

SECTION IV

Rules and Norms

Fighting Justly: The Russia-Ukraine War and the Usefulness of Morality

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Abstract

War is almost always conducted with various restrictions in the form of rules, rituals, and taboos. Many of the norms that regulate warfare can be found in the tradition of just war. This tradition seeks to provide a middle ground between an unrealistic (at least for politicians) pacifism that does not even allow war in self-defence and a too realistic realism that claims there is no place for ethics in war. The tradition of just war does not have the force of law; it provides, above all, a vocabulary to discuss war in moral terms. At the same time, the tradition does have an impact: it forms the basis of humanitarian law and the Geneva Conventions. Just like with laws, it is recognised here that imperfect adherence to these principles does not necessarily diminish their validity. Most proponents of the tradition believe that the principles of just war, even though some date back centuries, are sufficiently general to be applicable to contemporary conflicts, such as the Russia-Ukraine war. If we apply the norms of the just war tradition to the current situation in Ukraine, we see that Russia is waging an unjust war in an unjust manner.

Keywords: Just war, Michael Walzer, Proportionality, Discrimination, Due care

1. Introduction

Thucydides' *History of the Peloponnesian War* describes how Athens extended its empire to the alarm of competing power Sparta, leading to a war between Athens and a Spartan-led coalition that lasted from 431 to 404 BC.¹ In 416 BC, Athens told the island state of Melos to submit to Athenian rule and break ties with Sparta – or alternatively face an invasion by the much stronger Athens. Melos warned Athens that such an unprovoked invasion would cause other states to get worried about becoming the next victim of Athenian aggression and could thus increase hostility towards Athens. Athens conversely argued that it would appear weak if it left Melos siding with the Spartans unpunished. For Athens, justice was not part of

¹ Kagan, *Peloponnesian War*.

the equation. As the Athenian envoys famously put it: ‘For ourselves, we shall not trouble you with specious pretences [...] since you know as well as we do that right, as the world goes, is only in question between equals in power, while the strong do what they can and the weak suffer what they must.’² They believed this to be a law of nature: ‘Of the gods we believe, and of men we know, that by a necessary law of their nature they rule wherever they can [...] you and everybody else, having the same power as we have, would do the same as we do.’³ The Melians refused to yield but ultimately had to surrender after the ensuing Athenian siege, ending with the slaying of the men and the enslavement of the women and children. Athens ultimately lost the war with Sparta, partly because it overreached with its expedition to Sicily, and Thucydides warns that an overly amoral foreign policy will in the end backfire. For Melos, Athens’ defeat came too late, but Ukraine can still hope for a better outcome.

As for justice and war: almost everyone will agree that the Athenians committed an injustice when they imposed their will on Melos by force. Thucydides appeared to have thought so, and also in Athens the justice of the invasion of Melos was a subject of debate. That suggests that it is possible to have a meaningful conversation about the morality of a war – just as we can have a meaningful discussion about the strategy or logistics of that war. We do not have to leave that conversation to those working in or for the military: philosophers and lawyers (and ultimately we ourselves) should engage in that exchange. Doing so contributes to what is commonly called the just war tradition. That tradition has no force of law, but offers a vocabulary for thinking and speaking about war in moral terms. At the same time, the tradition does have actual impact: it is, for example, the basis of humanitarian law and the Geneva Conventions. Most advocates of the tradition believe that its principles, even though some date back centuries (the term just war tradition is more accurate than the more widespread term just war theory), are sufficiently general to apply to contemporary conflicts such as in Ukraine. As with laws, the imperfect adherence to these principles does not diminish their validity.

The next section describes how the just war tradition distances itself from realism and relativism, essentially the beliefs the Athenian envoys subscribed to: ethics has no place in war because morality is relative in the first place. The section after that briefly describes the most important just war principles, which are in the subsequent section applied to the Russia-Ukraine war. To end things off, the final section debates the usefulness of morality in war.

² Thucydides, *Peloponnesian War*, 89.

³ Thucydides, *Peloponnesian War*, book V, 105.

2. Realisms and relativism

If one were to read Ukraine for Melos and Russia for Athens in the above, there are some discouraging parallels (Thucydides wanted his book to be ‘a possession for all time’).⁴ The Athenian belief that there is no place for justice and morality in times of war, for instance, still rings true to many people today. This popular view has turned up in various forms throughout history, from Cicero’s statement that the law is silent when weapons speak to Hobbes’ assumption that in a state of nature – where states still find themselves in relation to each other – man is a wolf to his fellow man.⁵ This understanding of war has been rather influential in the study of international relations where it goes under the name of realism. Realism suggests that in relations between states, the possibility (and will) to act morally is non-existent. National self-interest and necessity reign supreme, as states that show weakness will be subjugated. Speaking in moral terms about war and peace is hollow as it has no actual influence on actions.⁶ Prescriptive realism, which argues that states ‘should’ act amorally, adds that mixing war and morality ultimately leads to more casualties because a party that believes it occupies the moral high ground will fight even more ruthlessly.⁷

Realism is a way of thinking about war and peace that appeals to common sense – at first glance it contains an important truth that is summed up in General Sherman’s dictum that war is hell, but also in Clausewitz’s intuitively appealing claim that wars tend to ‘absoluteness’ and that the limitations law and morality impose are in essence alien to it.⁸ However, as many authors have pointed out, war is almost always fought with the observance of various rules, rituals and taboos.⁹ A familiar example is the taboo on shooting a lone soldier who forms too easy a target. This is the ‘naked soldier’ from Robert Graves’ war memoirs.¹⁰ The most important of these rules is that war is best left to a certain group in society: knights, mercenaries, nobles, samurai or, as is the case today, (professional) military personnel.¹¹ Such restrictions are not alien to what war is, but rather form an essential part of it. War

⁴ Thucydides, *Peloponnesian War*, book I, 22.

⁵ Cicero, *Pro Milone*; Hobbes, *De Cive*, dedication.

⁶ Walzer, *Just and Unjust Wars*, 3, 10

⁷ Orend, *War and International Justice*.

⁸ Walzer, *Just and Unjust Wars*, 22, 32–3.

⁹ See for instance Chiu, *Conspiring with the Enemy*; Keegan, *History of Warfare*; Lynn, *Battle*; Shaw, *Utilitarianism and War*.

¹⁰ Walzer, *Just and Unjust Wars*, 139

¹¹ Hence that many just war theorists are critical about the use of private military companies (such as the Wagner Group is or was) and volunteer battalions (such as those fighting for Ukraine). See for instance Pattison “Just war and privatization.”

is often a surprisingly regulated practice. We find many of these norms that aim to limit the damage that war causes to at least some extent in the just war tradition. This tradition tries to offer a middle ground between an unrealistic (for politicians at least) pacifism that does not allow war for self-defence, and a too-realistic realism that asserts that in war states cannot but follow their self-interest. Precisely because it has a semblance of truth, realism, with its assumption that states want to increase their power and that other possible motives are mere talk, is a more formidable opponent of the just war tradition than pacifism is.

One of the reasons for the outward plausibility of realism lies in its assumption that morality is relative, and that there can be no universally accepted judgments about right and wrong in war. 'One man's terrorist is another man's freedom fighter,' as the platitude goes. Clearly, such relativism reduces ethical judgments to matters of opinion. It builds on the empirical claim that there is widespread moral disagreement, and the metaethical claim that the truth of moral judgments is 'relative to the moral standard of some person or group of persons.'¹² Walzer refers to Melos: we all see that the rights of the Melians have been trampled on, just as we all see that kicking babies for fun is wrong.

3. Fighting just wars justly

The principles of the just war tradition address both when one may choose to go to war (the *jus ad bellum*) and how soldiers should fight that war (*jus in bello*). As for *jus ad bellum*, the three most important criteria are that a war must serve a just cause, must be proportional to that just cause, and must be the last resort. Of those criteria, just cause is the most essential, and there are really only two of those: a country may defend itself and, in exceptional circumstances, intervene to stop severe human rights abuses in another country. No politician will start a war without trying to convince the population and its armed forces that there is indeed a just reason for fighting – although this does not necessarily mean that politicians themselves believe that justification, of course. Politicians 'work hard to satisfy their subjects of the justice of their wars; they "render reasons," though not always honest ones.'¹³

The two main principles of *jus in bello* are the principle of discrimination and the principle of proportionality. Discrimination – distinguishing between

¹² It is on such grounds that the just war tradition explicitly distances itself from moral relativism. In the end, we can all subscribe to a number of basic principles that minimise the suffering caused by war. Michael Walzer has most influentially expressed that view in his *Just and Unjust Wars*.^{<fn>}Walzer, *Just and Unjust Wars*.

¹³ Walzer, *Just and Unjust Wars*, 39.

combatants and non-combatants – concerns the immunity of innocent civilians and states that they should never be the target of an attack. Proportionality means that unintended civilian casualties (intended civilian casualties are never justified) are only justified if their number is proportionate to the military objective: the (expected) number of civilian casualties resulting from a legitimate attack on a military target must be proportionate to the (expected) military gains. Both principles thus place the protection of civilians at the centre. War is a destructive activity, and the application of the principles of discrimination and proportionality aim to limit the damage done. Discrimination and proportionality together set limits on what can and cannot be done to civilians.

This principle of discrimination is fairly straightforward: attacks should be limited to military targets. Proportionality is more a matter of weighing, and inherently subjective: military planners tend to exaggerate the importance of their target, while underestimating the risk of civilian casualties. Moreover, the requirement that the number of unintended civilian casualties should be proportionate does not by itself require political and military decision-makers to minimise the number of civilian casualties as much as possible. It is because of the elasticity of the principle of proportionality that Walzer proposes an additional ‘due care’ principle: military planners must actively try to avoid unintended civilian casualties.¹⁴ They can, for example, warn civilians in a timely manner of an impending attack on a nearby military target, use precision weapons, or opt for ground troops instead of airplanes.

4. Fighting an unjust war unjustly

Regarding the *jus ad bellum*, the rhetoric from the Kremlin about the war in Ukraine clearly testifies to the fact that political leaders deem it a necessity to at least give the impression of waging a war on just grounds.¹⁵ President Putin (who prefers to call the war a special military operation) invokes the necessity of self-defence, but also the duty to end genocide by Ukraine (the Genocide Convention of 1948 states

¹⁴ Walzer, *Just and Unjust Wars*, 155–6. As Walzer puts it elsewhere, the doctrine of double effect ‘makes things too easy for the attackers; all they have to do is “not intend” to harm the civilians, even though they know they will cause injury or death. Instead, there must be a second intention to match the second, collateral effect. First, the soldiers carrying out the attack must intend to hit the target; and second, they must not intend to kill civilians. It is this second intention that must be manifest in the planning and conduct of the attack; the attacking force is morally required to take positive measures to avoid or minimise injury to civilians in the target area.’ Walzer, “Responsibility and proportionality,” 49.

¹⁵ According to Walzer ‘no political leader can send soldiers into battle, asking them to risk their lives and to kill other people, without assuring that their cause is just – and that of their enemies unjust.’ Walzer, *Just and Unjust Wars*, xi–ii.

that there is an obligation to prevent and punish genocide) and of an humanitarian intervention to protect innocent civilians. By using such terms and motives, he attempts to justify the invasion, most likely mainly for the Russian domestic audience, Russian soldiers and governments that have not yet taken a position. Putin does not espouse the view of the Athenian envoys that might makes right, cloaking himself in arguments from the just war tradition instead. Although this is of course an abuse of that tradition, it has the collateral benefit that it makes Putin vulnerable to criticism from that same tradition. Also in the realm of morality, arguments can be false. The justifications Putin offers have been extensively and repeatedly debunked: Ukraine and NATO do not pose a threat to Russia, and Ukraine is not committing genocide against Russian-speaking Ukrainians.¹⁶

This brings us to the *jus in bello* principles of discrimination and proportionality. Both can be applied to the current war: both Russian and Ukrainian attacks must be limited to military targets, and the number of unintended civilian casualties must be proportional to those targets. But especially the Russian attacks we have seen so far also target civilian objects and infrastructure, such as hospitals and schools, clearly violating the norms of the laws of war and the just war tradition regarding how a war should be fought. Such attacks constitute a flagrant violation of the principle of discrimination that is there to protect civilians. Undoubtedly, there will always be situations where the distinction between military and civilian objects is difficult to make, but the real problem is that the Russian military is not too concerned about making that distinction in the first place. Many attacks seem to be aimed at undermining the morale of civilians and their trust in their own government. To the extent that civilian casualties in Ukrainian cities are unintended, we can at least establish that the Russian military does not comply with the 'due care' principle by using unguided rockets and bombs from the cold war era.

Nevertheless, Russia also tries to maintain the appearance of justice here, for instance by the half-hearted establishment of humanitarian corridors. Russia also alleges that images of war crimes have been staged. The most important tribute Russia brings to the *jus in bello* is the claim that it does not attack civilian objects and that targeted buildings were used by the Ukrainian military, suggesting that the Ukrainian military uses civilians as human shields. Nowhere does Russia state that Ukrainian civilians are an appropriate target because there is no place for ethics in war. Of course, this lip service to the principles of just warfare is far from convincing, but here too it gives us at least a ground to criticise the Russian military for breaching *jus in bello* principles. If Putin knew (or should have known)

¹⁶ 'The Russian war is an unprovoked attack on a neighbor, an independent and sovereign state. It is clearly illegal. It is also, and this is more important, unjust—it is a crime not only legally but morally, too.' Walzer, "Our Ukraine."

of these breaches, he, as commander-in-chief of the Russian military, is also subject to criticism on this point. Biden's calling his colleague Putin a war criminal, already in the early weeks of the war, did not go down well in the Kremlin.¹⁷

In short: the just war tradition stipulates that a state must have a very good reason for war – self-defence – and Russia does not have this good reason. In war, intentional attacks on civilians are prohibited, and military personnel must make efforts to avoid unintended civilian casualties. Russia does not adhere to these principles. The Russian way of operating evidently leads to many unintended civilian casualties, but it is becoming increasingly clear that a significant number of civilians have been executed by Russian occupiers. Many journalists and politicians now accuse Russia of practices reminiscent of the Middle Ages, when soldiers terrorised innocent civilians to avoid direct confrontation.¹⁸ This mediaeval way of operating shows at least some similarities in terms of practice and purpose with the attacks on civilian targets (such as hospitals and apartment buildings) by the Russian military and the executions of civilians by Russian soldiers. Russian normlessness with regard to attacks on civilian objects appears to be a deliberate choice that serves a clear purpose – just like it was in the Middle Ages. The question is to what extent the execution of civilians is a policy that stems from the Kremlin; but the fact that Putin decorated the Russian soldiers who fought in Bucha (where more than 400 civilians were murdered in March 2022) is an indication that this might very well be the case.

That brings us to a final consideration. If we can blame Putin for the unjust way this war is fought, the *jus in bello*, can we then also blame Russian soldiers for the unjustness of the war itself, the *jus ad bellum*? Walzer, articulating the prevailing view, sees these two domains as strictly separate: politicians may decide to wage an unjust war, but the question of whether soldiers fight it justly is another matter. In this view, soldiers are responsible for how they fight, not for what they fight for.¹⁹ The fact that Russia is waging an unjust war does, in this view, not change a thing for Russian soldiers in Ukraine: they have the same rights and duties as soldiers fighting a just war. Russian soldiers are responsible for how they fight, in this case often unjustly, but cannot be held responsible for the unjustness of the war itself. However, an increasing number of theorists disagree. These revisionists point out that the view that soldiers fighting an unjust (for instance genocidal) war have the same rights as soldiers fighting for a just cause (for instance stopping a genocidal war) leads to untenable conclusions.²⁰ The most blatant one in the case of the

¹⁷ Parker, "Biden calls Putin a 'war criminal.'"

¹⁸ See Lynn Battle; Slim, *Killing Civilians*.

¹⁹ Walzer, *Just and Unjust Wars*; for a different view, see McMahan, *Killing in War*.

²⁰ 'Suppose that unjust combatants are engaged in a continuing atrocity, such as a massacre of civilians. Just combatants arrive and attack them as a means of stopping the slaughter. According

Russia-Ukraine war: in the traditional Walzerian interpretation Russian soldiers who kill Ukrainian soldiers defending their country are acting morally permissible when they do so. Revisionists acknowledge that there are excusing conditions for these Russian soldiers – state propaganda, lack of independent media – but insist that the killing of an Ukrainian soldier by a Russian soldier can never be ‘just.’²¹ Others go a step further, and do think that Russian military personnel should know better and should hence be prosecuted for waging a war of aggression.²² This, of course, goes especially for those higher up in the military hierarchy, or personnel of the Federal Security Service of the Russian Federation, better known as the FSB, who busied themselves with planning the war. As it stands, international law leaves little room for prosecuting soldiers for their participation in an unjust war of aggression, while the idea itself is hugely unpopular among those working for the military.²³

5. Discussion: The usefulness of morality

Some years ago, Walzer wrote an essay titled ‘The Triumph of Just War Theory’ – a title that may be overstating the case a bit.²⁴ Nonetheless, the idea that all is fair in love and war holds less and less true for war, at least according to Walzer. Although restrictions on what soldiers can do are as old as war itself, at present law, politics, media and public opinion, both at home and abroad, set limits on what troops may do that are stricter than ever before. Today, especially Western military personnel feel duty-bound to exercise self-control when deployed, and violations of norms on a mediaeval scale have largely been eradicated. If Western soldiers deliberately kill civilians, as has happened in Iraq and Afghanistan, this is not a policy but a reason for investigation and prosecution.²⁵

to the Theory, even though the unjust combatants are acting impermissibly in killing the civilians, they nevertheless act permissibly if they kill those who are trying to rescue the civilians. It is hard to believe that morality could permit *that*.’ McMahan, “Rethinking the Just War.” Thomas Nagel already wrote about the Vietnam War that ‘if the participation of the United States in the Indo-Chinese war is entirely wrong to begin with, then that engagement is incapable of providing a justification for any measures, taken in its pursuit – not only for the measures which are atrocities in every war, however just its aims.’ Nagel, “War and massacre.”

²¹ McMahan, “Moral liability for the Russian invasion.”

²² Clapham, “Ukraine can change prosecuting crimes of aggression.”

²³ See for that latter point also Peperkamp and Braun, “Contemporary Just war thinking.”

²⁴ Walzer, “Triumph.”

²⁵ See for example the investigation by the Inspector-General of the Australian Defence Force. Inspector-General of the Australian Defence Force, *Afghanistan Inquiry Report*.

The reasons behind this self-restraint are partly functional: in many contemporary conflicts, winning the hearts and minds of the local population is crucial, and sparing innocent civilians achieves this most effectively. This *modus operandi* is thought to yield better information and more cooperation from the local population, and thus, in the end, furthers the accomplishment of mission goals and increases security for the troops. Those who wish to convince soldiers of the importance of ethical behaviour often do so by demonstrating that it ultimately serves their own interests – as the Melians did when they warned the Athenian envoys that raiding Melos would only weaken Athens.²⁶ In part due to these functional arguments, Western military personnel generally leave civilians alone. That there is a self-serving element here does not take anything away from the fact that nowadays most wars are probably fought somewhat more ethically than in older times, testifying to the idea that military ethics does not necessarily amount to a contradiction in terms.

Walzer thinks that for the United States Vietnam was the turning point. During that war, the US military bombed Laos and Cambodia without regard for civilian casualties, but afterwards the sparing of civilians was increasingly seen as a ‘military necessity.’ Walzer: ‘it was a war that we lost, and the brutality with which we fought the war almost certainly contributed to our defeat. In a war for “hearts and minds,” rather than for land and resources, justice turns out to be a key to victory. So just war theory looked once again like the worldly doctrine that it is.’²⁷ What we see today is that success in conflict not only requires winning hearts and minds in the conflict area, but increasingly also in one’s own country and the rest of the world. Walzer argues that ‘modern warfare requires the support of different civilian populations, extending beyond the population immediately at risk.’ This broader support can only be obtained by sparing civilians in the war zone: ‘a moral regard for civilians at risk is critically important in winning wider support for the war ... for any modern war. I will call this the usefulness of morality. Its wide

²⁶ We see this two-sidedness also in US General Petraeus’ letter from 10th May 2007 to his troops in Iraq: our values and the laws governing warfare teach us to respect human dignity, maintain our integrity, and do what is right. Adherence to our values distinguishes us from our enemy. This fight depends on securing the population, which must understand that we – not our enemies – occupy the moral high ground. This strategy has shown results in recent months. Petraeus, “Letter to personnel in Iraq.” Interestingly, also some outside the military have a tendency to convince militaries of the importance of ethical conduct with arguments that are mainly based on expediency: Human Rights Watch reported that civilian fatalities in Afghanistan increased support for the Taliban, and that taking ‘tactical measures to reduce civilian deaths’ was essential for maintaining the support of the local population that the mission in Afghanistan depended on. Human Rights Watch, *Troops in Contact*, 5.

²⁷ Walzer, *Triumph*, 9.

acknowledgement is something radically new in military history.²⁸ An optimist might say that waging war without regard for human life is becoming increasingly ineffective.

At the same time, however, the mixed motives behind this restraint admittedly form somewhat of a surrendering to the rationale behind realism. Most of us would like to see a more moral motivation in both military personnel and political leaders, if only because the pitfall of functional arguments for ethical behaviour is that they lose their power when it seems more effective to act unethically. History is replete with examples of military action that was anything but ethical but was nevertheless effective. Russia's actions in Chechnya and Syria are two recent examples. Russia thinks, or thought, that also in Ukraine it is more effective to ignore moral considerations. Whether such amorality actually brings the Russian goals closer depends on how costly for the Kremlin the rest of the world can make that normlessness. On a very hopeful note: if the Kremlin's unscrupulousness becomes costly enough, Ukraine might prove a turning point for Russia, forcing it to acknowledge the usefulness of morality.

Although it is uncertain how and when the Russia-Ukraine war will end, Russia's position (militarily and economically) seems weakened in any case. While Putin by and large controls public opinion in his own country, he has alienated much of the rest of the world (although particularly in the West). This is at least partially because Russia is waging an unjust war in an unjust manner. Athens found out a long time ago that the most likely result is a small tactical gain at the cost of a momentous strategic loss.

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²⁸ Idem 10.

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