

The Tragedy of Justified War

Abstract

This article examines and critiques the binary structure of contemporary just war thinking. Theorists claim that the waging of war, and the committing of military acts within war, is either just or unjust. This binary distinction should be tempered by the awareness that justified wars are tragic: tragic in the broad sense of inescapably involving moral wrongdoing, but *not* necessarily tragic in the narrow sense of not having been preventable by the tragic agent *herself*. Justified war situations which fail to be tragic in the narrow sense are inauthentic. If contemporary just war theorists were to explicitly recognise the tragedy of justified war in the broad sense, as well as the dangers of lacking authenticity, their theory might become less susceptible to abuse by political moralists.

Keywords: *binary thinking, just war theory, justified wrongdoing, pacifism, tragedy*

The target of my critique is contemporary analytic just war theory: a theory which constructs highly sophisticated chains of reasoning in order to press the complex moral world into a neat binary moral structure of right and wrong.¹ For all its analytic complexity, and as a result of its proponents' obsession with questions of individual responsibility and liability to be killed, contemporary just war theory has become both ahistorical and apolitical. The just war discourse no longer needs to be connected to anything happening in the real world in order to make perfect sense to those participating in it. Examples of analytic just war reductionism abound.² Likewise, fictitious scenarios blossom, as they fit the binary just war accounts better than the real world ever could. Consider, for example, the way in which Jeff McMahan draws a distinction between just and justified wars. Since he is not able to offer an actual historical example (the Soviet Union's war against Finland in 1939–40 is only an approximation), he entertains the reader with the following thought experiment:³

Suppose that country A is about to be unjustly invaded by a ruthless and more powerful country, B. A's only hope of successful defense is to station forces in the territory of a smaller, weaker, neighboring country, C, in order to be able to attack B's forces from prepared positions as they approach A along the border between B and C. A's government requests permission from the government of C to deploy its forces on C's

territory for this purpose, but C's government, foreseeing that allowing A to use its territory in this way would result in considerable destruction, denies the request. Suppose that C is within its rights to deny A the use of its territory but that, all things considered, it is nonetheless justifiable for A to avoid an otherwise inevitable defeat at the hands of B by going to war against C in order to be able to deploy troops there, provided that it will withdraw immediately after fighting off the invading forces from B ... Given that C is not morally required to sacrifice its territory for the sake of A, it seems that C does nothing to make itself liable to attack by A. On the account I have offered, therefore, A does not have a just cause for war against C. Yet if A is nevertheless morally justified in going to war against C, it must be possible for there to be wars that are morally justified yet unjust. A war is just when there is a just cause and all other relevant conditions of justification are also satisfied. But, while all just wars are morally justified, it seems that not all morally justified wars are just wars.⁴

I have quoted this passage at length because it embodies what is wrong with contemporary just war theory: it often deals with neat fictitious worlds, rather than the complex real world; it makes clinical moral judgements about large-scale killing, mutilating, and suffering; and it proceeds as if absolute moral and epistemic certainty could always be obtained.

Contemporary just war theorists have turned the world of war into a sterile analytic playground.

The flaw in just war theory I focus on in this paper is its denial that any morally justified war – should there be such a thing⁵ – would be fundamentally tragic. I argue that situations in which there are strong moral reasons for going to war would be tragic in the broad sense of inescapably involving moral wrongdoing. This claim, if correct, requires certain adjustments of the just war discourse. Theorists would have to embrace, rather than reject, the contingent pacifist insight that virtually all wars are *unjust*. They would have to insist on the exceptional stringency and inevitable deficiency of the *jus ad bellum* criteria, while becoming more sensitive to, and explicit about, the moral and epistemic fragility of war's justification. Moreover, they would need to be acutely aware of the dangers of moralistic abuse, placing more emphasis on the moral requirement that tragedies of justified war (in the broad sense) ought to be prevented from occurring in the first place.⁶

Tragedies in the broad sense are situations in which moral agents cannot avoid wronging at least one person through an act or an omission.⁷ Such situations are not necessarily tragedies

in the narrow sense, though, which have two added features. First, the tragic agent has not caused these tragedies, or significantly contributed to causing them, in a way that could be described as deliberate, reckless, or negligent. Second, the agent could not have prevented these tragedies from occurring, ‘by knowledge of past tragedies or more careful decision-making.’⁸ Only if these added features are present, the tragedy is what I call *authentic*; otherwise it is *inauthentic*.

I am not primarily interested in stipulating a set of necessary and sufficient conditions under which war can be justified in this article (in fact, I am not sure this is possible at all); nor do I provide an extensive account of what conditions in the real world would need to be met for wars to be justified *authentically* (though my argument implies that authenticity can hardly be taken for granted). What I argue is that justified wars are inescapably tragic in the broad sense; that they are not necessarily tragic in the narrow sense as well; and that moral agents are, in principle, required to prevent tragedies of justified war from occurring. They also ought not to deliberately, recklessly, or negligently cause such tragedies, or contribute to causing them.

The rest of this paper is divided in four parts. First, I offer some more reflections on tragedies. In the second and main part, I argue that justified wars are virtually always tragic in the broad sense. Binary thinking in just war theory either leaves no conceptual space for the recognition of war’s tragedy or places too little emphasis on it. Third, I suggest that the fragility of justified war is further compounded by the fact that war’s tragedy is not necessarily, and perhaps not even ordinarily, authentic. Fourth, and finally, I shed light on some implications of my argument for the theory and practice of just war.

Tragedies

Bernard Williams reserves the term ‘tragic’ for situations that are dilemmatic in a conceptually narrow sense, writing that, in a tragic case, ‘an agent can justifiably think that whatever he does will be wrong: that there are conflicting moral requirements, and that neither of them succeeds in overriding or outweighing the other’.⁹ On *this* view of tragic warfare, whose plausibility I neither defend nor dispute in this article, it would *always* be wrong to wage war (this is true on certain moral and empirical assumptions about non-overridden requirements and contingent impossibilities in war, such as the impossibility to meet the non-overridden moral requirement not to kill toddlers when dropping bombs); in tragic cases, however, it would also be *right* to wage war. Alternatively, on a different

understanding of dilemmatic war situations, it would not be right *and* wrong to wage dilemmatic wars (as well as to not wage them), but *neither right nor* wrong.¹⁰

Tragedies defined as situations in which moral wronging has become inescapable are not necessarily dilemmatic in this narrow sense.¹¹ That is, they are not necessarily non-resolvable at the level of what Martha Nussbaum calls ‘the *obvious* question’ of what one should do.¹² There may be a right course of action to take, yet not one through which nobody is wronged. In the words of Williams, ‘the conflict arises from a contingent impossibility’, namely, that there is a ‘double *ought*’ and that one ‘cannot discharge both’.¹³ Think of Williams’s example of the tourist Jim, for whom it would (apparently) be right to follow Pedro’s invitation to shoot one of 20 Indians, since Pedro and his heavily-armed gang are otherwise going to kill all 20 of them.¹⁴ Jim ought to prevent 19 Indians from being killed, *and* he ought *not* to kill one of the Indians. There is thus no positive answer for him to the ‘tragic question’ of whether or not ‘any of the alternatives open to us [are] free from serious moral wrongdoing’.¹⁵

If Jim kills the Indian, he can still say, retrospectively, that he ought not to have done it. This is so because “‘acting for the best’ ... is not the same as to revise or reconsider the reasons for the original *ought*’s, nor does it provide me with the reflection “‘If I had thought of that in the first place, there need have been no conflict’”.¹⁶ The fabric of our moral world is such that we may end up being appropriately agonised by acting for the best in situations of moral conflict, including situations whose occurrence we are in no way responsible for. Michael Stocker writes that ‘unless our ethics should engage in noble lies, it is difficult to see how it could even allow, much less encourage, the moral and emotional insensitivity in not feeling these conflicts’.¹⁷

In this paper, I suggest that binary just war theory has a tendency to undermine the moral conflict inherent in justified war situations, namely by striving to eliminate ambiguity, doubt, and appropriate agony. Just war theorists give the impression that justified war situations simply arise every now and then and that, whenever they do, they can always be satisfactorily resolved by those facing them, with just war theory giving the relevant action-guiding advice on how to achieve this. In the view defended in this article, justified war situations are *tragic*; that is, there is a sense in which they cannot be resolved at all.

There is another problem though. The situation faced by Jim is *authentically* tragic, as he has not contributed to causing it, nor could he have prevented it from occurring. He is an innocent tourist after all, taking part in a botanical expedition and falling into the *agon* through no fault

of his own. Things could have been different, though. Suppose that Jim had overheard Pedro credibly announcing his vicious plans to his gang members the day before, and that he could have warned the Indians, thus saving them from being captured. However, since Jim did not care about the Indians' fate *then*, he could not be bothered to inform them about what was in the offing (perhaps he was chilling out at the pool, too lazy to get up). Or think of a different scenario in which Jim travels incognito, only pretending to be a foreign tourist. In his real life, he is a member of government and has recently decided, together with his cabinet members, to deprive the Indians of their land, which has led to legitimate acts of protest against the government. Pedro has now been assigned the task, also by Jim's government, to put down these protests, 'using all means necessary'. Or imagine Jim is indeed a foreign tourist, but he also happens to be the CEO of a big weapons manufacturing company, which has produced and sold the guns to Pedro and his gang. None of the three Jims could *authentically* claim to be justified in killing one of the Indians (by which I do not mean to imply that he ought not to do it). Two of these Jims could have prevented a foreseeable disaster – and, as it turns out, a tragedy – from occurring: the first by *not* being too lazy to warn the Indians, the second by *not* depriving them of their land and by *not* telling Pedro to crush the legitimate protest. The third Jim could not have prevented the tragedy, assuming the criminals could have found some other company happy to sell their weapons, located in countries whose governments would have been happy to not disallow it. However, he could have refrained from recklessly contributing to a tragedy's occurrence, simply by *not* manufacturing weapons and/or by *not* exporting them to criminals like Pedro, who will foreseeably cause moral disasters with these weapons, or indeed tragedies. Jim may be 'justified' in killing one Indian (indeed, he may have a *special* obligation to do so), but the justification will be severely tainted through his own previous misconduct.

Applied to the case of war, we can say that no agent can *authentically* claim to be justified in going to war unless the situation in which she finds herself can be described as tragic in the narrow sense. Conversely, if an agent has caused, or significantly contributed to causing, a tragedy of war in a way described above, or if she has failed to prevent the tragedy from occurring (although she could have prevented it through more careful decision-making), her claim to be justified in going to war will be inauthentic. Such a politician is not only a tragic agent, but also a political moralist, pejoratively understood: an agent whose claim to be justified is inauthentic in light of her own acts or omissions. Hence, political agents can offer

an authentic moral justification for waging war only if, and insofar as, the inescapability of wronging people is not too closely related to their own previous or ongoing moral failure. As Peter Euben writes, ‘for tragedy to “work” it must master you before you master it’, for otherwise the danger is that ‘something like the reverse occurs’: one ends up being ‘attracted to what [one] so loudly excoriates’.¹⁸ I take this to be an important clarification and extension of the potentially shallow *jus ad bellum* condition of last resort. However, *even* a moralist – or indeed *particularly* a moralist – could end up having overriding moral reasons to go to war, which is why the question of authenticity further compounds the tragedy of justified war.

The distinction I draw between authentic and inauthentic tragedies is a heuristic device; it would be a mistake, particularly in light of my critique of binary thinking, to suggest that one can always draw a clear-cut distinction between authentic and inauthentic tragedies in global politics. There may be degrees of lacking authenticity, and, given the complexity of global politics as well as certain epistemic constraints, it may be difficult to determine, not only if a war is justified or not according to *jus ad bellum*, but also whether or not the justification is authentic. This, however, only adds to the overall concern raised in this paper; that the moral case for war is more fragile, both morally and epistemically, than just war theorists tend to assume.

I argue in this paper that the tragedy of war *ought to* be prevented if it *can* be prevented. Agents who are aware of their role as potential warriors should therefore critically examine whether or not some of their own actions or inactions *today* may end up being conducive to the occurrence of tragedies of justified wars *tomorrow*. I agree with Lebow here, who writes that ‘[i]f the frequency and scope of tragedy can be reduced through learning, progress is possible even if universal harmony and accurate prediction of the consequences of human behaviour are not’.¹⁹ Ruth Barcan Marcus derives a ‘second-order regulative principle’ from this possibility: ‘that as rational agents with some control of our lives and institutions, we ought to conduct our lives and arrange our institutions so as to minimize predicaments of moral conflict’.²⁰ Just war theorists assume a world of morally responsible agents, a world that can neatly be divided into unjust aggressors and just defenders. However, normative relationships between agents in global politics are often too complex to warrant such a straightforward classification.

Fragility I: The Injustice of Justified War

Accepting the proposition of war's potential rightness as revealing *the* profound moral truth about war misses out something important: namely that a binary distinction between justified and unjustified wars is necessarily fragile and also not as exclusively morally meaningful as just war theorists have made it out to be. This is so because war's justifiability is severely put into perspective by its substantial injustice – roughly, the inevitable killing and maiming of all those who have nothing or very little to do with the aggression that instantiated a justified response by some victim (or some third party defender): in particular people who are neither morally responsible for the aggression nor making any causal contribution to it. But these people *will* get hurt when the aggressor is fought off. It is thus entirely appropriate when Ken Booth notes that 'Just Wars are just war', and that 'a war by any other name hurts as much'.²¹ For contingent pacifists, this is precisely the reason why resort to war is always *wrong*. Robert Holmes argues 'that the conditions that might theoretically justify war simply are not met in the actual world, hence that war is impermissible in the world as we know it'.²² A tragic conception of war does not necessarily subscribe to the pacifist prohibition, since *not* waging war may inevitably result in a high, indeed a *higher*, number of innocents being killed as well (with killing, of course, not being the only morally relevant harm that can be caused, or avoided, by waging or not waging war). Think only of Nazi-Germany. I am not necessarily claiming here that *the* Second World War *was* morally justified, but that *a* war against the Nazis *would have been* justified (or whatever adjective we might choose to describe tragic wars in case we subscribe to the dilemmatic war conception).²³ Not waging war may sometimes lead to a moral disaster *as well*, with that disaster perhaps being *even more morally unacceptable*. And yet, the tragic conception shares the pacifist insistence that war inevitably wrongs innocent parties *regardless* of whether it is morally justified or not. Even a justified war against the Nazis would have been unjust, as it would have resulted in the wronging of innocents. It is not less wrong to kill a 'Nazi toddler' than it is to kill any other toddler in the world. To state this is *not* to put into perspective the unspeakable horrendousness of the Nazi crimes; it is *not* to mitigate the moral requirement to stop the Nazis from doing what they did; and it is *not* necessarily to deny that sometimes mass murderers cannot be stopped other than by means of force, with such force potentially being a case of acting for the best *even if* it results in the (unjust) killing of toddlers.

There are many situations in which it is rather less obvious that *not* waging war will lead to a moral disaster which is even more morally unacceptable than war itself. Think of three recent wars: Operations Enduring Freedom (Afghanistan), Iraqi Freedom (Iraq), and Odyssey Dawn

(Libya), respectively. I am not discussing here if any of these wars was morally justified. The point is that even if one were to grant this, one could not deny that each of these wars was also *unjust*, namely for killing toddlers (as well as many other people that contemporary just war theorists would concede to be ‘non-liable’).²⁴ The wronging could be denied by just war theorists in various ways, in particular (i) by attempting to drown the injustice of war in the dark blue sea of moral measuring and all-things-considered moral calculi; (ii) by overemphasising the normative difference between two forms of killing: intentional killing and killing with foresight; and/or (iii) by at least implicitly prioritising *our* life over *theirs*. (One cannot help but think that, to some people’s minds, the approximately 3,000 civilians who died on 9/11 somehow matter more than the vastly higher number of civilians that have died as a result of the U.S.-led invasions of Afghanistan and Iraq since 2001 – and this perception is owed not only to the fact, as Jean Bethke Elshtain takes it to be, that the victims of 9/11 were wickedly murdered, rather than justifiably man-slaughtered.²⁵) None of these justificatory tools, nor any combination thereof (as far as they *can* consistently be combined), can take away from the injustice of justified wars.

The unavoidable injustice of justified war has not been sufficiently appreciated by contemporary theorists of just war, who belittle, ignore, or deny it (while more fully appreciating the potential injustice of *not* waging war). Binary thinking dominates, according to which war is morally just or unjust, *period*. For all the battle among theorists about whether or not an unjust war’s conduct can be just, the protagonists are much closer in spirit than one is led to assume.²⁶ For neither has any qualm about pressing a complex moral reality into a rigid binary structure. Chris Brown’s judgement on the nature of analytical political theory captures the discursive parameters according to which many theorists operate:

There is a particular style to analytical political theory which involves an extraordinary, at times painfully detailed, attention to the importance of constructing unbreakable chains of close theoretical reasoning, with the intention of providing an absolutely airtight account of the problem in question. Most such theorists would regard this as a statement of the blindingly obvious; the fact that most, if not all, of the major political philosophers produced work that contained contradictions, and left loose ends untied, is regarded as a strike against those classics, rather than as a reflection of their inevitably inadequate attempts to cope with the untheorisable complexities of human existence. When a writer such as Michael Walzer emulates the past by employing underspecified

concepts (“supreme emergency”, for example) or leaving certain key questions unresolved, he is described as a “phenomenologist of the moral life” (Jon Elster’s phrase) who stays on the surface of events, unlike proper political philosophers who are intolerant of ambiguity and unresolved dilemmas.²⁷

Likewise, and referring to Brown, Peter Euben criticises the ‘analytical style’s fetish for constructing unbreakable chains of closely reasoned argument in order to solve political and moral problems. The assumption is that ambiguity and unresolved dilemmas (let us call them riddles) are somehow pathological.’²⁸ What is implied here, of course, is that a categorical insistence on the resolvability of dilemmas (or at least on resolvability without substantial remainders) may itself be pathological.

I cannot provide an extensive account of binary thinking and lacking ambiguity in contemporary just war theory here. A few examples, picked from a pool of many more contemporary theorists whose works one could draw on, may suffice to make the relevant point. It should become apparent that most of the thinkers I refer to do recognise the ambiguity of moral justifications for war.²⁹ However, they do not place this recognition at the centre of their moral arguments about war. That is, they somehow fail to engage with the tragedy of justified war in the broad sense. There is some fragmented talk of tragedies, moral dilemmas, dirty hands, and rights infringements, but no critical engagement with the kind of thinking in just war theory that is predominantly – or in some cases even exclusively – concerned with drawing binary distinctions between just and unjust wars and military operations. The core question raised in the literature is whether or not one *may* wage war, and whether or not certain military operations *may* be undertaken; once the answer has been found, the moral case is closed – particularly, but not exclusively – in just war accounts that embrace the kind of style described by Brown.³⁰

This style, of course, is not Michael Walzer’s. When contemporary analytical philosophers deride his contributions to just war theory as some kind of ‘story-telling’,³¹ devoid of conceptual clarity, argumentative rigour, and methodological finesse, it is perhaps sentences like the following one which critics have in mind: ‘[T]he theory of war, when it is fully understood, poses a dilemma, which every theorist ... must resolve as best as he can.’³² Walzer’s thinking nonetheless falls prey to the kind of binary thinking which analytical theorists would take to new heights a couple of decades later on. While Walzer famously defends the conceptual plausibility of the notion of dirty hands, according to which especially

politicians must sometimes do wrong to do right, he introduces this concept into his theory of ‘just and unjust wars’ *only* in his account of ‘supreme emergencies’. Here, political communities cannot help but engage in the *intentional* killing of innocent people: ‘[D]irty hands aren’t permissible (or necessary) when anything less than the ongoingness of the community is at stake, or when the danger we face is anything less than communal death. In most wars, the issue never arises; there are no supreme emergencies; the normal defense of rights holds unquestioned sway.’³³

This feature also sets ‘most wars’ apart from the case of torturing the captured terrorist who refuses to reveal the location of a number of bombs about to go off in the midst of a metropolis.³⁴ According to Walzer, the terrorist is *wronged* in the ticking bomb scenario, *rightly* wronged, but wronged. The toddler bombed into pieces in justly conducted wars, on the contrary, is *not* wronged in Walzer’s view. This is implausible. If some version of Walzer’s doing-wrong-to-do-right thinking is sound, it must also apply to the case of dropping bombs in too close proximity of innocent toddlers, rather than only to the case of torturing non-innocent terrorists.

A similar criticism can be launched against Brian Orend’s work, whose substance and style is similar to Walzer’s. On the one hand, and much like Walzer, Orend thoughtfully points out that ‘*reflection upon war’s tragedy is something which just war theory can benefit from, and which has hitherto been ignored*’.³⁵ On the other hand though, and again like Walzer in spirit, Orend follows up his own reference to war’s tragedy *only* in his discussion of the moral structure of supreme emergencies: ‘*The whole thing is a wretched moral tragedy and, no matter what you do, you’re wrong*’.³⁶ While Orend actually sets out to reject Walzer’s dirty hands account of supreme emergencies, his critique veils a much more fundamental agreement between the two thinkers: War itself is no case of doing wrong to do right (Walzer) and no wretched moral tragedy (Orend); rather, it can be morally evaluated in binary terms. This is implied by statements such as the following two: ‘*Provided that the other criteria of just war are fulfilled, then the defence of rights, the protection of people, and the punishment of aggression seem worth the cost of incidental, indirect casualties*’.³⁷ And: ‘*Although the people in the aggressor state retain their human rights, these will not be violated, provided that the victim state fights its just war in accord with the laws of war*’.³⁸ The first sentence somehow belittles what is effectively the bombing of toddlers into pieces (given certain plausible assumptions about the nature of modern warfare), while the second

denies that the targeting of toddlers with foresight *necessarily* constitutes a violation of rights. Walzer's and Orend's intentionality restriction on war's tragedy must be lifted.

A more *explicit* denial of the tragedy of justified war, and one that resembles more closely the style referred to by Brown, is to be found in C. A. J. (Tony) Coady's writings. Coady suggests that 'if we accept that some incidental killing (collateral damage) is morally legitimate in a just war, either because of the [Doctrine of Double Effect] or for some other principled reason, it is then unclear (at least to me) how the non-combatants ... have been wronged. They have not been done any injustice, though their deaths are a horrible and deeply regrettable outcome of what we are assuming to be right action.'³⁹ Coady goes on to state, even more remarkably: 'It would of course be psychologically understandable (to say the least) that if they [i.e. the unintentionally targeted non-combatants] had access to appropriate weapons they might shoot down the bomber. Such (as Hobbes insisted) is the imperative of self-preservation. It might even be morally excusable since they may not know, or positively disbelieve, that the target is legitimate or their likely deaths proportionate.'⁴⁰ On this view, there is really *nothing* wrong about bombing toddlers, provided certain conditions are met.

This view is apparently shared by the just war theorist A. J. Coates, who writes that '[r]ealistically, [noncombatant deaths] are an inevitable part of any war, and especially of modern war. Though an undoubted physical evil, they may not constitute a moral evil.'⁴¹ Part of the reason why 'collateral damage' may not constitute a moral evil from a just war theorist's point of view is that the damage is *proportionate*. While just war theory is not a consequentialist doctrine, it cannot dispense with making proportionality judgements that involve the weighing of some lives against some other lives (or even against abstract notions like 'military advantage'). Particularly when delivered with a high degree of precision and/or certainty, such judgements tend to be insensitive to the tragedy of justified war. Take the example of Thomas Hurka, who concedes that '[j]udgments about proportionality in war cannot be made simply or mechanically', but then proceeds to confront the reader with a passage like the following:⁴²

I wish I could say more precisely ... how many enemy civilian deaths are proportionate side effects of saving one of our civilians. But I do think that when weighing its own civilians' lives against those of enemy civilians it will merely collaterally kill, a nation may give some preference to the former: more than zero preference, but not as much as

is permitted when no killing is involved. If the nation is trying to prevent terrorist attacks like those of September 11, 2001, then tragic though the result will be, and assuming the nation makes serious efforts to minimize collateral harm, it may kill somewhat more enemy civilians if that is unavoidable in saving a smaller number of its own.⁴³

Hurka's wish for more precision is precisely the problem here. It is a wish for unambiguous, action-guiding judgements about war, judgements that no longer leave any space for interpretation and disagreement, for doubt and agony: for the recognition of war's tragedy. Hurka concedes that he finds himself unable to make more precise judgements about proportionality, while *not* questioning the binary structure of his moral argument. We might come to a point at which we cannot be certain about the judgements we make, he is suggesting. We may (unintentionally) kill 100 of *them*, in order to save 90 of *us*, but not, perhaps, in order to save 50: *at some point*, we begin to be uncertain. However, until we reach that point of uncertainty, our judgements are safe, and the task of the moral philosopher of war is to expand the moral space in which we can make unambiguous, safe moral judgements. Perhaps, one day, we can crush the other moral space entirely: the space in which we experience moral doubt about what is right, and moral agony about doing what, despite all doubt, we might assume to be right. In fairness, Hurka does recognise the tragedy of justified warfare, but only as some sort of disclaimer, in a subordinate clause. It is not the kind of recognition that would lead him to abstain from weighing the lives of *their* civilians against those of *our* soldiers in the following way: 'I ... feel forced to treat them as of approximately equal weight, so our soldiers' and enemy civilians' lives count roughly equally. While a nation may prefer its own civilians' lives to those of enemy civilians, it may not do the same with its soldiers' lives. Instead, it must trade those off against enemy civilians' lives at roughly one to one.'⁴⁴

The just war theorist David Rodin rightly expressed considerable scepticism about such trading business: 'Persons have rights against being harmed or used for the benefit of others, rights which can only be alienated in very specific ways, usually having to do with actions and decisions they have freely and responsibly taken.'⁴⁵ When war is initiated and waged, it is naturally the case that risks are being imposed on individuals, and the question should be if 'it [is] justifiable to inflict such a risk upon this particular person'.⁴⁶ According to Rodin, '[t]he fact that the risks are necessary (from the perspective of the beneficiaries of the risky

activity) and proportionate (from the impersonal perspective of the world at large) is not sufficient to defeat the personal right not to be endangered or used in this way'.⁴⁷ The same thinker, however, has recently advocated the NATO intervention in Libya, despite the killing of innocent civilians which the NATO bombings would foreseeably result in – and *have* resulted in. As Mervyn Frost and David Rodin write:

We should be clear ... that using airpower in crowded urban settings will inevitably lead to the accidental killing of civilians. This is a gut-wrenching dilemma. Yet throughout the region ordinary citizens have shown a courageous readiness to face mortal danger in pressing their legitimate political demands. It seems reasonable that they will bear the risk of accidental air strike, provided that we keep our side of the bargain by doing everything humanly possible to minimise that risk.⁴⁸

On the face of it, this seems like a neat summary of a tragic conception of justified war. But, at least in my interpretation, it is not. The 'yet' somehow comes too quickly here; and it is delivered in a language that does not seem to sit well with the previous gut-wrenching-dilemma rhetoric, and also not with Rodin's earlier point about personal rights. The anticipated bombing of *some* Libyan toddlers into pieces, for example, would not seem to be appropriately described as a reasonable imposition of risk on *all* Libyan toddlers; likewise, the 'bargain' rhetoric hardly points to a genuine recognition of war's tragedy.

Of course, as is indicated by Rodin's own comments on proportionality, it is not true that contemporary analytical just war theory *necessarily* fails to provide conceptual space for the recognition of unintentional wrongdoing. Jeff McMahan, for example, distinguishes between violations and infringements of people's rights: 'When one ... permissibly acts against a right, I will say that one *infringes* that right, whereas when one impermissibly does what another has a right that one not to, one *violates* that right. Even though an agent acts permissibly in infringing a right, the victim is nonetheless wronged and may thus be owed compensation.'⁴⁹ McMahan acknowledges that justified acts (such as 'tactical bombing') are sometimes unjust, namely when they harm parties who are not liable to be harmed, thus infringing their rights. Nonetheless, McMahan does not subscribe to my suggestion that we should therefore stop talking about 'just wars':

I think we should resist [deleted for blind review]'s way of understanding these terms mainly because we should, as far as possible, speak the same language as our predecessors in the just war tradition. Writers in this tradition have always known that it is virtually impossible to fight a war without physically harming people who are innocent in the sense of not being morally liable to be physically harmed. Yet despite this knowledge, they have constantly referred to certain wars as just wars ... it seems that we have always understood what they meant; hence their way of using the word "just" must be intelligible.⁵⁰

It may not be true that 'we' have always understood, and are still understanding, what 'they' meant; it is certainly not true that war-waging *politicians* always understand the moral subtleties which are, from McMahan's own perspective, evidently implied by the term 'just war'.⁵¹ In most contemporary accounts of just war, however, and certainly in all *political* pleas for war, war's injustice is virtually absorbed by its justness, with 'collateral damage' being perceived as a regrettable side-effect of virtuous political and military conduct – a physical evil, not a moral one (again, this is not true for McMahan, who considers the justified collateral killing of non-liable parties a *lesser* moral evil, but an evil nonetheless).⁵² The irony here is that theorists justify war as a valid instrument to protect *individual* human rights, while insisting that the only relevant wrong-making feature of non-intentional and non-instrumental killing of innocents in the pursuit of a just cause, to sum up the doctrine of double effect without intended irony, would be its lack of proportionality.⁵³ But surely judgements about proportionality, the weighing of some innocent lives against some other innocent lives, *must* appear less than straightforward to moral philosophers (unless they identify themselves as thoroughgoing consequentialists, which just war theorists do not usually do). In some exceptional circumstances, one may perhaps come to judge that waging a war that foreseeably kills tens of thousands of innocents is proportionate. However, if this is a moral truth, as just war theorists insist it is, it is fragile and tainted. It is also dangerous, as it tends to be transformed into self-righteous, uncompromising, passionately partisan speeches: the kind of speeches ordinarily delivered by politicians who are sending their troops to battle. If intellectuals prove unable to tell their fragile truth in a way which does not lend itself to convenient transformation, namely into a truth which its transformers pretend (or somehow manage to persuade themselves) to be *absolutely* certain about, they should perhaps consider keeping it a secret.

Fragility II: Inauthentic Tragedies of Justified War

An appreciation of the tragic nature of justified wars in the broad sense would caution theorists against being certain. It would also make them place emphasis on the importance of tragedies in the broad sense being prevented in the first place: situations in which agents cannot help but wrong people, neither by waging war nor by *not* waging war. This is more than saying that wars can be justified only as a last resort and when waged with the right intention, since any such ‘second-order regulative’ (Marcus) requires much closer attention to how we conduct our lives and arrange our institutions in the world we share.

Just war theorists seem to assume that justified war situations are authentically tragic (though they fail to appreciate what this means). The assumption here is that justified warriors are normally presented with such situations without having been involved in their emergence. From this view, it simply happens from time to time that some morally responsible aggressor decides to commit the crime of aggression, with the virtuous victim (or a third party) being in a position justly to respond by military means, provided certain conditions are met. While the binary and agent-centred world view of just war theorists may be intuitive to some, it also reveals an uncritical understanding of the world we live in.

In this world, it is a possible scenario that today’s ostensible defenders have previously nurtured or collaborated with today’s aggressors, thus rendering the tragedy of war in the broad sense (if it is one anyway) *inauthentic*. Recall that an inauthentic tragedy is one which could have been prevented by the tragic agent herself, and/or which the agent has caused, or significantly contributed to causing, in a way that could be described as deliberate, reckless, or negligent. Can Western governments confidently claim that their respective moral justifications for invading the Taliban’s Afghanistan and Saddam Hussein’s Iraq were untainted by the direct or indirect Western support which these regimes have received in the past? Is the moral justification for NATO’s intervention in Libya in 2011 not severely burdened by many preceding years of flattering, and cooperating with, Qaddafi – years during which Qaddafi was already known to be exactly the kind of ruthless dictator that he proved to be in 2011? Does it not matter that crucial surveillance equipment, used by the Qaddafi regime to control and oppress its people, was installed by a *French* company?⁵⁴ And as for those who claimed that a humanitarian intervention in East Timor by Western powers would have been morally justified in 1999, how could they have squared this claim with the

Western military support, which Indonesia had continuously relied on since its invasion of East Timor in 1975?⁵⁵

It is also conceivable that alleged military defenders are tied into oppressive structures which are not only violent in themselves (by some conception of violence), but also conducive to outbreaks of the kind of direct military violence which just war theory is concerned with. Take the case of Rwanda. It is common just war wisdom that a humanitarian intervention waged to stop the Hutus from massacring 800,000 Tutsis in Rwanda in 1994 would have been justified.⁵⁶ However, why do just war theorists not ponder the effects of the economically motivated US withdrawal from the International Coffee Agreement in 1989, a withdrawal which led to collapsing coffee prices and, in Rwanda, to a massive drop of export earnings in subsequent years? The consequences, according to Richard H. Robbins: widespread famine; reliance of the Rwandan elite on foreign aid to maintain their power, aid which one could only receive by agreeing to IMF structural adjustment policies; devaluation of the Rwandan franc; further impoverishment; collapse of health and education systems.⁵⁷ Should this not matter to a moral analyst who stipulates Rwanda as the paradigmatic case of Western states failing to live up to their 'responsibility to protect' (or 'R2P', as it is neatly abbreviated)? If Rwanda 1994 was a justified war situation, one that was tragic in the broad sense of inescapably involving moral wrongdoing, it may not have been tragic in the narrow sense as well.

When political agents claim to be justified in going to war, they ought to ask themselves whether or not – and, if so, in what respect and to what degree – they have made, or are making, their own contribution to a situation in which waging war turns out to be morally justified. Only if they could reasonably claim that (roughly speaking) *they have not been complicit in causing that situation themselves, and they could not have prevented the situation from being caused*, the tragedy of justified war would be authentic. This is not to say that moral agents who have deprived themselves of the possibility of avoiding a situation in which they cannot help but wrong people have *also* deprived themselves of the possibility of doing what is morally justified or even required *in that situation*. And yet, their justification is tainted and also hypocritical if not accompanied by the recognition of previous or ongoing moral failure. Just war theorists should begin to dismantle the profound hypocrisy of justified warriors in this world; warriors who permanently contribute to causing harm (or not preventing harm from being caused) to countless innocent people from economic or strategic motives, while being keen on selectively defending human rights by military means

(with this selectivity being determined, or co-determined, by economic and strategic considerations as well). If just war theory were at all critical in substance, rather than only rigorously analytical, it would stop taking authenticity for granted; in fact, it might even begin to question the *potential* for authentically morally justified wars to be waged by the powerful.

Of course just war theorists can reasonably claim that it is not *their* task to be critical and also not *their* fault that their theory is often misinterpreted and/or misapplied by political moralists (or by uncritical minds). They can insist that ‘establishing the moral facts is valuable in its own right’.⁵⁸ They can provide argumentative support for governments who claim that it was not *them* who caused, or failed to prevent, a certain tragedy of war which they are now facing, but their predecessors. Indeed, they may point out that governments may end up having a *special* obligation to go to war, namely in the sense that if a tragedy of justified war has emerged through their own misconduct, they *at least* ought to have the courage to put things right, namely by accepting the burden of going to war. As Jonathan Parry has pointed out to me, ‘the fact that I am responsible in some way for the existence of a crisis somewhere provides an *additional* moral reason to get involved ... it might bolster my overall case for war. It might also turn a merely permissible war into an obligatory war.’⁵⁹ This may be true. However, as an *action-guiding* theory that is, roughly, concerned with preventing innocent people from being harmed, just war theory cannot afford to turn a blind eye to long-term historical developments, structural patterns of the *actual* world, and certain *existing* features of political conduct that are conducive to the emergence of justified war situations. Moral theorising about war needs to start earlier, cut deeper, and look closer.

Implications

Just war theory is not concerned with millions of starving people who could be saved from death and disease with a fraction of the astronomical amount of money that, every year, goes into the US defence budget alone (a budget that could no longer be justified if the US ran out of enemies one day). It is not interested in exposing the operating mechanisms of a global economic structure that is suppressive and exploitative and may be conducive to outbreaks of precisely the kind of violence that their theory *is* concerned with. As intellectually impressive as analytical just war accounts are, they do not convey any critical sense of Western moralism. It is as though just war theory were written for a different world than the one we occupy: a world of morally responsible, structurally unconstrained, roughly equal agents,

who have non-complex and non-exploitative relationships, relationships which lend themselves to easy epistemic access and binary moral analysis. Theorists write with a degree of confidence that fails to appreciate the moral and epistemic fragility of justified war, the long-term genesis of violent conflict, structural causes of violence, as well as the moralistic attitudes which politicians and the media are capable of adopting.

To insist that, in the final analysis, the injustice of wars is completely absorbed by their being justified, reflects a way of doing moral philosophy that is frighteningly mechanical and sterile. It does not do justice to individual persons;⁶⁰ it is *nonchalant* about suffering of unimaginable proportions; and it suffocates a nuanced moral world in a rigid binary structure designed to deliver unambiguous, action-guiding recommendations. According to the tragic conception defended here, justified warfare constitutes a *moral* evil, not just a *physical* one – whatever Coates’s aforementioned distinction is supposed to amount to. If we do not recognise the *moral* evil of justified warfare, we run the risk of speaking the following kind of language when talking to a tortured mother, who has witnessed her child being bombed into pieces, justifiably let us assume, in the course of a ‘just war’: *See, we did not bomb your toddler into pieces intentionally. You should also consider that our war was justified and that, in performing this particular act of war, we pursued a valid moral goal of destroying the enemy’s ammunition factory. And be aware that killing your toddler was not instrumental to that pursuit. As you can see, there was nothing wrong with what we did. (OR: As you can see, we only infringed the right of your non-liable child not to be targeted, but we did not violate it.) Needless to say, we regret your loss.* This would be a deeply pathological thing to say, but it is precisely what at least some contemporary just war theorists would seem to advise. The monstrosity of some accounts of contemporary just war theory seems to derive from a combination of the degree of certainty with which moral judgements are offered and the ability to consider the moral case closed once the judgements have been made.

One implication of my argument for just theorists is clear enough: they should critically reflect on the one-dimensionality of their dominant agenda of making binary moral judgements about war. If they did, they would become more sympathetic to the pacifist argument. Not to the conclusion drawn by pacifists who are also caught in a binary mode of thinking (i.e., *never wage war, regardless of the circumstances!*), but to the timeless wisdom which forms the *essence* of the pacifist argument. It is wrong to knowingly kill and maim people, and it does not matter, at least not as much as the adherents of double effect claim, whether the killing is done intentionally or ‘merely’ with foresight. The difference would be

psychological, too. Moral philosophers of war would no longer be forced to *concede* this moral truth; rather, they would be free to *embrace* it. There is no reason for them to disrespect the essence of pacifism. The just war theorist Larry May implicitly offers precisely such a tragic vision in his sympathetic discussion of ‘Grotius and Contingent Pacifism’. According to May, ‘war can sometimes be justified on the same grounds on which certain forms of pacifism are themselves grounded’.⁶¹

If this is correct, just war theorists have good reason to stop calling themselves by their name. They would no longer be *just* war theorists, but *unjust* war theorists, confronting politicians with a *jus contra bellum*, rather than offering them a *jus ad bellum*. Beyond being *that*, they would be much ‘humbler in [their] approach to considering the justness of war’ (or, rather, the *justifiability*), acknowledging that ‘notions of legitimate violence which appear so vivid and complete to the thinking individual are only moments and snapshots of a wider history concerning the different ways in which humans have ordered their arguments and practices of legitimate violence. Humility in this context does not mean weakness. It involves a concern with the implicit danger of adopting an arrogant approach to the problem of war.’⁶² Binary thinking in just war theory is indeed arrogant, as is the failure to acknowledge the legitimacy of – and need for – ambiguity, agony, and doubt in moral thinking about war. Humble philosophers of war, on the contrary, would acknowledge that any talk of justice is highly misleading in the context of war.⁶³ It does not suffice here, in my view, to point out that ‘we’ have always understood what ‘they’ meant (assuming they meant what we think they meant). Fiction aside, there is no such thing as a just war. There is also no such thing as a morally justified war that comes without ambiguity and moral remainders.

Any language of justified warfare must therefore be carefully drafted and constantly questioned. It should demonstrate an inherent, acute awareness of the fragility of moral thinking about war, rather than an eagerness to construct unbreakable chains of reasoning. Being uncertain about, and agonised by, the justifiability of waging war does not put a moral philosopher to shame. The uncertainty is not only moral, it is also epistemic. Contemporary just war theorists proceed as if certainty were the rule, and uncertainty the exception. The world to which just war theory applies is one of radical and unavoidable uncertainty, though: where politicians, voters, and combatants do not always know who their enemies are; whether or not they really exist (and if so, *why* they exist and *how* they have come into existence); what weapons the enemies have (if any); whether or not, when, and how they are

willing to employ them; why *exactly* the enemies are fought; and what the consequences of fighting or not fighting them will be.

Philosophers of war should also become more sensitive to the problem of political moralism. The just war language is dangerous, particularly when spoken by eager, self-righteous, over-confident moralists trying to make a case. It would be a pity if philosophers of war, despite having the smartest of brains and the best of intentions, effectively ended up delivering rhetorical ammunition to political moralists. To avoid being inadvertently complicit in that sense, they could give public lectures on the dangers of political moralism, that is, on thinking about war in terms of black and white, good and evil, them and us. They could warn us against Euro-centrism, missionary zeal, and the emperors' moralistic clothes. They could also investigate the historical genesis and structural conditionality of large-scale aggressive behaviour in the global arena, deconstructing how warriors who claim to be justified are potentially tied into histories and structures, asking them: *Who are you to make that claim?* A philosopher determined to go beyond the narrow discursive parameters provided by the contemporary just war paradigm would surely embrace something like Marcus's 'second-order regulative principle', which could indeed lead to "'better" policy'.⁶⁴ If justified wars are unjust, and if it is true that not all tragedies of war are authentic, then political agents ought to prevent such tragedies from occurring. This demanding principle, however, may require a more fundamental reflection on how we 'conduct our lives and arrange our institutions' (Marcus) in this world. It is not enough to adopt a 'wait and see' policy, simply waiting for potential aggressions to occur and making sure that we do not go to war unless doing so is a 'last resort'. Large-scale violence between human beings has causes that go beyond the individual moral failure of those who are potentially aggressing, and if it turns out that some of these causes can be removed 'through more careful decision-making' (Lebow), then this is what ought to be done by those who otherwise deprive themselves, *today*, of the possibility of not wronging *tomorrow*.

Theorists of just wars are at pains to emphasise that *less* war, and the killing of *fewer* innocents in war, is what they seek to achieve. Larry May 'read[s] the Just War tradition as continuing a tradition of generally condemning war'.⁶⁵ Beyond the level of occasional rhetoric, however, I have found little indication of such condemnation in contemporary just war theory. Concerns about 'collateral damage' tend to be swept aside with relative ease; doubts about the underlying assumption of resolvability are suppressed; providing reflection on appropriate agony, remorse, and guilt is seen as none of the moral philosopher's

business.⁶⁶ Perhaps it is the particular style of contemporary just war theory that does not lend itself to such condemnation: the forcing of war's complex reality into a binary moral straightjacket, the construction of unbreakable chains of reasoning, and also a certain degree of detachment from what is going on in the real, moralistic world of politics.

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¹ In writing this article, I have benefitted from extensive advice received by Bob Brecher, Garrett Wallace Brown, Jonathan Perry, Uwe Steinhoff, Demetris Tillyris, Thomas Zoglauer, at least three anonymous referees, and the editors of *International Relations*. The remaining polemic is mine.

² See, for example, four articles that appeared in a recent special issue of the *Journal of Moral Philosophy*: Saba Barzagan, 'The Permissibility of Aiding and Abetting Unjust Wars', *Journal of Moral Philosophy* 8(4), 2011, pp. 513-29; Helen Frowe, 'Self-Defence and the Principle of Non-Combatant Immunity', *Journal of Moral Philosophy* 8(4), 2011, pp. 530-46; Gerhard Øverland, 'Dividing Harm', *Journal of Moral Philosophy* 8(4), 2011, pp. 547-66; and Stephen R. Shalom, 'Killing in War and Moral Equality', *Journal of Moral Philosophy* 8(4), 2011, pp. 495-512.

³ I critique the distinction McMahan draws here in more depth in Michael Neu, 'Why McMahan's *Just Wars* Are Only *Justified* and Why That Matters', *Ethical Perspectives*, 19(2), 2012, pp. 235-55. For McMahan's response, see Jeff McMahan, 'Just War: A Response to Neu', *Ethical Perspectives*, 19(2), 2012, pp. 257-61.

⁴ Jeff McMahan, 'Just Cause for War', *Ethics and International Affairs*, 19(3), pp. 15-16.

⁵ I assume this, with a considerable degree of unease, for the sake of the argument.

⁶ By 'justified warriors', I mean politicians who wage a justified war and/or combatants who fight it.

⁷ Since 2003, a number of articles in this journal have examined the meaning and role of tragedy in the practice and study of international relations. Mervyn Frost, 'Tragedy, Ethics and International Relations', *International Relations*, 17(4), 2003, pp. 477-95; James Mayall, 'Tragedy, Progress and the International Order: A Response to Frost', *International Relations*, 17(4), 2003, pp. 497-503; Nicholas Rengger, 'Tragedy or Scepticism? Defending the Anti-Pelagian Mind in World Politics', *International Relations*, 19(3), 2005, pp. 321-8; Richard Ned Lebow, 'Tragedy, Politics and Political Science', *International Relations*, 19(3), 2005, pp. 329-36; Chris Brown, 'Tragedy, "Tragic Choices" and Contemporary International Political Theory', *International Relations*, 21(1), 2007, pp. 5-13; Peter Euben, 'The Tragedy of Tragedy', *International Relations*, 21(1), 2007, pp. 15-22; Richard Beardsworth, 'Tragedy, World Politics and Ethical Community', *International Relations*, 22(1), 2008, pp. 127-37. Also see Maja Zehfuss, 'The Tragedy of Violent Justice: The Danger of Elshstain's Just War Against Terror', *International Relations*, 21(4), 2007, pp. 493-501.

⁸ Lebow, 'Tragedy, Politics and Political Science', p. 332. Compare Frost, 'Tragedy, Ethics and International Relations', pp. 485-6.

⁹ Bernard Williams, 'Conflicts of Values', in B. Williams, *Moral Luck: Philosophical Papers 1973-1980* (Cambridge: Cambridge University Press, 1981), pp. 71-82, at p. 74. For a useful collection of essays on moral dilemmas, see Christopher W. Gowans (ed.), *Moral Dilemmas* (Oxford: Oxford University Press, 1987)

¹⁰ Jeff McMahan has helped me to clarify my understanding of moral dilemmas.

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- ¹¹ Note that I define tragedies as situations of inescapable moral wrongdoing, rather than ‘inescapable moral wrongdoing’. The latter term is used by Christopher W. Gowans, *Innocence Lost: An Examination of Inescapable Moral Wrongdoing* (Oxford: Oxford University Press, 1994).
- ¹² Martha Nussbaum, ‘The Costs of Tragedy: Some Moral Limits of Cost-Benefit Analysis’, *Journal of Legal Studies*, 29(2), 2000, pp. 1005–36, at p. 1005. Again, I talk about ‘wronging’ instead.
- ¹³ Bernard Williams, ‘Ethical Consistency’, in Gowans, *Moral Dilemmas*, pp. 115–37, at p. 131.
- ¹⁴ See Bernard Williams, ‘A Critique of Utilitarianism’, in J. J. C. Smart and B. Williams, *Utilitarianism: For and Against* (Cambridge: Cambridge University Press, 1973), pp. 75–150, at 98–100. I am not intending this case to be strictly analogous to justified war situations.
- ¹⁵ Nussbaum, ‘The Cost of Tragedy’, p. 1005.
- ¹⁶ Williams, ‘Ethical Consistency’, p. 134.
- ¹⁷ Michael Stocker, *Plural and Conflicting Values* (Oxford: Clarendon Press, 1990), p. 126.
- ¹⁸ Euben, ‘The Tragedy of Tragedy’, p. 17.
- ¹⁹ Lebow, ‘Tragedy, Politics and Political Science’, p. 332.
- ²⁰ Ruth Barcan Marcus, ‘Moral Dilemmas and Consistency’, in Gowans, *Moral Dilemmas*, pp. 188–204, at p. 188.
- ²¹ Ken Booth, ‘Ten Flaws of Just War’, in K. Booth (ed.) *The Kosovo Tragedy: The Human Rights Dimensions* (London and Portland, OR: Frank Class, 2001), pp. 316 and 323.
- ²² Robert L. Holmes, *On War and Morality*. Princeton, NJ: Princeton University Press, p. 14.
- ²³ I am in agreement here with Steinhoff, ‘The Moral Equality of Modern Combatants’.
- ²⁴ I dispense with quoting any of the notoriously unreliable statistics on civilian casualties in the wars mentioned; it may be worth pointing out that there do not seem to be any *official* civilian body counts.
- ²⁵ Jean Bethke Elshtain, *Just War Against Terror: The Burden of American Power in a Violent World* (New York: Basic Books, 2003), p. 20. For a critique of Elshtain’s invocation of the notion of tragedy, see Zehfuss, ‘The Tragedy of Violent Justice’.
- ²⁶ The two main protagonists of this debate are Michael Walzer, who advocates the moral equality on the battlefield view, and Jeff McMahan, who has forcefully challenged it. See Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic Books, 1977); and Jeff McMahan, *Killing in War* (Oxford: Clarendon Press, 2009).
- ²⁷ Brown, ‘Tragedy’, pp. 6–7.
- ²⁸ Euben, ‘The Tragedy of Tragedy’, p. 19.
- ²⁹ There is no such recognition, however, in the aforementioned essays published in the special issue of the *Journal of Moral Philosophy*.
- ³⁰ John Gardner refers to this as the ‘closure view’. John Gardner, ‘In Defence of Defences’, in John Gardner, *Offences and Defences: Selected Essays in the Philosophy of Criminal Law* (Oxford: Oxford University Press, 2007), pp. 77–89, at p. 77.
- ³¹ I once picked up this description of Walzer’s work when being talked to by a young just war theorist, whose mind had clearly been trained to embrace the style of theorising referred to by Brown.
- ³² See Walzer, *Just and Unjust Wars*, p. 228.
- ³³ Michael Walzer, *Arguing about War* (Yale: Yale University Press, 2004), p. 46. For a critique, see Michael Neu, ‘The Supreme Emergency of War’, *International Journal of Political Thought*, 2014, forthcoming.
- ³⁴ Michael Walzer, ‘Political Action: The Problem of Dirty Hands’, *Philosophy & Public Affairs* 2 (1973), pp. 160–80.
- ³⁵ Brian Orend, *The Morality of War* (Peterborough: Broadview Press, 2006), p. 155.
- ³⁶ Orend, *The Morality of War*, p. 155, his emphasis.
- ³⁷ Orend, *The Morality of War*, p. 261.
- ³⁸ Orend, *The Morality of War*, p. 263.
- ³⁹ C. A. J. Coady, *Messy Morality: The Challenge of Politics* (Oxford: OUP, 2009), p. 84.
- ⁴⁰ Coady, *Messy Morality*, p. 84.
- ⁴¹ A. J. Coates, *The Ethics of War* (Manchester: Manchester University Press, 1997), p. 239.
- ⁴² Thomas Hurka, ‘Proportionality in the Morality of War’, *Philosophy and Public Affairs*, 33(1), 2005, p. 66
- ⁴³ Hurka, ‘Proportionality’, pp. 62–3.
- ⁴⁴ Hurka ‘Proportionality’, p. 64.
- ⁴⁵ David Rodin, ‘Terrorism without Intention’, *Ethics*, 114 (4), 2004, pp. 752–771, at p. 764.
- ⁴⁶ Rodin, ‘Terrorism without Intention’, p. 764.
- ⁴⁷ Rodin, ‘Terrorism without Intention’, p. 765.
- ⁴⁸ Mervyn Frost and David Rodin, ‘How to get humanitarian Intervention right: What Libya teaches us about responsibility to protect. A comment piece by Professor Mervyn Frost and Dr David Rodin’, *Insight Briefing*

(Oxford Martin School, March 2011), at www.oxfordmartin.ox.ac.uk/downloads/briefings/2011-03-Libya.pdf, p. 2.

⁴⁹ McMahan, *Killing in War*, p. 10. McMahan also thinks that there is a ‘moral remainder’ (personal correspondence).

⁵⁰ McMahan, ‘Just War: A Response to Neu’, p. 258.

⁵¹ One referee pointed out that contemporary just war theorists, in not acknowledging war’s tragedy, have actually moved away from the just war *tradition*. Also see Tarik Kochi on this, who writes that ‘[t]he accounts presented by Augustine and Aquinas move much closer towards taking the problem of war seriously’ (closer as compared to Walzer’s account, that is). Tarik Kochi, ‘Questioning Just War Theory’, in B. Brecher (ed.) *The New Order of War* (Amsterdam, Rodopi 2010), pp. 1-16, at p. 9.

⁵² The justified war theorist Uwe Steinhoff talks about ‘concomitant slaughter’ instead. Uwe Steinhoff, ‘Killing Civilians’, in H. Strachan and S. Scheipers (eds.) *The Changing Character of War* (Oxford: Clarendon Press, 2011), pp. 381-93, at p. 381.

⁵³ I consider *jus ad bellum* to be an argument about double effect as well, although, to my knowledge, it is not explicitly stated as such in the just war literature. Christopher Toner perceives a ‘structural parallel’ between *jus ad bellum* and *jus in bello*, which ‘reveals the unified logical structure of just war theory’. See Christopher Toner, ‘Just War and the Supreme Emergency Exemption’, *The Philosophical Quarterly* 55 (2010), pp. 545–61, p. 84.

⁵⁴ See Antoine Champagne, ‘Watching over you’, *Le Monde Diplomatique* (English edition), March 2012, pp. 14–15, at <http://mondediplo.com/2012/03/16internet> (retrieved on 14 April 2012).

⁵⁵ See Noam Chomsky, *A New Generation Draws the Line. Humanitarian Intervention and the “Responsibility to Protect” Today* (Boulder and London: Paradigm Publishers, 2012), pp. 48–93.

⁵⁶ The racial division between Tutsis and Hutus is a leftover from Belgian colonial rule. See Nicholas J. Wheeler, *Saving Strangers. Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000), pp. 209–10.

⁵⁷ See Richard H. Robbins, *Global Problems and the Culture of Capitalism*, 2nd edition (Boston: Allyn & Bacon, 2002), pp. 271–2.

⁵⁸ Jonathan Parry, personal correspondence.

⁵⁹ Jonathan Parry, personal correspondence.

⁶⁰ See Gowans, *Innocence Lost*, p.19.

⁶¹ Larry May, *Aggression and Crimes Against Peace* (Cambridge: Cambridge University Press, 2008), p. 8. I elaborate on this in Michael Neu, ‘Why There is No Such Thing as Just War Pacifism and Why Just War Theorists and Pacifists Can Talk Nonetheless’, *Social Theory and Practice*, Vo. 37(3), 2011, pp. 413-33.

⁶² Kochi, ‘Questioning Just War Theory’, p. 12.

⁶³ I owe this formulation to Jeff McMahan.

⁶⁴ Euben, ‘The Tragedy of Tragedy’, p. 21.

⁶⁵ May, *Aggression and Crimes Against Peace*, p. 9.

⁶⁶ Stephen de Wijze suggests that agents who do wrong to do right ought to feel ‘tragic-remorse’ (rather than regret, agent-regret, or straightforward remorse). Stephen de Wijze, ‘Tragic-Remorse – The Anguish of Dirty Hands’, *Ethical Theory and Moral Practice*, 7(5), 2004, pp. 453-71.