

# The Shortcomings of Just War Theories and the Legitimacy of Just Peace

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## Abstract

In theory, the just war tradition claims to provide an appropriate standard for distinguishing legitimate military intervention from illegitimate aggression, which reduces the incidence of state and international violence. In practice, however, the concept of just war helps to morally embellish military action and obscure the political interests behind it. The article provides both a moral and political critique of just war theories, without in turn advocating a pacifist ostracism of war or denying the need for a normative justification of wars in terms of political realism. The argument is not that war cannot be justified in individual cases, but rather that the attempt to legitimise war as a general instrument of law and justice fails both in moral philosophy and political theory. As a last resort, war requires a theory of just peace as a supplement in order to present a coherent conception of the justification of war and of peace.

## Keywords

just peace; just war; moral uncertainty; pacifism; political realism; political theory; ultima ratio

## 1. Introduction

There are many arguments to disavow just war theories (cf. Booth, 2000), but few of them are convincing. In this respect, the easiest argument to refute is certainly the classic “is–ought fallacy,” as it is articulated in David Hume’s *Treatise of Human Nature* (1739). This fallacy states that it is not possible to claim what should be by descriptive statements about what is and how things are: Even if one were to conclude that, empirically, there has never been (nor will there ever be) a war that fully conforms to the theoretical premises of *bellum iustum*, this would not disprove the possible existence of a moral ideal of a military intervention that political and military decision-makers should strive for in practice. Therefore, statements like “when we romanticise

the idea of the just war, we forget how difficult it is to actually fight one" (Fiala, 2008, p. vii) do not imply a theoretical critique, only a practical one. The same applies to the fact that the just war theory could be instrumentalised to justify "unjust" wars or that every war inevitably leads to unintended collateral damages. Not even a case-by-case application of just war criteria could harm the theory as such. Because none of these objections can invalidate the argument that, in extreme cases, it could mean the lesser evil to go to war (e.g., in the form of a humanitarian intervention), regardless of how decisions have been or will be made in similar situations. A dedicated "just" war could neither be criticised by the fact that most wars are unjust, nor that too few just wars are fought. Moreover, there is no doubt that just war theorists are interested in finding moral (or legal) criteria to legitimise military operations only in exceptional cases in order to avert even greater harm.

However, the main problem with just war theories is the futile endeavour to integrate war into any kind of ethical concept. This is not to say that the debate on the relevant theoretical developments is useless or that, from a poststructuralist perspective, it is merely a "powerful and dangerous illusion that ethics can tame politics (and by implication war)," when in reality it only "enables and enhances war while obscuring that this is the case" (Zehfuss, 2018, pp. 12–14). As long as the regulations of international law on the containment (or, in the best case, the abolition) of war are incomplete in their theoretical systematics and rarely take effect in practice, scholars will not be spared the discussion about whether a war is justified or not. Individual components of the theory of just war also seem quite compatible with a political ethic of right-preserving violence (which is directed against radical pacifism). With regard to this, the standards for determining and punishing war crimes, which can be useful for the further development of international law, should be mentioned (May, 2007). In particular, this includes the *ius post bellum*, which integrates more recent approaches to the theory of just war (Bass, 2004; Evans, 2008; Evans & Stender, 2008; Orend, 2006). There is no question that the punishment of war criminals, the payment of reparations, the reconstruction of infrastructure, and the establishment of legitimate local authorities must be central normative goals after the end of hostilities. Nevertheless, these issues say nothing about the prior justification for war or even the moral obligation to engage in military combat or not. As a result, *ius post bellum* alone cannot be expected to "heal" the just war theory in its entirety.

Based upon these assumptions, the just war theory itself, i.e., the establishment of certain criteria that claim to serve as a general standard for the ethical legitimisation of military force (e.g., Brough, 2007; Evans, 2005; Hensel, 2008), has to be rejected in its systematic form. At the same time, it is important to avoid getting caught up in the aporias of the two (even less convincing) alternatives to just war: pacifism and political realism. As a key reference for this argument, the article will draw on the works of Immanuel Kant in order to deny war a moral impact, which it cannot claim, and to emphasise the advantages of moral uncertainty when it comes to waging war (Section 2). The next step will then demonstrate why the contradictions and negative consequences of any ethical justification of war require the counter-principle of "just peace." This counter-principle is necessary to encompass the *ultima ratio* of military intervention as part of a coherent doctrine that does not misunderstand just peace as a compromise or middle ground between *bellum iustum* and absolute non-violence (Section 3). Finally, with regard to current empirical examples such as the Russia–Ukraine war or the war in the Gaza Strip, the moral uncertainty concerning the legitimacy of warfare is highlighted as the greatest strength of the concept of just peace compared to the tradition of just war (Section 4).

## 2. A Kantian Critique of Just War Theory Beyond Political Realism and Pacifism

All theories of the just war tradition (e.g., Allhoff, 2013; Brunstetter & O'Driscoll, 2025; Christopher, 1994; Coates, 1997; Dubik, 2016; Elshtain, 2003; Fotion, 2007; Guthrie & Quinlan, 2007; Johnson, 1999; Lazar, 2015; O'Donovan, 2003; Orend, 2006; Patterson, 2007; Ramsey, 2002; Rawls, 1999; Regan, 1996; Walzer, 2000; Zupan, 2004) usually share three premises:

1. War is principally open to moral judgements.
2. There are concrete reasons (*iusta causa*) that justify war from an ethical point of view.
3. War aims and military warfare must be operationalised and limited in such a way that premises 1 and 2 are not reduced to absurdity. On the one hand, this requires the *proportionality* of all military means being used. On the other hand, it requires that the war is waged with a just intention (*recta intentio*; see Burkhardt, 2017) and a reasonable prospect of success (*iustus finis*).

On the surface, these three principles suggest a necessary distinction between the (moral) right to war (*ius ad bellum*) and the right in war (*ius in bello*). Accordingly, it would be conceivable for a war to be started for a just cause, but the means of warfare to violate the principle of justice. The atomic bombs in World War II could serve as a precedent here. From a strategic point of view, the decision to achieve the unconditional surrender of Japan without a disastrous invasion of the main island of Honshu may have been understandable. From a moral point of view, however, the Japanese aggressors should undoubtedly have refrained from an unconditional surrender that could only have been enforced by nuclear means. Conversely, a warring party that allows the force of arms to speak without sufficient moral legitimisation can obviously respect the *ius in bello*, as Walzer (2000, pp. 38–39) attempts to show using the example of General Rommel in North Africa during World War II. On closer inspection, it becomes evident that *ius ad bellum* and *ius in bello* are closely interwoven (Canto-Sperber, 2005, pp. 302–346), since unjustly waging a war that is just in principle or, vice versa, justly waging a war that is unjust in principle would turn both wars into unjust wars. Otherwise, one of the two necessary conditions for just wars would already be sufficient. Hence, the logical independence of *ius ad bellum* and *ius in bello* (cf. Christopher, 1994, p. 96) is suited to undermine the theory of just war (and merely allowing individual components to exist in the aforementioned sense of law-preserving force) instead of affirming its validity as a whole. Attempts to preserve the ethical ideal of just war must therefore accept the indissoluble connection between all relevant components (*ius ad bellum*, *ius in bello*, and *ius post bellum*; Orend, 2006, pp. 48–49).

Only if sufficient capacity is available to achieve the war aims claimed to be just without simultaneously violating the conventions of “just” warfare (e.g., refraining from the use of weapons of mass destruction and not taking unacceptable reprisals against the civilian population), war itself, despite its horrors, would remain what the proponents of *bellum iustum* claim it to be: a moral category. Otherwise, while it would be understandable that there are situations that morally legitimise an act of war, one would have to concede that war without the chance of observing the *ius in bello* cannot be a means of changing the injustice of a situation, let alone of not making everything worse. At this point, it also becomes obvious that further premises and criteria cited by the proponents of *bellum iustum* are only secondary conditions. For example, these premises include that a just war must always be *the ultima ratio* and that *proportionality* to the reason

for war must be maintained, or that a *legitimate authority* exists that can claim the right to wage war (cf. Coates, 1997, pp. 123–126). These secondary conditions are irrelevant, at least at this point in the line of argument presented here, because they are not independent variables. If it can be demonstrated that there is no just war, it is irrelevant who conducts it and whether it is only used proportionately when all other means have been exhausted.

However, it is important to acknowledge that there are relevant differentiations *within* moral philosophy that influence the question about just wars. In this concern, Elshtain (1992, pp. 1–2) rightly pointed out that the theory of just war is an amalgam of deontological (duty-based) ethics and consequentialist (or utilitarian) ethics. This implies that, given the inevitable suffering of civilians in any war, it is not sufficient to describe a war as “just” if it merely achieves its objectives. The end can never justify the means unless deontological premises are completely excluded. The same reason gives rise to numerous paradoxes and dilemmas. Experience shows that morally precarious actions often increase the efficiency of warfare. This could in turn give these actions moral weight, provided they are suitable for ending the war more quickly and with less loss of life. An example of this is the bombing of German cities during World War II, which the Allies used to break the morale of the German civilian population. Moreover, the concentration camps in the Second Boer War in South Africa (1899–1902) or the nuclear strikes against Japan in 1945 were also “efficient” in their own way. Just war theorists therefore like to refer to the utilitarian Henry Sidgwick, who wanted the proportionality of benefit to be taken into account. Nevertheless, the extent to which the efficiency of acts of war must bow to moral imperatives or whether the benefit itself is the decisive yardstick touches on a general problem: the possible discrepancy between the intended *goals* of warfare and the *consequences* that can be observed. During a war, the morally plausible attempt to minimise the number of victims can in fact have the opposite effect, especially when considering the empirical evidence that, in war, the lives (and survival) of *friends* mean something different than the lives of *enemies*. It is worth recalling NATO’s strategy of avoiding ground troops during the Kosovo War (1998/1999) in order to avoid casualties to its own troops and to limit itself to air strikes outside the range of enemy air defences. This was understandable as an objective, but it made it more difficult to capture military targets and increased the probability of collateral damage. Hence, the moral imperative to limit force and “killing in war” (Dill & Shue, 2012) can also be used in an unjust way (Brunstetter, 2021). Consequently, the question of the moral justification of war depends essentially on how one assesses such paradoxes resulting from the clash of deontological and consequentialist ethics.

The ethical reasons that might justify military interventions in accordance with the proponents of just war can be categorised into two groups: those that respond to previous cross-border aggression and those that mark the beginning of international hostilities. Like World War II, the 1991 Iraq War represents a precedent for the first group, because the Allies and the UN fought back against an aggressor. In contrast, the UN’s Assistance Mission in Somalia, like NATO’s Kosovo War (Joyner, 2002), is categorised under the label of “humanitarian intervention,” i.e., as military intervention in the territory of another state with the aim of protecting human rights. The second group of morally justified interventions sometimes includes pre-emptive strikes (Bzostek, 2008), which, like Israel in the Six-Day War, tactically anticipate an imminent attack (Hilger, 2005). Alternately, like the USA in Afghanistan (2001–2021) or Iraq (2003), they aim to prevent terrorist attacks (Elshtain, 2003; Lee, 2007; Smit, 2004; Walzer, 2004) and install democratic structures (Dolan, 2005; Kredel, 2006; O’Driscoll, 2008). According to these two groups of categories, the “morality of defensive war” (Lazar & Fabre, 2014) is not part of just war theories. A well-known aperçu by Carl von Clausewitz argues that every war begins with (self-)defence, but the tradition of just war clearly

focuses on military interventions, which are often undertaken for the purpose of supporting a warring party which was attacked. Consequently, since the emergence of the concept of just war in ancient Rome, it has seldom been used to legitimise self-defence (which is not necessary from a moral-philosophical point of view). Rather, it is often used to initiate acts of war or justify intervention in a war already being waged. The theory of just war therefore deals with situations in which a free, moral decision to go to war is pending, and not with situations in which this decision has been imposed on someone.

As previously outlined, ethical reasons for initiating or intervening in a war can only constitute a sufficient condition for a just war in conjunction with morally legitimate and realisable war aims and relatively restrained warfare in accordance with the *ius in bello*. However, if the just war theory essentially links the “justice” of a war to its limitability, the question arises as to whether this dispenses war from any moral judgement. From the pacifist perspective, it is impossible to differentiate between moral and immoral wars: “Just” war is also war in which people die or are maimed and the desired limitation of warfare is doomed to failure. The cause of war, postulated as just, merely sets an uncontrollable spiral of violence in motion. Pacifists’ scepticism is shared by political realists, albeit for different reasons. Although realists agree with pacifists that warfare prohibits the use of moral categories, they draw the opposite conclusion: War should not be outlawed, but like all politics, it should be freed from moral imperatives and evaluated solely based on strategic standards. Therefore, in order to counter the central objection of pacifists *and* realists, just war theorists would have to be able to prove that, in spite of everything, war has a moral dimension. Accordingly, in *Just and Unjust Wars* (first published in 1977), Michael Walzer aims to reconstruct the moral reality of war as the basis of his just war theory. To do so, he refers to the morally charged vocabulary used in the description of wars to differentiate between “massacres,” “atrocities,” and “aggression” on the one hand and “self-defence,” “peacekeeping,” and “humanitarian intervention” on the other. Here, Walzer exploits the fact that, in reality, these morally charged terms often serve merely as a pretext for other non-moral interests to argue that war itself is by no means beyond moral evaluation. Otherwise, the apparently existing compulsion to ethically justify one’s own actions would not exist (Walzer, 2000, pp. 13–16, 19–20). Furthermore, he insists that everything that happens in war is not the result of an uncontrollable momentum, but of free decisions made by moral individuals. The containment and limitation of the use of weapons necessary for a just war therefore seems achievable in principle (Walzer, 2000, pp. 24–25).

It is certainly original how Michael Walzer concludes from observing moral hypocrisy that ethical categories are not simply suspended during wartime. If morally charged language is intended to gloss over potentially immoral actions in war, this only makes sense as long as the goal of harmony with morality is not fundamentally questioned. Unfortunately, this does not prove Walzer’s point. Of course, the people who bear the responsibility for a military operation remain moral individuals who can ethically reflect on their decisions. But what other choice would they have had if the reality of war could *not be* legitimised morally than to embellish the war or denounce the enemy’s atrocities in order to make their own “reaction” more understandable? And even if actions in war always remain the work of human hands, the moral state of war is in no way comparable to that of peace. Even soldiers who are at war for the sake of a “higher” cause are forced to kill people in order to survive themselves. This makes it hardly plausible to differentiate between combatants on the basis of their moral status in war (Rodin & Shue, 2008). The same insight inspired Immanuel Kant’s timeless statement that “War is evil, in so far as it makes more bad people than it takes away” (Kant, 1992, p. 78). Here, Kant echoes the ancient Greek wisdom that war may be a necessary evil in certain situations but ultimately creates more negative than positive effects. Consequently, it is important to

realise the temporal distance between the existential act of war and the subsequent attempt to justify it morally. In this respect, the theory of *bellum iustum* seeks to excuse in advance the morally precarious acts that are unavoidable in every war and to condemn those collateral damages that seem avoidable in retrospect. However, this does not make war itself a moral category, especially if one recalls the second version of Kant's categorical imperative, according to which human life always exists as an "end in itself" and can never be merely a means to an end (Kant, 2016, pp. 53–54). As a result, the idea of just war has roughly the same status in moral philosophy as the argument that torture methods can be used to extort information that saves the lives of a large number of people. In other words, this idea gets caught up in the cardinal problem of utilitarianism. Walzer's argument is therefore reminiscent of the wishful thinking of scholasticism's ontological proof of God: The real existence of a being (such as God) or an idea (such as justice) is deduced solely from the fact that a concept for it exists. In this case, the concept of just war is a visible sign of the endeavour to translate the events of war into a moral language. At least Walzer concedes that this "God" has a highly ambivalent impact. "War is always hell," he writes, at least for those who are forced to fight and do not pursue their profession as mercenaries (Walzer, 2000, p. 22). The hell of being forced into war, however, is solely the responsibility of the aggressors, whereas the guilt of the "just" defender is a violation of *ius in bello* at best (Walzer, 2000, pp. 25, 28, 31). Unfortunately, this is circular reasoning, since compliance with the law in war presupposes that the old rule *inter arma silent leges* has no validity—i.e., that war denotes a normative-moral category. And this has already been refuted above.

The just war theory therefore actually signifies a kind of *deus ex machina* that provides moral certainty or at least orientation in an ethically muddled situation. The intention to achieve something "just" through war cannot be denied. Anyone who honestly advocates for just war shows a willingness to act according to the moral principle of justice. However, it is more than the fatal probability of an error—perhaps one is looking at manipulated images or judging the situation on the basis of unintentional ethnocentrism—that triggers concerns. The idea that morally honourable goals can be achieved with the help of superior military power is based on a belief that has no empirical basis. There is no war that does not first and foremost mean violence and blood, where people kill and get killed. The cypher of the just war is therefore primarily used to calm one's conscience. In a way, this closes the circle between the classical theological tradition of *bellum iustum* and contemporary theories. Since the moral exceptionalism of war cannot be reconciled with the ethical idea of just war aims, a kind of absolute truth is needed that guarantees the justice of the war effort from a higher level, despite all empirical suffering.

### 3. Just War Dilemmas and the Counter-Concept of Just Peace

The fact that moral rules are inevitably violated in war is nothing new. Political realists have no problem with this, since for them the arena of politics requires its own "morality." In contrast to this, pacifists rigorously reject war for the same reason. The just war theory, however, finds itself in a dilemma. Its proponents, such as Ramsey (2002, Chapters 6–12), Johnson (1999), Walzer (2000, Part IV), or Elshtain (2003, pp. 46–58) could not avoid acknowledging the moral ambiguity of war, but did not draw the conclusion that this discredited the theory as a whole. Instead, they adhered to just war because, for them, a normative understanding of politics that opposes realism *and* pacifism is inconceivable otherwise (cf. Fisher, 2011). But does a combination of morality and politics really prescribe either a pacifist stance or the integration of just war theory (Orend, 2006, pp. 223–266)? As a matter of fact, the pacifists' and just war theorists' disagreement about the intrinsic moral nature of war concerns the assessment of the respective consequences above all else (Coates, 1997,



p. 115). While pacifists fear that the ethical justification of war increases the probability that it will take place, the proponents of *bellum iustum* accuse pacifists of not eliminating the danger of war with their attitude of refusal, but of gambling away the chance of a moral containment of war. The bottom line is that both “moral” concepts of war accuse the other of playing into the hands of their actual antipode: political realism. In the eyes of just war theorists, this is what pacifists do, as they close themselves off to the moral control of politics, to which power and war are inextricably linked. And pacifists accuse the epigones of just war of doing the same, as they apparently allow themselves to be infiltrated by political realists and betray morality by justifying war.

Both arguments overlook the paradox that war represents in this context. While pacifists believe that war must be rejected with the help of morality, and just war theorists want to legitimise war by moral attitudes, both are right and wrong at the same time. This is because, as was demonstrated in the previous section, war is not a moral category at all. On the other hand, morality suggests that peace which is maintained at all costs can also be morally wrong (Elshtain, 1988). The goal of building a bridge between deontological and utilitarian ethics can therefore only be achieved in a different way: If (moral) ethics demands peace, but (responsible) politics demands war in certain cases, then a normative understanding of politics may not avoid this discrepancy. Instead, from a moral point of view, war robs people of their sleep, and must do so, because otherwise they would no longer be able to boast of having morals. However, political considerations such as security interests, the threat to peace, and/or a massive violation of human rights could nevertheless lead to the legitimisation of warfare. This obvious contradiction is supposed to be seen as an essential advantage of moral uncertainty at this point: Only as long as a moral resistance to war remains constant can a necessary distance to the reality of killing and being killed be maintained. In this respect, it is crucial to understand that the ideal of *bellum iustum* does not continually place the entire war process, the entire war machine, under the important proviso of moral doubt. Only a general refusal to associate war with justice forces all players involved to continually reflect on their decision to wage war. This also applies to the reasons given for going to war, the war aims formulated, the type of warfare, and, if necessary, the option to abandon a military operation, provided that the number of casualties requires this. In other words: Conducting war makes all belligerent parties morally guilty, and it is absolutely consistent with a normative understanding of politics that this guilt should not be glossed over. The normative ideal is and must always be peace. There are merely situations in which peace has already been destroyed, so it may become necessary to fight for peace or other ideals such as freedom and human rights. That said, by rejecting the term “just war,” it is acknowledged that the causes for waging war remain morally uncertain, even if the decision to go to war can be justified subjectively. The conviction that just war theory offers a kind of *objective* standard that morally guides warfare would be counterproductive in any case. This culminates in the point where moral certainty makes the supreme maxim of military operations in any form of normative political understanding impossible: limiting war to the conceivable minimum and avoiding escalations resulting from the arrogance of power. Although this has been the main subject of just war theories since Saint Augustine and Thomas Aquinas, it seems easier to achieve as soon as we abandon the desire for an ethically consistent justification of war. After all, moral defamation of the enemy is ultimately a path that promotes the escalation logic of war (Beck, 1999, p. 987). Furthermore, empirical evidence suggests that the tradition of just war theories tends to expand rather than restrict the grounds for supposedly legitimate violence (Rengger, 2013). The decision to go to war is easier when moral concerns are ignored. The just war thus represents a figure of thought that one cannot convincingly grasp either in theory or in practice, a *contradictio in adjecto* par excellence. Therefore, moral politics in the 21st century must definitely renounce the seductive standard of a *bellum iustum*.

This moral-philosophical critique of just war theory, which is beyond both strict pacifism and moral-free realism, was already outlined by Kant. Despite general beliefs to the contrary, Kant was not a pacifist. Various passages in *Perpetual Peace: A Philosophical Sketch* (*Zum Ewigen Frieden*) and *Metaphysics of Morals* (*Metaphysik der Sitten*) suggest a very different pattern of thought. In this respect, it is necessary to emphasise that Kant accepted war as a regular option in international politics up to a certain point. As long as the character of international relations follows the rules of an anarchic state of nature, each state has not only the right to self-defence but even the *ius ad bellum* in order to enforce its claims if they are being violated by the power of other states (Kant, 1997, pp. 467–470). For Kant, war remains a surrogate to decide struggles and conflicts between states and nations unless there is an efficient international law at work. On the other hand, “war” means:

Only the sad recourse in the state of nature (where there is no tribunal which could judge with the force of law) by which each state asserts its right by violence and in which neither party can be adjudged unjust (for that would presuppose a juridical decision); in lieu of such a decision, the issue of the conflict (as if given by a so-called “judgement of God”) decides on which justice lies. (Kant, 1992, pp. 55–56)

Hence, the Kantian perspective on war and peace aims to overcome the sadness of natural anarchy in the international system and to implement international laws in order to make the need for war redundant. Proceeding from this, the term “unjust enemy” (which was declared to be useless in the context of the international state of nature, see Kant, 1997, pp. 473–474) might become a beneficial criterion due to the legal foundation of international relations. However, this does definitely not mean that Kant’s *Perpetual Peace* emphasises a new theory of just war (Orend, 1997) which is supposed to protect human rights, the rule of international law, a global concept of justice, humanitarian interventions, or even the promotion of democracy. In this respect, the Canadian scholar Brian Orend has misinterpreted a few passages from the preliminary articles of the *Perpetual Peace* as prescriptions of a *ius in bello*—for instance, the distinction between combatants and non-combatants and the interdiction of a war of extermination (see also Kant, 1997, pp. 470–471)—whereas the main aspects of Kant’s theory of peace are subsumed as parts of a *ius post bellum*. As a result, Orend ignores the successive process Kant assumed to be necessary in order to put the theoretical idea of the perpetual peace into practice. The preliminary articles are not an integral part of Kant’s theory, but only preconditions for the intended legal foundation of international relations. Therefore, in Kant’s view, the mistake of all just war theories will always remain that their reference point is not peace, but war. In contrast to this, he attempted to disavow the general idea that war could be an instrument of law and justice. At best, war is a “sad” surrogate for the lack of international law; at worst, the concept of just war is even (ab)used to disregard applicable international law in the name of a “higher” law. It is therefore no coincidence that there are currently just war approaches that, in the name of the “deep morality of war” (McMahan, 2008), precisely advocate for the systematic violation of international humanitarian law, even though this advocacy was criticised (Shue, 2016) or extended (Waldron, 2016) by other scholars. Moreover, it is significant that Kant appreciated the progress the founders of modern international law—Francisco de Vitoria, Alberico Gentili, Samuel Pufendorf, Hugo Grotius, or Emerich de Vattel—had achieved in opposition to the former just war theories (Kant, 1992, pp. 65–67). While just war theory assumes that international relations are asymmetrical, which undermines the basic requirement of international peace a priori, modern international law at least provides a symmetric relation between states and nations. As Kimminich (1980) pointed out, in the mid-18th century, modern international law replaced the moral argument of just war theory, thereby creating the prerequisites for a legal foundation of the international system. Thereafter, Kant



considered his own task as replacing the tradition of European international “law of war” through a new international and global “law of peace” (Tuck, 1999).

Accordingly, the several attempts to exploit Kant’s theory in favour of a liberal “just war” (Orend, 2006; Shell, 2005; Téson, 1992) must be rejected (Hidalgo, 2012, pp. 178–182; Williams, 2012). Kant’s concept of an “unjust enemy” (“an enemy whose publicly expressed will...[and] reveals a maxim by which, if it were made a universal rule, any condition of peace among nations would be impossible and, instead, a state of nature would be perpetuated,” Kant, 1997, p. 473) means nothing but a *performative* paradox in order to describe the situation in which the international law shows only *formal*, but no *material* differences to the state of nature yet. The unjust enemy is the actor in international relations who prevents the further progress of international law and provokes the reversion to the violent state of nature instead of supporting the transition towards an international law of peace. The appearance of an unjust enemy undermines again the opportunity to make any distinction between just and unjust. That is also the reason why Kant (1997, p. 474) describes the concept of an “unjust enemy” within the international state of nature as a sort of pleonasm. In the state of nature, everything is “unjust” and beyond international law. In contrast, a just enemy would not be an enemy any longer.

Instead of arguing in favour of pacifism or just war, Kant can be counted among the forerunners of a morally and politically ambitious “just peace.” Launched by peace ethics in Germany with a Christian ecumenical background, the concept of just peace has become a guiding principle in recent decades (Hoppe & Werkner, 2016; Sutor, 2004). It claims to provide consistent moral orientation in theory and practice in the area of international relations. Just peace describes a new paradigm of international ethics, which primarily supports the strict priority of international cooperation and civil measures for the prevention of violence and conflict over all options for military intervention. Furthermore, the paradigm encompasses a rich concept of peace beyond the view attributed to Thomas Hobbes that peace is nothing but the absence of war and physical violence. Instead of this, the concept of just peace emphasises the existence of a functioning legal order as a necessary characteristic, quality, and not least consequence of substantial peace, and does not neglect the socio-economic, cultural, and ecological dimensions as preconditions for achieving peaceful situations worthy of the name. In other words, the term “just peace” sets out important conditions for a sustainable peace process by not seeing it as merely the absence of war and violence or as a strict rejection of war. It implies further that even formal states of peace or the renunciation of military intervention can be “unjust” (Hidalgo, 2018).

By regarding Kant as the key figure in the history of ideas for such an ambitious concept of just peace, which combines legal, economic, and political-ethical aspects as interdependent categories, it can also be countered that the idea of just peace encompasses a compromise between the theory of just war and strict pacifism. Taking into account the previous section, it should rather be emphasised that the Kantian position of just peace actually rejects war as a moral category, but allows it in individual cases as a last resort or *ultima ratio* in a morally and legally undetermined situation. Hence, the special aspect of just peace has to do with the fact that this concept can convincingly claim a morally legitimate position beyond pacifism and realism. It is in stark contrast to the just war tradition, which fails to fulfil such a claim by suggesting (and misjudging) war itself as a means of justice. In this respect, the concept of just war tends to confuse a potentially lesser evil with a moral good. Contrary to its own purpose, it becomes more difficult to achieve the morally legitimate goal of allowing war as a last resort in exceptional cases. In contrast, the concept of just peace fosters awareness that the establishment of justice that was hoped for remains highly uncertain if a decision is made in favour

of war or military intervention. This is because war is more convincing to view as a last resort if it cannot be associated with justice. This awareness that military intervention cannot be carried out without moral guilt and therefore does not mean any “moral victory” (Brown, 2017) underscores the harshness and gravity of the decision to be made in relevant situations. However, as will be shown in the concluding section, this position of moral and legal uncertainty which marks the relationship between just peace and war should by no means be confused with a moral duty to wage war under certain conditions.

#### 4. Conclusion: The Advantages of Moral Uncertainty—Some Empirical Cases

The concept of just peace insists that the normative ideal to be striven for must never be war, but only peace. This includes that just peace must not be seen as the aim of “just” wars (Evans, 2008, p. 533), but that war can only be the “price” to be paid for unjust peace (Reed, 2007). Moreover, with its focus on the possible necessity of rights-preserving violence, the concept of just peace acknowledges that any strictly pacifist logic reaches its ethical limits in anarchic, lawless conditions resembling civil war, where the state’s monopoly on violence no longer applies and a systematic violation of human rights is either already occurring or at least imminent. At the same time, by implicitly refusing to speak of the “justice” of war in such exceptional situations, just peace not only concedes that even such extreme cases do not simply legitimise a right to war, but that it is also far more likely that the proportionality of the means to be used will subsequently be maintained than if one were to accept the (inevitable escalation) logic of war, as in the case of a *bellum iustum*.

Just peace therefore retains an inherent ethical uncertainty about the moral justification of military interventions, which just war cancels out performatively. In this respect, the critique of just war that emerges from the concept of just peace goes beyond the notion of “contingent pacifism” (May, 2015). The latter retains a potential justification for war under certain circumstances, arguing that the vast majority of wars are unjust due to the inherent problems and consequences of modern warfare. In contrast, just peace rejects the justice of war even in cases where concrete military intervention undertaken with the aim of law-preserving violence is based on the same criteria (e.g., *iusta causa*, *recta intentio*, *iustus finis*, or legitimate authority) provided for in the tradition of *bellum iustum* (cf. Fabre, 2012). In this context, the power (and violence) of language should not be underestimated. Paradoxically, speaking of a just war seems to be less likely to enforce the stated criteria than can be expected from the concept of just peace and the uncertainty it suggests about the moral justification of war. In this context, the argument of just peace may not be equated with the moral urgency emphasised by the revisionist (or analytical) school of just war theory (e.g., Brown, 2017; Lazar, 2017) to limit specific destructive practices in modern warfare as long as wars are being fought. By continuing to justify humanitarian military interventions and preventive wars to eliminate weapons of mass destruction as just wars (Dill & Shue, 2012; Shue, 2016), the revisionist school also remains trapped in the aporias of the just war tradition.

The difference between these two positions—just peace vs. just war revisionism—can be illustrated by Operation Iron Swords, in which the Israeli military has been seeking to crush the armed wing of the Islamist terrorist organisation Hamas and its allied militant Islamist forces in the Gaza Strip since the end of 2023. Without denying Israel the right to hold those responsible for the horrific terrorist attacks of 7 October 2023 to account, to free all hostages from the hands of the terrorists, and to protect its own population from Hamas using all means permitted under international law, the general refusal of a right to war in this context could help to ensure that the proportionality of the military operation is maintained and that the greatest

possible consideration is given to the Palestinian civilian population. However, this is made more difficult by the mere mention of war, since war in principle means being allowed to exert (counter-)violence in a way that goes far beyond the tolerable level of police action or operations to combat organised crime. Therefore, the war in the Gaza Strip, which, according to the UN High Commissioner for Human Rights, resulted in more than 120,000 deaths and injuries (mostly women and children) by June 2024, confirms that war will always remain a boundary concept that is far more suitable for defining time and space, where the application of moral rules comes to an end, than for being open to moral evaluation. Furthermore, the focus on just peace instead of just war—even in its revisionist, limited form—would enable the urgently needed discussion about the extent to which terrorist attacks can be effectively contained by military force (*iustus finis*) and whether the war in the Gaza Strip was actually the *ultima ratio* for an appropriate response to the terrorist attacks by Hamas (which obviously wanted to provoke an overreaction by Israel to legitimise its own political goals).

Consequently, the first major advantage associated with the uncertain moral justification of wars is that the ruthless naming of the moral guilt that every belligerent party inevitably incurs, regardless of its intentions, benefits the principle of the proportionality of war and the prior exhaustion of all alternative means. The second advantage is that the insoluble moral problem of war cannot be addressed by any international legal regulations and, at the same time, remains independent of existing ambiguities and gaps in international law. This means that international law neither replaces moral and normative judgements of the legitimacy of military operations nor makes ethical discussions about war obsolete. Thus, claiming that the Kosovo War in 1999 or the Iraq War in 2003 could not have been “just” (or morally justified) because NATO or the USA were not sufficiently legitimised under international law indicates a misunderstanding of the actual thrust of just war (and just peace) theory to close the gaps in the law of peoples. If someone concludes that the overthrow of a brutal dictator or the ending of a genocide with the help of military intervention is morally permissible or even necessary, then—as already mentioned—the question of *who* is authorised to carry out such a “just” military force can only be regarded as secondary from an ethical point of view. Accordingly, the absence of a UN mandate is not capable of pre-empting the discussion about a (possible) moral justification of war, since in the UN Security Council, morally indifferent interests are often at work that need to be eliminated in the sense of a normative understanding of politics. Shifting one’s own responsibility to a body that is empirically prone to dysfunctionality, such as the Security Council, cannot be the concern of political ethics.

In other words, just because a relevant conflict situation prompts the UN Security Council to pass or refuse a UN resolution that would legitimise a military intervention under international law does not answer or even raise the moral question of war and peace. This was recently demonstrated again in the context of the Russia–Ukraine war, when, after the Russian invasion of Ukraine on 22 February 2022, the UN Security Council remained inactive due to permanent member Russia’s veto power. On 2 March 2022, the 11th emergency special session of the UN General Assembly adopted Resolution ES-11/1, which condemned Russia’s invasion of Ukraine and demanded a full withdrawal of Russian forces and the reversal of the decision to recognise the People’s Republics of Donetsk and Luhansk. However, it did not result in a peacekeeping operation legitimised by international law. The moral question raised by the resolution is all the more pressing: Without a (legally or morally secured) unequivocal commitment to support Ukraine, all members of the UN are called upon by Resolution ES-11/1 to answer the ethical question of whether to participate in the war or not for themselves. The moral uncertainty regarding the pros and cons of

intervening in a war means that, from an ethical point of view, the states and political players involved can legitimately arrive at different opinions, either by emphasising Ukraine's right to self-determination and the plight of the Ukrainian civilian population, or by fearing a (nuclear) escalation of the war and preferring not to interfere.

Moreover, recalling Kant's position outlined in the previous section, it can be said that in the context of the Russia–Ukraine war, Putin's government's behaviour is strongly reminiscent of the “unjust enemy” in the *Metaphysics of Morals*. By not recognising Ukraine's state sovereignty, the Russian government goes beyond the specific conflict and, as quoted above, undermines the conditions of peace among nations as well as the further progress of international law as such. On the basis of Kant's arguments, other states' solidary intervention in favour of Ukraine, be it through arms deliveries, logistical and financial support, or active military forces, could therefore be justified.

Kant's statements on war and peace are not blind to practical difficulties. For this reason, he accepts military measures, at least temporarily, in cases where the desired global legal and peaceful order is not yet functioning, especially when the sovereignty or monopoly of force of a state has been destroyed. Nevertheless, Kant unambiguously adheres to the ideal of a genuine, ambitious peace as a regulative idea of international relations, which must be gradually approached. For the theory of just peace, this means that in all situations where (state, international, and global) law is suspended, the option of waging war cannot be strictly denied on moral or legal grounds, but remains a political option (Brown, 2013). However, this does not imply that war becomes a means of enforcing law or justice. At best, it represents an emergency solution that leads to lesser evils than refraining from military intervention. Apart from that, theorising about just war is problematic in itself, as it suggests that there are answers to unsolvable ethical dilemmas (Brown, 2017).

This leads to the third and final advantage of the enduring moral uncertainty of war and the corresponding ideal of just peace: Instead of seeing war as a solution to systematic human rights violations, geopolitical aggression, etc., and easily getting caught up in a spiral of violence and counter-violence, the focus is shifted away from the underlying conflict and onto a situation beyond it. This makes it possible, at least in theory, to abandon the logic of revanchism and instead approach a new beginning which hardly seems realistic in the violent, war-torn present. Nevertheless, this is precisely what all empirically successful peace negotiations show in practice: that former enemy parties can find a common peace, even if no one thought this to be possible before. In retrospect, solutions suddenly emerge that seemed unattainable during the conflict itself. This makes it all the more important to think about a political conflict from the end backwards, using the ideal of just peace, instead of using the concept of just war, which loses sight of that end.

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