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## Ending Wars: The *Jus ad Bellum* Principles Suspended, Repeated, or Adjusted?

*Janina Dill*

“War does not determine who is right, only who is left.” Bertrand Russell’s diagnosis that wars’ endings rarely reflect considerations of justice describes a reality implicitly endorsed by conventional just war theory. If belligerents encounter the same moral restrictions and are permitted the same actions in war regardless of the moral justifiability of their resort to force, no necessary connection exists between who should win and who actually wins. Advocates of the independence between *jus ad bellum* and *jus in bello* (belligerents on both sides may conduct themselves in the same way independent of whether they have a just cause) are therefore often also advocates of suspending moral judgment with regard to the overall justifiability of a war while it is ongoing. Justified resort to force is restricted, so is conduct in war, but its appropriate end is determined by the military exhaustion of one side, not by moral principle. This is the moral orthodoxy no longer. Revisionist just war theory considers permissible conduct in war a function of the overall justifiability of a belligerent’s military endeavor. Revisionism is not a precondition for reclaiming the ending of wars as a matter of morality, but by insisting that ‘who is left’ is to be determined by ‘who is right’, revisionists have added urgency to the question of when belligerents ought to cease hostilities.

The present symposium offers two alternatives to the suspension of moral judgment on when and how belligerents should sue for peace. I call them the ‘repeated’ and the ‘adjusted’ application of *jus ad bellum*. They both argue that the same moral principles guide making war and making peace and that the criteria which determine whether a belligerent may justifiably resort to force also govern the proper cessation of hostilities. Both positions further agree that given that the circumstances

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that initially rendered a war just or unjust may change, the justifiability of the initiation of force does not alone determine the justifiability of its continuation. At any time during a war, a belligerent requires a moral reason for the continuation or termination of combat. The subtle difference between the repeated and the adjusted application of *jus ad bellum* lies in whether the principles are thought to have the same implications for the permissibility of starting and continuing a war. The repeated forward-looking application of *jus ad bellum* principles treats decisions to continue hostilities as if they were decisions to resort to force. From the point of view of the adjusted judgment position, circumstances that may legitimate a resort to force may not justify sustaining a fight and vice versa.

Cécile Fabre advocates “sever[ing] the ethics of war termination from the ethics of war initiation.”<sup>1</sup> She explores the implications of a (repeated) forward-looking application of the criteria of just cause and reasonable chance of success. While the lapse of a just cause or the loss of a reasonable chance of success (e.g., because the aggressor acquires new and more powerful weapons) may mean an initially just war has to be terminated, the existence and realizability of the just cause are determined at the time of the decision to cease or continue hostilities. In other words, the just aim providing the grounds for continuing a war “need not be success in obtaining redress for the precise wrongdoing which provided . . . a just cause for going to war” in the first place.<sup>2</sup> Fabre further argues that, in turn, it may be morally permissible to continue an initially unjust war once a just cause emerges. By the same token, even an unjust belligerent does not have to surrender if this will “impair [its] citizens’ prospects for a minimally decent life” to such an extent that it would provide a just cause for resort to force, meaning combatants on the other side are liable to being killed or they may be killed as the lesser evil.<sup>3</sup> Darrel Moellendorf makes a similar point regarding the criterion of last resort. Even if at the outset of a war the just cause could have been pursued by nonmilitary means, rendering the war *prima facie* unjust, whether a belligerent is morally obligated to terminate the war depends on the availability of peaceful alternatives at that time.

Broad consensus exists among the articles that the standards of just cause, necessity, and reasonable chance of success need not be adjusted to take account of a war’s past moral balance sheet when applied to determine its appropriate end. It is the application of the principle of proportionality to the ending of wars that brings to the fore a disagreement among opponents of suspending *jus ad bellum*. David Rodin outlines a

1. Cécile Fabre, “War Exit,” in this issue, 631.

2. *Ibid.*, 635.

3. *Ibid.*, 642.

scenario in which the harm initially judged proportionate in relation to the just cause pursued has been inflicted without that cause being secured. Yet, at the cost of some extra harm the just cause comes within reach. If we repeat the *ad bellum* proportionality calculus, only the harm foreseeable in the future, not the harm inflicted in the past, determines whether exiting the war is morally required. Rodin considers it a dilemma that a belligerent may thus be “permitted to contribute to a project that is all things considered morally unjust [because] that project is morally justified on a forward looking basis.”<sup>4</sup> Jeff McMahan fully endorses repeated nonadjusted judgments of *ad bellum* proportionality, arguing that they are “entirely prospective and harms suffered or inflicted in the past should in general be ignored.”<sup>5</sup> Moellendorf and Fabre, to the contrary, reject the forward-looking proportionality calculus for war’s continuation, even though they find it appropriate for the initiation of force. Moellendorf cautions that not adjusting the application of *ad bellum* proportionality in this way would “evacuate proportionality of much of its important critical force, for it renders incomprehensible the claim that a war is disproportionate because of its cumulative cost.”<sup>6</sup>

Not all articles in the symposium explore either the repeated or the adjusted application of *jus ad bellum*. Daniel Statman’s contractarian proposal rests on a suspension of the *jus ad bellum* criteria once a war starts. It reveals the affinity between this position and the endorsement of the independence of *jus in bello* from *jus ad bellum*. Yet, Statman demonstrates that accepting that morality does not vouchsafe that wars’ ends reflect moral asymmetries among belligerents does not mean morality has nothing to say about when a war should end. He argues that due to “the enormous suffering brought about by war,” it is justified only “if the benefit it yields is significant enough.” The benefit he has in mind is a “clear and durable victory.”<sup>7</sup> While this is best secured by the complete annihilation of an enemy, potential future belligerents should in a mutually beneficial contract accept military victory as a stand-in for complete destruction or indeed for the direct and full achievement of their political goals. It is hence a moral proposition that “the end of war will be determined by military victory.”<sup>8</sup>

Like Statman, Gabriella Blum and David Luban consider the morality of ending wars to be centrally concerned with frustrating belligerents’ tendencies to take a maximalist approach to wars’ ends. Blum and Luban propose to think about war as an exercise in risk transfer. The

4. David E. Rodin, “The War Trap: Dilemmas of *Jus Terminatio*,” in this issue, 674.

5. Jeff McMahan, “Proportionality and Time,” in this issue, 696.

6. Darrel Moellendorf, “Two Doctrines of *Jus ex Bello*,” in this issue, 663.

7. Daniel Statman, “Ending War Short of Victory? A Contractarian View of *Jus ex Bello*,” in this issue, 720.

8. *Ibid.*, 733.

repeated judgment of its justifiability is then a matter of “risk management.”<sup>9</sup> Once a state has reduced risk to itself below the threshold of morally bearable risk, it must exit the war. In turn a state may be justified in resorting to force if it is threatened beyond this level of morally legitimate bearable risk. As they consider risk distribution to follow a zero-sum logic so that risk reduction in one actor increases risk in another, Blum and Luban rule out zero risk (or any risk below the bearable level) as a just aim for war or indeed a justification for continuing to fight.

The articles address many acute questions about the morally appropriate termination of wars that transcend the three positions. What counts as a just aim, when do we know that it was achieved, and how durable must this achievement be? Whether in tackling these questions the articles suspend, repeat, or adjust the *ad bellum* criteria they respectively endorse is significant because it is both reflective and determinative of diverging conceptions of war. The repeated forward-looking application of *ad bellum* criteria, whose standards do not yield because war is already upon us, insists on treating war as a tool for the advancement of justice, a tool that will rarely be appropriate, given the high costs it imposes, but a tool that, like any other, is judged with a view to whether it can address an injustice without doing more harm than good. In contrast, accepting that the internal dynamics of war complicate the parameters of moral judgment so as to require an adjustment in how principles are brought to bear must inspire a presumption against the use of force and may be highly correlated with contingent pacifism. Of course, even while maintaining a presumption against the use of force one can still consider war theoretically an instrument for the advancement of justice. In turn, depending on the stringency of one’s *ad bellum* criteria, even an endorsement of war as a tool to promote justice may amount to contingent pacifism. The kinship between the adjusted and the repeated judgment positions and their respective visions of war is highlighted by the fact that some articles advocate the adjusted application of proportionality while endorsing the repeated application of other *jus ad bellum* criteria. The suspended judgment position purports a different conception of war. If war diverges from peace in such a fundamental way that we need to suspend our normal moral principles in order to determine its appropriate end, then morality’s ambition shifts from rendering a war the lesser evil to an unjust peace to rendering morally guided war the lesser evil to war we simply accept as amoral in nature. In that case, war likely fails as an instrument of justice even if, at its end, the right belligerent is left.

9. Gabriella Blum and David Luban, “Unsatisfying Wars: Degrees of Risk and the *Jus ex Bello*,” in this issue, 751.