions entirely as a restriction on the *type* of aim or end that may legitimately be pursued by means of war’ (McMahan 2005: 4). I say that *only* this is

consistent for the following reason: if you want to keep just cause entirely separate from proportionality, you *cannot* have considerations of scale and magnitude enter into just cause (especially not without being exposed to the quite correct charge that what you are doing is pointless).

On the other hand – and this is why the account criticized here is necessarily incoherent or at least redundant – it is *impossible* to say anything meaningful about just causes of the right ‘type’ *without* simultaneously saying something about scale and magnitude. This reality also catches up with McMahan:

War, as I understand it here, necessarily involves killing and maiming, typically on a large scale. A just cause, then, has to be a goal of a type that can justify killing and maiming.

Contrary to what I wrote earlier, this gives considerations of scale a role in the concept of just cause. Only aims that are sufficiently serious and significant to justify killing can be just causes. Beyond this, however, considerations of scale are irrelevant to just cause. (McMahan 2005: 11)

However, conceding a contradiction does not make it go away; nor does McMahan do anything to deflect his own previous and quite correct observation that the kind of division of work envisioned here is ‘uneconomical and indeed pointless’.

There are even further inconsistencies in McMahan’s account. To wit, on his ‘formal account of the requirement of just cause, ... there is a just cause for war only when those attacked are liable to be warred upon’ (McMahan 2005: 11). However, why should we accept this ‘formal account’? After all, McMahan himself explicitly adduces an example of a *justified* war (a version of the Soviet invasion of Finland, where the Soviets allegedly invaded Finland in order to gain a better position for fighting off the Nazis) – justified by a necessity justification, not by what he would call a liability-based justification – where those attacked are *not* liable to be warred upon. This example contradicts McMahan’s claim that ‘war that involves killing and maiming is what requires a just cause’ (2005: 11) in his allegedly ‘formal’ sense of the term. In other words, if, as McMahan also claims, a ‘just cause ... has to be a goal of a type that can justify killing and maiming’, why is the cause that justifies killing and maiming in this example not a just cause?

In addition, McMahan states that in principle ‘there might be a wholly nonviolent war’ (2005: 11) but emphasizes that this is not his topic; as already quoted, his topic is war that ‘necessarily involves killing and maiming’. However, if he does not allow possibilities that exist in principle to distract him from the more unpleasant realities, and therefore denies that a just cause can be one that is incapable of justifying killing and maiming, and since he elsewhere states that ‘wars to which [he applies] the term “just” almost invariably involve the infliction of some harms to which the victims are not liable’ (2012: 258) (because they are innocent: ‘collateral damage’),<sup>6</sup> it is unclear why in spite of *this* reality he should only focus on justifications for killing the non-innocent instead of considering also justifications for killing the innocent. He seems to be inconsistent here and to arrive at his ‘formal account’ by way of stipulation and, perhaps, a preference for liability talk. In any case, it would seem that a just cause for a war that does in fact involve the killing of innocent people must be one that helps *justify* the killing of innocent people. However, such a justification would be a necessity justification and traditionally relies heavily on the doctrine of double effect, which in turn contains a proportionality criterion. Thus, once again there is no reason to separate just cause from proportionality.

Any attempts to do so, like McMahan's, are bound to be incoherent.

Some might argue that a separate criterion of just cause, incoherent or not, offers an additional protection against precipitate recourse to war. If one already knows that certain acts, *lèse-majesté* for example (as we want to assume), cannot even *in principle* justify killing people in order to avert, rectify or punish such acts, then this is to be welcomed, after all. Such knowledge prevents people from 'getting bad ideas' in the first place.

But, as already stated, if such acts cannot justify killing 'in principle', they cannot justify it in the concrete case either. Conversely, however, there are things that are unable to justify killing a person in the concrete case at hand – but *can* do so 'in principle'. If on the basis of this one then assumes that indeed one has a just cause for war, this only invites 'bad ideas' instead of avoiding them.

These remarks might be somewhat abstract, so let me offer an example from the sphere of personal self-defence (which is to be understood as including other-defence). In many jurisdictions (and morally as well, in my view), the danger of losing an arm at the hands of an unjustified attacker can justify killing the attacker. It justifies it, for example, if the arm cannot be saved from the attacker by any other means than killing him. The aim of defending one's arm against an unjustified attacker *could* thus be a just cause for self-defence. However, if in the concrete case the arm can be saved as effectively and efficiently, that is, without additional costs and risks for the defender, by merely knocking the attacker down, then killing the attacker would be excessive and hence unjustified in this case.

Thus, while according to the 'list account' of just cause I am criticizing here there would be a just cause for killing in this case, there is *no* just cause for killing in this case according to the account defended here. It would appear that the latter account is to be preferred if one would like to avoid misunderstandings that could have grave consequences. After all, the more or less subtle point that one has a just cause for war (or killing) but is nonetheless unjustified in resorting to war (or killing) will hardly be one that can be successfully communicated to all politicians, military brass, soldiers, and citizens.

With regard to just cause one also has to make a distinction that, unfortunately, is never made in the literature – which often leads to considerable confusion. To wit, one has to distinguish the question *whether an agent* (for example a private person or a state) has a just cause for war from the question *whether a particular war* (which can be actual or potential) has a just cause. Let us again use the self-defence example. If in a concrete case a potential defender can save her arm from an unjustified attack only by knocking down the attacker, then the potential defender has a just cause for using force against the attacker. If, however, *the* force or violence she actually uses far exceeds what is necessary under the circumstances – if, for example, she kills him although simply knocking him down would have been as easy, safe, and efficient – then there is *no* just cause for *this* use of force. This distinction relates to (but does not coincide with) Elizabeth Anscombe's correct (and almost completely ignored) observation that waging *a* war can be morally justified under certain circumstances while *the* war that is actually waged under said circumstances is impermissible. For instance, she is of the opinion that the British were justified in waging *a* war against the Nazis but that the war they *actually* waged was nevertheless unjustified as it was disproportionate, guided by illicit intentions, and violated the principle of discrimination between the guilty and the innocent (Anscombe

1981: esp. at 73).

Thus, I propose the following characterizations:

An *agent* has a *just cause* for war (alternatively we could say: there *is* a just cause for a war) if there is an injustice, or an agreement to wage war between the potential parties to the war,<sup>7</sup> such that under the given (for example geographic, strategic, military-technological) circumstances the military rectification or punishment of the injustice or the defence against it, or the military realization of the agreement, is not necessarily disproportionate; that is, under the given circumstances a proportionate war is possible.

A *particular war* has a *just cause* if there is an injustice, or an agreement to wage war between the potential parties to the war, such that under the given circumstances the military rectification or punishment of the injustice or the defence against it *through this particular war*, or the military realization of the agreement *through this particular war*, is not disproportionate (or would not be disproportionate, in the case of a potential war.)

It is thus possible for an agent (that is, a person, a state, or some other collective) to have a just cause for war without the (kind of) war the agent is actually waging or contemplating having a just cause.

## II. *The Subjective Element of a Justified War*

I said at the beginning that just cause is logically connected with right intention. What is the connection? It is often said – in fact, it seems to be the standard view – that in order to satisfy right intention the war has to be fought *for* the just cause (see, for instance, Coady 2008: 98-99, Fisher 2011: 72, Lee 2012: 83, O’Brien 1981: 34 and 166, Pollard 2013: 94-95, Regan 1996: 85). However, given the account of just cause presented here, a war *cannot* be fought *for* a just cause but at best *with* a just cause: a just cause is not an end to achieve, but a set of conditions that the war satisfies or the agent finds him- or herself in.<sup>8</sup> But if this is so, what then is the subjective element, if any, of a justified war?

Again a comparison with self-defence law (where, again, ‘self-defence’ is regularly understood to include other-defence) might help. This comparison is pertinent since self-defence is, next to rectification and punishment, one of the traditional justifications of war. If anything, its importance has even increased in modern times: the defence justification has marginalized the other two justifications. (These are sometimes not even mentioned anymore or at best in passing – an example is Lee 2012: 69 and 73-78 – although recently there has been a renewed interest in the punishment justification, mostly by way of rejecting it, see for instance Gould 2009 and Luban 2012. Kaplan 2013, however, provides a qualified defence of punitive warfare.) Moreover, the self-defence justification is not only used on the *jus ad bellum* level to justify the *collective* war effort (as *national* self-defence), but also on the *jus in bello* level to justify soldiers’ killing enemy soldiers (as *individual* self-defence) (see on this for example Rodin 2002: chs. 6-7). And this *jus in bello* level is also relevant for right intention. While one finds the right intention condition often only listed under *jus ad bellum* (see, for instance, Fisher 2011: 67),<sup>9</sup> traditionally it is also a *jus in bello* condition, applying not only to state leaders but to individual soldiers as well. The traditional Christian just war theorists were also



addressing the question whether, and under what circumstances, individuals may participate in war, and they made it clear that when they do participate in war, these individuals must have a *right intention*. (See for example Aquinas 1948: II-II.66.8: ‘Nevertheless even they who are engaged in a just war may sin in taking spoils through cupidity arising from an evil intention, if, to wit, they fight chiefly not for justice but for spoil. For Augustine says (De Verb. Dom. xix; Serm. lxxxii) that “it is a sin to fight for booty”.’)<sup>10</sup>

Moreover, the comparison would still be relevant if self-defence played no role in justifying war and killing in war: it would be relevant as an illustration of how the justification of an act can comprise a subjective element without demanding that the act be committed *for the (objective) reasons* that justify it. To wit, the leading legal commentaries on the German self-defence statute agree that indeed there is the requirement of a subjective element, but while some scholars claim that for self-defence to be justified the defender must have the specific *intention* to defend him- or herself or others, that is, that he or she must use force (or other measures) *in order to* defend him- or herself or others, these leading commentaries explicitly reject this claim and instead affirm that it is sufficient if the defender *knows* that *the conditions of justified self-defence are fulfilled*. (See Erb 2003: 1333, Rönnau & Hohn 2006: 470, Günther 2010: Rn 134. For an overview of the Anglo-Saxon debate on this issue, see Sangero 2006: 231-236.)<sup>11</sup>

I subscribe to the latter view (with one caveat, as far as morality is concerned), which obviously fits well with the account of just cause presented here. In previous work I had already criticized the view that a war can only be justified if it is fought *for*, that is, with the *intention* to achieve, some good end (Steinhoff 2007: 27-28).<sup>12</sup> In fact, I argued that a man who takes part in a war only because he enjoys killing people and in order to kill people, but respects the rights (this is the caveat) of others enough to make sure that he only kills people he is (by proportionality and necessity standards) objectively justified in killing, *also* satisfies the subjective element of justification, that is: his *action is justified*, period (whatever we might think about his *character*). The same applies to states and organizations: if a state engages in an intervention to stop a genocide *not* in order to stop the genocide but simply to enhance its power, but nevertheless conscientiously complies with the objective just war criteria, then this power’s intervention is a justified war. If, on the other hand – and this, again, expresses the caveat – the state would have intervened anyway, even if the justifying conditions had not been fulfilled (so that its current knowing abidance with the criteria is not an expression of respect for the criteria but of mere coincidence), then the intervention would not have been just.

It should be noted that this is *not* a particularly lenient or permissive conception if compared with the view that the subjective element for a justified war merely demands ‘right intention’ in the sense of fighting *for a morally good aim*, like stopping an unjust aggression, for example. Again a comparison with self-defence is useful. The objective criteria of justified self-defence against an attack are necessity and proportionality (or at least no-gross-disproportionality, in some jurisdictions). Imagine now that Anna is about to unjustly attack Bela (an imminent attack can justifiably trigger self- or other-defence). A third person, Christine, believes that the imminent attack, if successful, would harm Bela only very mildly, causing her a very light pain for 5 seconds. Christine wants to stop this unjust aggression, is convinced that she can easily achieve this simply by pushing Anna away – and shoots Anna dead anyway. Normally, this would be anything but

justified self-defence; rather, it would be murder or at least manslaughter, due to the egregious excessiveness of Christine's act.

Yet, this case is not a normal one: unbeknownst to Christine, it was actually impossible to stop the attack in any other way than the one she chose and, moreover, the attack would not have been mild but lethal. Thus, here the objective conditions justifying self-defence, namely necessity and proportionality, are satisfied; and if the only subjective element necessary was the intention to reach a just goal (like stopping an unjust attack), then Christine's act would be justified. This, however, is not necessarily how law and most legal scholars would see it: her action could actually be punished (and morally condemned) as an (impossible) attempt to commit murder or manslaughter (Rönnau & Hohn 2006: 546-549, Sangero 2006: 235-236). This is the correct view to take. After all, while we might say that it was *good* that Christine did what she did, there is no reason to say that she was *justified* in doing what she did. Her action displayed a blatant disregard to law and morality; she actually *did* attempt to commit murder or manslaughter. Neither law nor morality can tolerate such disregard of law or morality.

Consider now a variation of the case. This time Christine knows perfectly well that the objective justifying conditions are fulfilled but kills Anna *not* because she intends to save Bela (she couldn't care less about Bela or about averting unjust attacks), but because she sees this as a great opportunity to shoot somebody in the head, something she always has fantasized about. Does she also defy law and morality here? Obviously she will not defy law if law does not require that she *intend* to defend herself or others before it grants her a self-defence justification. But why *should* law make such demands? Law, at least liberal law, aims at *guiding action*, not at regulating people's preferences, beliefs, predilections, or weird tastes. And law regulated Christine's actions successfully here: she only acted because she believed that the objective justifying conditions were in fact satisfied. Liberal morality, too, should content itself with regulating actions. The way of doing this is to tell people what they must or may do under certain circumstances instead of pointlessly telling them what intentions they must or may have before they can act in a certain way under certain circumstances.

However, what if Christine did *not* only act *because* she believed that the objective justifying conditions were in fact satisfied but would have acted in the way she did anyway, even if the objective justifying conditions had not been satisfied? Then, I say, she would again have acted impermissibly (this explains the caveat mentioned above).<sup>13</sup> Thus, *mere* knowledge of the existence of the objective justifying conditions is not sufficient. Suppose, for example, that Christine had been a hired killer, intent on preventing Anna from appearing as a witness in the court proceedings against a kingpin. The second she draws her gun to shoot Anna in the head as her contract demands, she realizes that, amazingly, certain objective justifying conditions to kill Anna are satisfied. Would we really want to let Anna off the hook? Hardly so. As in the first case, her action displayed a blatant disregard of law and morality; and again she actually *did* attempt to commit murder or manslaughter. Again, neither law nor morality can tolerate such disregard of law or morality.

I submit that nothing changes if in the example we exchange the three persons for three states. An invading state that only accidentally, as it were, stops a genocide with its invasion of another state, not even knowing that a genocide was in the making and actually invading because it seeks military glory, is acting unjustifiably. This does not

mean that we should try to *stop* the state's invasion, but it does mean that we can condemn it; and from a moral perspective, we could punish the state leaders for an attempted aggression. Conversely, if the invading state *knows* that the other state is about to commit genocide, invades the other state in a bid for military glory but conscientiously only uses force that is a proportionate and necessary means to stop the genocide and would not have invaded without knowing about the genocide, then the invading state does act justifiably, whether its *aim* is to stop the genocide or not.

This subjective element of justification defended here is perfectly general; thus, it also applies to individual soldiers. However, since it is not correct that individual soldiers cannot justifiably participate in unjustified wars (I have argued this at length in Steinhoff 2012a and 2012b),<sup>14</sup> they need not necessarily know what, if anything, justifies the whole war; rather, they must know and respect the justifying conditions of their own participation. (What those conditions are need not be discussed here.) The leaders, however, those who trigger and drive the collective act of war, indeed must know the justifying conditions of the war. In fact, one could even say that this is part of their being a *legitimate authority*.<sup>15</sup> Thus, the subjective element of just war theory is ill-described by calling it 'right intention'.

### *Conclusions and Practical Consequences*

The account of just cause presented here thus differs from two very popular accounts: one considers a 'just cause' as a *rights violation* (in particular as one that is severe enough to in principle justify killing), the other one as an *aim* (namely as the aim of defending against, rectifying or punishing a rights violation). On the account defended here, however, proportionality is a subcriterion of just cause; furthermore, last resort and prospects of success are subcriteria of proportionality: whether a war is proportionate also depends on what other means are available and how likely they are to achieve the positive results the war is supposed to bring about. Thus, without knowing whether the other (valid) criteria – apart from 'right intention' – are satisfied one cannot know whether there is a just cause. Moreover, I distinguish between a party having a just cause for waging *a* war and a party having a just cause for *the* war it is actually waging; or, in other words, between there being a just cause for *a* war on the one hand and *the* war *actually* being waged having a just cause on the other.

Four differences between the account presented here and the rights-violation account merit particular emphasis, not least since they have important practical implications. First, on the former account (but not on the latter) a war can have a just cause although there has been no prior rights-violation: there could be a necessity justification for the war,<sup>16</sup> or the war could be consensual (the two parties, maybe two medieval lords, consent to settle a dispute on the battlefield), or, if this science fiction example is allowed, the enemy might not be the kind of thing (a person) that can violate your rights in the first place (though it can harm you), for example, your own robot army might have malfunctioned and turned against you.

Second, the account presented here, in contradistinction to the version of the rights-violation account that insists that a just cause must be able to justify killing in principle, allows for just causes that are *not* in principle capable of justifying killing. It allows for

this possibility since wars do not *necessarily* involve killing.

Since a just cause is normally considered to be a necessary condition for the justification of a war, these two differences are obviously of the highest importance: the different accounts lead to different conclusions as to which wars are justified and which are not. Of course, since it looks rather strange to basically declare a war unjustified *because* it does *not* involve killing – this concerns the second difference – a defender of the rights violation account might either reject the premise that justified wars must have a just cause, or deny that wars that do not involve killing are really wars and then complement just war theory with some kind of just non-lethal ‘wars’ theory.<sup>17</sup> The first possibility is a radical deviation from the tradition. This would, of course, be entirely acceptable if such a deviation brought any advantages. However, it does not,<sup>18</sup> instead, it only unnecessarily complicates things. The same is true of the second possibility. The account presented here, however, has the attractive feature that it both continues a venerable tradition and need not be supplemented with *additional* theories (of ‘*jus ad vim*’, for example<sup>19</sup>) that deal *separately* with non-lethal force and *separately* with force that answers to things other than rights violations. In short, it is both simpler and more comprehensive; two features that make this theory more useful in its practical application.

Third, the rights violation account, as I argued above, makes just causes shoot up like mushrooms and in the most unlikely places. Since even the justified side in a war will probably commit *some* rights violations, this would mean that the opposing side immediately gains a just cause for war. However, in political discourse we have good reasons to steer clear of a just war theory that is extremely quick in conceding just causes for war to genocidal states that have become targets of justified humanitarian interventions. Such a theory would be misleading and might have a poisonous and counter-productive effect on public and political discourse, which is again a practical reason to prefer the account presented here.

More generally, the account defended here helps to avoid the dangerous perception that one can have a just cause without actually being able to fight a justified war. In other words, it helps to block the nefarious tendency to have the mere fact that a rights violation might have occurred overshadow the other just war criteria. A rights violation, even an egregious one, does not yet provide the wronged party with a just cause for war, nor does it provide a just cause to wars that are already fought in response to such rights violations. Keeping this in mind might help to restrain a just war rhetoric that does more to rationalize aggressive impulses than to restrain and control recourse to war.

Fourth, the rights violation account uses the criterion of proportionality (and other criteria) twice: first in order to establish whether there are *in principle* conditions under which measures involving the killing of people are proportionate and necessary means to retaliate against a foreign power’s insulting one’s own king (for instance), and subsequently in order to establish whether this is so *in the concrete case*. This, however, is unnecessarily complicated and uneconomical. The account presented here, in contrast, is economical and that is, again, a practical advantage.

As regards the second account of just cause, which conceives of a just cause as an *aim* (like the aim of defending against or rectifying or punishing a rights violation), I already pointed out that it leads to the entirely counter-intuitive implication that an innocent people threatened with total annihilation by a genocidal aggressor does not have a just cause at all if it does *not* aim at defending itself (or at punishing or rectifying rights

violations). Conversely, it also implies that Hitler had a just cause for invading Poland (after all, he wanted to defend – this might have been at least *one* of his goals – Germans living in Poland against Polish violations of their rights). Thus, the aim-account seems to be absurd and confused: it confuses just cause with right intention. It also, again, has the disadvantage of letting just causes mushroom, with all the negative practical effects this would have for political and public discourse. The account presented here avoids such disadvantages.

Finally, the distinction introduced here between a party having a just cause for waging *a* war and a party having a just cause for *the* war it is actually waging, or between there being a just cause for *a* war and *the* war actually being waged having a just cause, leads to greater conceptual clarity in our discourse about just cause and just wars in general. It enables us to condemn a particular war being waged without (sometimes implausibly) having to deny that the party has, indeed, a just cause for war (although not for the war it is actually waging).

Just cause comprises all (valid) just war criteria *apart* from ‘right intention’ or, as it should be called, the subjective element of the justification of a war: there can be a just cause without anybody intending to fight for it; indeed, without anybody knowing it. Conversely, however, the subjective element requires that those responsible for waging the war both actually *know* (or are aware of the fact) that the justifying objective conditions are fulfilled *and* respect them. This is in one sense, as we saw, more demanding than traditional just war theory; in another sense, however, it is less demanding: nobody needs to *intend* to fight for a ‘just aim’ nor need soldiers suppress their feelings of hatred or their lust for violence – as Augustine seems to demand.<sup>20</sup> Therefore, and since, as I said above, it is not correct that individual soldiers cannot justifiably participate in unjustified wars, inculcating soldiers with a *respect* for the (morally valid) rules would go a long way towards ensuring that they will wage and fight wars justifiably.<sup>21</sup>

## NOTES

<sup>1</sup> This also affects Steven P. Lee’s account, according to which a ‘just cause is a *justifying reason*, that is, a reason for an action, such as going to war, that morally justifies (or helps to justify) it. A state goes to war for a reason or reasons, which may be just or unjust’ (Lee 2012: 73). However, although Lee clearly conceives of a reason here as something that people are actually acting on, his position could be modified (and saved from said objection) by insisting that there can *be* a reason to do something without anybody *knowing* that there is such a reason (see Steinhoff 2000: 87-88). Yet, it should be pointed out that Lee’s own official account of a just cause as a reason that helps to justify a war is incompatible with his neat separation between just cause and the other *jus ad bellum* criteria. Proportionality, prospects of success, and even right intention also help to justify a war. Yet, while I argue below that just cause is indeed not independent of proportionality and its subcriteria, I also argue that it is independent of right intention. Therefore, my more precise two formulations of ‘just cause’ below are preferable to Lee’s account of just cause as justifying reason.

<sup>2</sup> For a related example, see McMahan (2005: 15-16).

<sup>3</sup> I do not regard last resort and prospects of success as *necessary* conditions for the justification of a war, though; still, they need to be taken into account. I need not go into this any further for present purposes, but see Steinhoff (2007: 23-25 and 28-30), where I further discuss these two criteria and their relation to proportionality.

<sup>4</sup> Moreover, the idea is also – quite rightly, as we just saw – accepted by one of the authors I am criticizing here, namely McMahan. We will get back to this below.

<sup>5</sup> Not, as I pointed out, necessarily in absolutely all wars, and not necessarily forever.

<sup>6</sup> Michael Neu (2012) argues convincingly (as McMahan admits) that McMahan’s way of using terms like ‘just’, ‘unjust’, and ‘justified’ in different contexts is, to use McMahan’s own words, ‘confused and confusing’ (McMahan 2012: 258). In particular, contrary to McMahan’s use of the term, ‘just wars’ that kill and maim innocent people cannot be just at all, but at best justified.

<sup>7</sup> The idea of a (justified) consensual war will seem absurd to many people. However, see Steinhoff (2007: 23-25).

<sup>8</sup> This I had not yet made clear in Steinhoff (2007: 27-28).

<sup>9</sup> Admittedly I, in the past, also *listed* it only under *jus ad bellum*, but at least I *discussed* it also with respect to the individual soldier. See Steinhoff (2007: 2-3, and 28-28).

<sup>10</sup> I thank Gerhard Beestermöller for steering me to this passage.

<sup>11</sup> I submit that the fact that this construal of the subjective element is popular in the legal scholarship provides it with additional credibility.

<sup>12</sup> Kamm (2011: 119-130) has recently made essentially the same point, making no reference to my previous work on this topic. Her argument that right intention – understood as aiming at a just aim – is not necessary for the permissibility of war is not supplemented with an analysis of what *is* necessary for the subjective element of the justification of a war to be satisfied.

<sup>13</sup> See in this context also Victor Tadros’s (2011: 159-160) *Poisoned Pipe* example, which nicely shows that dropping what I here called the ‘caveat’ leads to unacceptable results. However, Tadros seriously overstates his case. His example merely shows that, as I claim, in order to legally or justifiably kill others, agents must respect law or morality, respectively, and in this sense be ‘motivated’ by them, to use Tadros’s terminology. However, this does not imply that, as he claims, one may not also be motivated by personal glory (2011: 163) or, I assume, hatred, bloodlust, or greed.

<sup>14</sup> My position does not imply, however, that soldiers can justifiably participate in *all* wars as long as they, the soldiers, abide by *jus in bello* restrictions.

<sup>15</sup> This is compatible with an individual being its own legitimate authority for its own individual war. That is, I reject (Steinhoff 2007: ch. 1) the criterion of legitimate authority as it is usually understood. For recent criticisms of the criterion of legitimate authority along similar lines, see Fabre (2012: sec. 4.3) and Reitberger (2013).

<sup>16</sup> One might object here that the war then is at best justified, but not *just*. I agree, but wars in which innocent bystanders are killed (‘collateral damage’) are also at best justified, but not just: after all, they violate the right to life of innocent bystanders, and that is *unjust*. The term ‘just war theory’ is a misnomer; it should rather be ‘justified war theory’. Yet, the former term is used for reasons of tradition, and I use the term ‘just

cause' in the same spirit: with an understanding that it refers to something that is necessary for the *justification* of the war. Necessity justifications, however, are justifications too.

<sup>17</sup> The first option is McMahan's, as we saw above.

<sup>18</sup> McMahan does certainly not spell out any advantages such a deviation from the tradition might have.

<sup>19</sup> See Brunstetter & Braun (2013). These two authors overlook the fact that we can, as I did here, 'recalibrate' (to use their term) our understanding of the moral use of force also by recalibrating *jus ad bellum* instead of coming up with an additional theory of *jus ad vim*. In that context, it is also entirely unnecessary, *pace* Moellendorf (2008) or Rodin (2011), to 'complement' *jus ad bellum* with a category like '*jus terminatio*' or '*jus ex bello*'. *Jus ad bellum* concerns the justification for entering *and continuing* a war (see Steinhoff 2007: 2), which should be quite obvious: if you *cease* to have a just cause, you cannot be justified in *continuing* the war anyway. For a critique of Moellendorf and Rodin, see Schulzke (2013).

<sup>20</sup> 'The passion for inflicting harm, the cruel thirst for vengeance, an unpacific and relentless spirit, the fever of revolt, the lust of power, and such like things, all these are rightly condemned in war.' (Augustine 1887: 301 [Contra Faustum, xxii, 74]).

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