Reconceiving the Reasonable Probability of Success criterion

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Abstract

This thesis examines the Reasonable Probability of Success criterion of *jus ad bellum*. Chapter One provides an initial explication of this principle. It outlines its historical origins, and explains the rationale for requiring that this criterion is satisfied in order for it to be ethically permissible to wage war. Chapter Two offers some guidance for interpreting and applying the Reasonable Probability of Success criterion. Chapter Three denies the claim that this criterion is redundant because it can be subsumed by the Proportionality criterion. Chapter Four of this thesis denies the assertion that the Reasonable Probability of Success criterion violates a feasibility constraint. Chapter Five denies the claim that this criterion grants the United States a form of hegemonic moral immunity. Chapter Six of this thesis argues that the contemporary understanding of the Reasonable Probability of Success criterion conflicts with widespread intuitions towards historical instances of war. Chapter Seven of this thesis critically evaluates Statman’s so-called Honour Solution, presenting a series of problems with his proposal. Chapter Eight argues that the Reasonable Probability of Success criterion could actually have been satisfied in the historical cases that are seemingly troubling. It maintains that the contemporary understanding of the Reasonable Probability of Success criterion is mistaken, because it erroneously assumes that defence of others requires a state to mitigate or avert the imminent threat that it faces.
Declaration

This is to certify that:

I. This thesis comprises only my original work towards the PhD, except where indicated in the preface;

II. Due acknowledgement has been made in the text to all other material used; and,

III. This thesis is fewer than 100,000 words in length, exclusive of tables, maps, bibliographies, and appendices.

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Kieran Francis McInerney
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Contents

Abstract ............................................................................................................................... 2

Declaration .......................................................................................................................... 3

Acknowledgements ............................................................................................................ 4

Thesis overview .................................................................................................................. 6

Chapter 1: History and rationale behind the Success criterion ........................................ 12

Chapter 2: Interpreting and applying the Success criterion .............................................. 35

Chapter 3: Denying the Proportionality criterion can subsume the Success criterion ....... 57

Chapter 4: Denying the Success criterion violates a feasibility constraint ....................... 77

Chapter 5: Denying the Success criterion grants the United States moral immunity ...... 90

Chapter 6: Arguing the Success criterion conflicts with widespread intuitions ............. 120

Chapter 7: Critically evaluating Statman’s Honour Solution .......................................... 173

Chapter 8: Reconceiving the Success criterion ............................................................... 197

Bibliography ..................................................................................................................... 233
Thesis Overview

Chapter One of this thesis provides an initial explication of the Reasonable Probability of Success criterion. It begins by explaining that the primary motivation for this investigation is the widespread acceptance of the check-list understanding of *jus ad bellum*, and the under-theorised nature of the Reasonable Probability of Success criterion. This chapter then outlines the historical origins of this criterion. The remainder of this chapter illustrates the rationale for requiring that the Reasonable Probability of Success criterion is satisfied. It contends that Patterson and Calhoun are mistaken in their suggestion that the primary rationale for including this criterion in *jus ad bellum* is self-interested prudence. Further, it asserts that it is erroneous for Howard, Johnson, and McLaughlin to claim that this criterion warrants lower priority than the other criteria governing the ethical permissibility of resorting to war. This chapter argues that there are strong ethical reasons for requiring that the Reasonable Probability of Success criterion is satisfied. These include concern for one’s non-combatant and combatant citizens, concern for an adversary’s non-combatant and combatant citizens, and the benefits associated with forcing a decision-maker to reflect on the possibility of failure when considering initiating hostilities.

Chapter Two of this thesis offers some guidance for interpreting and applying the Reasonable Probability of Success criterion. It initially maintains that a subjectivist understanding of this criterion is appropriate. However, it then clarifies that not all ignorance constitutes ‘invincible ignorance’ for a decision-maker. This chapter contends that the term ‘reasonable’ also serves to function as a reminder of the epistemic difficulties involved with predicting the consequences of war. It then argues that the level of probability that constitutes a ‘reasonable’ probability of success fluctuates depending on
the expected costs associated with a particular decision to wage war. Chapter Two continues by explaining the benefits of consistently employing the term ‘probability’ in the title of the Reasonable Probability of Success criterion. It also posits the principle of uncertain expectations, and highlights that calculations of probability must only consider the outcome of war waged in accord with *jus in bello*. This chapter concludes by explaining that success ought to be interpreted to mean ‘successful achievement of one’s Just Cause,’ noting several implications of this interpretation.

Chapter Three of this thesis denies the charge that the Reasonable Probability of Success criterion can be subsumed by the Proportionality criterion. McMahan, Steinhoff, Coates, Hurka, and Brown have each asserted this claim. This chapter begins by providing an overview of the various elements typically taken to warrant consideration when determining whether or not the Proportionality criterion is satisfied. This summary is presented in order to demonstrate that calculations for this criterion are incredibly complicated. It then contends that assessments for the Proportionality criterion should not include an estimation of the probability that one’s Just Cause will be achieved. This chapter presents and rejects Frowe’s argument for reaching the same conclusion. It then concludes by maintaining that there are stronger pragmatic reasons for stipulating that the Reasonable Probability of Success criterion remains an independent constraint in *jus ad bellum*.

Chapter Four of this thesis denies the claim that the Reasonable Probability of Success criterion violates a feasibility constraint. Whilst not explicitly referencing the notion of feasibility, just war theorists such as Suarez, Hudson, Lee, Evans and Hensche, Coleman, Steinhoff, and McLaughlin have each suggested that this criterion is too demanding in certain circumstances. This chapter explains that there are two possible ways to interpret
the concerns of these just war theorists. The first is that the Reasonable Probability of Success criterion is in conflict with a hard feasibility constraint. This chapter argues that such a hard feasibility constraint does not exist. Alternatively, these just war theorists could be alleging that the Reasonable Probability of Success criterion violates a soft feasibility constraint. This chapter responds that an ethical theory should not be dictated to by soft feasibility constraints.

Chapter Five of this thesis denies the contention that the Reasonable Probability of Success criterion grants the United States a form of hegemonic moral immunity. It begins by accepting the claims that the United States enjoys unparalleled global military dominance, and that it occasionally exercises its military force in a morally questionable manner. It then explores the reasons why van der Linden believes that these two premises generates a problem for the Reasonable Probability of Success criterion. This chapter presents three different interpretations of what van der Linden may be arguing, before considering a possible solution that has been put forward. This is to weaken the *jus in bello* constraints for states that are the victims of aggression. This chapter posits both a practical and a theoretical objection to this remedy. This chapter then argues that van der Linden’s criticism relies on a simplistic understanding of the probability that militarily inferior states have of mitigating or averting a threat posed by a militarily powerful belligerent. It demonstrates that many states could satisfy the Reasonable Probability of Success criterion if confronted with aggression from the United States.

Chapter Six of this thesis addresses the claim that the Reasonable Probability of Success criterion conflicts with widespread intuitions. It begins by arguing that this criterion is not intuitively considered necessary for determining whether or not it is ethically permissible
to resort to force in domestic instances of self-defence. This chapter then presents and rejects three responses available to one who wanted to deny the force of this objection. Each of these responses relates to a methodological issue within Just War Theory. The first is to question the practice of granting intuitions evidential weight in ethical theorising. This chapter responds by providing a defence of this broadly accepted methodology. The second is to claim that intuitions elicited regarding purely hypothetical (and unrealistic) cases should not be granted weight when determining the ethics of war. This chapter responds by noting that the domestic case that is troubling for the Reasonable Probability of Success criterion is quite realistic, and arguing that there are several benefits to employing hypothetical vignettes rather than real-world cases.

Chapter Six then tackles the strongest response to the criticism that the Reasonable Probability of Success criterion conflicts with intuitive appraisals of domestic instances of self-defence. This is to question the relevance of domestic instances of self-defence for determining the ethics of war. This chapter submits three possible rejoinders for those criticising the Reasonable Probability of Success criterion. The first is to argue in favour of the reductivist view that the principles relevant to determining whether or not it is ethically permissible to resort to force in self-defence remain consistent regardless of the context. This chapter summarises this position, and then posits the strongest objection that it has received. The second rejoinder is to argue that the domestic case that is troubling for the Reasonable Probability of Success criterion is analogous to state-based self-defence. This chapter tentatively suggests that this is the case. The third alternative is to charitably accept that reductivism is not tenable, and further that the domestic case under discussion is not analogous to state-based self-defence, but then to argue that the contemporary
understanding of the Reasonable Probability of Success criterion conflicts with intuitions regarding historical instances of collective self-defence. This chapter presents two cases of collective resistance that violate the contemporary understanding of this criterion whereby most commentators believe that resorting to force was ethically permissible. This constitutes evidence that the contemporary understanding of the Reasonable Probability of Success criterion requires modification or rejection from *jus ad bellum*.

Chapter Seven of this thesis critically evaluates Statman’s proposed Honour Solution for the Reasonable Probability of Success criterion. It initially outlines his innovative modification to the contemporary understanding of this principle. This chapter then puts forward a series of problems with the so-called Honour Solution. These are: that it renders the requirement of a Reasonable Probability of Success redundant, that the temporal scope for employing force that it sanctions is too permissive, that the parasitic requirement is implausible, that it violates the Right Intention criterion, and several related issues to do with the concept of honour itself. The purpose of this chapter is to demonstrate that Statman’s reformulation of the Reasonable Probability of Success criterion suffers from more defects than the contemporary understanding of this criterion upon which he is attempting to improve.

Chapter Eight of this thesis argues that the Reasonable Probability of Success criterion could actually have been satisfied in the historical cases that have proved troubling. It maintains that the contemporary understanding of this criterion mistakenly assumes that self-defence or defence of others can only be achieved by mitigating or averting an imminent threat. This chapter asserts that there are three ways that resistance to aggression can achieve defence of others even when a present threat is not mitigated or averted. Future
aggression can be prevented by inflicting military costs on an aggressor, by demonstrating a will to inflict retaliatory costs if attacked, and through expressing an affirmation of the values of political sovereignty and territorial integrity. This chapter argues that these outcomes of resistance are both more likely to be brought about, and are of great significance, given the anarchic nature of the international state system.
Chapter One: The history and rationale behind the Reasonable Probability of Success criterion

Chapter overview

The purpose of this chapter is to provide an initial explication of the Reasonable Probability of Success criterion. It will begin by briefly presenting the motivation for this investigation. It will explain that the primary motivation is the widespread acceptance of the check-list understanding of *jus ad bellum* in Just War Theory, and the under-theorised nature of the Reasonable Probability of Success criterion. The historical origins of this criterion will then be explored. This will include some comments on the secular nature of the Reasonable Probability of Success criterion. Next, this chapter will explain the rationale for including the Reasonable Probability of Success criterion as a constraint governing when it is ethically permissible to wage war. In detailing this rationale it will be contended that it is erroneous to suggest that the *only* reason for stipulating that a state satisfy this criterion is self-interested prudence.\(^1\) Instead, it will be argued that there are strong ethical reasons for requiring that the Reasonable Probability of Success criterion is satisfied when waging war. These ethical reasons are concern for one’s own non-combatant and combatant citizens, concern for an adversary’s non-combatant and combatant citizens, and the benefits of forcing a decision-maker to reflect on the possibility of failure when considering resorting to war.\(^2\)

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\(^1\) For convenience this thesis will often refer to the agents that wage war as ‘states.’ However, this should not be taken as an endorsement of either the conceptual view or the normative view that agents must be states in order to wage war. Revolutionary wars, civil wars, and tribal wars are often fought by non-state actors, and most recent wars have in fact not been fought between two competing states.

\(^2\) The term ‘citizen’ is being employed in such a way that it incorporates long-term residents of a state regardless of whether or not they have been officially granted residency.
The nature of *jus ad bellum*

Just War Theory has experienced a renaissance of interest in recent years, with many commentators questioning whether the existing formulations offer a conceptual framework that is both coherent and reasonable for guiding statesmen, military officers, and rank and file combatants. Most of this attention can be taxonomised into two categories: *jus ad bellum*, which consists of a set of criteria for determining whether or not it is ethically permissible to wage war, and *jus in bello*, which dictates the ethical means to prosecute war.³ Within Just War Theory literature increased attention has been paid towards *jus ad bellum* in the last century, largely as a response to the increasingly destructive nature of modern warfare, and the devastation caused by World War I and World War II.⁴ As a result of the complex and largely patchwork pedigree of the just war tradition, contemporary expositions of *jus ad bellum* are often diverse and can be comparatively contradictory. However, despite this lack of overall conformity, there exists a general consensus that the morality of a state’s decision to wage war can be ascertained through the agency of six distinct criteria. These are: Just Cause, Legitimate Authority, Right Intention, Proportionality, Last Resort, and Reasonable Probability of Success.⁵

An essentially contested issue within contemporary Just War Theory literature is whether or not each of these criteria must be satisfied for it to be ethically permissible to

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³ Just war theorists also discuss *jus potential ad bellum* (regarding just military preparedness), *jus ex bello* (regarding when a war ought to be ended), and *jus post bellum* (regarding permissible action after a war).
⁴ This is not to suggest that the destructive nature of modern warfare and the devastation caused by World War I and World War II have not also generated increased attention on *jus in bello*.
⁵ Just war theorists have periodically proposed additional formal criteria for *jus ad bellum*, such as Just Conduct and Public Declaration of War, but the six listed are the only requirements that have garnered widespread acceptance.
wage war. Some believe that the criteria are individually necessary and jointly sufficient for it to be ethically permissible to wage war (in other words, each of them must be satisfied). Conversely, others have argued that even if one or more of the criteria are violated, war may still be ethically acceptable. The former view, often labelled the ‘check-list’ or ‘procedural’ approach, is the most widely accepted. It is consistent with the ‘presumption against war’ position advanced by the United States Catholic bishops in their famous pastoral letter of 1984. In this oft-cited article it is argued that the purpose of *jus ad bellum* is to limit the frequency of war and ensure that it remains an exceptional prerogative. However, this seemingly intuitive stance is not without critics.

Johnson has been a vocal critic of both the check-list approach to *jus ad bellum*, and a presumption against war in Just War Theory. He has argued in a series of articles that these views are an unfounded innovation in the just war tradition. He stated that “the concept of just war does not begin with a ‘presumption against war’ focused on the harm which war may do, but with a presumption against *injustice* focused on the need for responsible use of force in response to wrongdoing.” Johnson is not alone in his condemnation. Weigel has declared that “these scholars, activists, and religious leaders who claim that the just war tradition ‘begins’ with a ‘presumption against war’ or a ‘presumption against violence’ are quite simply mistaken… The claim that a ‘presumption against violence’ is at the root of the just war tradition cannot be sustained historically, methodologically, or theologically.”

Johnson and Weigel seemingly believe that the primary purpose of *jus ad bellum*
*bellum* is not to judge and restrict instances of war, but to justify and sanction this enterprise.

The problem for these just war theorists is that they do not offer an argument in favour of their position other than the fact that the check-list approach and a presumption against war diverge from how Just War Theory was understood historically. In other words, they do not provide convincing reasons for not adopting these understandings when thinking about war contemporarily. In contrast, advocates of a ‘presumption against war’ have put forward detailed defences of their position. For instance, Childress gestured towards Ross’ theory of *prima facie* duties when contending that there ought to be a presumption against war.\(^9\) He began by noting that there are inherent features of all wars (most importantly widespread killing) that are fundamentally morally problematic.\(^10\) Childress continued that individuals have *prima facie* moral duties of benevolence and non-maleficence, which are necessarily violated by war. A *prima facie* duty is one that is intrinsically binding, but may be overridden in exceptional circumstances when outweighed by competing moral considerations. In light of these facts, Childress concluded: “Because it is *prima facie* wrong to injure or kill others, such acts demand justification. There is a presumption against their justification, and anyone who tries to justify them bears a heavy burden of proof.”\(^11\) These factors support the view that there ought to be an attitude of presumptive

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10. This notion has been advanced by philosophers throughout history. For instance, Aristotle wrote “no-one desires to be at war for the sake of being at war, nor deliberately takes steps to cause a war: a man would be considered an utterly bloodthirsty character if he declared war on a friendly state for the sake of causing battles and massacres.” Aristotle as quoted in *The Basic Works of Aristotle*, ed. Richard McKeon (New York: Random House, 1941), 615. Similarly, Grotius wrote in the seventeenth-century that war “is so horrible, that nothing but mere Necessity, or true Charity, can make it lawful.” Hugo Grotius, as cited in Stephen P. Lee, *Ethics and War: An Introduction* (New York: Cambridge University Press, 2012), 109.
disapprobation towards war, which can be best realised through the check-list approach to *jus ad bellum*. This is why, in the words of Holmes, modern “just war theory gives no blanket endorsement of war but demands painstaking discrimination between just and unjust causes.”\(^\text{12}\)

The ascendency of the check-list approach to *jus ad bellum* and the under-theorised nature of the Reasonable Probability of Success criterion have provided the motivation for this explication. Given the widespread belief that the *jus ad bellum* criteria are individually necessary for it to be ethically permissible to wage war, the lack of attention devoted to some criteria is remarkable. Without doubt the criterion that has suffered most from neglect in Just War Theory literature is the requirement of a Reasonable Probability of Success.\(^\text{13}\)

Almost every articulation of this surprisingly complex criterion consists of one or two general sentences compressed between comprehensive analyses of the other criteria. For instance, the aforementioned United States Catholic bishops believed it sufficient to posit in their seminal (and otherwise painstakingly meticulous) pastoral letter that: “This is [a] difficult criterion to apply, but its purpose is to prevent irrational resort to force or hopeless resistance when the outcome will clearly be disproportionate or futile.”\(^\text{14}\)

Like most expositions, this leaves the substantive content of this requirement completely under-evaluated. Kemp’s treatment is perhaps most notable in its neglect. He stated: “let us consider Proportionality, Last Resort, and Prospect of Success. The first two, at least, clearly must belong to any adequate list of the criteria of a just war. How could it be


\(^{13}\) Right Intention and Legitimate Authority have also received insufficient attention in Just War Theory literature.

\(^{14}\) The United States bishops and J.E. Gordon, *The Challenge of Peace*. 
justified to initiate a costly war to rectify wrong? And above all, how could it be permissible to go to war when peaceful alternatives are still available? (Prospect of Success will be left aside as a rather more complicated case).”\textsuperscript{15}

This lacuna in Just War Theory scholarship has been noted by several just war theorists in recent years. In Seybolt’s discussion of the \textit{jus ad bellum} criteria he observed: “there remains deep disagreement about some principles and a lack of serious thought about others. For none this is more true than it is for the principle of a reasonable prospect of success. Despite its essential character, the prospect of success is undervalued and has been the subject of too little study.”\textsuperscript{16} This point was also emphasised by Uniacke, who contended that the “success condition warrants more critical attention than it usually receives in contemporary discussions of Just War principles.”\textsuperscript{17} McLaughlin described the Reasonable Probability of Success criterion as “the least well-defined aspect of the Just War doctrine,”\textsuperscript{18} and O’Brien believed the “question of probability of success has emerged increasingly as a subject that needs more serious attention in just-war analyses.”\textsuperscript{19} Given the ascendency of the check-list understanding coupled with the under-theorised nature of the Reasonable Probability of Success criterion, this chapter will endeavour to explicate this condition of \textit{jus ad bellum}, a field that according to Walzer “remains one of the more imperfect of human artefacts.”\textsuperscript{20}

Origins of the Reasonable Probability of Success criterion

A possible reason for the lack of attention that the requirement of a Reasonable Probability of Success has received is that it was only explicitly posited in the Western Christian just war tradition relatively recently. Both Augustine and Aquinas did not propose such a requirement in their influential works on the ethics of war. Yet this is not to suggest that the criterion was absent from other ancient texts on this topic. Writing in roughly 200 B.C.E., a Hindu scholar named Vishnu Sharma declared:

\[\text{Make Peace with an enemy} \]
\[\text{Who is as strong as you are,} \]
\[\text{For, in a battle between equals,} \]
\[\text{The victory hangs in the balance,} \]
\[\text{Never fight} \]
\[\text{Unless you are sure of success.}^{21}\]

It was not until the seventeenth-century that this criterion was suggested in the Western Christian just war tradition. In the *Rights of War and Peace* Grotius declared:

\[\text{If one King is going to make war with another King, he sitteth down first, (the Manner and Posture of such as deliberate with great Care and Attention) and considereth, whether he be able with ten thousand to meet him that commeth against him with twenty thousand; or else, whilst the other is yet a great Way off, he sendeth an Embassage, and desireth Conditions of Peace.}^{22}\]

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It has been argued that this requirement was a direct result of the secularisation of the just war tradition and the desire to exclude wars of religion from the category of just wars.\textsuperscript{23} In the preceding centuries (during the time of the crusades) there was a widespread belief in the notion of ‘righteous invincibility,’ and that success was guaranteed if one’s cause was endorsed by God. McLaughlin explained that in “this theological religio-political atmosphere, reasonable hope of success would have been considered not only superfluous, but possibly a blasphemous absurdity.”\textsuperscript{24}

Grotius’ desire to posit a Just War Theory that had a secular grounding could be attributed to the fact that he lived through the ‘divinely sanctioned’ Thirty Years’ War. He summed up his treatise by maintaining: “What we have been saying… would have a degree of validity even… if there is no God, or [if] the affairs of men are of no concern to Him.”\textsuperscript{25}

The secular nature of the Reasonable Probability of Success criterion is also reflected in Johnson’s comment on the “unique and valuable contribution to policy debates over the use of military force” that the Church can offer contemporarily.\textsuperscript{26} He accepted that the Proportionality, Last Resort, and Reasonable Probability of Success criteria “are categories secular utilitarians can use… [because t]here is nothing in the theological training or experience of denominational officials that might privilege their judgements on these matters over that of the persons in government and the military whom they are seeking to influence.”\textsuperscript{27} In contrast, Johnson believed that the Church should offer guidance on the

\begin{itemize}
\item \textsuperscript{23} Such a shift can be traced back to the influential works of Vitoria and Suarez.
\item \textsuperscript{24} McLaughlin, “Reasonable Hope of Success as an Element in \textit{Jus ad Bellum} Theory,” 66.
\item \textsuperscript{26} James Turner Johnson, “Just war thinking in recent American religious debate over military force,” in Charles Reed and David Ryall, \textit{The Price of Peace: Just Wars in the Twenty-First Century} (Cambridge: Cambridge University Press, 2007) 97.
\item \textsuperscript{27} Ibid.
\end{itemize}
Just Cause, Legitimate Authority, and Right Intention criteria because they are “rooted chiefly or uniquely in the religious” sphere. In the same vein, McLaughlin described the Reasonable Probability of Success criterion as “an intellectual child of rationalist, rather than religious, tradition.”

Rationale for the Reasonable Probability of Success criterion

There is a pervasive confusion within Just War Theory scholarship concerning the rationale for including the requirement of a Reasonable Probability of Success as a formal condition in jus ad bellum. Several just war theorists have contended that the raison d’être for stipulating that this requirement be satisfied is solely prudential. Such an interpretation is somewhat understandable given the prudential reasoning that can be discerned from some of Grotius’ remarks on the issue. For instance, he denounced those “with greater Courage than Prudence [who] had drawn upon themselves the entire Ruin of their Country.” It is also true that prudence would recommend adhering to such a requirement. From a purely rational cost-benefit perspective, it would be quixotic for a statesman to expend blood and treasure on an endeavour that is not expected to produce redeeming results. This reasoning may have been what led Patterson to maintain that the

28 Ibid.
29 McLaughlin, “Reasonable Hope of Success as an Element in Jus ad Bellum Theory,” 71.
30 An alternative, equally erroneous explanation was proposed by Potter, who believed the Reasonable Probability of Success criterion stemmed from a moral ban on suicide. See Ralph B. Potter “The Moral Logic of War,” in Peace and War, ed. C Beitz and T. Herman (Freeman, 1973), 7.
31 Grotius, The Rights of War and Peace, 1143.
32 In saying this, there may also be cases wherein the Reasonable Probability of Success criterion would require submission to aggression whilst simple self-serving prudence would not. For example, so-called zero-sum cases where an entire population will be killed regardless of whether or not they resist. These will be discussed in a later section.
Last Resort and Reasonable Probability of Success criteria “are more pragmatic calculations than moral imperatives.”\textsuperscript{33} Similarly, Calhoun noted that the “reasonable chance of success requirement might seem to be more a matter of professional prudence than of justice.”\textsuperscript{34} Interpreted in this fashion, the Reasonable Probability of Success criterion is simply a formalised expression of Montgomery’s famous two rules of war: ‘Do not march on Moscow’ and ‘Do not go fighting with your land army in mainland Asia.’

Such an understanding of the Reasonable Probability of Success criterion has provoked some just war theorists to contend that it is merely an ancillary condition of \textit{jus ad bellum}. For instance, Howard argued that the \textit{jus ad bellum} criteria can be “grouped under two heads.”\textsuperscript{35} He distinguished between “prudential considerations,” which measure “material, tangible, foreseeable socio-political resources and effects” and “categorical imperatives,” which are “informed and inspired by more esoteric, value-laden considerations.”\textsuperscript{36} Johnson has drawn a similar distinction, utilising it to endorse his claim that “satisfaction of the requirements of just cause, competent authority, and right intention has a greater moral priority than does satisfying the prudential criteria of just war \textit{jus ad bellum}.”\textsuperscript{37} In other words, due to the purportedly prudential nature of the Reasonable Probability of Success criterion it ought to be conferred lower moral priority. Such a conclusion would have no doubt bewildered past international relations theorists (such as Machiavelli or Hegel) who believed that prudence was the only legitimate motivation for a state’s action.

\textsuperscript{33} Eric Patterson, \textit{Just War Thinking: Morality and Pragmatism in the Struggle Against Contemporary Threats} (Lexington Books: Lanham, 2007), 105.
\textsuperscript{35} Michael Howard, \textit{Restraints on War} (Oxford: Oxford University Press, 1979), 1-16
\textsuperscript{36} Ibid.
\textsuperscript{37} Johnson, \textit{Morality & Contemporary Warfare}, 44.
McLaughlin’s highly disparaging paper took the conclusions of Howard and Johnson even further. He ultimately argued that the Reasonable Probability of Success criterion ought to be expelled from *jus ad bellum* altogether in light of its prudential nature. McLaughlin claimed that given “its very character as a prudential, realist non-sequitur amongst an otherwise categorical collection of elements” it is “both philosophically and methodologically misplaced as an element of *jus ad bellum* theory.” McLaughlin then speculated that the inclusion of this supposedly prudential constraint “so disrupted [*jus ad bellum’s*] internal coherence- opening the ‘gates’ to the ‘barbarian’ theory of realism- that it was actually a significant causal factor in the eclipse of Just War Theory by realism in the Eighteenth and Nineteenth Centuries.” McLaughlin’s paper is the clearest example of the aforementioned confusion regarding the rationale for including the Reasonable Probability of Success criterion in *jus ad bellum*. He clearly believed that the only reason to adhere to this principle is self-serving prudence.

An initial problem with such an interpretation of the Reasonable Probability of Success criterion is that it is grounded in the idea that prudence can be sharply distinguished from morality. Several influential philosophers have denied this claim, instead contending that prudence is actually a moral virtue. Aristotle wrote at length about the ‘prudent’ man who has gained *phronesis* (practical wisdom) and has developed the capacity to make sound moral decisions. Coady has also asserted that it is wrong to treat prudence as if it is solely concerned with expediency and self-interest. He believed “one may show imprudence, not only in dealing with one’s own affairs, but in helping and advising others, and generally in

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38 McLaughlin, “Reasonable Hope of Success as an Element in *Jus ad Bellum* Theory,” 90.
39 Ibid., 89. McLaughlin offers no justification for this conjecture.
The fact that self-interest alone would recommend the Reasonable Probability of Success criterion does not necessarily have any bearing on whether or not it is also recommended by morality. Johnson pointed out that “to determine that a particular use of force is imprudent is not the same as determining that it would be unjust.” Whilst this is true, it is also true that prudential considerations can overlap with morality. It will be argued that morality (and not just self-serving prudence) requires adherence to the Reasonable Probability of Success criterion.

Firstly, the decision to wage a war that violates the Reasonable Probability of Success criterion wrongs the non-combatant citizens residing in one’s own state. It is often noted that a decision to wage war typically results in the citizens of the state, and not the decision-making leaders, suffering the substantial harms of war. These harms suffered by citizens can include increased taxation, forced conscription, destruction of property and public infrastructure, economic collapse, disruption of social order, and most importantly physical harms such as individuals being maimed and killed. It is surprisingly often overlooked though that these harms to one’s own population can constitute moral wrongs partly attributed to their leader who decided to wage war (even if it is a war of self-defence). A prime example of when a leader is partially morally responsible for the harms suffered by their own citizens is when they decide to wage a war that violates the Reasonable Probability of Success criterion. It was noted previously that a fundamental axiom of

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42 James Turner Johnson, “Just War, As It Was and Is,” First Things vol. 149, no. 1 (2005), 21. It should be noted that there are some forms of action that are unjust in virtue of being imprudent. For example, a legal guardian acts unjustly if they imprudently squander the money of those in their care.
43 These wrongs are only partly attributed to the leader of the victim state because a large level of the wrongs must be attributed to individuals in the adversary aggressor state.
rational decision-making is not to incur costs where there will be no greater benefit. If these costs are expected to be suffered by others then such a decision constitutes an ethical wrong. Even if faced with unjust aggression it can be appropriate to offer appeasement rather than resistance because this will decrease the harm one’s population will suffer.

This notion that a decision-maker can morally wrong their own population by deciding to wage war can be traced back to Suarez in the sixteenth-century. He declared: “If one prince begins war upon another, even with just cause, while exposing his own realm to disproportionate loss and peril, then he will be sinning not only against charity, but also against the justice due to his own state.” Significantly, this moral rationale is also explicitly present in Grotius’ original formulation of the Reasonable Probability of Success criterion. He stated:

_It is not only Prudence, or Affection for his Subjects, that requires him to forbear engaging in dangerous War, but very often Justice itself, that political Justice, which from the very nature of Government does no less oblige a Prince to take Care of his Subjects, than it does the Subjects to obey their Prince... A King who undertakes a war upon frivolous Accounts... such as will involve his Subjects in a great Deal of Trouble, is obliged to make up the Damages they suffer thereby: For tho’ he cannot be accused with any Injury done to his enemies, yet may there be a heavy Charge laid against him of wronging his Subjects, by plunging them in so much Misfortune and Misery._

The fact that Grotius asserted that such an ethical requirement could be distilled from ‘the very Nature of Government’ is significant. He believed that there was something

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44 Such a rationale is routinely suggested to potential victims of assault in domestic society, because resistance often leads to them suffering increased harm (though it is not usually claimed that they have acted immorality of they do resist).


46 Grotius, _The Rights of War and Peace_, 1146.
particularly morally wrong with states *qua* states making a decision that will likely cause their citizens to suffer increased harm. Many believe that the authority accorded to the state is grounded in a duty to protect its citizens from internal and external threats. In other words, the primary moral purpose of the state is to ensure its citizens suffer as little harm as possible. Blum and Luban contended that this is the “*sine qua non* for all other functions of the modern state.”  

This is not simply a modern notion. Writing in the seventeenth-century, Hobbes declared that the “Office of the Sovereign, (be it a Monarch, or an Assembly,) consisteth in the end, for which he was trusted with the Sovereign Power, namely, the procurement of *the safety of the people*” (emphasis in original). 

For this reason, subjecting one’s community to increased harm by deciding to wage a war that violates the Reasonable Probability of Success criterion is particularly morally wrong. Rather than constituting merely a prudential constraint, a state’s duty towards its own citizens represents a moral reason to act in accord with this principle.

This moral duty of states extends to its combatants as well. Although harms to combatants are an expected element of any conflict, they are no less worthy of moral consideration. Those who survive hostilities are often maimed, suffer from psychological issues, and also suffer the moral costs of engaging in or supporting acts of violence or

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49 Uniacke argued further that in light of the fact that a state is granted its authority in order to ensure the security of its constituents, any leader who violates the Reasonable Probability of Success criterion also automatically violates the Legitimate Authority criterion. Her argument is interesting and coherent but it requires further elaboration. Whilst it clearly has humanitarian benefits, Uniacke’s proposal is not consistent with how the Legitimate Authority criterion is historically and contemporarily understood. See Suzanna Uniacke, “Self-Defence, Just War, and a Reasonable Prospect of Success,” in *How We Fight*, edited by Helen Frowe and Gerald Lang (New York: Oxford University Press, 2014). For a criticism see Helen Frowe, *Defensive Killing*, (New York: Oxford University Press, 2014), 157.
killing.\textsuperscript{50} When these harms to combatants are brought about through an endeavour that violates the Reasonable Probability of Success criterion they constitute moral wrongs partly attributed to their decision-making leader. Preventing harms to one’s combatants is not solely a prudential requirement recommended by rational self-interest. As Coady observed, “concern for one’s own troops represents a moral advance over many military policies of the past, such as treatment of one’s own soldiers as the merest cannon fodder in the trenches of World War I.”\textsuperscript{51}

At this juncture one could be tempted to respond that the increased harms suffered by a state’s non-combatants and combatants through a decision to wage a war that violates the Reasonable Probability of Success criterion do not constitute moral wrongs partly attributed to their leader if these non-combatants and combatants are aware of the risks and volunteer to fight regardless.\textsuperscript{52} Whilst there are still self-serving prudential reasons not to wage war in circumstances such as this, one could claim there are no morally salient reasons. Alternatively, one could argue that the Reasonable Probability of Success criterion can be bypassed in situations when the harms suffered by one’s citizens will be the same regardless of whether or not one’s state resorts to war. This seemingly follows if the only rationale for stipulating that this criterion is satisfied is to ensure that one’s citizens are not harmed unnecessarily. Kuo’s paper on the Reasonable Probability of Success criterion makes this assertion.\textsuperscript{53}

\begin{itemize}
\item \textsuperscript{50} In Australia, the suicide rate of ex-combatants is fourteen percent higher than that of the overall national rate. See “Stark Suicide Rates Among Ex-ADF Soldiers,” \textit{SBS News}, published 19/01/2018 at https://www.sbs.com.au/news/stark-suicide-rates-among-ex-adf-soldiers
\item \textsuperscript{51} C.A.J. Coady, \textit{Morality and Political Violence} (New York: Cambridge University Press, 2008), 95.
\item \textsuperscript{52} It could plausibly be argued that non-combatants and combatants cannot be sufficiently informed of the risks for their consent to be legitimate. This will be discussed in a later section.
\item \textsuperscript{53} Yuchen Kuo, “Success and the Aftermath of Surrender,” \textit{Journal of Global Ethics} vol. 10, no. 1 (2014).
\end{itemize}
Kuo labelled his position the ‘aftermath argument.’ He stated that there are exceptional circumstances whereby it is permissible to circumvent the Reasonable Probability of Success criterion when considering waging war. These are so-called ‘zero-sum’ cases, whereby the negative consequences of resorting to force for the victim state are no greater than the negative consequences of appeasement. Referring to this reasoning as the ‘inevitability explanation,’ Kuo declared that “a state can justifiably fight a hopeless war of self-defense when its enemy determines to massacre its people after it surrenders or is defeated.”\(^{54}\) He then qualified that the aftermath argument is not applicable to cases “in which the victims of the war and the victims of the massacre are not identical.”\(^{55}\) Kuo optimistically believed that one benefit of this caveat to the Reasonable Probability of Success criterion is that it can “motivate an aggressor not to impose the policy of massacre on its opponent… [it] can serve the purpose of deterring the aggressor from massacring the people in the victim state.”\(^{56}\)

However, this fails to take into account the moral wrongs committed against non-combatants in the adversary state. Firstly, the families of the enemy combatants who are killed through a state’s decision to wage a war that violates the Reasonable Probability of Success criterion are wronged. More critically, in the last century the ratio of non-combatant to combatant casualties in war has shifted heavily in favour of the former. Even in the modern age of sophisticated laser-guided missiles a state’s decision to wage war almost necessarily entails that non-combatants from an adversary belligerent state will be killed. These individuals are completely innocent in the relevant sense, and will most likely

\(^{54}\) Ibid., 101.
\(^{55}\) Ibid., 105.
\(^{56}\) Ibid., 102.
include infants, the infirm, and the elderly. Lazar aptly recognized: “Complex and subtle theorizing aside, the pretheoretical presumption against killing the innocent is the closest think we have to a universally recognized norm, acknowledged in almost all moral belief systems, probably since the first recorded instance of armed conflict in Wadi Halfa, Suda, about 13,000 years ago.”\(^{57}\) Whilst Just War Theory does provide the resources to justify the killing of an adversary state’s non-combatants under a strict set of circumstances, these circumstances (stipulated by the doctrine of double-effect) cannot be satisfied when a war violates the Reasonable Probability of Success criterion.

The exact moral weight that ought to be accorded to an adversary state’s non-combatants is still up for debate in contemporary Just War Theory literature. Just war theorists such as Kasher, Yadlin, and Fleury have opposed the idea of equal consideration to all non-combatants.\(^ {58}\) Fleury asserted that the state exists to protect its own citizens, and that combatants are agents of the state. From these two premises he concluded that “soldiers do not have the same positive duty to protect innocents among the enemy population as they do to protect their own population.”\(^ {59}\) The form of national partiality that these just war theorists advocate is somewhat intuitive.\(^ {60}\) However, even if it is accepted that some level of partiality towards one’s non-combatant citizens is ethically permissible, the Reasonable Probability of Success criterion would still operate as an ethical constraint on


\(^{60}\) There are some interesting parallels between this theory and the commonly held belief that personal partiality for loved ones is morally permissible. However, it must be noted that this intuition towards personal partiality only extends to benefitting a loved one rather than benefitting a stranger; not harming a stranger to benefit a loved one.
waging voluntary or zero-sum war. It would only cease to operate as a constraint if it was argued that non-combatants in an adversary state warrant no moral consideration at all.

The most plausible theory that maintains that a state can completely disregard non-combatants in an adversary state has been labelled the ‘discretionary association view.’ According to Buchanan, the ‘discretionary association view’ is the “dominant understanding of the nature of the state and the role of government in liberal political thought.”61 It holds that “the state is an association for the mutual advantage of its members and that the government is simply an agent whose fiduciary duty is to serve the interest, or to realise the will, of those citizens.”62 As such, the state ought to wage a war that violates the Reasonable Probability of Success criterion if this is the will of its citizens. Any harm caused by such an endeavour to adversary non-combatants is not its moral responsibility. Such a theory would seemingly license a state to disregard the Reasonable Probability of Success criterion, and any criterion of jus ad bellum for that matter, if this constituted the determination of the population.

However, the ‘discretionary association view’ suffers from several shortcomings. Buchanan has pointed out that it “justifies the state as a coercive apparatus by appeal to the need to protect universal interests, while at the same time limiting the right of the state to use its coercive powers to the protection of a particular group of persons, identified by the purely contingent characteristic of happening to be members of the same political society.”63 This is both arbitrary and inconsistent. As Frowe acknowledged, it “might seem rather hard justice to require restraint out of concern for the citizens of the invading state…

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62 Ibid.
63 Ibid., 29.
But even if a state’s combatants volunteer to risk their own lives, they cannot thereby make it permissible to endanger the lives of others.”

Further, the ‘discretionary association view’ seems straightforwardly counter-intuitive. The notion that State A has no moral obligation to refrain from killing non-combatants in State B, so long as this is the will of State A’s citizens, is perverse. Vicarious liability does not permit agents to perform seriously immoral acts simply because they are acting on behalf of the state (even if this happens to be the will of its citizens).

Further, despite Grotius’ insistence in the aforementioned original formulation of the Reasonable Probability of Success criterion that one ‘cannot be accused with any Injury done to his Enemies,’ this is not obviously the case. Once again, this is an essentially contested issue in Just War Theory literature. Gray explained that in the past it was common to depict an enemy combatant “as a creature who is not human at all… A peculiar species of animal with indeterminable qualities and habits, all evil.” However, concern for enemy military personnel can also be discerned historically. In a letter attempting to justify the deployment of nuclear weapons in World War II, Truman insisted his motivation was “to end the… war and save a quarter of a million of our youngsters, and that many Japs from death and twice that many on each side from being maimed for life” (emphasis added).

Most modern just war theorists believe that adversary combatants carry moral weight, and should be included in calculations for the Proportionality criterion. Frowe has convincingly argued that “even if we think they’re morally responsible for threatening and thus liable to be killed, we could still think that there are general moral reasons not to cause

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64 Helen Frowe, The Ethics of War and Peace (New York: Routledge, 2011), 58.
(likely) gratuitous harm.\textsuperscript{67} Such a contention is applicable to the Reasonable Probability of Success criterion, because a war that violates this principle is extremely likely to cause gratuitous harm. To clarify, it is being contended that it is the leader of a state who decides to wage a war that violates the Reasonable Probability of Success criterion who wrongs adversary combatants who are harmed as a result of that war, not necessarily the combatants that prosecute the war.

States that violate the Reasonable Probability of Success criterion wrong (and do not just harm) enemy combatants for the basic reason that this decision causes unnecessary harm to these enemy combatants. This notion has been formalised for domestic instances of self-defence and defence of others in the Necessity condition. Firth and Quong present this condition as follows: “It is necessary to impose defensive harm on an attacker only if doing so has a reasonable prospect of successfully averting the unjust threat posed by the attacker, and there is no alternative way of averting the threat that is suitably low cost (relevant costs include the harms suffered by attackers, victims, and third-parties).”\textsuperscript{68} Such a requirement for domestic self-defence is most applicable to situations when a victim has two or more means to achieve the same outcome. For example, if an individual can prevent themselves from being robbed by either breaking their assailant’s finger, or by shooting them in the head. According to the Necessity condition they ought to choose the former option. This is relevant to the Reasonable Probability of Success criterion because in cases when it is unlikely that a state will achieve its Just Cause it still has two options; to wage

\textsuperscript{67} Frowe, \textit{Defensive Killing}, 128.
\textsuperscript{68} Joanna Firth and Jonathan Quong, “Necessity, Moral Liability, and Defensive Harm,” \textit{Law and Philosophy} vol. 31 (2012), 678.
war or not wage war. Given that the positive outcomes will likely be the same regardless of the option selected, the aggressor state is only liable to suffer the lesser harm.

A response to the rationale that has been outlined could be that the harms motivating the inclusion of the Reasonable Probability of Success criterion in *jus ad bellum* are not a necessary feature of warfare. Of course, depending on one’s definition of ‘warfare’ this could be in principle correct. For, given the infinite potential for possible hypothetical scenarios, one can conceive of a situation whereby a state wages war without causing any greater harm than what would have occurred had the state simply surrendered. However, in response, the claim that a decision to wage war will directly cause increased harm to either non-combatants or combatants for either one’s own population or an adversary’s population rests on fairly permanent facts about the enterprise of war. It does not rely on contingent conditions that only hold for particular societies at particular periods of history. For, in the words of Lazar, “it just seems wildly unrealistic to imagine warfare could be so morally congenial… wars against aggression… cannot be fought without collaterally killing many people, and intentionally killing many others, who are not culpable for the outcomes we thereby avert.”

The moral rationale for stipulating that the Reasonable Probability of Success criterion is satisfied is not just to prevent the likely gratuitous harm that will be entailed by such a decision. This requirement also forces decision-makers to acknowledge and reflect on the harms that their decision will cause. As previously noted, typically the only harms suffered by decision-making leaders as a result of their decision to wage war are political in nature. This could lead them to focus solely on what may be lost by opting not to commence

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hostilities. Coady has observed that the Reasonable Probability of Success criterion “is partly motivated by concern that the horrors attendant upon war not be unleashed capriciously or without sufficient regard for outcomes.”\(^70\) This criterion also provides a useful measure by which decision-makers can be held to account. Harbour ended her discussion of the Reasonable Probability of Success criterion by declaring that forcing “decision makers to accept moral responsibility for the costs of possible failure is a unique contribution to the just war criteria.”\(^71\) In the aftermath of a failed war effort a leader can be required to provide clear and convincing evidence demonstrating why they were justified in believing that the Reasonable Probability of Success criterion was satisfied. For this reason this criterion ought to include a requirement of publicity that stipulates that decision-makers must make their reasoning accessible to the public.

To summarise, Patterson, Calhoun, Howard, Johnson, and McLaughlin are mistaken in their suggestion that the only rationale for stipulating the Reasonable Probability of Success criterion be satisfied is self-serving prudence. There are moral reasons to demand that a state satisfies this requirement before waging war. The primary rationale is to prevent the increased harm that will result from such a decision, harm that will most likely be gratuitous. Whilst domestic instances of self-defence typically only result in one increasing the risk of harm to oneself and one’s assailant, the decision to wage war increases the risk of harm for one’s own non-combatants and combatants, and also the adversary state’s non-combatants and combatants. It is consideration of the latter two categories that entails that it is wrong to wage a war that violates the Reasonable Probability of Success criterion even

\(^{70}\) Coady, *Morality and Political Violence*, 94.

\(^{71}\) Harbour, “Reasonable Probability of Success as a Moral Criterion in the Western Just War Tradition,” 230.
if one’s citizens volunteer to accept the costs. A secondary moral reason for including this criterion in *jus ad bellum* is to force decision-makers to reflect on the possibility of failure. Given this moral rationale for including the Reasonable Probability of Success criterion, claims that it is ancillary or secondary within *jus ad bellum* are erroneous. Failure to satisfy this requirement is no less of a problem than failing to satisfy any of the other independent, necessary conditions of *jus ad bellum*.\(^{72}\)

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\(^{72}\) This was point was summarised by May, who suggested “just cause is important but not the cornerstone of the *jus ad bellum* normative principles. Indeed, it isn’t clear to me that there is such a cornerstone principle rather than a collection of principles all operating at about the same level that together form a coherent set of principles for determining when a State’s recourse to war is justified.” Larry May, *Aggression and Crimes Against Peace* (New York: Cambridge University Press, 2008), 115.
Chapter Two: On interpreting and applying the Reasonable Probability of Success criterion

Chapter overview

Whilst the ethical reasons for including the requirement of a Reasonable Probability of Success in *jus as bellum* have been presented, this thesis has not yet demonstrated how this criterion ought to be interpreted and applied. This will be achieved through an analysis of the three terms ‘reasonable,’ ‘probability,’ and ‘success.’ This chapter will begin by explaining the work that the term ‘reasonable’ is doing in the title of the Reasonable Probability of Success requirement. It will argue that ‘reasonable’ implies a subjectivist understanding of this criterion, and will clarify that even though a subjectivist understanding is appropriate, not all ignorance constitutes ‘invincible ignorance.’ It will be further maintained that the term ‘reasonable’ is functioning as a reminder of the epistemic difficulties involved with predicting the consequences of war. Lastly, it will be argued that the level of probability that constitutes a ‘reasonable’ probability when applying this criterion fluctuates depending on the expected costs associated with one’s particular decision of whether or not to wage war.

This chapter will then turn to the term ‘probability.’ It will explain why this locution is preferred over the various others that are prevalent in the title of this criterion in Just War Theory literature. It will be noted that the term ‘probability’ implies that a strong degree of intellectual rigour should be employed when considering this criterion, and the positive link between the notion of probability and the field of mathematics will also be observed. This chapter will then explain why probability calculations must be attentive to the principle of uncertain expectations, and will posit various other critical factors that impact
determinations of probability. This chapter will then conclude by explaining what constitutes ‘success’ in regard to the Reasonable Probability of Success criterion. It will present reasons why ‘success’ ought to be interpreted to mean ‘successful achievement of one’s Just Cause,’ and will put forward several implications of this interpretation. Whilst some of the points put forward in this chapter have been advanced previously by just war theorists, many have not. Further, the pervasive conceptual confusion within Just War Theory regarding how the Reasonable Probability of Success criterion ought to be interpreted and applied demonstrates the importance of stating them again.

The role of the term ‘reasonable’ for the Reasonable Probability of Success criterion

There is a fundamental ongoing debate within self-defence and defence of others literature regarding whether the morality of resorting to force is grounded in objective or subjective factors.\(^\text{73}\) Objectivists contend that the morality of any given instance of self-defence or defence of others can be determined by reflecting on the objective facts relevant to the case (completely independent of an agent’s knowledge of, or beliefs about, these facts). Applied to the Reasonable Probability of Success criterion, this interpretation dictates that waging war is only ethically permissible when the fact of the matter is that a state satisfies this criterion. In contrast, subjectivists maintain that at the time of acting, agents only have to justifiably believe that a war satisfies the requirement of a Reasonable Probability of Success for this condition to be satisfied.\(^\text{74}\) This distinction is most

\(^{73}\) Advocates of the former view have been labelled ‘objectivists’ or ‘deeds theorists,’ and proponents of the latter view ‘subjectivists’ or ‘reasons theorists.’

\(^{74}\) The precise level of justification required varies according to each subjectivist account.
significant when judging the ethical permissibility of a decision to wage war *post-factum*. However, an objectivist understanding could also alter an agent’s decision-making process if they are worried that they may be judged to have acted immorally despite their best intentions.

The most plausible interpretation of the Reasonable Probability of Success criterion is subjectivist. Arguably, the primary role of Just War Theory is to be action-guiding. It does not seem reasonable to judge that an agent has acted immorally simply because they did not possess the knowledge of an omniscient observer. An agent can only act in accord with the best information they have at the time. As Urmson declared, “a moral code that would work only for angels (for whom it would in any case be unnecessary) would be a far from ideal moral code for human beings.” Further, a subjectivist understanding is consistent with how the Proportionality criterion of *jus ad bellum* is most commonly formulated. It makes sense to employ a consistent understanding of each criterion. Therefore, one reason for the inclusion of the adjective ‘reasonable’ in the title of the Reasonable Probability of Success criterion is as an acknowledgement of the fact that agents are not omniscient and that this criterion ought to be interpreted subjectively. Interestingly, this entails that a war that does not actually have a reasonable probability of success could still satisfy the Reasonable Probability of Success criterion.

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75 For example, this could make an agent disregard moral considerations because they can be judged to have acted immorally despite their best intentions, or alternatively, it could make them adopt pacifism because they can never know for certain that their decision to wage war is ethically permissible.

However, there is a crucial caveat to this subjectivist interpretation of the Reasonable Probability of Success criterion. This caveat relates to the distinction drawn by McMahan between “what is permissible in relation to what the agent believes, what is permissible in relation to the evidence available to the agent, and what is permissible in relation to the facts.”\textsuperscript{77} It is the second option that governs whether or not the Reasonable Probability of Success criterion is violated. In other words, whilst this criterion ought to be interpreted subjectively, not all ignorance is ‘invincible ignorance.’\textsuperscript{78} As political leaders are typically civilians rather than military personnel, they ought to consult their military strategic advisers when predicting what outcomes can be achieved through war. It is often said that ‘hope alone is not a military strategy.’ Cook noted that in terms of the Reasonable Probability of Success criterion, political “leaders are almost entirely dependent on realistic and good faith professional advice in making that determination.”\textsuperscript{79} Consultation with appropriate agents is thus necessary for a decision-maker to satisfy this criterion.\textsuperscript{80}

For decision-makers to simply act on the basis of unconsidered beliefs would be an abdication of their moral duty. As Erasmus declared: “Although a prince ought nowhere to be precipitate in his plans, there is no place for him to be more deliberate and circumspect than in the matter of going to war.”\textsuperscript{81} This view was also echoed by Luther, who wrote:

\begin{quote}
\textsuperscript{77} Jeff McMahan, “Intention, Permissibility, Terrorism, and War,” \textit{Philosophical Perspectives} 23 (2009), 353.
\textsuperscript{78} The relevant distinction between ‘vincible ignorance’ and ‘invincible ignorance’ was well-articulated by Vitoria in the sixteenth century. See Francisco de Vitoria, \textit{Political Writings}, ed. Anthony Pagden and Jeremey Lawrence (Cambridge: Cambridge University Press, 1991), 268.
\textsuperscript{80} Interestingly, this entails that a war may successfully achieve its Just Cause, whilst still violating the Reasonable Probability of Success criterion, if the relevant decision-maker breached their consultative duty.
\textsuperscript{81} Desiderius Erasmus, as cited in Holmes, \textit{War and Christian Ethics}, 177.
\end{quote}
“‘non putassem’ – ‘I did not think of it’ – [are] the most shameful words a soldier could speak. These words indicate that he was one of those secure, careless, men, who in one moment, by one step, with one word, can do more damage than ten like him can repair.”\textsuperscript{82}

The term ‘reasonable’ can thus also be regarded as a reminder that beliefs held by political leaders do not satisfy the Reasonable Probability of Success criterion, even when genuinely held, if they are unreasonable and the result of insufficient inquiry.

The qualification ‘reasonable’ is also necessary in light of the epistemic difficulties inherent in the task of predicting the consequences of war. In the past, philosophers such as Bentham were so confident in humanity’s capacity to accurately calculate the consequences of an action that they based entire ethical theories on this capacity.\textsuperscript{83}

However, most contemporary philosophers are sceptical of the existence of such a capacity and believe that a high level of epistemic humility is warranted when attempting to predict the results of interpersonal action.\textsuperscript{84} Even in retrospect it is often difficult to determine exactly what actions have caused what results. This is directly relevant to the Reasonable Probability of Success criterion because it amounts to a prediction by a political leader of the consequences of their decision to wage war.\textsuperscript{85} It is a future-orientated criterion.

\textsuperscript{82} Martin Luther, as cited in Holmes, \textit{War and Christian Ethics}, 154.
\textsuperscript{84} Predicting the future consequences of international affairs is notoriously difficult, as evident in the fact that the collapse of the Soviet Union was considered highly unlikely until it actually occurred, and virtually no economists predicted the 2008 Global Financial Crisis.
\textsuperscript{85} Interestingly, Biggar argued that because of the epistemic difficulties involved with determining if the Reasonable Probability of Success criterion is satisfied it ought to carry less weight than the Just Cause, Legitimate Authority, Right Intention, and Last Resort criteria. He declared: “I am disinclined to load the dice against the justification of war by foregrounding the prudential criteria of the prospect of success and proportionality… [in \textit{jus ad bellum}, and] insisting upon spurious ‘calculations’ that pretend to predict the future and weigh up incommensurables with an impossible accuracy.” His position has been convincingly criticised by Fabre, who responded that the four criteria Biggar wants to retain are also incredibly difficult to apply. Starting with Just Cause, Fabre contended: “Disputes over, for example, territory, are notoriously complex, revolving as they often do around decades of perceived injustices on both sides. Likewise, claims to the effect that one fights with the right intentions are notoriously vulnerable to the difficulty of
operating under epistemic uncertainty so predictions are bound to be somewhat speculative. This may have been why Grotius advised in his original formulation of this criterion to “[c]onsider before you enter it, what unexpected incidents there are in war.”

The conceptual and empirical difficulties inherent in predicting the consequences of one’s actions are magnified for the enterprise of war. The contemporary international system involves several actors shaping outcomes, ensuring that there are always wide margins for uncertainty. Part of the problem stems from the difficulty of determining the future decisions of foreign leaders (and possibly future foreign leaders who have not yet taken power). This problem is compounded by the fact that democratic states (and to a lesser extent other systems) require popular support to prosecute a war effort, and public opinion is notoriously fickle. Sheer luck also impacts the vicissitudes of war, a fact Plato emphasised, writing that the “dangers of war cannot be always foreseen; there is a good deal of chance about them.”

The fallibility of estimates is increased by the aforementioned fact that agents can only apply principles that seem to be relevant to them at the time. Churchill famously declared: “Never, never, never believe that any war will be smooth and easy, or that anyone who embarks on that strange voyage can measure the tides and hurricanes he will encounter.” Similarly, Norman concluded: “A major war involves social upheaval on a huge scale, eluding effective human control, and its outcome is almost unearthing what collective intentions are transparent to those agents themselves and to third parties, which is far from a foregone conclusion… Claims that the war was the option of last resort are vulnerable to uncertainties about the strength of one’s position relative to one’s adversary, in the dance of bluff and counter-bluff which is characteristic of preludes to war.” See Nigel Biggar, *In defence of war* (Oxford: Oxford University Press, 2013), 322, and Cecile Fabre, “Nigel Biggar’s Just War: Reflections on jus ad bellum,” *Studies in Christian Ethics* vol. 28, no. 3 (2015), 296.

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bound to be unpredictable.” It is for these reasons that the phrases ‘no plan survives contact with the enemy’ and ‘the enemy gets a vote’ are so common in military parlance.

There are numerous historical examples to support the contention that it is extremely difficult to predict the duration and consequences of war. There is the often-cited fact that many believed in September 1914 that combatants fighting in World War I would be home to celebrate Christmas. An example from antiquity is the Greeks’ successful repulsion of the Persians. More recently, most commentators at the time were dismissive of the prospects of the American Revolution succeeding in light of the strength of the British Empire. Perhaps most relevant is the example of liberation in Africa from Portuguese influence. It is claimed that in 1972 a just war theorist declared that violent resistance to Portuguese oppression would not be ethically permissible because “on the evidence of the last decade they have no reasonable prospect of success at all.” Within just two years the Portuguese empire in Africa had collapsed as a direct result of the very resistance that had been dismissed. These historical examples clearly illustrate the limitations involved with attempting to reliably forecast the results of violent conflict.

Even the most basic measure of whether or not a war satisfies the Reasonable Probability of Success criterion, a comparison of military strength, is not a straightforward exercise. Firstly, as the above examples indicate, superior military capabilities do not necessarily entail automatic military success. This will be discussed at length in a later section. Secondly, states are notoriously (and understandably) secretive about the military

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89 Richard Norman, as cited in Lee, The Ethics of War, 25.
91 There are several other pertinent factors that impact whether or not a state satisfies this criterion, such as public support for the war effort. These will be discussed at length in a later section.
capabilities at their disposal, often deliberately concealing or distorting information. This makes risk assessment in regard to war much more difficult than risk assessment in regard to other phenomena, such as natural disasters. As Blum and Luban noted, “Mother Nature may be pitiless, but she has no interest in fooling us.” They continued that compared to other areas concerned with risk, such as insurance and public health, there is a welcome “lack of a large body of actuarial data” to analyse when it comes to large-scale conflicts.

Assessments of any given adversary state’s military strength is further complicated by the existence of private military companies, which can facilitate the addition of considerable resources instantly through a signature on a contract. This fluidity entails that even thorough and accurate assessments can instantly become obsolete. Although mercenaries existed in the past, recruiting them was a much more drawn-out and geographically contingent process. A clear recent example of this modern feature of warfare was in Sierra Leone, where the incumbent government could not defend itself militarily against the Revolutionary United Front due to a lack of resources. However, Eckert explained that “[a]fter hiring the private military company Executive Outcomes, the government’s fortunes improved substantially, to the point that the government was able to compel the Revolutionary United Front to negotiate a settlement.” The effectiveness of Executive Outcomes is underscored by the fact that they provided a relatively small military force to this conflict, numbering roughly 200 troops. These complications with

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92 This behaviour was rife during the Cold War between the United States and the Soviet Union. In 1959 the United States successfully planted an agent in the Soviet intelligence organisation with the role of exaggerating the chemical threat they faced. The aim of this subterfuge was to encourage the Soviet Union to divert resources to an unnecessary chemical defence system.
93 Blum and Luban, “Unsatisfying Wars,” 775.
94 Ibid.
calculating an adversary’s military strength further add to the difficulty of determining whether or not the Reasonable Probability of Success criterion is satisfied.

In light of these factors, a further reason that the term ‘reasonable’ is included in the title of the Reasonable Probability of Success criterion is thus as an acknowledgement of the inherent difficulty of predicting the consequences of war.\textsuperscript{96} Suspending a decision until one’s probability of success is certain is almost never an option.\textsuperscript{97} There is also the issue of time criticality; waiting until more relevant facts are ascertained may help a leader make a more well-informed decision, but waiting may simultaneously make it less likely that a war effort will succeed. An imminent threat can force a split-second decision onto a decision-maker, and the fact that one’s probability of success cannot be measured precisely does not mean that it cannot be measured at all. In broader society it is often considered appropriate to make ethical decisions without guaranteed certainty of the outcomes (in fields such a pharmaceutical safety or airline safety for instance). As Harbour maintained, “[a]dding ‘reasonable’ to the mix makes it clear that what is required is the conclusion that a rational and unbiased person should draw from the same evidence… Experts can and do make mistakes about probabilities, but these mistakes have roots in observable phenomena.”\textsuperscript{98} This is all part of the human predicament, and opting to refrain from war constitutes a moral decision in itself.\textsuperscript{99} As Guthrie and Quinlan aptly asserted, “choice amid uncertainty is a constant issue in most fields of human activity, and it cannot be a valid

\textsuperscript{96} The term ‘reasonable’ is thus functioning in two distinct ways; in an agential context and in an epistemic context.
\textsuperscript{97} This feature of warfare was noted by Suarez, who wrote that “it is often in the common interest of the state not to await such a degree of certitude.” Francisco Suárez, as cited in Holmes, \textit{War and Christian Ethics}, 212.
\textsuperscript{98} Harbour, “Reasonable Probability of Success as a Moral Criterion in the Western Just War Tradition,” 232.
\textsuperscript{99} For instance, the international community was widely criticised for inaction during the 1994 Rwandan genocide.
reason for pacifism.”

It was for this reason that Ramsey concluded that one “can require of the statesmen that there be a reasonable expectation of success, but only a reasonable expectation, not assurance.”

In regard to the actual application of this criterion this entails that one’s probability of success is ‘reasonable’ if it is calculated with the best information available to the decision-maker at the time, the decision-maker has attempted to garner a sufficient level of relevant information, and their decision takes into consideration the unpredictability of war. This section has not yet touched on exactly what level of probability is required in order for it to be ‘reasonable’ to wage war. Suarez believed that a decision-maker required more than a fifty percent probability of success in order for it to be reasonable to wage war. He stated that a leader “ought to balance the expectation of victory against the risk of loss, and ascertain whether, all things being carefully considered, expectation [of success] is preponderant.”

A more plausible alternative is that there is a variable threshold for the probability that is required, which is determined by the sets of costs that one’s state is expected to suffer. In other words, the standard for what counts as reasonable is not static, and in situations whereby the consequences of not acting are more severe, what constitutes a reasonable probability is proportionately lower. Although rarely explicitly

100 Guthrie and Quinlan, Just War, 24.
102 Francisco Suarez, as cited in Howard M. Hensel, The Prism of Just War: Asian and Western Perspectives on the Legitimate Use of Military Force (Burlington: Ashgate, 2010), 53.
103 An expected utility formula similar to those utilised in rationalial choice theory may be useful when making such a determination.
104 Interestingly, Grotius claimed that the consequences at stake altered the actual probability of success, rather than the reasonableness of resorting to force. He declared “a soldiers strength is broken or increased by his causes” and further that “God customarily interposes His judgment in the fortunes of war in such a way that success falls not infrequently on the side where right also lies.” Hugo Grotius, as cited in Holmes, War and Christian Ethics, 235, and Hugo Grotius, as cited in Martin Julia van Ittersum, Commentary on the Law of Prize and Booty (Indianapolis: Liberty Fund, 2006).
stated in Just War Theory literature, this does not seem controversial.\textsuperscript{105} For if a state does not have a high probability of success, and the decision not to wage war will only cost it an unmanned vessel off the coast, it would not be reasonable to resort to force. In contrast, if a state again does not have a high probability of success, yet the decision not to wage war will result in the genocide of its entire population, it would be much more ethically reasonable to resort to force. Whilst this fluid notion of reasonableness is strongly intuitive, it is surprisingly rarely explicitly advocated in Just War Theory literature.

\textbf{On the term ‘probability’ for the Reasonable Probability of Success criterion}

Just War Theory literature varies widely in regard to the second term employed in the title of the Reasonable Probability of Success criterion. Some common locutions include ‘chance,’ ‘expectation,’ ‘hope,’ ‘likelihood,’ ‘possibility,’ and ‘prospect.’\textsuperscript{106} Surprisingly, these terms are often employed interchangeably within single works. Whilst at first glance they may seem analogous, each can entail fundamentally different considerations and implications. This section will clarify why the term ‘probability’ ought to be used rather than the alternatives that are prevalent in Just War Theory literature. Firstly, ‘probability’ implies that a strong degree of intellectual rigour is necessary when predicting the consequences of war. Alternatives such as ‘likelihood’ and ‘prospect’ are basically neutral in connotation, and for an outcome to have a reasonable ‘probability’ of occurring it must

\footnote{This notion is referred to in Christopher J. Finlay, \textit{Terrorism and the Right to Resist: A Theory of Just Revolutionary War} (Cambridge: Cambridge University Press, 2015), 131.}

\footnote{The Reasonable Probability of Success criterion is also occasionally referred to as the ‘Feasibility’ criterion.}
be more likely than a mere ‘chance,’ ‘hope,’ or ‘possibility.’\textsuperscript{107} Harbour explained that requiring high evidentiary standards “represent[s] a clearer demand than intuition, opinion, or emotion.”\textsuperscript{108} In the words of Coady, this is “particularly significant in providing a dampener to the unbalancing effects of enthusiasm, outraged feelings, and triumphalist fervour that often precede the decision to go to war,” which is essential in light of “the innumerable follies that lofty military fantasies have produced.”\textsuperscript{109}

The fact that the term ‘probability’ implies a link with mathematics is also useful. Tying the decision to mathematics indicates that what is required when predicting one’s probability of success is an empirical calculation based on reliable evidence. One ought to draw the same conclusion that any rational and unbiased individual would draw from the same evidence. Such a clinical analysis will aid the avoidance of rapid fluctuations in expectations purely derived from despair or triumphalism. One’s calculation must take into consideration “human psychology, human capacities generally, the laws of nature, and the natural resources available to human beings.”\textsuperscript{110} This could involve specific numbers and thresholds being assigned to probabilities as a heuristic. However, it must be emphasised that they would only be a heuristic. Any numbers and thresholds chosen would necessarily be somewhat arbitrary, and applying a rigid institutional framework and procedural mechanism may paralyse, or even distort, one’s decision-making process. Stressing that the term ‘probability’ is used is also important given the different tolerances and appetites different individuals have for risk. Risk markets only exist because some agents are more

\textsuperscript{107} It could be argued the ‘likelihood’ semantically has the same meaning as ‘probability,’ but it seems that the latter term is commonly treated as though it requires a higher evidentiary standard.
\textsuperscript{108} Harbour, \textit{Reasonable Probability of Success as a Moral Criterion in the Western Just War Tradition}, 233.
\textsuperscript{109} Coady, \textit{Morality and Political Violence}, 94.
risk averse than others. Judging the justice of one’s cause is also notoriously biased, as agents tend to confer great weight to projects that they deem to be significant. The association between the term ‘probability’ and the field of mathematics is thus helpful.

Probability calculations must also be attentive to the generally accepted principle of uncertain expectations. This principle dictates that one ought to give more weight to the harms predicted to come from war than the benefits. The first reason for this is that harms are guaranteed to come from a decision to wage war regardless of the overall result, whereas the benefits one hopes to bring about are often contingent on one’s state being militarily successful. Secondly, Gamson and Meyer have argued that decision-makers “systematically overestimate the degree of political opportunity”[111] when considering whether or not to resort to force.[112] This is evident in the fact that prior to most wars both sides usually believe that they will succeed, and they cannot both be correct.[113] The principle of uncertain expectations helps counteract this overestimation. According to Lee, another reason for adhering to this principle is that in war “the harms are usually more immediate, occurring in the short term, while the benefits would occur later in time… [and] given that short-term predictions are generally more accurate than long-term predictions, the benefits should be more heavily discounted than the harms.”[114]

[112] This is not to suggest that alarmism or pessimism are not also common in international risk assessment. Often the defence industry or the media have a vested interest in overstating the threat posed by foreign agents. This was famously the case for United States’ intelligence estimates of the military (and other) capabilities of Soviet Russia.
[113] Russell famously declared: “At the beginning of a war each nation, under the influence of what is called patriotism, believes that its victory is both certain and of great importance to mankind.” Bertrand Russell, “The Ethics of War,” International Journal of Ethics 25, no. 2 (1915), 130.
[114] Lee, Ethics and War, 27.
It was noted earlier that the primary means of determining one’s probability of succeeding in war is a comparison of one’s military capacity to that of one’s adversary. Such a comparison should take into consideration estimates of weaponry, organisational structures, the training of personnel, and also existing treaties that may tie third-parties to the conflict.\footnote{Interestingly, Biggar claimed that a leader’s callousness must be factored into calculations of this criterion. He maintained: “To be just, a war must have a prospect of success. To be successful, a military commander must be sufficiently callous to spend the lives of his troops.” Nigel Biggar, \textit{In defence of war}, 118.} It must be stressed that calculations of probability must only consider the results of war waged in accord with \textit{jus in bello}. As Rodin concisely maintained, “if a war can’t be fought justly, then it shouldn’t be fought at all.”\footnote{David Rodin, “The Ethics of Asymmetric War,” in Sorabji and Rodin, \textit{The Ethics of War}, 160.} This is not a modern notion. It can be discerned from the ancient words of Neoptolemus, who wrote: “I’d rather have defeat with fair means than success with foul.”\footnote{Neoptolemus, as cited in Hensel, \textit{The Prism of Just War}, 7.} This view has been described as the subordination of \textit{jus ad bellum} to \textit{jus in bello}. It remains controversial and hotly debated within Just War Theory literature, and it will be discussed and scrutinised at length in a later chapter.

The fact that one’s probability of succeeding in war is altered by the circumstances of one’s situation entails that factors that do not seem to be morally salient, like the geographical terrain one would have to fight on, or whether or not one’s state has adequate training for its military personnel, can affect whether or not it is ethically permissible for a state to defend itself with force against an invading army. Luck can even come into play, for instance if certain weather conditions occur that will impair one’s army and lessen one’s probability of military success. As Biggar observed, “[w]ell-meaning and earnest intentions, even when fortified with meticulous plans, can be frustrated by accidents of
history: the just may be robbed of victory by a change in the wind.” Whilst it may seem counter-intuitive that these seemingly non-morally salient factors can impact whether or not it is ethically permissible to resort to war, these factors can be the sole determinant of whether any good can be achieved through inflicting harm. They therefore must be taken into account when considering whether or not it is ethically permissible to initiate hostilities.

A final point on probability (that is perhaps obvious) is that having a high probability of success for one’s potential war effort only renders it ethically permissible to wage war (assuming the other criteria of *jus ad bellum* are satisfied). It does not render it ethically obligatory to resort to force. Ethical Theory often categorises actions as either permissible, obligatory, forbidden, or supererogatory. Satisfying the Reasonable Probability of Success criterion does not give a state a positive reason for action. The purpose of this criterion is simply to prohibit wars that violate this constraint. Lango suggested that the reason waging war is permissible rather than obligatory is that when “a state is unjustly attacked, we can expect that its citizens and leaders will be strongly motivated to defend themselves… hence the question of whether a just defensive war is obligatory might seem ‘academic.’” Whilst it is true that individuals typically have a strong intrinsic motivation to defend themselves when threatened, a stronger reason for stipulating that resort to war is only ethically permissible is that self-defence is morally optional, and giving victims a choice is consistent with the aforementioned presumption against war.

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Whilst it has been argued that satisfaction of the Reasonable Probability of Success criterion only renders resort to war ethically permissible (again, assuming the other *jus ad bellum* criteria have been satisfied), the notion that it may be ethically obligatory to wage war in certain circumstances has gained traction in the last two decades. Many now share Vattel’s belief that “…defence against unjust violence is not only the right of a nation, but the duty of a nation, and one of her most sacred duties.”\footnote{Emer de Vattel, as cited in Lee, *The Ethics of War*, 97.} This view has particularly re-emerged in discussions of humanitarian intervention, and it has an interesting implication for the Reasonable Probability of Success criterion. As satisfaction of this requirement depends in a large part on the just means that a state has at its disposal, it could be argued that if wars can be ethically obligatory, then every state has an ethical obligation to ensure that it can satisfy the requirement of a Reasonable Probability of Success criterion if what would be an obligatory case arises. This would entail that even in peacetime states would be ethically required to acquire and maintain adequate weaponry and ‘teach soldiers how to shoot straight.’

This implication was explored by Henschke and Evans, who noted that it “sits outside the purview of a traditional account of just war theory… [because] it may need to be discharged *prior to* and *independent of* any actual military engagement.”\footnote{Adam Henschke and Nicholas G. Evans, “Winning Well by Fighting Well: Probability of Success and the Relations between War’s Ends and Warfighters’ Roles,” *International Journal of Applied Philosophy* vol. 26, no. 2, 159. Woods asserted that *jus potential ad bellum* (just military preparedness) ought to be considered a new category in Just War Theory. See Mark Woods, “The Nature of War and Peace: Just War Thinking, Environmental Ethics, and Environmental Justice,” in Michael W. Brough, John W. Lango, and Harry van der Linden, *Rethinking the Just War Tradition*, (New York: State University of New York Press, 2007), 29.} It was also suggested by van der Linden in his discussion of how states could ethically resort to war against the United States. He wrote that ‘just military preparedness’ “may be seen as a new
JWT category of justice before the war (\textit{jus potential ad bellum}) with its own principles that must be satisfied in order not to distort the \textit{jus ad bellum} decision.”\textsuperscript{122} This argument is similar to the basic argument often asserted in favour of the existence of standing armies. It must be emphasised that it only carries weight for the minority who believe that it can be ethically obligatory to wage war, and that this thesis does not endorse this notion.\textsuperscript{123}

\textbf{On what constitutes ‘success’ for the Reasonable Probability of Success criterion}

The final element that must be addressed in an elucidation of the Reasonable Probability of Success criterion is the establishment of what exactly constitutes ‘success’ in relation to this criterion. It was previously noted that this criterion is concerned with the consequences of waging war. This is hardly surprising, as most philosophers believe that the expected consequences of an action are crucial for determining that action’s moral status. However, whilst this criterion is concerned with the consequences of a decision to wage war, it should not be considered simply consequentialist. The fact that there is a reasonable probability that waging war is expected to bring about better consequences than refraining from war is insufficient to satisfy the Reasonable Probability of Success criterion. Further, despite many just war theorists’ assertions, expected military victory alone is also insufficient.\textsuperscript{124}

\textsuperscript{123} It is not clear where the preparatory obligation would end for those who believe that war can be obligatory. For instance, would every state have a duty to be prepared for every possibly foreseeable war? This thesis will not pursue this idea, because it is not being argued that war can be ethically obligatory.
\textsuperscript{124} The distinction between success and victory is highlighted by the fact that the former is conceptually connected to the aims of an actor. This can be illustrated by considering a tennis player who has placed money on herself to lose. If she accidently ends up winning because her opponent forfeits before the match, she is victorious, but not successful.
Instead, ‘success’ ought to be narrowly interpreted to mean successful achievement of one’s Just Cause. In a sense, this criterion is thus a secondary principle in that its application must be derived from another criterion. However, this does not entail that it ought to be accorded a lower moral status than the other criteria in jus ad bellum. It remains individually necessary, or in the words of Seybolt, “reasonable prospect of success is as critical to [a decision to wage war] as just cause.”

It is clear that modern military action aims to realise a wide diversity of ends. Yet there are clear reasons for restricting what constitutes success in regard to the Reasonable Probability of Success criterion to only one specific end. According to Just War Theory, a Just Cause must exist for it to be ethically permissible to wage war. It is the aim of realising a Just Cause that can justify resort to force and causing the harms that will result from this decision. McMahan and McKim summarised that Just Cause “indicates the range of goods that may be permissibly pursued by war.” McMahan later added that Just Cause is “limited to the prevention or correction of wrongs that are serious enough to make perpetrators liable to be killed or maimed.” If it is a state’s Just Cause that justifies waging war, then determining whether or not there is a reasonable probability that any other end will be achieved through war is irrelevant to whether or not the war is ethically permissible. As Mellow noted, broadening the notion of ‘success’ to include the

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125 It must also be reiterated that despite O’Brien’s insistence that because some “revolutionaries can legitimately claim self-defence, they profit from exemption from the requirement of probable success,” this is simply not the case. Each criterion of jus ad bellum remains individually necessary, regardless of whether or not the other criteria have been satisfied. O’Brien, The Conduct of Just and Limited War, 165.
128 Jeff McMahan, “Just Cause for War”, Ethics & International Affairs vol. 19, no. 3 (2005), 8.
129 This constitutes a denial of Calhoun’s assertion that: “what constitutes ‘success’… is a matter of each leader’s interpretation, and a leader naturally considers war only at the price he is willing to pay. This
achievement of other aims “would imply that a war is justified, at least in part, by the fact that it would achieve certain goods that cannot permissibly be achieved by means of war.” Successful achievement of a Just Cause is thus the only plausible yardstick by which to measure whether or not the Reasonable Probability of Success criterion is satisfied.

The orthodox contemporary understanding of Just Cause is that the only ethically permissible aims of war are self-defence or defence of others. Most believe that successful realisation of such aims can only be achieved by mitigating or averting a perceived imminent physical threat. Allowing mitigation of a threat is important because although a state may not have the capacity to entirely block or neutralise a threat, it could have the capacity to reduce the harm suffered Limiting the scope of what constitutes ‘success’ to self-defence or defence of others has several benefits. Firstly, employing such a clear and easy to apply interpretation is crucial for an amorphous concept like success, which could be characterised in a myriad of different ways. This alleviates Fotion and Coppieters’ worry that “a problem with ‘success’ is the tendency of nations to redefine it as the war progressed.” Such a restrictive interpretation is also consistent with the aforementioned central purpose of *jus ad bellum* of limiting the frequency of war. A third benefit of this

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131 Fabre provided a typical example of what constitutes ‘success’ in war: “the aggressed country has won the war once it has rolled it’s enemy’s armies back across its borders and weakened it to such an extent as to forestall future similar threats.” Cecile Fabre, *Cosmopolitan War* (Oxford: Oxford University Press, 2012), 117.

interpretation is that it assigns a clear goal, which upon its attainment ends one’s justification for military action. Lastly, insisting that success be interpreted to mean successful achievement of one’s Just Cause prohibits states that lack a Just Cause from satisfying this criterion.

An interesting recent addition to Just War Theory has been the idea that the conditions of *jus ad bellum* ought to be reapplied throughout a conflict, and that it is unjust to continue waging a war if it is found that it no longer satisfies any of the criteria. As Rocheleau noted, just war theorists have begun to distance themselves from the traditional “holistic non-temporalized view of the ethics of war, such that the initial injustice of the war subsumes all of its later phases.” This shift makes sense, as a decision to continue hostilities is often no less ethically significant than a decision to resort to war in the first place. As the Reasonable Probability of Success criterion is essentially a prediction of the future consequences of war, it is particularly susceptible to repeated forward-looking re-evaluation. As circumstances evolve and the vagaries of war come to light, it may become apparent that the probability of realising one’s Just Cause is no longer reasonable. If this occurs, it is no longer ethically permissible to wage war, regardless of past predictions. Interestingly, O’Brien observed that such a thought-process was widespread during the Vietnam War. He noted that many “who changed from proponents to opponents of the war did so not because they would not have preferred to achieve the administration’s goal, but

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133 Alternative interpretations are often too vague, leaving no palpable means of determining when they have been achieved. For instance, Kamm’s claim that ‘success’ should be interpreted to mean ‘successful resistance.’ See F.M. Kamm, “Self-Defence, Resistance, and Suicide: The Taliban Women,” in Frowe and Lang, *How We Fight*, 77.

because they thought that the probability of success was insufficient to warrant the continued costs of the war.”\(^{135}\)

However, this should not be interpreted to license resort to war when one does not satisfy the Reasonable Probability of Success criterion with the hope that unforeseeable developments could entail that subsequent re-evaluations of this criterion will render it satisfied. Commencing hostilities when this criterion is not satisfied with the hope that it will later be satisfied is an act of bad faith. Further, Brown incorrectly asserted that a lack “of success, if required to legitimize the use of force, is curable, if the force is actually successful in the end… whether its proponents were reasonably certain of success when they made the decision to undertake it no longer matters… This criterion is rendered moot.”\(^{136}\) This claim demonstrates confusion between the subjectivist and objectivist views of self-defence outlined previously. Whilst a later evaluation of one’s probability of successfully achieving one’s Just Cause may alter and become reasonable, this only reveals that waging war was objectively ethically permissible the whole time. However, from the pertinent subjectivist position, the agent who decided to resort to war still acted wrongly given the evidence that was available to them at the time and the outcome of their initial evaluation.

**Conclusion**


This chapter offered some guidance on how the Reasonable Probability of Success criterion should be interpreted and applied. It initially explained that the term ‘reasonable’ implies a subjectivist understanding of this criterion, but noted that not all ignorance constitutes ‘invincible ignorance’ for decision-makers. It then suggested that the term reasonable is also functioning as a reminder of the epistemic difficulties inherent in the task of predicting the consequences of war, and further that what constitutes a ‘reasonable’ probability of success when applying this criterion fluctuates depending on the expected costs of one’s decision. This chapter then clarified why the term ‘probability’ is preferable to the other locutions prevalent in Just War Theory literature. It outlined the principle of uncertain expectations, and posited a number of important factors that impact determinations of probability. This chapter concluded by presenting reasons why ‘success’ ought to be interpreted to mean ‘successful achievement of one’s Just Cause,’ and highlighted several implications of this interpretation.
Chapter Three: Denying the claim that the requirement of a Reasonable Probability of Success can be subsumed by the Proportionality criterion

Chapter overview

The purpose of this chapter is to shed some light on the interrelationship between the *jus ad bellum* Proportionality and Reasonable Probability of Success criteria. Neither principle can be exhaustively examined without at least a rudimentary appraisal of the other. Recent assertions that the requirement of a Reasonable Probability of Success is substantively redundant because it does not offer a contribution independent of the Proportionality criterion provides further impetus for this inquiry. This chapter will begin by analysing the function and application of the Proportionality criterion. This will take the form of an overview of the various elements typically proposed to warrant consideration when assessing whether a given war satisfies this requirement. This examination will endeavour to demonstrate that determining whether or not the Proportionality criterion is satisfied is incredibly difficult.

This chapter will then highlight why some just war theorists believe that the Reasonable Probability of Success criterion is substantively redundant. It will unpack the idea that this requirement can be subsumed by the Proportionality criterion. This chapter will then respond by asserting that the Proportionality criterion should not include an estimation of the probability that the harms that constitute one’s Just Cause can be mitigated or averted. It will present and reject Frowe’s arguments for reaching the same conclusion, before maintaining that there are stronger pragmatic reasons for stipulating that the Reasonable Probability of Success criterion remains an independent constraint in *jus ad bellum*.
The Proportionality criterion

The Proportionality criterion, like the requirement of a Reasonable Probability of Success, was not listed among the *jus ad bellum* criteria espoused by Augustine or Aquinas in their influential works on the ethics of war. It was not until the sixteenth-century that this principle was first explicitly posited by Vitoria.\(^{137}\) Since its inception this condition has held a preeminent position in accounts of *jus ad bellum*, and it is widely considered critical for determining whether or not it is ethically permissible to wage war. However, despite this consensus, Mellow aptly observed that “there continues to be a significant lack of clarity, precision, and agreement about how the proportionality condition should be defined and applied in practice.”\(^{138}\) Given the purpose of this chapter, it will be sufficient to simply survey the various elements that are often suggested as constituting part of the Proportionality criterion calculus. This chapter will not attempt to arbitrate disputes between the developed interpretations of this complex principle that do not bear weight on the requirement of a Reasonable Probability of Success. This overview is important to demonstrate the complexity of determining whether or not the Proportionality criterion is satisfied for any given conflict.

The Proportionality criterion is included in *jus ad bellum* to restrict the number of wars deemed ethically permissible. It is a constraint on when it is permissible for a state to pursue

\(^{137}\) Vitoria also asserted that *jus in bello* requires a separate Proportionality requirement, however this separate principle is not of concern to this chapter. Francisco de Vitoria, *De Indus Et De Ivre Reflectiones* (Reflections on Indians and on the Laws of War), trans. John Pawley Bate (Washington D.C.: The Carnegie Institution, 1917 [1557]), section 60, 187.

\(^{138}\) David Mellow, “Counterfactuals and the Proportionality Criterion,” *Ethics and International Affairs* vol. 20 (2006), 440. Interestingly, Bell has noted that the legal notion suffers from similar issues: “Proportionality means different things in different contexts within the law of war, and the scope and application is far from clear in many cases.” Abraham Bell, as quoted in Daniel Statman, “Can Wars Be Fought Justly? The Necessity Condition Put to the Test,” *Journal of Moral Philosophy* vol. 8 (2011), 3.
its Just Cause. As the title suggests, it is a relational principle, in that nothing can be described as ‘proportionate’ by itself. The Proportionality criterion is motivated by the previously explored idea that war necessarily causes harm, and that harm is intrinsically bad. Put simply, it stipulates that the morally weighted ‘created evil’ that arises from a decision to wage war must not be greater than the morally weighted ‘resisted evil’ that the war is attempting to avert. This effectively takes the form of a comparison between what is expected to occur if a candidate course of action is taken, and what is expected to occur if this action is not taken. The created evil of a war refers mainly to the wrongs against individuals (violations of individual’s rights) that arise from a state’s decision to wage war. However, it can also include extreme damage to the environment or to heritage structures. The resisted evil of a war refers to the wrongs against the victim state that the war is attempting to avert. Such a principle is familiar to moral theorising in general, which often considers the notion of proportionality in situations when one value cannot be promoted without impairing some other competing value. It is also familiar to rational choice theory. Waging a war that violates the Proportionality criterion is akin to a physician deciding to administer a form of treatment that heals a disease at the cost of causing a more serious one.

The Proportionality criterion is a forward-looking principle, in that any costs collected in the past are not relevant to calculations (except insofar as they are helpful for predicting future costs). This must be emphasised because this criterion is often misinterpreted to

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139 For each of the cases considered in this chapter it will be assumed that the state has satisfied the Just Cause criterion. Although it may somehow be theoretically possible for a state to satisfy the Proportionality criterion and not satisfy the Just Cause criterion, such a situation is not of concern to this chapter.

140 More contentiously, they may also include negative changes to cultural mores within a community (such as creating a more aggressive set of social attitudes after a conflict).

141 This chapter is thus advocating the Prospective View for the Proportionality criterion. Alternatively, some just war theorists have argued in favour of the Quota View, whereby the amount of permissible harm
constitute a comparison between a harm already suffered by the state and the harm that it can dispense in retaliation.\textsuperscript{142} When considering this criterion the Parmenides Fallacy of comparing a possible outcome of action with a past state of affairs that is now ‘off the table’ must also be avoided. As with the previously outlined Reasonable Probability of Success criterion, a subjectivist understanding of the Proportionality criterion is appropriate. The Proportionality criterion must also be continually reapplied throughout a conflict to ensure that it is still satisfied. In fact, Rocheleau observed that “it is probably proportionality judgements which most typically and paradigmatically give reason to rethink the morality of war over time.”\textsuperscript{143}

Recently, most just war theorists have begun distinguishing between narrow Proportionality and wide Proportionality in the context of war. Narrow Proportionality relates to the harms inflicted on individuals who are liable to be harmed. There are various accounts of what renders an individual liable to harm. Some believe that an aggressor forfeits their right not to be harmed in virtue of their unjust behaviour, and others believe that a victim may gain a right to inflict harm when various conditions are satisfied. Another that can be inflicted for the sake of one’s Just Cause is stipulated prior to a conflict and remains static. Accordingly for the Quota View, when the Proportionality criterion is reassessed during a conflict, past harms must be granted weight. A core problem for the Quota View is that it carries the counter-intuitive implication that if one’s quota of permissible harms to achieve one’s Just Cause has been reached, and one has the option to either surrender so that the harms already inflicted were in vain or achieve one’s Just Cause by inflicting incredibly minor harm, one ought to surrender. For a detailed defence of the Prospective View (including an interesting discussion of the Redemption Thesis) see Jeff McMahan, “Proportionality and Time,” \textit{Ethics} vol. 125 (2015).

\textsuperscript{142} Such a sentiment is evident in (the then United States Secretary of Defence) Perry’s insistence that the United States would deliver a “disproportionate” response to Iraq’s unsuccessful strikes on United States’ aircrafts. This remarkable statement also demonstrates the varied use of the term ‘proportionality’ by military personnel. William Perry, as cited by an anonymous source in “Saner Voices, \textit{The Economist} (1996), 45.

\textsuperscript{143} Jordy Rocheleau, “From Aggression to Just Occupation? The Temporal Application of \textit{Jus Ad Bellum} Principles and the Case of Iraq,” \textit{Journal of Military Ethics} vol. 9, no. 2 (2010), 129. Rocheleau also felt the need to stress that it is only future estimates that carry weight, adding “[r]uling out continued intervention due to past effects makes as little sense as arguing, as is sometimes done, that a war ought to be continued simply because it has \textit{already} cost so much,” ibid., 130.
somewhat related contested issue is whether an adversary’s unjust actions ought to count against a war satisfying the Proportionality criterion. There are extreme views that hold that one has no responsibility for an adversary’s unjust actions (so they do not count towards the created evils of a war), or alternatively, that all of the resulting evils from a war ought to be weighted equally regardless of agency. More prominent are intermediate views that diminish the weight attached to the created evils caused by an adversary when calculating the Proportionality criteria. The overall idea behind narrow Proportionality is that liability diminishes the moral weight accorded to some harms, so it is conceivable that one may be permitted to inflict more overall harm in self-defence than is being averted.

On the other hand, wide Proportionality refers to the harms suffered by individuals who are not liable to be harmed. These harms require a different form of justification, and the standard to satisfy wide Proportionality is significantly more demanding than narrow Proportionality. For a war to satisfy wide Proportionality one’s state is never permitted to inflict as much harm as is being averted. In other words, wide Proportionality requires a ‘lesser-evil’ justification. McMahan explained: “the claim is that it can be justifiable to harm a person who is not liable to be harmed when that is necessary to avoid a substantially greater harm to another, or to others, who are also not liable to be harmed.”

Assessing wide Proportionality is complicated by the suggestion that the weight attached to harms suffered by voluntary combatants ought to be diminished or excluded entirely from calculations. McMahan has contended that the deaths of combatants who “fight of their own volition rather than on orders from their leaders… [and perform] acts of self-sacrifice that are wholly voluntary cannot in general be disproportionate.”

An additional debate related to this aspect of the Proportionality criterion concerns whether or not harms to non-combatants that an adversary deliberately places in harms-way ought to be discounted. Referring to the problem generated by ‘human shields,’ Walzer has argued that “even ‘disproportionate’ counterattacks are justified,” because when confronted with these circumstances, if one “exercises the necessary care, responsibility for civilian deaths falls solely on” one’s adversary.146 Whilst most just war theorists do not share Walzer’s view, a satisfactory solution to the difficulties posed by human shields still remains elusive within Just War Theory scholarship. Distinguishing between narrow and wide Proportionality, and then determining whether or not to allow for these sorts of contentious concessions adds to the complexity of assessing the Proportionality criterion.

There is also a lack of consensus in contemporary Just War Theory regarding what types of goods count towards a war satisfying the Proportionality criterion. The traditional view is that only goods connected to the specific resisted evil that renders a state liable to suffer harm ought to be considered. In other words, only those goods that are relevant to the achievement of one’s Just Cause carry weight. In this sense, the Proportionality criterion can be considered a secondary principle, in that it relies on the existence of a Just Cause for it to be satisfied. As noted previously, in contemporary Just War Theory Just Cause is typically narrowly interpreted to mean self-defence or defence of others. According to advocates of this position, the only goods that can count towards a war satisfying the Proportionality condition are aims such as averting a perceived imminent threat, or

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preventing genocide from occurring.\textsuperscript{147} Frowe has labelled proponents of this position ‘specific liability theorists.’\textsuperscript{148}

In contrast, so-called ‘global liability theorists’ argue that goods that do not constitute a Just Cause for war can count towards a war satisfying the Proportionality criterion, but only if a Just Cause exists. These associated benefits of war may be insufficient to justify resorting to war when considered in isolation, but it is argued that they can be assigned weight in calculations of the Proportionality calculation once an adversary state is liable to suffer military force. It must be noted that advocates of this position typically still limit the goods that can contribute weight to the Proportionality criterion calculus. For example, most do not maintain that purely economic benefits or benefits to scientific weaponry research can be considered when determining whether or not the Proportionality criterion is satisfied. Contributing causes must be aims that in some circumstances can justify killing, such as disarmament or incapacitating an adversary to prevent future aggression. Again, this debate internal to the Proportionality criterion regarding what type of goods ought to be accorded weight remains contested in contemporary Just War Theory scholarship.

Determining whether the Proportionality criterion is satisfied is further complicated by the nature of the competing values at stake when considering whether or not to resort to war. There is some level of incommensurability when trying to weigh human lives, property, and autonomy against values such as state sovereignty or political

\textsuperscript{147} On the topic of humanitarian intervention, there is also ongoing debate within Just War Theory literature regarding whether or not harms that will be suffered by non-combatants from one’s own state can be assigned greater weight than harms to an adversary state’s non-combatants, for calculations for the Proportionality criterion.

\textsuperscript{148} Frowe, \textit{The Ethics of War and Peace}, 67.
independence. Biggar has declared that “all talk of proportionality in terms of making an arithmetical ‘calculation’ or quantitative ‘weighing’ and reaching a precise certain conclusion is nothing but a modernistic technocrat’s fantasy… [for] the many goods and evils involved… There is no common currency in terms of which they can be measured and weighed against each other to produce a reliable answer.” Whilst there is certainly an element of truth in Biggar’s criticism, Hurka also aptly observed that just because calculations for the Proportionality criterion “involve some indeterminacy does not mean they can never be made… The common argument that what cannot be measured precisely cannot be measured at all is as fallacious here as elsewhere.” Whilst there is some level of incommensurability between the values being compared, it seems there will be clear cases of wars that satisfy or that violate the Proportionality criterion. This is sufficient to render the Proportionality criterion a useful element of jus ad bellum.

Why the Reasonable Probability of Success criterion can purportedly be subsumed by the Proportionality criterion

Another element often considered part of an assessment of whether a war satisfies the Proportionality requirement is an estimate of the probability that the resisted evils that justify waging war can actually be averted. Such an estimation is clearly relevant to determining whether it is ethically permissible to wage war. As Grotius declared, “in all

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149 Interestingly, Rodin has noted that “mainstream philosophical, legal, and strategic practice has made it clear that the preservation of a state’s sovereign independence from wrongful attack is attributed virtually infinite value in proportionality assessment.” David Rodin, “The Myth of National Self-Defence,” in Cecile Fabre and Seth Lazar, The Morality of Defensive War, (Oxford: Oxford University Press, 2014), 71.
150 Biggar, In Defence of War, 146.
our Consultations, we should compare, not only the Ends with one another, but the Capacity of the Means for bringing about those Ends.” Many just war theorists believe that such an estimate should be internal to one’s assessment of the Proportionality criterion. This interpretation is natural, as intuitively it seems that a war that is not expected to avert the threat that justifies using force will also be all-things-considered ethically disproportionate. It is argued that comparisons of the created evils and resisted evils of any given war ought to be modified to take this probability estimate into account. It is interpretations of the Proportionality criterion that include this feature that motivate the claim that the requirement of a Reasonable Probability of Success is rendered substantively redundant.

The reasoning behind this claim is that such an interpretation of the Proportionality requirement incorporates the utility of the Reasonable Probability of Success criterion. The purpose of the *jus ad bellum* criteria is to act as constraints. If the Proportionality criterion contains an internal estimate of the probability that the proposed war will avert the evil that justifies waging it, then it can be argued that any war that violates the requirement of a Reasonable Probability of Success would also violate the Proportionality requirement. Note, this is not the claim that every war that violates the Proportionality criterion would necessarily violate the requirement of a Reasonable Probability of Success (for a war may successfully achieve its Just Cause at a disproportionate cost in terms of created evil). Rather, the claim is that given this interpretation of the Proportionality criterion, there cannot be a situation whereby this principle is satisfied and the Reasonable Probability of Success condition is not satisfied. As such, the requirement of a Reasonable Probability of

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Success will never be the sole constraint that prohibits an otherwise ethically permissible resort to war. Assuming the check-list understanding of *jus ad bellum* that was advocated in a previous chapter, any decision to wage war deemed unjust for violating the Reasonable Probability of Success principle would be determined to be unjust regardless for violating the Proportionality principle. The requirement of a Reasonable Probability of Success would merely act as a ‘rubber stamp,’ offering no independent contribution to determining whether or not it is ethically permissible to wage war. The fact that a state violates the requirement of a Reasonable Probability of Success would be rendered merely an *explanation* for why a war violates the Proportionality requirement.

Such an interpretation of the Proportionality criterion, and judgement concerning the requirement of a Reasonable Probability of Success, has been advanced by several notable just war theorists. McMahan has simply claimed that “the plausible element in the requirement of ‘reasonable hope of success’ is subsumed by the proportionality requirement.”¹⁵³ Similarly, Steinhoff concluded that the “criteria of last resort and prospect of success are hence not independent, necessary conditions; they are merely, but nevertheless significantly, two points among others that have to be considered in the evaluation of proportionality.”¹⁵⁴ Coates has maintained that “determining the prospect of success is simply one aspect of the general assessment of a war’s worth or proportionality rather than a limiting criterion that rules out recourse to war… [it is] less a principle in its own right than a corollary of proportionality”¹⁵⁵ Hurka also declared that any “fact, which

¹⁵³ McMahan, “Just Cause for War,” 5.
makes [a war] violate the reasonable hope of success condition, surely also makes it disproportionate, since its destructiveness now serves no purpose whatever. The same is true if the war has only some small probability of achieving relevant goods, since then its expected harm is excessive compared to its expected good. If it takes account of probability in this way… the *ad bellum* proportionality condition incorporates hope-of-success considerations.”¹⁵⁶ Lastly, following these just war theorists, Brown has recently contended that the “reasonable prospect of success calculus is no more than the calculus of proportionality of cause with zero value, which makes it redundant.”¹⁵⁷

However, a strong case can be mounted against annexing the requirement of a Reasonable Probability of Success into the Proportionality requirement. This position rests on the claim that an appraisal of whether or not the Proportionality criterion is satisfied should not include an estimate of the probability that the resisted evil that justifies waging war will be averted.¹⁵⁸ Rather, it can be argued that judgements of whether the Proportionality criterion is satisfied should only consider the created evil and resisted evil of that war *if successful*. This interpretation would limit the Proportionality criterion to strictly an evaluation of means and ends. It would also entail that the requirement of a Reasonable Probability of Success does have independent moral weight. To clarify with a


¹⁵⁸ It must be noted that it is only being argued that this one estimate of probability should be removed from calculations of the Proportionality criterion. McMahan aptly pointed out that there could be six probabilities that are relevant to this criterion: “(1) that a threatened harm will occur in the absence of defence, (2) that a threatened harm will be of a certain magnitude, (3) *that a defensive act will succeed*, (4) that a defensive harm will be of a certain magnitude, (5) that a defensive action will harm innocent bystanders, and (6) that harm to bystanders will be of a certain magnitude.” Jeff McMahan, “Helen Frowe, *Defensive Killing.*” *Ethics* vol. 126, no. 3 (2016), 826.
domestic example, if breaking an assailant’s nose to avert having one’s nose being broken would satisfy the Proportionality criterion if it was guaranteed to succeed, it would also satisfy this requirement given any other estimate of the likelihood of success, however infinitesimal.\textsuperscript{159} It may be helpful to note that it is not being claimed that waging war would be ethically permissible regardless of one’s probability of success. This course of action would still have to satisfy each of the other \textit{jus ad bellum} criteria (including the Reasonable Probability of Success condition). Frowe has been the most prominent advocate of this position.

\textbf{Frowe’s reasoning for retaining a distinct Reasonable Probability of Success criterion}

Frowe initially observed that the title of the Proportionality criterion itself seems to imply an assumption of success. As stated previously, the notion of proportionality is relational. It is an appraisal of the means utilised to achieve an end. According to Frowe, if a set of harms (the created evil of war) fails to achieve the relevant good (the resisted evil is averted), it does not make sense to describe these harms as a ‘means.’ The harm is neither proportionate nor disproportionate. Paraphrasing Frowe, if harm is to be a proportionate or disproportionate means, it must first be considered \textit{a means}. Frowe stated that “it is only on the assumption that force is successful that we can compare the good achieved with the harm inflicted- that is, do a proportionality calculation.”\textsuperscript{160} In other words, an assumption of success must preclude judgements of whether the Proportionality criterion is satisfied.

\textsuperscript{159} It may be helpful to note that avoiding having one’s nose being broken by shooting an assailant dead would satisfy the Reasonable Probability of Success criterion, but would violate the Proportionality criterion.

\textsuperscript{160} Frowe, \textit{Defensive Killing}, 152.
Furthering this semantic point, Frowe elaborated that when “we ask whether a war would be *ad bellum* proportionate, we are asking, ‘would war, fought with the means at our disposal, be a proportionate way of securing the just cause?’ That is, we build an *assumption* of success- of securing the just cause- into our calculation. The calculation cannot, therefore, also be sensitive to the *probability* of success.”\(^{161}\)

Following this semantic point, Frowe then offered three related reasons why the Proportionality criterion should not include an estimate of the probability that one’s perceived threat can be averted. They stem from her following cases:

**First Timer:** *Attacker tries to break Alice’s leg. It’s his first time trying to break a leg, so he’s a bit nervous. Alice has an 80 per cent chance of fending him off by breaking his leg first.*

**Old Timer:** *Determined Attacker tries to break Beth’s leg. He’s so fond of breaking legs that even if Beth breaks his leg first, there’s only a 40 per cent chance that this will fend him off.*\(^{162}\)

Frowe noted that according to those who believe that the Proportionality criterion is sensitive to the probability that one’s threat can be averted, Alice’s self-defence may satisfy the Proportionality criterion whilst Beth’s may not (depending on one’s thresholds for a sufficient level of probability). This could be the case despite the fact that both potential victims are confronted with threats of the same magnitude, and both can inflict the same amount of harm in self-defence. Frowe declared that this judgement concerning her cases illustrated three related problems for the subsuming account of the Proportionality criterion. She thought it important to emphasise that in her second case “Beth’s defence is

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\(^{161}\) Ibid., 152.

\(^{162}\) Ibid., 148.
not futile, she is not inflicting harm that is certain to be pointless. It is merely less likely to succeed.”

Frowe’s first problem with the subsuming account of the Proportionality criterion is that it can entail that an aggressor can ensure that their victim’s act of self-defence will violate the Proportionality criterion simply by strengthening their resolve to harm the victim. Frowe asserted: “It seems to me implausible that Beth’s defence can be disproportionate but Alice’s proportionate… simply by an act of [Attacker’s] will.” This seemingly amounts to the straightforward claim that some verdicts of the subsuming view are counter-intuitive. Frowe must intuitively believe that there should be a very limited number of factors that should be conferred weight in calculations of the Proportionality criterion. However, advocates of the subsuming view could simply respond that there is no problem with this implication of their account. It seems that they could comfortably bite this bullet and endorse the fact that an aggressor’s resolve can impact a victim’s satisfaction of the Proportionality criterion. Beth may be barred from resorting to force in self-defence if her assailant’s commitment to harming her is too strong for the simple reason that it is likely she will be inflicting gratuitous harm. The aggressors’ resolve has made it probable that Beth’s infliction of a broken leg will not bring about any redeeming results. Thereby, it could be responded that she lacks justification for inflicting this harm.

163 Ibid., 149.
164 Ibid.
165 Husak considered this question, pondering: “Do wrongdoers… acquire moral immunity from defensive harm when they are able to become more impervious to it- by killing under circumstances in which resistance is certain to be futile rather than those in which resistance might be effective in deterring future aggression?” He then tentatively accepted that the “most determined the wrongdoer, the less the innocent victim is permitted to do to him.” Douglas Husak, “The Vindication of Good Over Evil: ‘Futile’ Self-Defense).
166 Gratuitous at least in the relevant sense; it will not mitigate or avert the present threat she faces.
Frowe’s second problem with the subsuming view of the Proportionality criterion relates to her observation that in “many cases, as one increases the force to be used, one will thereby increase the chance of success.” \(^{167}\) Given this feature of self-defence, (according to the subsuming view) if Beth has an alternative method of fending off her attacker that will cause him much more harm, but which has a much higher chance of fending off his threat, Beth’s more harmful alternative may satisfy the Proportionality criterion whilst the less harmful method may not (again, depending on one’s thresholds for probability and for permissible harm). Frowe contended that it was a “worrying implication… [that] by using more force, I can sometimes achieve proportionate means to an end even if less harmful means aimed at achieving that same end were thought to be disproportionate.” \(^{168}\) Again, however, it is not immediately obvious why this implication is troubling for advocates of the subsuming view of the Proportionality criterion. There does not seem to be anything counter-intuitive about the claim that Beth could satisfy the Proportionality criterion if she increases her probability of fending off the threat she faces by inflicting more harm on her aggressor. Providing the additional harm she will inflict remains below the relevant permissible threshold, her action may now satisfy the Proportionality criterion because it is less likely she will be inflicting gratuitous harm.

Frowe’s third problem with the subsuming view is that it could entail that Beth has violated the Proportionality criterion and thus acted wrongly even if the harm that she inflicts in self-defence improbably succeeds in fending off the threat she faces.\(^{169}\) She

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\(^{167}\) Ibid., 150.
\(^{168}\) Ibid.
\(^{169}\) One distinction relevant to this complaint is between a subjectivist and an objectivist understanding of self-defence. Recall from a previous chapter that objectivists believe that the morality of any given instance of self-defence can be determined by reflecting on the objective facts relevant to the case (completely independent of an agent’s knowledge of, or beliefs about, these facts). In contrast, subjectivists believe that the morality of any given instance of self-defence can be ascertained by reflecting on what an agent can
stated: another “problem with the subsuming account is that it suggests that Beth wrongs her attacker even if she inflicts only necessary and successful harm equivalent to the harm that the attacker would otherwise inflict on her.” In response, firstly it is not clear how stipulating a separate Reasonable Probability of Success criterion (or Necessity criterion in cases of individual self-defence) will solve this purported problem. As long as the probability of fending off one’s threat is taken into account by an individually necessary criterion, Beth would still have acted wrongly if she resorts to force in her case. Further, there does not seem to be anything wrong with the verdict that Beth’s decision to inflict harm on her attacker was morally wrong regardless of the eventual improbable success of this action. Given the evidence available to Beth at the time of action, it was likely that opting to break her assailant’s leg would cause gratuitous harm. Frowe’s strong intuitions towards this case may be skewed by the nature of the assailant that she depicts. McMahan has aptly pointed out that intuitions shift in favour of the notion that Beth has acted wrongly if one considers a minimally responsible threatener, rather than the culpable threateners depicted in Frowe’s two cases. Although this chapter ultimately endorses Frowe’s conclusion concerning the Reasonable Probability of Success criterion, it does not seem that her three arguments are damning for the subsuming view of the Proportionality criterion.

reasonably be expected to believe at the time of acting. For objectivists, Frowe’s problem seemingly does not arise. If the harm that Beth inflicted turns out to be successful in averting the threat she faced, then her action actually always objectively satisfied the Proportionality criterion (despite the fact that she believed it only had a 40 per cent chance of averting the threat). However, it seems subjectivists must accept Frowe’s charge.

170 Ibid., 156.
The pragmatic reasoning for maintaining a distinct Reasonable Probability of Success criterion

A stronger reason for employing an interpretation of the Proportionality criterion that does not include an estimate of the probability that one’s Just Cause will be achieved is pragmatic. As the above exploration of the Proportionality criterion endeavoured to illustrate, its application is incredibly complex. Gross observed that this criterion “is generally ill-defined, misunderstood, wrongly applied, and without any feasible operational use.” Political and military leaders routinely misapply the term, further highlighting this difficulty. Judging the worth of one’s cause and the probability that one will prevail is also notoriously biased. Removing estimates regarding whether one’s threat can be averted from calculations of the Proportionality criterion has the tangible advantage of simplifying this complex issue. This benefit was observed by Coady, who explained: “proportionality is such a broad notion that it may well be interpreted to cover other conditions such as reasonable probability of success. Nonetheless, listing the conditions in the usual fashion has the advantage of allowing us to focus on specific tests that deliberation about going to war should address.”

Theoretically this separation will not alter the overall headline judgement regarding the ethical permissibility of waging any war (it should not impact whether a war is judged just or unjust). A decision to wage war must still satisfy the independent requirement of a Reasonable Probability of Success. This point is critical and must be emphasised. However, separating judgements concerning the probability that one’s threat will be averted from the

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Proportionality criterion will have the practical significance of assisting statesmen and military leaders to form clearer judgements. Adopting a limited interpretation of the inputs relevant to the Proportionality criterion will facilitate expeditious decision-making in time-sensitive situations. This is crucial, as arguably the chief purpose of Just War Theory is to be action-guiding. An interpretation of Just War Theory that clearly demarcates the inputs for appraisals of the Proportionality criterion and the Reasonable Probability of Success criterion provides a clearer conceptual framework for guiding statesmen and military officers. The practical orientation of this field was summed up by Patterson, who maintained: “twenty first century just war thinking must be both ethical and practical in order to be a useful guide for policy when confronted with the decision of whether or not to employ military force.”

A second practical benefit of having an independent Reasonable Probability of Success criterion is that this provides an easier measure by which decision-makers can be held to account. As noted in a previous chapter, in the aftermath of a failed war effort a leader can be required to provide clear and convincing evidence of why they believed that the specific perceived threat that justified resorting to war could have been mitigated or averted. A distinct Reasonable Probability of Success criterion can prevent them from responding that resorting to war was simply all-things-considered proportionate. This additional benefit is highlighted by the fact that most contemporary politicians use the grammar of Just War Theory when discussing resorting to war. Separating the criteria may also force decision-

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174 Patterson, “Just War Thinking: Morality and Pragmatism in the Struggle Against Contemporary Threats,” 39. The practical orientation of Just War Theory was also emphasised by Butler, writing: “Given the central focus of the just war tradition on these material and empirical considerations, it would seem as if the conversation at the heart of the tradition as well as the theoretical construct of the ‘just war’ that it seeks to define is, are, and always have been, endeavours in applied rather than theoretical morality.” Michael Butler, Selling a Just War: Framing Legitimacy, and the U.S. Military Intervention (New York: Palgrave Macmillan, 2012), 72.
makers to acknowledge the possibility of failure prior to making a decision. In addition, a criterion solely focused on the probability that one’s Just Cause will be achieved would help guide public debate both within a state considering initiating hostilities, and also for the broader international community. This is one reason that Uniacke also concluded that: “The use of proportionate force in self-defence involves a comparison between the harm inflicted on the attacker in relation to the threat fended off/interest protected… The likelihood of successfully fending off a threat is a distinguishable, further consideration; it is not internal to or implied by the condition of proportionate force.”\(^{175}\)

An interpretation of the Proportionality criterion that does not include an estimate of the probability that a threat will be averted also provides an ideal reference point by which to measure ‘reasonableness’ for the Reasonable Probability of Success criterion. The standard for what constitutes a reasonable probability is not static. Whether a decision to wage war is reasonable must take into consideration the sets of costs at stake, and when the consequences of not acting are more severe, that standard should be much lower. For as previously asserted, if a state does not have a high probability of success, and the decision to refrain from war will only cost an unmanned vessel off the coast, it would not be ethically reasonable to commence hostilities. In contrast, if a state again does not have a high probability of success, and the decision to refrain from war will result in the genocide of an entire population, it would be much more ethically reasonable to commence hostilities. A Proportionality criterion that only evaluates the means and ends of a war if successful provides the perfect index for the variable threshold of reasonableness to measure against the probability that one’s state will succeed.

\(^{175}\) Uniacke, “Self-Defence, Just War, and a Reasonable Prospect of Success,” 64.
Chapter summary

Whether the requirement of a Reasonable Probability of Success provides a distinct contribution to determining if it is ethically permissible to wage war depends on one’s interpretation of the Proportionality criterion. Interpreting the Proportionality criterion in such a way that it does not consider estimates of probability that one’s Just Cause will be achieved will not theoretically alter judgements of whether a war is just or unjust (assuming the requirement of a Reasonable Probability of Success is maintained). It will, however, have the practical implication of reducing obscurity in relation to evaluating the complex Proportionality criterion and improving conceptual clarity for decision-makers. This advantage may seem rather modest, and this may seem to be merely an inconsequential disagreement relating to the taxonomy of moral principles. However, given what is at stake when determining whether to wage war, and given that arguably the chief purpose of Just War Theory is to be action-guiding, a methodology that simplifies assessments of the Proportionality criterion is invaluable. An interpretation of the Proportionality criterion that assumes success also seems to be implied by the very notion of proportionality itself. It may be for these reasons that centuries of just war theorists, since Grotius first posited the requirement of a Reasonable Probability of Success, have felt the need to include this principle as an independent *jus ad bellum* criterion when articulating their accounts of Just War Theory.
Chapter Four: Denying the claim that the requirement of a Reasonable Probability of Success violates a feasibility constraint

Chapter overview

This chapter will address the charges levelled against the Reasonable Probability of Success criterion that relate to feasibility. Whilst not explicitly referencing the notion of feasibility, just war theorists such as Suarez, Hudson, Lee, Evans and Henschke, Coleman, Steinhoff, and McLaughlin have indicated that requiring a Reasonable Probability of Success is too demanding in certain circumstances. This chapter will initially present the concerns raised by these just war theorists. It will then survey two interpretations of what they are claiming. The first is that there is a hard feasibility constraint that will prevent statesmen from acting in accord with this criterion when so doing will entail allowing many citizens to be killed. This chapter will argue that such a hard feasibility constraint does not exist, and will note a negative implication of this interpretation. This chapter will then examine a second interpretation of the just war theorists’ remarks; that the Reasonable Probability of Success criterion violates a soft feasibility constraint. This chapter will respond by arguing that an ethical theory should not be dictated to by soft feasibility constraints.

The feasibility constraint that is purportedly violated

It is theoretically possible that the Reasonable Probability of Success criterion could be the sole constraint preventing a state from resisting lethal aggression. In other words, the
criterion could require a state to allow its citizens to be killed. This feature of this criterion constitutes a practical problem because in the past there have been numerous instances of an invading army choosing to kill rather than accept surrender from their victims. Merom explained that from “an expedient point of view… the movement on the strategic scale from selective eradication to indiscriminate annihilation is tempting… [because i]ndiscriminate annihilation requires relatively little investment and military skill and produces long-lasting results.”\(^{176}\) When confronted with such a situation, if a victim state’s probability of mitigating or averting the threat that it faces is too low, the Reasonable Probability of Success criterion could require it to refrain from resorting to force in self-defence. Several just war theorists have raised concerns with this aspect of the Reasonable Probability of Success criterion.

Prior to surveying these concerns it must be emphasised that it is incredibly unlikely that the Reasonable Probability of Success criterion will require a state to forego military resistance in a situation whereby many of the citizens of that state will be killed. This is unlikely because determining whether or not it is ‘reasonable’ to forcefully resist takes into consideration the sets of costs that a state is expected to suffer. As explained in a previous section, the standard for what counts as a ‘reasonable’ probability is not static, and in situations whereby the consequences of not resisting are more severe, what constitutes a ‘reasonable’ probability of mitigating or averting a threat is proportionately lower. As such, even an extremely low probability would be sufficient to satisfy the requirement of a Reasonable Probability of Success in situations whereby non-resistance would lead to many citizens being killed. This is especially the case when appeasement will result in the

genocide of an entire population. It is important to keep this facet of the Reasonable Probability of Success criterion in mind when considering the criticism under discussion.

However, as noted above, it is theoretically possible that the Reasonable Probability of Success criterion could require a state to forego violent resistance and allow many of its citizens to be killed. It has been claimed that this criterion ought to be amended to permit resorting to force in these cases of ‘necessary’ self-defence. Suarez hinted at this idea, famously writing “if the expectation of victory is less apt to be realised than the chance of defeat… then in almost every case that war should be avoided… [but if] that war is defensive, it should be attempted; for in that case it is a matter of necessity.”177 Elaborating on this notion, Hudson has argued in favour of a caveat to the Reasonable Probability of Success criterion. She believed that when “facing genocidal aggression, a state (or rebel movement) does not need to meet the criterion of likelihood of success to justify resisting.”178 Lee also believed such a qualification was important, declaring: “A state or group is morally entitled to fight for the very survival of its citizens, even if failure is very likely.”179

Several other just war theorists have also commented on the demandingness of this aspect of the Reasonable Probability of Success criterion. Evans and Henschke contended that “it would be too much to expect of, say, a small state to allow themselves to be slaughtered by a large state just because the probability of their success is very small.”180

179 Lee, Ethics and War: An Introduction, 97.
Steinhoff agreed with this sentiment, arguing: “The criterion of probability of success says that a war is only just if it has a sufficiently high prospect of success... But with respect to self-defensive wars against genocides, this is obviously wrong.”\(^\text{181}\) Coleman discussed this issue in more detail. He postulated: “Suppose a large state was intent not simply on conquering a small neighbouring state, but on genocide. The large state has a huge well-equipped army, while the small state barely has an army at all... At its simplest, the principle of success seems to suggest that the people of the small state ought to simply allow themselves to be slaughtered, which does seem far too much to demand of anyone.”\(^\text{182}\) Lastly, McLaughlin emphatically concluded his article on the Reasonable Probability of Success criterion by declaring that “reasonable hope of success- often meaningless in limited scenarios- is absolutely meaningless in extreme situations... [because the] imperative of survival requires potentially hopeless wars to be fought regardless of reasonable hope of success, rendering the consideration both conceptually and substantively meaningless.”\(^\text{183}\)

Although the just war theorists cited do not adequately elaborate on the substantive content of their remarks, it seems they are each separately espousing that the Reasonable Probability of Success criterion violates a feasibility constraint. Feasibility constraints have been the subject of much discussion in political theory recently. These constraints on normative theorising are related to moral motivation, and the oft-uttered idea that ‘ought implies can.’ A view that has gained traction in recent years is that a “normative political

\(^{183}\) McLaughlin, “Reasonable Hope of Success as an Element in *Jus ad Bellum* Theory: Misplaced and Meaningless,” 86.
theory is defective and thus false if it imposes standards or requirements that ignore human nature— that is, requirements that will not, owing to human nature and the motivation incapacities it entails, ever be satisfied.”\textsuperscript{184} There are two types of feasibility constraints, and thus two possible interpretations of what the aforementioned just war theorists could be claiming. They could either be arguing that there is a \textit{hard feasibility constraint} or a \textit{soft feasibility constraint} that will prevent an agent from acting in accord with the Reasonable Probability of Success criterion in extreme circumstances.

If there is a hard feasibility constraint against a certain action it is simply a brute fact that an agent cannot perform that action. Lawford-Smith explained that “[h]ard constraints include facts about what is logically, conceptually, metaphysically and nomologically impossible.”\textsuperscript{185} Most ethical theorists believe that hard constraints are requirement-blocking.\textsuperscript{186} An example of a hypothetical ethical requirement that would violate a hard feasibility constraint would be that ‘deaf people ought to acknowledge others who call their name, even when they do not see the person calling to them.’ This violates a hard feasibility constraint because it would be physically impossible for deaf individuals to satisfy such a requirement. The just war theorists quoted could be interpreted as arguing that the Reasonable Probability of Success criterion violates a hard feasibility constraint because it would be physically or psychologically impossible for statesmen to allow an invading army to kill their citizens without waging a war of resistance. Suarez’s reference to the notion of ‘necessity’ seemingly supports this interpretation. Violation of a hard feasibility constraint

\textsuperscript{185} Holly Lawford-Smith, “Understanding Political Feasibility.” \textit{Journal of Political Philosophy} vol. 21, no. 3 (2013).
\textsuperscript{186} For an alternative view see Cohen, who argued that facts concerning what is possible are irrelevant to moral principles. Gerald A. Cohen, “Facts and Principles,” \textit{Philosophy and public affairs} vol. 31, no. 3 (2003).
would be a significant problem for the Reasonable Probability of Success criterion. As Hoffmann declared, “a deontological ethic in which the definition of what is right is not derived from a calculation of what is possible condemns itself to irrelevance.”

There is an interesting parallel between the claim that the Reasonable Probability of Success criterion violates a hard feasibility constraint because it could require a state to allow its citizens to be killed, and the claim that an ethical principle that requires an individual to sacrifice their life violates a hard feasibility constraint. The latter idea has a long history in political philosophy. Hobbes, who was described by Coady as a “shrewd observer of human realities,” famously decreed: “A Covenant not to defend my selfe from force, with force, is always voyd. For no man can transferre, or lay down his right to save himselfe from Death… he cannot Covenant thus, Unless I do so, or so, I will not resist you, when you come to kill me. For man by nature chooseth the lesser evill, which is danger of death resisting; rather than the greater, which is certain and present death in not resisting.” Benbaji believed this view was critical to Hobbes’ entire theory of self-defence. He summarised that “its bottom line can be put as follows: if a person’s life is at stake, the notions of right and wrong, justice and injustice have… no place.” The claim that there is a hard feasibility constraint violated by such a principle was also notably echoed by the British Prime Minister in 1932. Baldwin believed that “[i]f a man has a

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189 Hobbes, *Leviathan*, 199. Hobbes also wrote “every man… shuns what is evil, but chiefly the chiefest of natural evils, which is death; and this he doth, by a certain impulsion of nature, no less than that whereby a stone moves downward.” Hobbes, *Leviathan*, 39. Alternatively, Augustine clearly believed that self-sacrifice was possible. He argued at length that it is always ethically impermissible for private individuals to kill to save their own life. See Augustine, *De Civitate Dei*, trans. Henry Bettenson (London: Penguin Books, 1972).
potential weapon and has his back to the wall and is going to be killed, he will use that weapon, whatever it is and whatever undertaking he has given about it.”

However, it would be wrong to suggest that the Reasonable Probability of Success criterion can require an individual to allow themselves to be killed by invading combatants. The requirement of a Reasonable Probability of Success is a constraint on when it is ethically permissible for a state to resort to war. It only restricts a statesman’s choice-set, and does not apply to an individual’s decision to defend their life. Individuals retain the right to protect their vital interests and defend themselves regardless of their state’s capacity or decision to repel an invasion. Whilst it could perhaps be argued that a requirement violates a hard feasibility constraint if it stipulates that an individual ought to let themselves be killed, this argument does not bear weight on a statesman’s decision concerning whether or not their state ought to resort to war. For this reason, it seems clearly false to suggest that the Reasonable Probability of Success criterion violates a hard feasibility constraint. It is always possible for a decision-maker to refrain from declaring war, regardless of the expected outcomes of such a decision.

191 Stanley Baldwin, as cited by Walzer, *Just and Unjust Wars*, 232.
192 Interestingly, there could be some repercussions for individuals who attempt to fend off the individual threat they face from invading combatants if their state does not prosecute a war of self-defence. It seems these individuals would not be subject to the military justice (or military law) that governs combatants fighting on behalf of their state. Crucially, this includes ‘combat immunity,’ which protects individuals from civil liability for negligence or deliberate harm caused to adversary combatants.
193 Kuo noted that a possible objection to the view that individual resistance will be permissible is that such individual resistance against invaders may lead to negative repercussions for other individuals in the victim state who otherwise may not have been harmed. He considered the idea that individuals “should not bypass their own government… because the harms [resulting from individual skirmishes] are likely to be extended to citizens other than the victims of the massacre.” Firstly, it should be remembered that the possible negative implications of individuals defending themselves will be factored into calculations of the Proportionality and Necessity criteria governing the permissibility of individual self-defence. Further, Kuo aptly concluded that “allowing some harms of war possibly befalling the safe group is more reasonable than prohibiting the victim group from defending itself.” See Yuchun Kuo, “Success and the Aftermath of Surrender,” *Journal of Global Ethics* vol. 10, no. 1 (2014), 108.
A further negative implication of the idea that an ethical principle that could require a statesman to allow their citizens to be killed violates a hard feasibility constraint is that this does not just impugn the Reasonable Probability of Success criterion. It seems equally troubling for the *jus ad bellum* criteria Legitimate Authority, Right Intention, and Proportionality, which could also be the sole constraint requiring a state to refrain from resisting lethal aggression (it seems that Just Cause or Last Resort could not require restraint in such circumstances because they would inevitably be satisfied). The requirement of a Reasonable Probability of Success is not the only *jus ad bellum* criterion that can require a state to allow its citizens to be killed. If the just war theorists cited are suggesting that the Reasonable Probability of Success criterion violates a hard feasibility constraint, this not only seems straightforwardly false, it also would entail a much more radical alteration to Just War Theory than simply removing or reformulating one *jus ad bellum* criterion.

A more charitable interpretation of the just war theorist’s comments presented is that they believe that the Reasonable Probability of Success criterion violates a soft feasibility constraint. A principle violates a soft feasibility constraint if it is too demanding according to the preferences or dispositions of most agents. An example of a soft feasibility constraint would be the hypothetical principle that ‘one ought to donate 70% of their income to poverty relief.’ Exceptional circumstances aside, it would be physically and psychologically possible for most agents in First World countries to satisfy this requirement. However, given most agents’ lack of motivation to act in accord with this principle, and given the unlikelihood that it would be realised by most agents, this principle violates a soft feasibility constraint. One way to understand the realist position in
international relations is that they believe that moral principles are irrelevant if they violate a soft feasibility constraint. The most plausible interpretation of Evans and Henschke, and Coleman’s accusations that the adhering to the Reasonable Probability of Success criterion is ‘too much to expect’ and ‘too much to demand of anyone’ is that they believe this criterion violates a soft feasibility constraint so it ought to be modified or removed.

The idea that moral principles should not be too demanding because they are supposed to be action-guiding is often advanced in more general ethical discussions. Summarising this position, Goodin explained that “if we set the standard of what is morally required too high, people will simply throw up their hands in despair… [thus] we must moderate our moral demands: even if the greater demands might be abstractly justified from the moral point of view, in order for morality to serve its social function of guiding we must limit the duties to the ordinary capacities of ordinary people.”194 Urmson believed that ethical principles must be receptive to soft feasibility constraints. His reasoning was that a “moral code must not be in part too far beyond the capacity of ordinary men on ordinary occasions, or a general breakdown of compliance with the moral code would be an inevitable consequence; duty would seem to be something high and unattainable, and not for ‘the likes of us.’”195

This functionalist idea is related to the distinction often discussed in legal theory between extrinsic compliance motivation and intrinsic compliance motivation. It has been observed that individuals comply with laws that they are intrinsically motivated to find reasonable, even if the likelihood of punishment is low. For this reason, laws that align with most agents’ preferences or dispositions are preferred over laws that require extrinsic

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compliance motivation. A prime example of a law that lacked intrinsic compliance motivation was the Prohibition in the United States, which was routinely ignored. Just as some legal theorists believe that the law should be comprised of rules that individuals are intrinsically motivated to abide by, some ethicists believe that ethical principles too should track the actions that individuals are intrinsically motivated to perform.

Several just war theorists have also maintained that there is something wrong with a principle in Just War Theory if it violates a soft feasibility constraint. Lee argued this point by reference to the principle of tolerable divergence. He declared “if it is to be practically relevant, morality must not demand such sacrifice that it is likely to be generally ignored.” Lee gestured towards non-combatant immunity as a requirement that adheres to the principle of tolerable divergence, because combatants and statesmen do not find this requirement too burdensome. Lee’s belief that there is something wrong with a principle if it violates a soft feasibility constraint seemingly stems from his broader understanding that the “just war tradition is a compromise with the moral ideal… a morality grounded in the moral ideal would have less of an impact on the practice of war.” In the same vein, Lazar and Valenti noted that if a “critical mass of combatants disobey the laws of armed conflict, then those laws cannot minimize the wrongful harms involved in war… the law should not make demands of people that they will, predictably, not fulfil.” The basic idea is that moral principles should be evaluated in respect to useability as well as correctness. When

197 Ibid., xii.
198 Seth Lazar and Laura Valentini, “Proxy battles in just war theory: jus in bello, the site of justice, and feasibility constraints” (2016), 18. This comment is more focused on the laws of war than the morality of war, but the same reasoning can seemingly be straight-forwardly applied to the latter field. There has been much discussion in legal theory concerning the importance of being attentive to soft feasibility constraints. Kelman has written that “legal compliance and legitimacy flow from the intuitive plausibility or acceptability of substantive rules.” See Mark Kelman, “Intuitions,” *Stanford Law Review* vol. 65 (2013).
this notion is coupled with the claim that a state will resort to war if its citizens are going to be killed regardless of what just war theorists proclaim, it appears there is in fact something wrong with the Reasonable Probability of Success criterion.\footnote{At this juncture it may be helpful to note that even if it were true that most agents could not make such a sacrifice, this would not entail that there is a hard feasibility constraint against requiring this action. Estlund explained that “[t]ypicality adds nothing: If S’s being unable to will Ø is not requirement blocking, then this is still the case if all humans are (even essentially) like S in this respect.” In fact, even if it were true that every living moral agent could not allow the citizens of their state to be killed there would not necessarily be a hard feasibility constraint against this action. Rawls aptly declared that “the limits of the possible are not given by the actual, for we can to a greater or lesser extent change political institutions, and much else.” Estlund, “Human nature and the limits (if any) of political philosophy,” 220. John Rawls, as quoted in Pablo Gilabert and Holly Lawford-Smith, “Political Feasibility: A Conceptual Exploration,” \textit{Political Studies} vol. 60, no. 4 (2012), 810.}

\textbf{Rejecting soft feasibility constraints}

Despite the assertions of these just war theorists, a strong case can be mounted that ethical principles should not be beholden to soft feasibility constraints. The fact that the Reasonable Probability of Success criterion might violate a soft feasibility constraint may entail that it is less likely that it will prevent a state from resorting to war, but this is not a sufficient reason to believe this criterion does not capture what morality requires. Writing on this issue broadly, Goodin concluded that denying the legitimacy of moral principles that violate soft feasibility constraints “rather smacks of saying that bad behaviour, if sufficiently common, is self-excusing. Letting what is morally demanded of us be a function of what demands we are prepared to meet puts the cart before the horse, morally speaking.”\footnote{Goodin, “Demandingness as a Virtue,” 11.} In the past the moral principle ‘one ought to not keep a slave’ would have appeared to violate a soft feasibility constraint because such behaviour was well-entrenched and part of normal economic relations. However, surely this moral principle
should have been advocated. Yielding to soft feasibility constraints would rule out radical revisions to current morality, and would have prevented many of the moral advances achieved in the past.

Without doubt it is incredibly demanding to require a state to not resort to war when appeasement will lead to many of its citizens being killed. However, there is no reason to believe that morality should not be demanding. Demandingness is an accepted feature of many fields. If one wanted to be epistemically justified in asserting that there is an odd number of books in a library one would have to count how many books there are (a task that would be incredibly demanding in some of the larger libraries in the world). If one wanted to be an Olympic athlete one must devote a large portion of their life to gruelling training. It may be difficult to comply with morality, but it is precisely an agent’s ability to overcome such difficulties that allows agents to be morally evaluated and lauded. Given the demandingness of what the Reasonable Probability of Success criterion could require it would not be surprising if some states failed to act morally. Perhaps it could be said that a state that violates this criterion in the face of lethal aggression is not morally blameworthy.\textsuperscript{201} However, as Goodin pointed out, the “problem is not that legitimate demands demand too much; the problem is instead that people find themselves able to give too little.”\textsuperscript{202}

Those who castigate the requirement of a Reasonable Probability of Success for reasons related to feasibility need to reconsider why this criterion would prevent a state from defending itself in the extremely limited set of circumstances under discussion. A state

\textsuperscript{201} Briefly, blameworthiness is linked to the idea that certain actions can be excused (rather than justified) or that they are understandable given an agent’s coercive circumstances.
\textsuperscript{202} Ibid., 2.
would only fail to satisfy this criterion when faced with lethal aggression if there was almost no probability that the victim state could mitigate or avert the perceived threat through violent resistance, and if resistance would entail that many more individuals would suffer harm than would suffer through appeasement. It is often forgotten that violent resistance can lead to much more suffering than non-resistance, even when facing lethal aggression. As Estlund explained, “those to who we owe justice do not lose their claim on us just because it might turn out that we are not, perhaps even by our nature, disposed to deliver it.”203 It may be demanding to abide by the Reasonable Probability of Success criterion in these circumstances, but this demandingness should not allow a state to violate this constraint and cause many to suffer who otherwise would not have for little prospect of gain.204 In the words of Goodin, “true morality- whatever that may be, however we might find it- might be awfully demanding. It just cannot be ‘too demanding,’ if its demands are morally legitimate.”205


204 Lawford-Smith advocates a scalar understanding of when one can yield to a soft feasibility constraint, based on what is at stake in one’s given situation. She explained that “[s]ometimes it will be worth pursuing an outcome with low scalar feasibility, because having brought it about will be really good…” This chapter has argued that adhering to the Reasonable Probability of Success criterion is such a situation, even when this will lead to the deaths of many citizens in one’s state. Lawford-Smith, “Understanding political feasibility,” 254.

Chapter Five: Denying the claim that the requirement of a Reasonable Probability of Success unfairly grants the United States a form of hegemonic moral immunity

Chapter Overview

A consistent criticism of the Reasonable Probability of Success criterion is that it is inattentive of the contemporary international political landscape. Proponents of this criticism claim that the Reasonable Probability of Success criterion ought to be reformulated or expelled entirely for *jus ad bellum* given the United States’ unparalleled global military dominance. It has been asserted that the orthodox understanding of this principle unfairly favours the United States by effectively granting it a form of moral immunity. This objection could be broadened to include a criticism of the authority that the Reasonable Probability of Success criterion seemingly grants other militarily powerful states, such as China and Russia, in each of their respective regions of influence. This chapter will ultimately argue that this criticism is not persuasive because it relies on a simplistic understanding of the probability that militarily inferior states have of mitigating or averting a threat posed by a militarily powerful belligerent.

This chapter will begin by briefly surveying the United States’ military capacity. It will accept the claim that the United States frequently exercises its military force in a manner that is morally questionable. This chapter will then explain why some just war theorists have concluded that this gives rise to a problem for the Reasonable Probability of Success criterion. This chapter shall examine an alternative proposed solution to the alleged problem; weakening the *jus in bello* constraints for states that are the victims of aggression so that it is easier for them to satisfy the Reasonable Probability of Success requirement. It will present both a practical and a theoretical objection to this remedy. This chapter will
then conclude by denying the criticism under discussion by demonstrating that a sufficient number of states could satisfy the Reasonable Probability of Success criterion if confronted with United States aggression.

**The purported problem generated by the United States’ military capabilities**

Campbell’s thesis on the requirement of a Reasonable Probability of Success observed:

*The popularity of shirts, hats, and other items boldly emblazoned with an American flag and the words ‘back to back world war champions’... with a caution on the back: ‘don’t make us three-peat.’ These items are at best a trivialization of the horror of the two world wars and at worst largely inappropriate. Yet the sale of these items and their relative popularity are also incredibly intriguing especially as an easily-received reminder and as a way to display a certain expectation of what happens when the United States goes to war.*[206]

Strictly in terms of military capacity such an expectation is justified. Since the demise of the Soviet Union the disparity between the military capabilities of the United States and every other state in the world (and even most plausible alliances between states) has been unprecedented historically. Measured by any variable, the United States is the most powerful state in history. Its military hardware, warfare technologies, organisational structures, and industrial capacity overshadow every competitor by a considerable margin. It also has the widest military reach due to its vast network of strategically placed military bases. The lacuna between the United States’ reach and that of every other state will

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increase further if it succeeds in its self-declared aim of “dominating the space dimension of military operations to protect U.S. interests and investments.”

In terms of figures, it has been estimated that the United States accounts for a third of the world’s total military expenditure. According to Rodin, this represents “a higher proportion even than that of the Roman Empire at the height of its power.” The vast majority of states have a military budget of less than one per cent of that of the United States. For further comparison, the United States spends approximately thirty times more than the states that it has labelled ‘rogue’ combined (Syria, Cuba, Iraq, Iran, Libya, North Korea, and Sudan). Considering these statistics it is hardly surprising that a high-ranking Chinese officer declared that attempting to compete with the United States in terms of military technology would be “like throwing eggs against a rock.” The United States plans to maintain its position of military hegemony, acting to ensure that it will not be challenged for several decades to come. The United States’ National Security Strategy explicitly affirms: “Our force will be strong enough to dissuade potential adversaries from pursuing a military build-up in hope of surpassing, or equalling, the power of the United States.”

208 “Trends in World Military Expenditure, 2015,” Stockholm International Peace Research Institute. The United States’ ratio of military spending to development aid is approximately twenty-five to one, compared to less than two to one for states such as Belgium, Denmark, and Holland.
211 Unnamed Chinese officer, as quoted in Rodin, “The Ethics of Asymmetric War,” 155.
If the United States only engaged in wars of self-defence its supreme military power would not be considered a significant problem for the Reasonable Probability of Success criterion. There exists a deeply entrenched belief in many citizens of the United States (as well as some foreigners, particularly from Western states) that the United States acts only as a ‘force for the good.’ Such reasoning is not a distinctive feature of citizens of the United States. Most combatants in the history of warfare (who have considered the question) have believed that the wars that they fought had a Just Cause. If the United States only waged wars that satisfied *jus ad bellum* and *jus in bello*, then the alleged issue posed by its military capabilities would not be considered a practical problem. In the words of Hurka, the criticism under discussion would be “a philosopher’s argument in the pejorative sense, one completely divorced from reality.”\(^{213}\) However, the historical record indicates that the United States’ operational commitments are both frequent, and more importantly, are often morally questionable.

The willingness of the United States to deploy its military abroad has been unmatched since the end of World War II.\(^{214}\) Military historians would not find this trend surprising, as it has long been observed that “powerful states [are] often tempted to exploit their military superiority in order to subjugate and oppress others.”\(^{215}\) Powerful states usually have sufficient troops to both defend their own territory and simultaneously deploy troops abroad. When hostilities take place on foreign soil the citizens of powerful states are insulated from the devastation of war and can also better absorb the material costs of war. The United States has frequently taken advantage of this power relation to attain great

\(^{213}\) Hurka, “Proportionality and the Morality of War,” 53.
\(^{214}\) This is not to suggest that the United States did not also frequently resort to military force prior to World War II. Incredibly, the United States has only experienced 20 years of peace since its founding.
utility, thus appeasing the tax-payers that enable huge military investments. Under the guise of ‘promoting freedom and democracy abroad’ the United States has violated state sovereignty in almost routine fashion to secure oil and other resources, promote its economic interests, and for unilateral advantage in power politics.\(^{216}\)

It can be argued that much of the United States’ recent military activity has been morally questionable. A clear example was the Reagan administration’s decision to overthrow the Sandinista government in Nicaragua in 1984. At the time, Nicaragua successfully appealed to the International Court of Justice to denounce the United States’ use of force, a denunciation that was simply ignored. The United States then vetoed two Security Council resolutions affirming the court judgement. Another more recent example is the 2003 war in Iraq. Even accepting the suspect ‘weapons of mass destruction’ rationale, it has been argued that this war violated \textit{jus ad bellum}.\(^{217}\) When deciding to resort to military force the United States chose to simply reject the United Nations Security Council’s decision concerning this conflict, announcing “it would no longer be bound by the [United Nations] Charter’s rules governing the use of force.”\(^{218}\) In describing this war Schlesinger declared: “The president has adopted a policy of ‘anticipatory self-defence’ that is alarmingly similar to the policy that imperial Japan employed at Pearl Harbour, on a date which, as an earlier American president said it would, lives in infamy.”\(^{219}\) Similarly, Falk contended that “the Iraq war was a Crime against Peace of the sort for which surviving German leaders were

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\(^{216}\) Although it may be argued that the United States aims to promote the ideals of freedom and democracy abroad in the long-run, it is difficult to believe that this has ever been its primary motivating factor for commencing hostilities. Further, even if this was the underlying intention of the United States, most just war theorists agree that waging war to promote these ideals constitutes an act of aggression and does not satisfy the \textit{jus ad bellum} requirement of Just Cause.

\(^{217}\) For instance, see Michael Walzer, \textit{Arguing About War} (New Haven: Yale University Press, 2008).


indicted, prosecuted, and punished at the Nuremberg trials.” Other examples of recent controversial military operations carried out by the United States include the Gulf War, the intervention in Kosovo, and the Afghanistan War.

Such a unilateral resolve and certainty has been a persistent feature of United States foreign policy for several decades. Many theorists believe that such behaviour can be attributed to a phenomenon labelled ‘American exceptionalism.’ Koh explained that this is the theory that “the United States differs qualitatively from other developed nations, because of its unique origins, national credo, historical evolution, and distinctive political and religious institutions.” This may explain why the United States has opted to exempt itself from so many international conventions. These include the 1997 Mine Ban Treaty, the 2008 Convention on Cluster Bombs, the Convention Against Torture, and the Convention on the Rights of the Child (at the time of writing Somalia was the only other state not to have ratified the latter convention). Summarising this situation, Koh declared that “when the United States promotes double standards, it invariably ends up not on the higher rung, but on the lower rung with horrid bedfellows- for example, with such countries as Iran, Nigeria, and Saudi Arabia, the only other countries that have not in practice either abolished or declared a moratorium upon the imposition of the death penalty on juvenile offenders.”

In fact, it has been argued that the United States actually falls into the analytical category ‘rogue states.’ The usefulness of this category is essentially contested, and there is no

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220 Richard Falk, *Frontline* 20, no. 8 (India, 12-25 April, 2003).
222 Ibid., 1486-1487.
223 Many believe that the term was invented by stakeholders in the United States in order to justify increased military expenditure. For an argument against the use of this label see Robert S. Litwak and Robert Litwak, *Rogue States and US Foreign Policy: Containment After the Cold War* (Woodrow Wilson Center Press, 2000).
widespread consensus on the necessary criteria to fall into this category, but Jervis has maintained that “in the eyes of much of the world, in fact, the prime rogue state today is the United States.”

Echoing this sentiment, Huntington observed that the United States was “becoming the rogue superpower, [considered] the single greatest threat to [other] societies.” These remarks are substantiated by a Canadian opinion poll that revealed that 36 per cent of Canadians regarded the United States as the biggest threat to world peace, trumping the 21 per cent who selected Al Qaeda, the 17 per cent who chose Iraq, and the 14 per cent who nominated North Korea. This should not be surprising, given Obama’s assertion while president that “there will be times when [the United States] must play the role of the world’s reluctant sheriff. This will not change—nor should it.”

It has been claimed that there is no more effective recruiter for Al Qaeda than the status quo of United States foreign policy, and this is reinforced by Koh’s conclusion that “Americans generally tend to strike the world as pushy, preachy, insensitive, self-righteous, and usually, anti-French.”

The United States’ military capacity and its foreign policy record have been briefly surveyed because this forms the basis of van der Linden’s criticism of the Reasonable Probability of Success criterion. He gestured towards the power differential that exists and the frequency of the United States’ morally questionable operational commitments to argue that there is a problem with requiring that this criterion is satisfied for it to be ethically permissible to resort to war. According to van der Linden, the “major difficulty is that Just

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226 Chomsky, *Hegemony or Survival?*, 41.
War Theory demands of most countries in the South the high price of surrendering to U.S. aggression.”229 Developing this claim, he continued: “A credible and critical Just War Theory must make the very fact that we live in a unipolar military world part of the application of *jus ad bellum* principles.”230 This assessment can be linked to a broader criticism of Just War Theory; that it is outmoded because its application is only relevant to conflicts between two comparatively equal states.231 It can also be linked to a separate broad criticism of Just War Theory; that it reduces justice to peacefulness.232 Van der Linden concluded that because of the Reasonable Probability of Success criterion, Just War Theory does not “offer adequate guidelines for adversaries of the United States when confronted with its overwhelming military might, especially in cases where its exercise of force is morally questionable.”233

This chapter has focused on the United States because it constitutes van der Linden’s primary concern. However, as noted previously, this criticism of the Reasonable Probability of Success criterion can be broadened to include the authority that it grants to other militarily powerful states. Several just war theorists have alluded to this potential broader problem. Kuo summarised that the “success requirement is heavily criticized for its bias against militarily weak belligerents.”234 An instance of this was Childress’

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231 When many of the tenets of Just War Theory were formulated, warfare was most often characterised by clashes of armies of similar strength fighting decisive battles. In contrast, most recent conflicts have been fought between powerful, highly-trained, well-equipped armies against belligerents with limited means of defence. It has been contended that the relevance of Just War Theory has been compromised by the failure of many in the field to heed Clausewitz’s famous description of warfare as a true chameleon, constantly changing its colour and shape.
232 Proponents of this view label the contemporary paradigm *jus contra bellum*, arguing that it is based on the notion that justice can best be realised through the avoidance of war.
observation that this criterion “favors the established military powers,” adding that “[i]deological bias and the tension between success and moral requirements must be confronted clearly and honestly.”²³⁵ Orend cautioned that “[g]reat care… needs to be exercised that this criterion… does not amount to rewarding aggression, and especially by larger and more powerful nations… which I think explains its absence from international law.”²³⁶ Almost identically, Coleman speculated “[p]erhaps the reason this requirement is not part of international law is because it is seen to be biased in favour of larger states against smaller states.”²³⁷ More specifically, Hudson was concerned that “[n]o matter how just the cause, an offensive war against Russia, China, the United States, or a similarly strong power would very likely be ruled out as… unlikely to succeed.”²³⁸ Lastly, and perhaps most strongly, Harbour declared that the Reasonable Probability of Success criterion “[s]ystematically condemns the weaker party in a conflict.”²³⁹

Van der Linden and these other just war theorists who allude to a broader problem fail to adequately elucidate the substantive content of their criticism. For this reason this paper will present three possible interpretations of their objection to the Reasonable Probability of Success criterion. One interpretation is that they believe that this criterion facilitates a relationship of ‘domination.’ Van der Linden asserted that very few (if any) states would be ethically permitted to resist United States aggression because most (if not all) could not satisfy the requirement of a Reasonable Probability of Success. According to Pettit and

²³⁷ Coleman, Military Ethics: An Introduction with Case Studies, 81. It could be argued that there are many elements of contemporary international law that are biased in favour of larger states.
²³⁸ Hudson, Justice, Intervention, and Force in International Relations: Reassessing just war theory in the 21st century, 106.
Young, “domination exists when the relationship between two agents is such that one agent is subject to arbitrary interference, or to the constant threat of arbitrary interference, by an agent.”²⁴⁰ If van der Linden’s above assertion is accurate, it seems that the Reasonable Probability of Success criterion indeed does force most states into a relationship of domination with the United States. This generates a suzerain state system whereby one state’s paramountcy remains unchallengeable, thus allowing it to exploit others.

Most believe that any rule that facilitates a relationship of domination is morally troubling. For instance, Finlay contended that “[d]omination, of course, is connected to the evil of slavery since masters can interfere with their slaves at will.”²⁴¹ Van der Linden does not require the United States to actually exploit the Reasonable Probability of Success criterion for his argument to be forceful (if this is the correct interpretation of his criticism). The very fact that most states are ethically bound to accept arbitrary interference seems enough to constitute a problem. The analogy between a master and slave was actually invoked by Levine when describing the United States military hegemony. He rhetorically asked:

*What kind of relationship does that set up with other nations’ militaries? ...it puts them in the position of the slave and the US the master- even if the US does not concern itself right now with the nation’s goals the military cannot hope to pursue its nation’s foreign policy goals (even the foreign policy goal of national defence) unless the US acquiesces... [this is an] international context of domination.*²⁴²

It could be responded that there is no problem with the Reasonable Probability of Success criterion preventing resistance because in cases when this criterion is violated resistance would almost certainly be futile. However, van der Linden could be arguing that there is a problem with the fact that the Reasonable Probability of Success criterion prevents states from even trying to (violently) not succumb to domination, or that it rules out the option of going down with a fight.243

A second interpretation of van der Linden’s criticism is that he believes that the Reasonable Probability of Success criterion is ‘unfair.’ He could be arguing that a criterion is unfair if it prohibits most states from resisting United States’ aggression with military force. Such an interpretation is favoured by the co-written summary of his chapter (in the introduction of his book), which stated: “If weaker countries are precluded (by the *jus ad bellum* principle of reasonable chance of success) from declaring (an otherwise just) war against the U.S., does the tradition *unfairly* favour the hegemon? [in this chapter] …this question is answered affirmatively.”244 This claim has been advanced by several other just war theorists. Harbour has noted that “[r]equiring a reasonable chance of success seems *unfairly* to brand resistance to superior force as wrong.”245 Almost identically, Frowe stated that “requiring a reasonable chance of success seems to *unfairly* disadvantage less well-off states that have only limited means of defence, and cannot hope to defeat a wealthy country.”246

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243 It should be noted that the Reasonable Probability of Success criterion would not prohibit non-violent means of resistance.
244 Brough, Lango, and van der Linden, *Rethinking the Just War Tradition*, 8.
245 Emphasis added, Harbour, “Reasonable Probability of Success as a Moral Criterion in the Western Just War Tradition,” 231.
This notion of fairness is also discussed at length by Rodin, who sketched an analogy between chess and warfare. He abstracted from the idea that on a “chessboard, two equally configured forces, displaying clear and distinguishable uniforms, do battle on a bounded field and in strict accordance with rules that specify how conflict is to commence, how it is to be conducted, and how it is to be terminated”\(^{247}\) to the view that “[a]s well as justice, fairness is a form of moral assessment relevant to war.”\(^ {248}\) This view is the impetus for his discussion on the Reasonable Probability of Success criterion. He questioned—how can it be fair to require the overwhelmingly weaker party to abide by the same rules as the stronger… [when] an interpretation of the right to self-defence which effectively denied recourse to the weak while ensuring it for the strong would be a perverse interpretation indeed[?]”\(^ {249}\) Linking the concepts of fairness and justice, Rodin summarised that because of the requirement of a Reasonable Probability of Success, it could be argued that Just War Theory unfairly “denies recourse to war to precisely those who have need of its remedy—the weak, the powerless and the oppressed, those who are most exposed to unjust and predatory use of force.”\(^ {250}\) Again, whilst according to van der Linden most states would succumb to United States aggression if they opted to resist, the purported problem with the Reasonable Probability of Success criterion could be that it unfairly prohibits states from even trying to resist militarily, or again that it rules out the option of going down with a fight.\(^ {251}\)

\(^ {247}\) Rodin, “The Ethics of Asymmetric War,” 153. Rodin interestingly ignores the fact that the player with the white pieces in chess enjoys quite an appreciable advantage over their opponent given that they get to make the first move.

\(^ {248}\) Ibid., 158.

\(^ {249}\) Ibid., 159.

\(^ {250}\) Ibid.

\(^ {251}\) To reiterate, non-violent resist would still be an option available to militarily weak states. This would mean that they would not have to simply passively succumb to aggression.
A third interpretation of van der Linden’s criticism is that he believes that due to the United States’ military capacity the requirement of a Reasonable Probability of Success will always be satisfied by this state. He may also think that this criterion is a sufficient rather than a necessary condition for ethical resort to war. Van der Linden would not be the first just war theorist to make either of these claims. Sjoberg asserted that “[i]f the ‘reasonable hope of success’ standard permitted war when the aggressor thought that they could win, global politics could easily revert to the arena that Thucydides pictured in the Melian Dialogue, where the strong do what they can… [and the weak yield to such conditions as they can get, because] wouldn’t a strong state have a reasonable chance of winning every war?”

McLaughlin also believed that accepting the Reasonable Probability of Success criterion in *jus ad bellum* amounts to a tacit acceptance of the Athenian generals’ proposition in the Melian debate. According to McLaughlin, by effectively “rewarding ‘might’ at the expense of ‘right,’ the whole purpose behind the application of *jus ad bellum* is inverted.”

This third interpretation can be dismissed immediately. Firstly, these just war theorists are misinterpreting *jus ad bellum* if they take the Reasonable Probability of Success criterion to be a sufficient condition for it to be ethically permissible to resort to war. This criterion has only ever been posited as a necessary condition. Further, these just war theorists have overlooked the fact that it is a very specific type of ‘success’ that is required for satisfaction of the requirement of a Reasonable Probability of Success. As outlined in a previous chapter, the only type of ‘success’ relevant to evaluations of this criterion is the

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253 McLaughlin, “Reasonable Hope of Success as an Element in *Jus ad Bellum* Theory: Misplaced and Meaningless,” 80.
successful realisation of a Just Cause. For this reason, it is clearly not the case that military superiority necessarily translates to satisfaction of the Reasonable Probability of Success criterion. In fact, it could be argued that several of the United States’ recent wars did not satisfy the requirement of a Reasonable Probability of Success (because it is widely believed that they did not satisfy the Just Cause criterion).

*Relax *jus in bello *to solve problem*

This chapter will not arbitrate the question of whether the first or the second interpretation of van der Linden’s criticism best captures his objection. Such arbitration is not necessary because both the possible solution that will be considered and dismissed, and the defence of the requirement of a Reasonable Probability of Success offered by this chapter, can be applied to either interpretation. If the third interpretation best captures van der Linden’s complaint then it is clear that he has simply misinterpreted this *jus ad bellum* criterion. It has been postulated that the problem with the requirement of a Reasonable Probability of Success (read: the first or second interpretation of van der Linden’s argument) can be solved by relaxing the *jus in bello* constraints on states that have satisfied the *jus ad bellum* Just Cause criterion. *Jus in bello* is the set of criteria that must be satisfied for a war to be fought justly. There is an often-cited tension between the requirements of *jus ad bellum* and *jus in bello*. An element of this tension is that states often believe that they cannot satisfy the requirement of a Reasonable Probability of Success if they are to wage a war in accord with *jus in bello*. Orthodox Just War Theory explicitly espouses that *jus ad bellum* need not be considered if a war cannot be fought in accord with *jus in bello*. 
However, some believe that in situations when Just War Theory makes it impossible for either belligerent to wage an ethically permissible war, it ought to be altered so that the state with a Just Cause can succeed ethically.

This notion that *jus in bello* ought to be softened (or ignored altogether) in certain circumstances has been regularly proposed throughout the history of Just War Theory. This is highlighted by Weiler and Deshman’s assertion that there “is no longer, if ever there was, any kudos to be had by challenging the distinction between *jus ad bellum* and *jus in bello*.”254 A famous advocate of softening *jus in bello* in certain circumstances was Cicero, who proclaimed: “If our lives are endangered by enemies any and every method of protecting ourselves is morally right.”255 Machiavelli was predictably also on board with this outlook, arguing “when it is absolutely a question of the safety of one’s country, there must be no consideration of just or unjust, of merciful or cruel, of praiseworthy or disgraceful; instead, setting aside every scruple, one must follow to the utmost any plan that will save her life and keep her liberty.”256 This also seems to be what Walzer was suggesting in *Just and Unjust Wars*. He maintained: “The greater the justice of my cause, the more rules I can violate for the sake of the cause- though some rules are always inviolable… The same argument can be put in terms of outcomes: the greater the injustice likely to result from my defeat, the more rules I can violate in order to avoid defeat.”257

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257 Walzer, *Just and Unjust Wars*, 229. Alternatively, Walzer could be read as arguing that some conventions of *jus in bello* are less significant and more open to exception than others (such as the requirement that combatants wear uniforms).
This notion that different constraints ought to apply to states that have a Just Cause was also notably advanced in a statement circulated by the Democratic Republic of Vietnam in 1974. This statement read: “unjust equality is inequality and unjust impartiality is partiality, and that to the advantage of war criminals, not of their victims.”

The most developed accounts of this possible solution to van der Linden’s problem with the Reasonable Probability of Success criterion have been put forward separately by Rodin and Gross. Rodin was worried that many states “feel they have a just cause against the U.S.A. [and other]… regionally dominant powers such as Russia or Israel… [but violating jus in bello is] the only kind of military recourse available that would not lead directly to a suicidal defeat.” Rodin believed that denying militarily weak states the right to resort to war in such circumstances would not actually alter these states’ actions, because tactics that violate jus in bello are “tactics of weakness, not tactics of choice.” He claimed that such tactics become necessary because they offer “the only way the weak can restore any measure of equality to a conflict.” Despite ultimately rejecting the idea, Rodin acknowledged the intuitive pull of the egalitarian notion that: “if (as just war theory assumes) war is a morally appropriate remedy to redress certain kinds of injustice, then fairness ought to dictate that it be a remedy open to the weak as well as the strong.” This can be achieved by weakening the jus in bello constraints on states that have a Just Cause to help them satisfy the Reasonable Probability of Success criterion.

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258 As cited in Weiler and Deshman, “Far Be It from Thee to Slay the Righteous with the Wicked,” 39.
260 Ibid.
261 Ibid., 159.
262 Ibid.
Gross also discussed the idea of softening *jus in bello* for states with a Just Cause, but only in cases of asymmetric war. Part of his argument stems from Chaumont’s statement appended to the Geneva Convention, which declared: “In order to remain objective and credible, humanitarian law must allow every party an equal chance in combat. If a norm of this law is incompatible with this principle and makes it impossible from the outset for one of the parties to have a prospect of victory, it is better not to draft such a norm at all.”

Developing this position, Gross contended that “a fighting chance is integral to the idea of just cause. It makes little sense to acknowledge one group’s right to fight oppression… and then use the law of armed conflict to deny… the means to do so.”

Considering the possible means that a state may purportedly ethically employ to ensure it has a fighting chance, Gross rhetorically stated that the “question is: do torture, assassination, and blackmail pass the test? The short answer is ‘yes, but.’” His only reservation was that these tactics must be necessary to achieve a Just Cause, and that some effort must be made to discriminate between combatants and non-combatants.

Gross concluded by claiming that the acts that violate *jus in bello* that his theory permits are “not barbaric… [r]ather, they protect the right of each side to a fighting chance.”

The tactics under discussion that often violate *jus in bello* have been labelled guerrilla tactics, non-conventional tactics, fourth generational warfare, or the term *du jour*.

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264 Ibid.
265 Ibid., 239.
266 Gross goes to great lengths to emphasise that a Just Cause is required before you can begin contemplating whether or not particular tactics are militarily necessary. He declared “any side waging a war to rout civilians from their homes, or cleanse a territory of one minority group or another, does not merit a fighting chance.” Ibid., 249.
267 Ibid., 251.
asymmetric tactics. The latter notion has dominated the lexicons of Just War Theory in recent years. Such tactics are both ancient and diverse, including *inter alia*: shifting a battlefield to complex urban environments (to limit the effectiveness of high-technology military hardware), not wearing identifiable uniforms, tying non-combatants to objects of tactical or operational worth as ‘human shields,’ or even the deliberate targeting of non-combatants. The basic claim discussed by Rodin and advocated by Gross is that whilst such tactics violate *jus in bello* and “conflict with principles of justice in that they attack or expose non-combatants to excessive risks, they are justifiable by a principle of fairness to restore balance in radically unequal conflicts.”

Allowing such tactics could enable militarily weak states to satisfy the Reasonable Probability of Success criterion when faced with aggression. Clausewitz famously declared that “the ruthless user of force who shirks from no amount of bloodshed must gain advantage if his opponent does not do the same.” The United States’ superior military capabilities give it an incredible battlefield advantage in centralised conventional conflict. However, as Bellamy noted, “conventional military forces are still designed, trained, and equipped to fight near mirror images of themselves.” They are much less well-equipped to deal with adversaries employing the aforementioned tactics that often violate *jus in bello*. This was emphasised by Merom, who noted that from “an expedient point of view, the movement on a strategic scale from selective eradication to indiscriminate annihilation is

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268 Rodin, “The Ethics of Asymmetric War,” 159.
269 Karl von Clausewitz, as cited in Walzer, *Just and Unjust Wars*, 23.
270 Christopher Bellamy, as cited ibid., 439.
tempting… [because] indiscriminate annihilation requires relatively little investment and military skills, and produces long lasting results.”271

To summarise, the charge against the Reasonable Probability of Success criterion is either that it facilitates a relationship of domination, or that it is unfairly biased in favour of powerful states. The impetus for this criticism is the empirical observations that the United States is incredibly militarily dominant, and that it frequently takes advantage of this dominance in morally questionable ways. One possible solution to this problem is to weaken the *jus in bello* constraints on belligerents that are the victim of aggression and have a Just Cause. This would partially alleviate the issue because the Reasonable Probability of Success criterion is sensitive to *jus in bello*. For instance, if the principle of Discrimination was relaxed for states with a Just Cause, this would increase the likelihood that they could achieve this Just Cause, thus making it more likely that the Reasonable Probability of Success criterion would be satisfied. In turn, this would make it less likely that the Reasonable Probability of Success criterion would be the sole constraint prohibiting a state from commencing a war of self-defence.

**Why *jus in bello* cannot be relaxed to solve the problem**

The fact that relaxing *jus in bello* could allow weaker states with a Just Cause to satisfy the Reasonable Probability of Success criterion and ethically resort to war is insufficient to

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271 Merom, *How Democracies Lose Small Wars*, 45. It must be noted that Merom qualified this claim by adding: “Admittedly, the use of less-discriminate methods of violence… is not risk-free. The attitude of the target population can presumably harden, the pool of material and human resources available to insurgent forces may grow… The implications of such potential developments, however, should not be exaggerated,” ibid.
demonstrate that relaxing these constraints is ethically justified. There is both a practical and a theoretical problem with this proposed solution. The practical problem has been observed by several influential commentators. Walzer stated that if “a conviction of justice and a sense of danger are sufficient to allow violations of the rules of war, the rules will regularly be violated.” It was noted previously that almost every combatant in the history of warfare (who has considered whether or not the war that they fought had a Just Cause) has believed that the wars they participated in had a Just Cause. States without a Just Cause will inevitably mistakenly believe that they have satisfied this criterion (this is often achieved by employing some form of ‘domino effect’ logic), or will attempt to justify also adopting tactics that violate *jus in bello* by appealing to the notion of reprisals. As Walzer explained, in war both “sides are ready, equally ready, to claim the benefits of any relaxation of the rules… [t]here will be no rules at all unless they apply in the same way to both sides.”

This unfortunate reality was also observed by Darcy. He noted that “[b]elligerents with a penchant for violating the laws of armed conflict would undoubtedly seek the comfort of a doctrine, irrespective of whether the circumstances permitted its application, which might ultimately legitimize their unlawful activity.” This may have been why Coady cautioned that “we should be particularly worried about allowing exemptions from profound moral and legal constraints under categories that are, at the very least, open to divergent

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272 Walzer, *Just and Unjust Wars*, 442.
273 It has been said that ‘nobody ever believes that they are the Nazis.’
274 Fabre has added that such tactics “make it impossible for enemies to trust each other and turn war into a rule-less fight to the death.” Fabre, *Cosmopolitan War*, 241.
interpretations.” This practical objection is particularly forceful if it is accepted that the chief purpose of Just War Theory is to be action-guiding.

The second objection is that there is a salient difference between the rules in games such as chess that revolve around the notion of ‘fair-play,’ and the moral rules of war. The core difference is that the ‘pieces’ in war have an inherent moral value that takes precedence over fairness. The *jus in bello* criteria exist because it would not be ethically permissible to fight a war that violates these constraints, regardless of whether or not it achieves a Just Cause. Almost all just war theorists explicitly state that if a war cannot be waged in accord with *jus in bello*, it ought not to be waged at all. *Jus ad bellum* in conjunction with *jus in bello* may generate circumstances whereby it is impossible for either belligerent to achieve a Just Cause ethically, but this just means that both sides ought to abstain from commencing hostilities. This response was actually best articulated by Rodin in his discussion of relaxing the *jus in bello* criteria. He wrote that “[n]otions of a ‘fair’ fight between the two sides, in the sense of a rough equality of capabilities, symmetrically and reciprocally deployed, is at best a secondary and subservient moral principle.” *Jus in bello* already acknowledges that one may be fighting for a Just Cause; this is exactly why it is more permissive than everyday morality. The ‘means’ of relaxing the constraints that

278 As Melden explained: “There is, indeed, a place for ideals that are practically unworkable in human affairs, as there is a place for the blue-print of a machine that will never go into production; but it is not the place of such ideals to serve as a basic code of duties.” Melden, *Essays in moral philosophy*, 211.
279 According to Weiler and Deshman paraphrasing Terry Gill, this is why “the absolute distinction between *jus ad bellum* and *jus in bello* is one of the oldest and best established axiomata of international law and its predecessor just war doctrine.” Weiler and Deshman, “Far Be It from Thee to Slay the Righteous with the Wicked,” 46.
280 Interestingly, Hudson advances this claim but does so by arguing that any war that requires the violation of *jus in bello* to satisfy the Reasonable Probability of Success criterion automatically violates the Right Intention criterion of *jus ad bellum*. See Hudson, *Justice, Intervention, and Force in International Relations: Reassessing Just War Theory in the 21st Century*, 6.
281 Rodin, “The Ethics of Asymmetric War,” 159. Rodin concludes his appraisal by ultimately endorsing this view.
protect non-combatants ought not to be traded for the ‘ends’ of increasing the probability of achieving a Just Cause. In the words of Weiler and Deshman: “To stray from the equal applications baseline invites a race to the bottom, with basic humanity, the lives of civilians and soldiers, as the cost.”

Purported problem stems from simplistic understanding

A stronger response to van der Linden’s claim that the Reasonable Probability of Success criterion ought to be modified or expelled in light of the United States’ military power is to question his underlying premise that most states would not satisfy this criterion if faced with United States’ aggression (even complying with *jus in bello*). The history of warfare is full of examples of militarily weak states deciding to resist aggression from powerful adversaries. For centuries it was true that the outcomes of such hostilities were predictable, with Lilliputian states almost invariably defeated. However, a thorough examination of the outcomes of asymmetric conflicts divided into discrete time periods has revealed a surprising trend. Arreguin-Toft’s study demonstrated that:

*From 1800 until 1849, strong actors win 88.2 per cent of all asymmetric conflicts. That proportion dropped slightly to 79.5 per cent in the next fifty-year period. But starting in 1900, the number of asymmetric conflicts won by strong actors began to fall off significantly, down to 65.1 per cent through 1949. By the last fifty-year period, 1950-1999 - strong actors won only 48.8 per cent of all asymmetric conflicts.*

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282 Weiler and Deshman, “Far Be It from Thee to Slay the Righteous with the Wicked,” 27.
Put simply, militarily strong states have succeeded in wars against militarily weak states less and less over time. Notable examples of states with military superiority failing to convert this factor into battlefield success include the United States in the Vietnam War, Britain in Palestine, the Soviet Union in Afghanistan, France in Algeria, Israel in Lebanon, and the United States backed by the United Nations in Somalia. This emerging trend and these particular examples suggest that the prospects of militarily weak states satisfying the requirement of a Reasonable Probability of Success are not as bleak as van der Linden assumed.

A key factor contributing to this trend of militarily weak states mitigating or averting threats posed by stronger states is the limitations imposed on the use of force on the latter. Elshtain remarked that in previous ages the foremost restraints imposed on the use of force were “the seasons of the year… [in that] three-quarters of the year was closed to military actions, and [the fact that] soldiers were themselves units of economic production who could not be in arms year round.”²⁸⁴ In contrast, the primary restriction in contemporary times on the use of force for powerful states is the sentiment of their own citizens.²⁸⁵ Limitations are especially strong for conflicts that are perceived to be ‘wars of choice.’ When attempting to justify resorting to war, politicians are at pains to emphasise that vital interests and important principles are at stake. However, such attempts are often fruitless in conflicts where defeat will clearly not grow to existential proportions. The tolerance of

²⁸⁴ Elshtain, Just War Theory, 70.
the general public in powerful states for wars that will only bring about additive value has proven to be quite low in the last century. In the words of Kubiak, “going to war for minor objectives may fail to stir the requisite passion in people to sanction such killing and dying.”\textsuperscript{286} This shift in tolerance was aptly articulated by Chomsky, who declared that for the United States (van der Linden’s primary concern) “the only way to attack a much weaker enemy is to construct a propaganda offensive depicting it as an imminent threat or perhaps engaged in genocide.”\textsuperscript{287}

This idea of a non-material dimension to warfare is not novel. The importance of attracting and maintaining sufficient public support for a war effort was stressed by Clausewitz in the nineteenth-century. He was also aware of the difference between ‘real’ wars (wars of choice) and ‘absolute’ war (existential war). Even wars fought on foreign soil adversely affect the domestic general public. Although draft systems are no longer in place in the United States, commencing hostilities usually entails increased taxation. A seemingly modern phenomenon is the level of care that the general public has shown in powerful states for the plight of foreigners. This increase in empathy has been variously attributed to the ‘pangs of liberal conscience,’ or a ‘sense of Western moral rectitude.’ In terms of practical outcomes, such empathy has led to it becoming increasingly difficult, in the words of Merom, to “escalate the level of violence and brutality” necessary for powerful states to succeed in war.\textsuperscript{288} There is strong pressure for wars of choice to be swift, clinical, and virtually bloodless. Even for operations that satisfy these requirements, there are further obstacles regarding the perceived legitimacy of the publically declared Just

\textsuperscript{287} Chomsky, \textit{Hegemony or Survival?}, 40.
\textsuperscript{288} Merom, \textit{How Democracies Lose Small Wars}, 15.
Cause. Merom continued that in a sense, powerful states are restricted “in particular by the creed of some of their most articulate citizens.”

There are numerous examples of public opinion influencing a decision of whether or not to wage war. According to Patterson, “Neville Chamberlain’s appeasement of Hitler was dictated by the public’s unwillingness to confront the Nazi threat… [and the] reluctance of the Roosevelt Administration to engage the war in Europe and Asia was likewise caused by over reliance on public opinion.”

More recently, many believe that the United States’ decision to not intervene in the Rwandan genocide can be attributed to public sentiment following the ‘Blackhawk Down’ incident that occurred in nearby Somalia months earlier. There are also several examples of cases whereby domestic opinion influenced the strategic tactics of the United States. In the Gulf War the United States did not initiate a ground initiative until it had carried out a massive aerial bombing campaign on Iraq’s infrastructure. In the Kosovo Intervention N.A.T.O. implemented a ‘zero-casualty’ strategy, electing to drop bombs inaccurately from 15,000 feet where they were out of range from Yugoslav anti-aircraft weaponry. These cases display an acute awareness on behalf of the United States politicians and military leaders of the importance of maintaining public support for war efforts and preventing ‘body-bag syndrome.’

There has also been an increased public awareness of the fact that unwanted consequences

\[\textit{Ibid.}\]
\[\textit{Patterson, Just War Thinking: Morality and Pragmatism in the Struggle Against Contemporary Threats, 112.}\]
\[\textit{Conversely, non-state militarily weak agents tend to have relatively high ‘blood thresholds’.}\]
\[\textit{Patterson has asserted that because of the influence that public opinion can have on the decision to wage war, there may be ethical reasons to educate the citizenry in Just War Theory. See Patterson, Just War Thinking, 26.}\]
can attend apparent military victories (for example, the rise of resistance movements such as al Queda and ISIS after United States interventions in the Middle East).

The fact that the United States is structured in such a way that politicians must be receptive to public opinion (or risk not getting re-elected) means that militarily weak states do not have to resort to tactics that violate *jus in bello* to have a reasonable probability of mitigating or averting aggression from the United States.\(^{294}\) Weak states do not have to win decisive battlefield victories to be militarily successful; they just have to engage their powerful aggressors for a long period of time. Time is the crucial factor because it increases the economic, human, and moral costs of an extended campaign for powerful states in what are wars of choice. The importance of time is highlighted by Arreguin-Toft’s contention that the United States was successful in Grenada in 1983 because “there was no time for the U.S. public to consider the need to intervene, much less oppose it, before U.S. victory had become an accomplished fact.”\(^{295}\) Drawing out hostilities also increases the likelihood that other potential victims will intervene and assist militarily weak states.\(^{296}\) Maoz argued that a “display of ‘excessive’ power provokes third parties, be they enemies of the powerful protagonist or previously indifferent actors, to join the struggle against the rising menace.”\(^{297}\) If militarily weak states can resist long enough for battle fatigue to develop on the home-front for their powerful adversary, they may be able to “[s]hift the war’s centre

\(^{294}\) The importance of public opinion and democratic political systems were essential to Merom’s explanation. He summarised: “To put things in a broad theoretical perspective, the (realist) iron rule of power has eventually broken down in the context of democratic small wars. After 1945, democracies discovered that military superiority and battlefield advantage have become fruitless, if not counter-productive, in protracted counterinsurgency campaigns.” Merom, *How Democracies Lose Small Wars*, 229.


\(^{296}\) For instance, the Soviet Union and China offered integral material support to the Vietcong to assist against the United States during the Vietnam War.

of gravity from the battlefield to the marketplace of ideas, where the state’s capacity to pursue its objectives is checked.”

The belief that motivates van der Linden’s criticism of the requirement of a Reasonable Probability of Success is that this criterion cannot be satisfied when faced with United States aggression. The strongest counter-example to this premise is the success achieved by the North Vietnamese Army and the Vietcong against the United States in the Vietnam War. Conventional thought would suggest that the significant military advantage possessed by the United States would guarantee success. In a sense this simplistic appraisal was accurate, in that the United States dealt with North Vietnamese and Vietcong military offensives. However, it was the North Vietnamese Army and the Vietcong that inevitably achieved their military aims, with the United States only effectively managing to extend political independence for the South Vietnamese for a few more years. This conflict demonstrates how militarily weak states can exploit the fact that stronger states often require domestic support to continue hostilities. It was for this reason that Hoffman maintained that the most effective weapons for weak states are “not only the guns and bombs that they have long been, but also the mini-cam, video tapes, television, and the Internet.”

Importantly, it should be noted that exploiting the ‘open’ nature of the United States active media and the democratic accountability of politicians does not require weaker states to violate jus in bello. Thornton summarised that “when blood is spilt, and

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298 Merom, How Democracies Lose Small Wars, 21.
299 Bruce Hoffman, as cited in Thornton, Asymmetric Warfare, 12. Another avenue that militarily inferior belligerents can now pursue that does not necessarily require violation of jus in bello is cyber warfare, which only requires a few skilled technicians and can have a significant impact.
300 In fact, violations of jus in bello by the militarily weaker belligerent may make it less likely that public support will turn against the powerful aggressor. It could be argued that the Vietcong and the North Vietnamese Army may have been able to repel the United States more quickly if they made more of an effort to maintain the ‘moral high ground’ in this respect.
especially when it is caught in images by the plethora of media outlets that exist today, then the liberal democracies hesitate, wring their moralistic hands, lose patience, and can allow tactical setbacks to lead to strategic failure.”

The pronounced casualty aversion that exists in powerful states engaging in wars of choice not only undermines their own military operations. It also emboldens combatants in victim states. In terms of stakes, the balance of interest already favours the militarily weak when confronted by powerful aggressors more often than not. Gamson and Meyer have argued that this is strengthened further when there are reports of domestic dissent in adversary strong states, which can “convince others to join [the victims] cause, and that by influencing perceptions of opportunity among potential activists, organisers can actually alter the material bases of opportunity.” Internal dissent clearly impacted the United States’ fortunes in the Vietnam War. Concerns regarding the morality of the conflict, widespread fears of being drafted to fight, and the broader civil-rights movement of the time, came together to cause such unrest that the Joint Chiefs of Staff in the United States began to question whether or not sufficient troops remained in the United States to control civil disorder. This situation altered the North Vietnamese and Vietcong estimations of the probability that they could succeed. A former high commander and North Vietnamese official has revealed that:

The American anti-war movement was essential to our strategy... the American rear was vulnerable. Every day our leadership would listen to world news over the radio... to follow the growth of the American anti-war movement... it gave us confidence that we should hold on in the face of battlefield reverses... The

301 Ibid., 22.
303 Chomsky, Hegemony or Survival?, 39.
conscience of America was part of its war-making capability, and we were turning that power in our favour.\textsuperscript{304}

It is also not a viable option for powerful states to prevent domestic backlash against a war-effort by manipulating media coverage. For instance, in 2003 the United States passed a new regulation forbidding the media from distributing images of soldiers’ coffins. However, according to Merom’s detailed analysis, politicians’ attempts to “regain control over the public discourse by elevating the levels of deceit and repression… [effectively] supplies the anti-war opposition with a winning card… [because] both involve the abuse of fundamental principles that underlie democratic life… [so] the war can be depicted as threatening democracy itself.”\textsuperscript{305}

Van der Linden’s criticism of the requirement of a Reasonable Probability of Success relies on a simplistic understanding of the probability that militarily weak states have of mitigating or averting United States’ aggression. The concern motivating his criticism is that this criterion can never be satisfied by states confronted by the United States. This is simply not the case. Many states could satisfy the requirement of a Reasonable Probability of Success because they do not have to achieve success on the battlefield. To satisfy this \textit{jus ad bellum} criterion it only must be conceivable that they can extend hostilities for such a length of time that domestic pressure builds to such a level that the powerful aggressor is forced to withdraw. It must be emphasised that it is not being asserted that every state could satisfy the requirement of a Reasonable Probability of Success against the United States. For if

\textsuperscript{304} Bui Tin, as cited by Merom, \textit{How Democracies Lose Small Wars}, 22. Similar tactics have been employed by other agents against the United States more recently. It has been reported that Saddam Hussein distributed copies of Black Hawk Down to his troops in an attempt to demonstrate the United States’ sensitivity to visceral images of conflict.

\textsuperscript{305} Merom, \textit{How Democracies Lose Small Wars}, 230.
this criterion never ruled out war with the United States it would not rule out many wars at all. However, enough states could satisfy this criterion that it cannot be accused of facilitating a relationship of domination, or an unfair relationship, for many states in the world.
Chapter Six: Endorsing the claim that the requirement of a Reasonable Probability of Success conflicts with widespread intuitions

Chapter overview

This chapter will address the claim that the Reasonable Probability of Success criterion conflicts with widespread intuitions. It will begin by arguing that this criterion is not intuitively considered necessary for determining whether or not it is ethically permissible to resort to force in domestic instances of self-defence. This chapter will then present and reject three responses available to one who wanted to deny the force of this objection. Each of these responses relates to a methodological issue within Just War Theory. The first is to question the practice of granting intuitions evidential weight in ethical theorising. This chapter will reply by providing a defence of this broadly accepted methodology. The second is the claim that intuitions elicited regarding purely hypothetical (and unrealistic) cases should not be granted weight when determining the ethics of war. This chapter will reply by noting that the domestic case that is troubling for the Reasonable Probability of Success criterion is quite realistic (especially considering some of the other cases explored in Just War Theory), and arguing that there are several benefits to employing hypothetical vignettes rather than real-world cases.

This chapter will then tackle the strongest response to the criticism that the Reasonable Probability of Success criterion conflicts with intuitive appraisals of domestic instances of self-defence. This is to question the relevance of domestic instances of self-defence to determining the ethics of war. This chapter will submit three possible rejoinders for those criticising the Reasonable Probability of Success criterion. The first is to argue in favour of the reductivist view that the principles relevant to determining whether or not it is
ethically permissible to resort to force in self-defence remain consistent regardless of the context. This chapter will summarise this position, and then posit the strongest objection that it has received. The second rejoinder is to argue that the domestic case that is troubling for the Reasonable Probability of Success criterion is analogous to state-based self-defence. This chapter will tentatively suggest that this is the case. The third alternative is to charitably accept that reductivism is not tenable, and further that the domestic case under discussion is not relevant to state-based self-defence, but then to argue that there is still a problem for the Reasonable Probability of Success criterion because it actually conflicts with intuitions regarding collective instances of self-defence. This chapter will present two historical cases of collective resistance that seemingly violated this criterion whereby most commentators intuitively believe that resorting to force was ethically permissible. It will conclude by declaring that this constitutes evidence that the contemporary understanding of the Reasonable Probability of Success criterion requires modification or rejection from *jus ad bellum*.

**The domestic case of self-defence that is troubling for the Reasonable Probability of Success criterion**

Statman’s influential paper “On the success condition for legitimate self-defense” was the first to argue that the Reasonable Probability of Success criterion conflicts with intuitive ethical appraisals of domestic instances of self-defence.\(^{306}\) Statman’s primary hypothetical case depicted an individual confronted with the threat of rape by a group of five

assailants.\textsuperscript{307} In this scenario the victim possesses a gun with two bullets. The victim knows that shooting two of the aggressors will not deter the other three, and that if anything, shooting two of their confederates will spur them on to carry out the threat even more brutally. To employ familiar terminology, the victim knows that violent resistance will not mitigate or avert the perceived threat. The maximum amount of force at the victim’s disposal is simply insufficient. It is also stipulated that resistance will not cause a reduction in the incidence or brutality of any wrongful aggression in the future. Statman maintained that most individuals intuitively believe that it would be ethically permissible for the victim in this scenario to shoot two of the assailants. He argued that this intuition conflicts with the demands of the Reasonable Probability of Success criterion.

At first glance this case does not seem troubling for the Reasonable Probability of Success criterion. Rodin aptly pointed out that Statman’s group-based example is undermined by the fact that the victim is actually successful in averting the threat posed by the two assailants who are shot.\textsuperscript{308} He explained that liability is rooted in the relationship between interacting individuals, so the victim is permitted, at least in terms of the Reasonable Probability of Success criterion, to shoot two of the assailants individually because of what they each individually intend to do. Statman’s appraisal implies that according to the Reasonable Probability of Success criterion one is not ethically permitted to resist aggression unless resistance will make oneself better off overall. However, as Frowe aptly observed, “I may, for example, kill a (culpable) person who will otherwise kill

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\textsuperscript{307} Statman also depicted a second scenario involving John Wayne confronted with a group of ‘bad guys.’ Writing on the same issue, Steinhoff altered the case by replacing the rapist with a batterer. He believed that cases related to sexual assault “tend to elicit emotional responses that are not conducive to rational argument.” This chapter remains true to the original formulation because the just war theorists who have written on the issue are responding to Statman. For Steinhoff’s case see Uwe Steinhoff, “Self-Defense and the Necessity Condition” (2013), 17.
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me even if I’m certain to die of an illness the next day.” However, despite this limitation in Statman’s group-based case, it is still possible to elicit the intuition that his conclusion requires.

It has been noted by several just war theorists that Statman could simply alter his scenario so that instead of involving five aggressors, it could depict one strong assailant who is going to rape one weaker victim. Instead of possessing a gun it could be stipulated that the victim is only capable of breaking the aggressor’s wrist. It ought to further be stipulated that the aggressor is determined to rape the victim exactly 30 seconds after throwing them to the ground, and that the aggressor is capable of (and committed to) doing this even if their wrist is broken in the meantime (this is to avoid claims that the victim’s resistance somehow succeeds in mitigating the threat by delaying it). This revised scenario seems to provoke the same intuitive ethical appraisals as the case initially depicted. When presented with this case most commentators believe that it would be ethically permissible for the victim to break the assailant’s wrist, despite the fact that this will not mitigate or avert the perceived threat. This intuition clearly conflicts with the contemporary understanding of the Reasonable Probability of Success criterion.

Statman summarised his problem with the Reasonable Probability of Success criterion by declaring that it “demands submission to evil and passivity in the face of wickedness… [and that] If this is what some moral or legal theory demands of us, it seems like a reduction

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of the theory.” Several just war theorists have endorsed Statman’s assessment of this hypothetical domestic case of self-defence. Steinhoff asserted that a victim “has a right to resist the aggressor, and she is permitted to exercise this right, whether it serves some ‘further purpose’ or not.” Similarly, Firth and Quong have argued that there is “something deeply troubling about the proposal that an innocent person under threat has no liberty whatsoever to defend herself… Even if a person’s attempt to defend herself is predetermined to fail there is… something problematic about the view that morality can render an innocent person defenceless.” In separate articles Bunckenburg, Ferzan, Kamm, Miller, and Uniacke have also expressed the same sentiment as Statman. Perhaps most emphatically, Hurd declared: “Of course you should be able to stand your ground when threatened with unjustified aggression… To think otherwise is to subscribe to the view that you must forfeit your liberty to an assailant… It is to think that your rights end where others’ wrongs begin.”

It is important to note that this criticism of the Reasonable Probability of Success criterion is not merely that it requires action (or inaction) that conflicts with the intuitions

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313 Firth and Quong, “Necessity, Moral Liability, and Defensive Harm,” 690.
of some academics working in Just War Theory. Rather, the claim is that this criterion diverges with intuitions that are extremely widespread (to the point of being almost universal). Statman emphasised that the Reasonable Probability of Success criterion “lead[s] to results that contradict our strongest convictions about self-defence.”\textsuperscript{316} Husak agreed, maintaining: “I submit that the intuitive judgments of virtually all respondents... is that ‘innocent victim’ is permitted to exercise her right of self-defense, however futile… This intuition, I believe, is incredibly powerful and robust.”\textsuperscript{317} It must also be noted that this criticism is distinct from the previously explored claim that the Reasonable Probability of Success criterion violates a soft feasibility constraint. Contending that a moral principle is in conflict with a soft feasibility constraint amounts to the assertion that it is too demanding given most agents’ preferences. This need not entail (and usually does not entail) a belief that the principle does not capture what morality requires. In contrast, Statman is claiming that in light of the fact that the Reasonable Probability of Success criterion conflicts with widespread intuitions, there is strong evidence to suggest that it is not a legitimate moral principle.

\textbf{On granting intuitions evidential weight}

Statman’s criticism of the Reasonable Probability of Success criterion relies on the methodological assumption that widespread intuitions carry normative moral weight. For this reason, an immediate response for one who wanted to defend this criterion could be to suggest that intuitions should not hold such credence. Accordingly, a brief explanation and

defence of this methodology is required. The process of consulting, evoking, or eliciting intuitions is routine in philosophical debate. It is especially prevalent in contemporary analytic moral and political philosophy. In light of this it is not surprising that just war theorists place a lot of stock in the importance of intuitions held toward particular cases. Walzer’s *Just and Unjust Wars* constitutes a clear example of a text that attempts to systematise widespread intuitions into a coherent theory of the ethics of war. His explicit aim was to “[g]rasp and expound our common morality” by aligning intuitions towards historical cases with plausible ethical principles. In the event of disagreement between intuitions and promising principles Walzer believed that the “task of the moral theorist is to study the pattern as a whole, reaching for its deepest reasons.” Since the publication of *Just and Unjust Wars* just war theorists have attempted to make progress in their field by identifying cases whereby proposed principles yield results that diverge from robust widespread intuitions, or by offering principles that better capture a wide range of intuitions.

At this point it is important to clarify exactly what is meant by the term ‘intuition’ within Just War Theory. Bengson has pointed out that the notion of ‘intuition’ is regularly “derided as an abstruse or esoteric phenomenon akin to crystal-ball gazing.” In contemporary Just War Theory the term ‘intuition’ refers to a certain kind of moral judgement held towards a particular action (or kind of action), problem, agent, principle, or institution. The defining feature of this type of belief is its psychological genesis; such

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318 The fact that this is contemporary practice in ethical theorising is not to suggest that it is a new approach. The strongest historical critiques of utilitarianism consisted of ethicists highlighting moral judgments derived from this theory that conflict with widespread intuitions. For instance, see H. J. McCloskey, “An Examination of Restricted Utilitarianism,” *Philosophical Review* vol. 66 (1957), 466-485.


320 Ibid., 45.

a belief is not consciously derived from inferential reasoning. However, as McMahan qualified, this “is not to say that a moral intuition is necessarily elicited instantaneously the way sense perception is... If a particular problem or case is complex, one may have to consider it at length in order to distinguish and assimilate various relevant features.” An example of a moral intuition could be the judgement that ‘one ought to not torture a baby.’ It does not seem controversial to suggest that such a judgement can be elicited when one considers such an action, without consulting any other beliefs to derive this judgement. At this juncture it should be noted that within Just War Theory intuitions are not taken to be factive, indubitable, or incorrigible. This will be discussed in more detail below.

Contemporary just war theorists utilise widespread intuitions in a process similar to Rawl’s ‘reflective equilibrium.’ They employ moral intuitions in order to vindicate, refute, or adjust the principles of Just War Theory. Rawls’ reflective equilibrium has the capacity to both highlight the intuitions that ought to be disregarded, and employ the intuitions that remain. The purpose of his method was to systematise, evaluate, and revise one’s intuitions in order to bring to light internal inconsistencies, eliminate contradictions, and test the soundness of a moral principle or theory. In outlining his

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322 Although the brief definition offered in this chapter leaves the phenomenological and ontological character of intuitions unresolved, Bengson has pointed out that “the absence of a set of necessary and sufficient conditions for a given philosophically interesting concept, property, or relation need not threaten its theoretical utility.” Bengson, “The Intellectual Given,” 720.
324 Whilst analysing Rawls’ reflective equilibrium is helpful, there are some important differences between his methodology and the one employed in Just War Theory. One is that Rawls maintained that his readers need to only consult their own intuitions, whilst just war theorists more commonly appeal to intuitions that are widespread. Another is that just war theorists utilise hypothetical cases, a practice not typically associated with Rawls’ methodology.
method, Rawls’ initial express stipulation was that intuitions must be disregarded if they are not generated under optimal conditions. For Rawls, these conditions were simply those that are held to be “favourable for deliberation and judgment in general.”326 Presumably, these would include sincerity in attempting to achieve impartiality, not suffering from any form of stress, and only considering intuitions formed with confidence. Next, Rawls stated that one ought to unify their remaining intuitions with a set of general moral principles, rules, or an ethical theory that both implies and explains one’s moral intuitions. One then ought to work back and forth between the general moral principles and one’s intuitions to detect any contradictions. These contradictions ought to then be eradicated by revising or eliminating elements of the moral principles, rules, theory, or one’s initial moral intuitions.327

Some have attempted to clarify Rawls’ proposed methodological model by comparing it to the model adopted in the so-called ‘hard sciences’ (such as chemistry and physics). It has been alleged that there is an analogy between the role assigned to moral intuitions in Rawls’ model and the role of the results of experiments in science, in that both are employed as a means to test a given principle or theory. However, such an analogy is misleading. In these scientific fields experimental data is only jettisoned if it is thought that the results have been contaminated or that an instrument is faulty. Experimental data carries strong evidential force and requires a specific causal story regarding how a mistake could have occurred for it to be legitimately ignored. In contrast, according to Rawls, almost any

326 John Rawls, A Theory of Justice (Oxford: Clarendon Press, 1972), 48. 327 In Just War Theory revising and choosing between competing moral principles also involves striving for what Daniel’s has described as a ‘wide reflective equilibrium.’ This entails subjecting promising moral principles to exhaustive review and not accepting them at face value simply because they match widespread intuitions. See Norman Daniels, “Wide Equilibrium and Theory Acceptance in Ethics,” The Journal of Philosophy vol. 76, no. 5 (1979).
intuition can be disregarded regardless of whether or not a causal story of suspected unreliability can be offered.\textsuperscript{328} Within Just War Theory widespread intuitions are employed strictly as initial evidence to support or oppose a given moral principle.\textsuperscript{329} McMahan and Tadros summarised the contemporary methodology of Just War Theory by declaring “[n]o belief is immune to rejection, no matter how compelling it may be,”\textsuperscript{330} and that the “fact that a principle has intuitive implications is almost never a sufficient reason on its own to endorse a principle.”\textsuperscript{331}

Criticisms of the methodology

It could be responded that such a methodology is inappropriate for Just War Theory given the evidence that exists demonstrating that intuitions are subject to a number of cognitive biases. Research conducted by anthropologists, psychologists, and sociologists has traced the genesis of many intuitions to cultural or religious indoctrination, superstition, social prejudice or class bias, self-interest, self-deception, and mere historical accident. Empirical tests have also demonstrated that even professional philosophers “are highly influenced by presumably irrelevant factors such as order of presentation or superficial differences in phrasing”\textsuperscript{332} when expressing their intuitions towards cases. In addition, it

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\item\textsuperscript{328} There are some moral intuitions that are seemingly beyond rebuke, such as that individuals ought to be morally treated equally absent morally salient differences between them.
\item\textsuperscript{329} This is important, as often when individuals criticise the use of intuitions in ethical theorising they are criticising the stronger claim that intuitions “are the deliverances of a special organ or faculty of moral perception, typically understood as something like an inner eye that provides occult access to a noumenal realm of objective values.” McMahan, “Moral Intuition,” 105.
\item\textsuperscript{330} Ibid., 114.
\item\textsuperscript{332} Eric Schwitzgebel and Fiery Cushman, “Philosophers’ Biased Judgments Persist Despite Training, Expertise and Reflection,” Cognition vol. 141 (2015), 127.
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has also been claimed that it is a problem that different individuals can hold variant intuitions towards the same case, or that it is common for individuals to repudiate past intuitions after re-examination. These facts have led many philosophers to endorse ‘evolutionary debunking arguments’ in ethical discussions. Put simply, these arguments assert that widespread moral intuitions may track the best means to keep a community harmonious, rather than track any sort of objective moral truths. Or in the words of Singer, because it seems that intuitions are simply “the biological residue of our evolutionary history, it is not clear why we should regard them as having any normative force.”^333

Singer has been one of the most ardent critics of relying heavily on intuitions in ethical theorising. He declared: “the particular moral judgments we intuitively make are likely to derive from discarded religious systems, from warped views of sex and bodily functions, or from customs necessary for the survival of the group in social and economic circumstances that now lie in the distant past.”^334 As an example Singer argued that the widespread intuitions towards the standard trolley cart problem are the result of mere historical accident. Briefly, the widespread intuitive reaction to the trolley cart problem is that it would be ethically permissible to switch a lever to save several lives, yet it would not be permissible to push a fat man to save several lives, even though both actions will result in one individual being killed who otherwise would have survived. Singer believed it is revealing that the option to switch the lever (rather than push the fat man) “describes a way of bringing about someone’s death that has only been possible in the past century or

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two, a time far too short to have any impact on our inherited patterns of emotional response.”

An initial response to these objections is that whilst it is clear that different individuals occasionally hold variant intuitions towards the same cases, it is also clear that there is a high degree of uniformity and agreement shared between the moral intuitions of most individuals. This fact is often downplayed by those who believe that intuitions ought to not be accorded weight in ethical theorising. Brody noted that from “the time of Socrates on, philosophers have supported and criticized moral views by comparing them with intuitions about particular cases, and while there has been considerable disagreement about which theories can be developed to handle particular cases, there has been much less disagreement about any of the particular intuitions.” As noted above, many just war theorists take their primary role to be to provide a systematic account of such intuitions and render them consistent with a plausible political theory. Further, it is not clear why the fact that individuals hold variant intuitions towards the same case, and the fact that individuals often repudiate past intuitions, is any more of a problem than the fact that individuals often form different judgements about what they are perceiving. In both cases performance errors are to be expected and it is not obvious that there are no facts of the matter.

336 Further, there are some intuitions that seem less subject to bias or prejudice than others. One can have more confidence in intuitions about broad principles, such as that ‘like cases ought to be treated alike,’ than about intuitions towards particular cases.
338 This explanatory analogy can be traced back to Sidgwick, who wrote that “any intuition may turn out to have an element of error, which subsequent reflection and comparison may enable us to detect; just as many apparent perceptions through the organ of vision are found to be partially illusory or misleading.” Sidgwick, The Method of Ethics, 211. Bengson has recently added that intuitions and perceptual experience “bear a number of non-trivial similarities: both are conscious, contentful, non-factive, gradable, baseless, fundamentally non-voluntary, [and] compelling…” Bengson, “The Intellectual Given,” 725. Another helpful analogy could gesture towards performance errors and divergences in memory.
In addition, although one’s intuitions are often the result of subconscious bias, it seems that the method proposed by Rawls and adopted by just war theorists provides the best means to expose intuitions that are subject to bias and prejudice. To demonstrate this point Daniels offered the example of deciding whether or not age ought to be taken into consideration when distributing medical goods. He stated that his initial intuition was that age was not morally salient and ought to be ignored, just as race ought to be ignored when making such decisions. However, upon discovering that such a belief conflicted with other intuitions he held, and conflicted with promising ethical theories he considered, Daniels realised “we all age, although we do not change race… the different treatment of people at different ages, if systematically applied over the lifespan, does not create inequalities between persons, as it would in the case of race.”\(^{339}\) In a similar fashion, Singer’s causal story regarding widespread trolley cart intuitions merely provides a reason not to confer evidential weight to the specific intuition that he discusses. Examining one’s intuitions and granting them initial evidential weight seems the best means, in the words of McMahan, to “abstract from or transcend the idiosyncrasies of our personal psychologies or subjective points of view in order to achieve the greatest possible degree of objectivity and impartiality.”\(^{340}\)

An exhaustive process of minimising the influence of intuitions that stem from erroneous sources can allow just war theorists to make progress in determining the ethics of war. Such a fruitful revisionism is likely because most individuals harbour many intuitions that are, on inspection, in conflict with other intuitions that they hold with equal

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\(^{340}\) McMahan, “Moral Intuition,” 117.
conviction. By subtly altering prompts in relevant ways and observing the resulting intuitions that are articulated it is possible for salient features to be elicited and scrutinised. McMahan observed that one can be “[d]riven by the demand for consistency to defend quite heterodox and indeed counterintuitive conclusions.”\textsuperscript{341} He continued that when employing this method one can “experience the process of moral inquiry as a process of discovery rather than an exercise of choice or will.”\textsuperscript{342} This capacity to generate progress ought to count in favour of a methodology, especially within the broader field of philosophy which is often derided for not facilitating advancement.\textsuperscript{343} As Sidgwick declared: there “is no doubt that the moral opinions of ordinary men are in many points loose, shifting, and mutually contradictory, but it does not follow that we may not obtain from this fluid mass of opinion, a deposit of clear and precise principles commanding universal acceptance.”\textsuperscript{344}

Despite these factors in favour of granting widespread intuitions evidential weight in Just War Theory, one could still object at this juncture that a positive reason has not been asserted for granting them any weight at all. Coons and Weber noted that “one might complain that the method is more like moral psychoanalysis than moral theory… Shouldn’t an ethics of self-defence tell us what we ought to think about the use of force in self-defence, rather than simply codify what we are already disposed to think?”\textsuperscript{345} Responding to such an objection is challenging because it is difficult to fathom what type of

\textsuperscript{341} Ibid., 116.
\textsuperscript{342} Ibid., 115.
\textsuperscript{343} This methodology would seemingly even appease Singer, who advocated “attempt[ing] the ambitious task of separating those moral judgments that we owe to our evolutionary and cultural history, from those that have a rational basis.” Singer, “Ethics and Intuitions,” 351.
\textsuperscript{344} Sidgwick, \textit{The Method of Ethics}, 338.
consideration could constitute decisive proof that moral intuitions ought to be conferred
evidential credence in ethical theorising. However, despite this ambiguity, there are certain
further features of ethical theorising that support a presumption in favour of bestowing
one’s filtered moral intuitions initial evidential normative force.

Ethics is a complex field that does not have clear feedback procedures. Demanding
concrete proof of a claim in such a field seems to misunderstand the endeavour. This fact
was noted by Aristotle in the *Nichomachean Ethics*. He explained: “Our discussion will be
adequate if it has as much clearness as the subject-matter admits of, for precision is not to
be sought for alike in all discussions… it is evidently equally foolish to accept probable
reasoning from a mathematician and to demand from a rhetorician scientific proofs.”

Further, it seems that every ethical theory that has ever been proposed rests on some level
on a fundamental intuition. It is difficult to imagine a method for conducting moral
theorising that is completely devoid of intuitions. Even those ardently opposed to granting
intuitions evidential weight inevitably appeal to common intuitions in the formative stages
of their arguments. As Brandt suggested, “a defender of appeals to intuitions might
[legitimately] challenge dissenters to name a better method for establishing normative
claims.”

This feature of moral theorising may have been what Rawls was alluding to
when he asserted that “there is a definite if limited class of facts against which conjectured

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point McMahan has added: “We can, indeed, be reasonably confident in advance that none of the moral
theories presently on offer are sufficiently credentialed to make it rationally required that we surrender our
principles can be checked”\textsuperscript{349} and that “dependence on intuitions cannot be eliminated entirely.”\textsuperscript{350}

The current method of conducting Just War Theory that grants evidential weight to intuitions has also been accepted by every theorist working in the field. Coons and Weber noted that “[d]espite lively debates about which principles are justified, the authors in this field rarely talk past one another or simply ‘pound the table’ insisting on their own intuitions… the method is thriving, as even rival theorists share an inventory of intuitions that drive the development of ever more sophisticated theory.”\textsuperscript{351} Given each of these considerations in favour of employing widespread intuitions as evidence in Just War Theory it seems that the burden of proof is on those claiming such a methodology is not justified. The crux of this claim is best articulated by Sidgwick, who declared: “A proposition which presents itself to my mind as self-evident, and is in harmony with the rest of my intuitions relating to the same subject, and is also accepted by all other minds that have been led to consider it may turn out to be false: but it seems to have as high degree of certainty as I can hope to attain under existing conditions of human thought.”\textsuperscript{352} For these reasons, one cannot defend the Reasonable Probability of Success criterion against the charge that it conflicts with widespread intuitions towards instances of self-defence by simply responding that intuitions should not be granted evidential weight.

\textbf{The legitimacy of hypothetical cases}

\textsuperscript{349}Rawls, \textit{A Theory of Justice}, 51.
\textsuperscript{350}Ibid., 41. A similar point was asserted by Russell, who wrote: “The fundamental facts in this as in all ethical questions are feelings; all that thought can do is to clarify and systematize the expression of those feelings…” Bertrand Russell, “The Ethics of War,” \textit{International Journal of Ethics} vol. 25, no. 2 (1915), 128.
\textsuperscript{351}Coons and Weber, \textit{The Ethics of Self-Defense}, 17.
\textsuperscript{352}Henry Sidgwick, as cited in Singer, “Sidgwick and Reflective Equilibrium,” 508.
Another possible response for one who wanted to defend the Reasonable Probability of Success criterion against the claim that it conflicts with widespread intuitions could be to accept granting intuitions evidential weight in Just War Theory, but to question the legitimacy of intuitions derived from purely hypothetical cases. It has become increasingly common in Just War Theory literature (and more broadly in moral and political philosophy) to test principles by ascertaining their implications for imagined (and often quite bizarre) cases. Some examples of vignettes that strain the imagination are ones that have included trolley carts, vaporising guns, surgically attached violinists, and ones whereby ‘philosophers have arranged’ for individuals to be trapped down the bottom of narrow wells. Writing about the use of far-fetched vignettes in Just War Theory, Lazar postulated that it is “perhaps morally dubious to invoke sanitised hypothetical examples when we could instead draw on the harrowing experience of real victims of war.”\textsuperscript{353} Similarly, prior to defending this method, Frowe and Lang noted that some “might even find the philosophical literatures’ appetite for abstract cases distasteful: as evidence of a lofty refusal among philosophers to acknowledge the hard politics and the visceral realities of war.”\textsuperscript{354}

It is not merely the fact that some thought-experiments are extremely unlikely to occur that is the issue. It is also that often the complexity of such thought-experiments makes it difficult to track one’s intuitions. Fantastic constructed scenarios that lack historical or practical reference points often fail to yield definitive intuitions. Husak maintained that “[i]ntuitions about cases are more likely to become increasingly unreliable as they deviate

\textsuperscript{353} Lazar, “Just War Theory: Revisionists Versus Traditionalists,” 2.
\textsuperscript{354} Frowe and Lang, How We Fight, xvi.
further and further from reality.” In addition, Lazar has observed that the opposite may be true. He contended that many hypotheticals offer minimal useful feedback for ethical theorising because they have been over-simplified. Lazar wrote: “Grounding our account of the ethics of war in our intuitions about small-scale cases of self-defence is like grounding our theory of distributive justice in the principles appropriate to shipwrecked castaways dividing up cowrie shells on a desert island... we can learn something about the morality of war from those highly simplified interpersonal cases. But we must also think about war itself.”

Statman may respond that there is nothing unrealistic about a case that depicts a victim who is incapable of mitigating or averting the advances of a physically stronger aggressor. Whilst his vignette is hypothetical, it does not seem to be especially exotic. However, this ignores the fact that self-defence is a preemptive act performed in the face of uncertainty. A possible problem with Statman’s case is his stipulation that the victim knows with absolute certainty prior to resisting that such resistance will not avert, or even mitigate, the harm that they will suffer. Such a stipulation of omniscience may detract from the credence granted to any intuition derived from such a case. This is a problem concerning bounded rationality. Real-world scenarios that are similar to the one described by Statman involve potential victims making split-second decisions based on limited information. As Husak

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357 It may generally be good to have certain dispositions, even if those dispositions misfire on particular occasions. Coons and Weber noted that this “point is often made in support of the use of (defensive) force by police: police must decide to act before determining with any degree of confidence relevant facts, for example, whether the suspect is reaching for a phone rather than a gun.” Coons and Weber, The Ethics of Self-Defense, 17. Relatedly, Husak noted that “[s]tipulations of omniscience are utterly fanciful, sometimes
asserted, on “the planet in which we live, I am relatively certain that innocent victims would believe (and certainly would hope) there to be a non-trivial chance that some future harm will be averted because of their resistance.” The fact that the case described by Statman cannot actually occur seems to cast doubt over his overall claim that there is something wrong with the Reasonable Probability of Success criterion. Coons and Weber have speculated that “any conclusions based on vignettes in which it is assumed that all the relevant facts are known might seem insufficient- indeed, almost entirely useless- in guiding us, whether as individuals, police officers, or nation-states, in the uncertain world we inhabit.”

However, there are several good reasons for employing hypothetical cases rather than simply analysing intuitions regarding military history, even if the former cannot occur in real-life. Perhaps surprisingly for some, fictional examples and abstract cases are often much more clinical than cases drawn from history. Stipulating exact conditions allows one to isolate specific principles and variables better in order to test whether or not they are morally salient. Most contemporary just war theorists adopt this methodology in an attempt to ensure that their cases are as ‘clean’ as possible. Coons and Weber have argued that “developing practical guidelines for self-defensive action, including acts performed when the actual circumstances are obscured, will require a certain amount of clarity- perhaps a lot of clarity- about what is justified when all the relevant facts are clear.”


359 Coons and Weber, The Ethics of Self-Defense, 17. They ultimately reject this view.

360 Dougherty and Pfaltzgraff Jr. explained that the “monumental difficulty in the field of international relations, as in all the social sciences, is that it is never possible to isolate a dependent and an independent variable in the real world as completely as one can isolate them for correlation in the mind.” Dougherty and Pfaltzgraff Jr., Contending Theories of International Relations, 307.

361 Ibid., 19.
Whilst some acknowledge that intuitions derived from extremely fanciful vignettes may be less reliable, they also believe that much can be learnt by observing the shifts in responses that occur when hypothetical prompts are altered in subtle ways. Frowe and Lang recognised the possible limitations of stipulations of omniscience in thought-experiments. However, they aptly responded: “when the time has come to apply these principles to real conflicts, complex questions of uncertainty and empirical fact have to be factored in… The vital point is that, even before such worldly accommodation is attempted, we need to have a lucid understanding of the principles and rules which we propose to apply to that world.”

A second reason for employing cases that are purely hypothetical is that this can help minimise biased intuitions. Discussions involving examples that concern international affairs or events that have actually occurred often become mired in disputes over background political assumptions or historical details. Some cases in point would be examples involving Israel or Gaza, China or Tibet, or any instance of colonisation. The necessity of abstracting from the obscurities and complexities of actual cases may have been one reason why Walzer, who famously utilised historical cases throughout *Just and Unjust Wars*, acknowledged that readers “might usefully treat the cases as if they were hypothetical- invented rather than researched.” It is for these reasons that it is not a problem for Statman’s criticism of the Reasonable Probability of Success criterion that it is grounded in a hypothetical case that cannot occur. For as Tadros noted: “As the world

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362 Frowe and Lang, *How We Fight*, xvii.
of science fiction demonstrates, our moral capacities are not disabled in imaginative contexts that are unfamiliar or even paradoxical.”

The relevance of intuitions related to domestic instances of self-defence for the ethics of war for reductivists

The strongest response to Statman’s criticism of the Reasonable Probability of Success criterion is to question the relevance of intuitions towards a domestic instance of self-defence to determining the ethics of war. This response delves into complex issues at the heart of Just War Theory which are essentially contested. There are two basic avenues of reply available to proponents of Statman’s criticism. The first is to argue that all justified killing is grounded in the same considerations, regardless of the circumstances in which it occurs. This chapter will outline this reductivist position and will note the strongest objection that it has received. The purpose of this section is not to conclusively determine whether or not reductivism is a tenable theory. Instead, it will simply be maintained that if reductivism is endorsed, then the widespread intuition derived from Statman’s case constitutes a significant problem for the Reasonable Probability of Success criterion. The second way that Statman’s case can be relevant to determining the ethics of war is that it could be analogous to cases of state-based self-defence. It will be argued that there are a few reasons for thinking that this may be the case.

The most straight-forward response to the question ‘what relevance do intuitions towards domestic cases of self-defence have for elucidating the ethics of war?’ is to argue

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365 In international relations literature the difference between the norms relevant to domestic society and those that are relevant to states in the international setting is known as ‘The Great Divide.’
that all instances of self-defence are justified by the same principles, regardless of the context in which they occur. This reductivist position has become the en vogue outlook for just war theorists in the last decade. The basic idea is that state-based self-defence is simply an extension of multiple and coordinated instances of individual self-defence. Therefore, the moral principles that govern interpersonal hostilities and hostilities in the international setting are exactly the same. In other words, there is a single general moral theory that applies to all instances of defensive violence. As war is not an exceptional state of affairs, intuitions elicited by cases such as the one depicted by Statman are highly relevant to determining the ethics of war. This outlook is labelled ‘reductivism’ because it maintains that the superficially complex questions regarding when it is ethically permissible for a state to wage war, and what it is ethically permissible for a state to do when prosecuting war, are reduced to familiar questions in the realm of domestic self-defence. Through analysing the latter field the answers to the former questions can be scaled up. As McMahan explained, the fact that defence is occurring on a larger scale “makes no difference other than to make the application of the relevant principles more complicated and difficult.”

There are a few factors that support this non-exceptionalist interpretation. The first is that it seems somewhat natural that the mode of justification required for killing human

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366 A similar approach has recently been adopted by theorists working on international law. Fletcher and Ohlin argued that by “studying the debates in domestic law, we will uncover a source of knowledge and understanding that, by and large, have been ignored… as though there were a hidden manuscript containing the secrets of life but no one had bothered to read it.” George P. Fletcher and Jens David Ohlin. Defending Humanity: When Force is Justified and Why (New York: Oxford University Press, 2008), 8. The reason that theorists believe that focusing on domestic cases can be illuminating is that they typically evoke clearer intuitions.

367 Plato famously reversed this procedure in Book II of the Republic, scaling down from the ethics governing the actions of states to deduce the ethics governing the actions of individuals.

368 Jeff McMahan, Killing in war (New Jersey: Oxford University Press, 2009), 156.
beings is the same regardless of the context. As Frowe noted whilst paraphrasing McMahan, to think otherwise “presupposes a form of moral alchemy by which people can, by agreeing amongst themselves to pursue a given goal in an organised fashion, license themselves to do what would otherwise be impermissible. And this kind of self-legislation hardly seems plausible.”369 A second factor supporting reductivism is the observation that just war theorists have long used the notions of ‘proportionality’ and ‘last resort’ when discussing war, notions that are commonly invoked in the context of the ethics of individual self-defence. Additionally, Coady has noted that, “supporters of war frequently meet pacifist objections by citing the validity of the individual right of self-defense against unjust lethal force.”370 Each of these considerations supports a reductive understanding of the ethics of war.

Prior to surveying the strongest objection to reductivism it must be highlighted that proponents of this view acknowledge that state-based self-defence is typically (and perhaps always) different in degree to other instances of self-defence.371 They also readily accept that the world is organised into states, and they are not committed to any metaphysical or ontological claim about the properties of a collective (such as whether or not ‘collectives’ exist). They simply maintain that the ethical principles that apply to domestic instances of self-defence (like the case depicted by Statman) are the same as the ethical principles that

369 Frowe, The Ethics of War and Peace, 2011), 33. It is the fact that one’s actions will negatively impact others who have not consented that must be the problem for Frowe and McMahan, for most people do not think there is a problem when participants in contact sport (or surgeons) perform activities that would otherwise be impermissible except for the fact that the individuals involved have agreed to take part (although some have expressed general objections to legitimacy of contact sports such as boxing).
371 Reductivists readily concede that the stakes, potential for destruction, and risk of escalation are much greater in state-based instances of self-defence. They are only arguing that domestic and state-based cases of self-defence are of the same kind and thus are subject to the same moral constraints.
apply to war. For this reason, it is clear that the intuition evoked by Statman’s case constitute a significant problem according to reductivists. For, if all justified acts of violent self-defence are justified at root by the same considerations, and if the requirement of a Reasonable Probability of Success is robustly counter-intuitive in domestic instances of violent self-defence, then this casts doubt over the tenability of the Reasonable Probability of Success criterion within Just War Theory.

However, there remains widespread debate regarding whether or not reductivism is a tenable theory. The most influential criticism of the reductivist outlook has been labelled the ‘bloodless invasion’ argument. First articulated by Rodin, it has been taken by many to be a fatal *reductio ad absurdum* of the claim that war is not a morally exceptional state of affairs. Rodin sets the scene by depicting two neighbouring states, call them State A and State B. In the scenario State A decides to aggressively invade State B in order to annex part of its territory, or take over its government. Rodin alternates between these two distinct threats in his discussion, perhaps because it does not seem to matter which is chosen if it is accepted that both do not threaten the ‘vital interests’ of individuals in State B, and that both intuitively warrant violent defence. The term ‘vital interests’ refers to the interests that it would be ethically permissible for individuals to employ lethal force to defend. These uncontroversially include one’s interest in one’s life, one’s bodily integrity, and one’s freedom from slavery. In Rodin’s example State A declares that it will not harm the vital interests of any individual in State B so long as it acquiesces and concedes part of its

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373 Notably, Rodin himself does not take it to be a *reductio ad absurdum*. This will be discussed later in this section.
territory, or control of its government, depending on how the case is set-up. However, if State B decides to violently resist invasion then State A will employ lethal force.\textsuperscript{374}

According to Rodin, if the ethical permissibility of State B resorting to a war of self-defence is grounded in the same principles that govern domestic instances of self-defence, then State B is not ethically permitted to trigger the conditional threat. State B ought to appease the aggressive State A because defending itself would violate the Proportionality condition of domestic self-defence. To demonstrate this point Rodin asks if an individual would be ethically permitted to use lethal force against someone who blocked them from casting a vote in an election (this can be extended to blocking them from voting in every election in their life).\textsuperscript{375} Violating an individual’s right to influence the make-up of their government does not seem to render one liable to be killed in a domestic setting. It violates the Proportionality condition of domestic self-defence to use lethal force in response to anything other than threats to one’s vital interests. Lazar pointed out that “[a]ccording to standard reductionism, institutions are wholly epiphenomenal to the morality of war, so it is hard to see how our interests in the continuation of a particular institutional arrangement could be worth killing for.”\textsuperscript{376} Further, it is extremely likely that resistance will lead to non-combatant casualties in State B, in a sense thus threatening the vital interests of those whose non-vital interests the war is being fought to defend (although this is clearly complicated by the fact that these are mediated harms).

\textsuperscript{374} Such a conditional threat is often referred to as ‘gunboat diplomacy.’
\textsuperscript{375} Whilst it could be argued that this is a crude analogy, most would agree that it is disproportionate in a domestic setting to employ lethal force to defend anything less than a ‘vital interest’ as defined by Rodin. This is especially the case if resorting to force will foreseeably lead to many innocent individuals suffering harms, as is almost always the case when states resort to war.
The apparent problem with this reductivist analysis is that state-based defence of political sovereignty and territorial integrity have traditionally been considered paradigm just causes for war.\textsuperscript{377} Mainstream philosophical, legal, and strategic practice considers the right to defend political sovereignty and territorial integrity to be non-negotiable.\textsuperscript{378} The reductivist appraisal is also contrary to both traditional Just War Theory, and widespread intuitions. Cicero famously declared that the “lands of Arpinum are said to belong to the Arpinates, the Tusculan lands to the Tusculands… each one should retain possession of that which has fallen to his lot; and if anyone appropriates to himself anything beyond that, he will be violating the laws of human society.”\textsuperscript{379} Interestingly, Walzer argued that defence of political sovereignty or territorial integrity are the only interests that unambiguously satisfy the Just Cause criterion, and that humanitarian intervention to defend foreigners’ vital interests was actually controversial. Rodin summarised that for “many thousands of years the proposition that politically ordered societies- notably states- have the right to defend their sovereign independence and territorial integrity through war has been a fixed point, a self-evident proposition that only cranks, eccentrics, or lunatics would question.”\textsuperscript{380}

It is also conceivable that widespread endorsement of the apparent reductivist assessment of the ‘bloodless invasion’ case could lead to chaos. Expansionist states may

\textsuperscript{377} Moore declared that “the right to defensive war is one of the pillars of international law and practice, and one of the least controversial aspects of the ethics of war.” Margaret Moore, “Collective Self-Determination, Institutions of Justice, and Wars of National Defence,” \textit{The Morality of Defensive War}, 185.

\textsuperscript{378} This is evident in the two major human rights conventions: the United Nations General Assembly Resolutions 1514 (1960) and 2908 (1972), and implicitly in Additional Protocol I to the Geneva Conventions (1977).


be spurred to exploit this judgement by undertaking territorial grabs coupled with conditional threats. The incidence of purely political aggression could increase if powerful states knew that the states that they invaded could not ethically resist them. This was noted by Lazar, who believed that one could “reasonably expect states like Russia and China, which have long-simmering territorial disputes with their neighbours, to take advantage of the opportunity to settle those disputes through bloodless invasion.”\footnote{Lazar, “National Defence, Self-Defence, and the Problem of Political Aggression,” 24.}

The fact that most individuals would intuitively regard defence against such invasions to be ethically permissible highlights the \textit{reductio ad absurdum} against the reductivist model. Fabre contended that the intuition that defence of political sovereignty or territorial integrity satisfy the Just Cause criterion is so widespread that “a normative theory of international relations which could not provide a justification for [defence of these interests] would be deemed a non-starter.”\footnote{Cecile Fabre, “Cosmopolitanism and Wars of Self-Defence,” in \textit{On the Morality of Defensive War}, ed. Cecile Fabre and Seth Lazar (Oxford: Oxford University Press, 2014), 91.}

There have been various responses to the ‘bloodless invasion’ argument that have been put forward in order to defend reductivism. This chapter will only provide a brief overview of these attempts, because it will later be argued that even if reductivism is not a tenable theory, there is still a problem with the contemporary understanding of the Reasonable Probability of Success criterion. Firstly, as noted above, Rodin did not take his argument to be a critique of reductivism. Instead, he believed that it demonstrated that resorting to war to defend a state’s political sovereignty or territorial integrity is not justified. According to Rodin, the notion that it is ethically permissible to employ force in his ‘bloodless invasion’ case stems from outdated and anachronistic ideas that fail to properly
value the worth of individual human lives. It must be noted that Rodin was not arguing in favour of pacifism. He still maintained that it can be ethically permissible to resort to war when faced with a threat to vital interests such as enslavement or genocide. Rodin simply believed that his ‘bloodless invasion’ argument highlighted the fact that some values traditionally taken to constitute just causes for war are actually not worth killing and dying to defend.

McMahan countered the ‘bloodless invasion’ argument by contending that the fact that vital interests are being threatened as part of the conditional threat ought to be factored into the legitimacy of a state defending itself. This claim is based on the idea that the aggressor state is responsible for restricting the victim state’s choice-set. Discussing a domestic case, McMahan claimed that as “soon as the thief structures the situation in such a way that the attempt to defend one’s possession automatically creates a need for self-defensive killing one’s right to self-defence is immediately activated.”383 Alternatively, Steinhoff attempted to deny the strength of the ‘bloodless invasion’ argument by questioning Rodin’s sharp distinction between vital interests and non-vital interests. He continued that there are cases in domestic society when it is ethically permissible to respond with lethal force to threats to non-vital interests, for instance when police officers are attempting to stop a bank robbery.384 Lazar has noted that another avenue of response could be to gesture towards the epistemic fact that a victim state cannot be certain that an invasion will remain

384 Uwe Steinhoff, “Rodin on Self-Defence and the ‘Myth’ of National Self-Defense: A Refutation,” *Philosophia* vol. 41, no. 4 (2013), 1024. It should be noted that since the decline of capital punishment far fewer individuals believe that it is permissible to kill someone robbing a bank who is not threatening any lives.
‘bloodless’ (or that absent resistance the invasion will not threaten vital interests).\textsuperscript{385} The reasonableness of relying on the good faith of those invading one’s state who are threatening lethal violence could be challenged.\textsuperscript{386} Lazar added the empirical claim that there has never been an instance of ‘bloodless invasion’ in history.\textsuperscript{387} A fourth response advocated by Hurka relies on the intuition that individuals in domestic society are ethically permitted to employ lethal force against someone who breaks into their home, regardless of what is being threatened. He claimed that the state has the same type of sanctity and inviolability as the home, and that it would be too much to expect appeasement or retreat in either setting.\textsuperscript{388}

Perhaps the strongest defence of reductivism against the ‘bloodless invasion’ argument has been posited by Frowe. Firstly, Frowe maintained that much of the harm that will be brought about if the victim state chooses to trigger the conditional threat through violent resistance ought to be heavily discounted in calculations for the Proportionality criterion because these are mediated harms.\textsuperscript{389} She added that “[w]hilst a defensive war will expose the victim state’s citizens to harm, it is those citizens who also stand to gain from the repelling of the aggression… It is plausible to think that collateral harms to potential beneficiaries are also discounted…”\textsuperscript{390}

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386 This notion was famously asserted by Locke, who wrote “I have no reason to conclude that he who would get me into his power without my consent would not use me as he pleased when he got me here, and destroy me too when he had a fancy to it…” John Locke, Second Treatise, ed. C. B. Macpherson, (Indianapolis: Hackett Publishing, 1980), chapter III, paragraph 17.
387 Interestingly, Lazar observed that such a response in favour of reductivism “sits extremely ill with other elements of the standard reductivist account, which is typically constructed out of hypothetical cases with little or no practical application.” Ibid., 23.
388 Hurka, “Proportionality and the Morality of War,” 55-56.
389 Frowe, Defensive Killing, 129.
390 Ibid., 147.
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for the Proportionality criterion.\textsuperscript{391} Frowe then declared that the apparent counter-intuitive reductivist prescription for the ‘bloodless invasion’ case does not necessarily follow if aggregation of interests is taken into consideration.\textsuperscript{392} She contended that if the inhabitants of State B have their non-vital interests in territorial integrity or political sovereignty aggregated then this may warrant lethal resistance. Frowe continued that such an aggregation is compatible with reductivist commitments because “there’s no special moral work being done here by the notion of the collective: it’s just a question of numbers.”\textsuperscript{393} Aggregation is a familiar feature of ethical theorising in general, and an accepted element of determining the ethical permissibility of action in domestic situations.\textsuperscript{394}

It is beyond the scope of this chapter to conclusively determine whether or not reductivism is justified. There are certainly several factors that support a reductivist understanding of the morality of resorting to force. These factors have led to reductivism becoming the mainstream view within Just War Theory in the last decade. However, Rodin’s ‘bloodless invasion’ argument constitutes a significant hurdle that those defending reductivism must clear. This chapter briefly surveyed several notable avenues of response available to one who wanted to defend reductivism. If reductivism is tenable then the intuitions elicited from Statman’s case clearly represent a problem for the Reasonable

\textsuperscript{391} Frowe’s suggestion is actually quite controversial and has counter-intuitive implications. She noted that it broadly entails “that members of the defending state are required to choose tactics that expose their own state’s non-combatants to harm rather than tactics that expose innocent non-combatants in the aggressor state to harm (assuming that each method enjoys similar prospects of success), since it is their own non-combatants who stand to benefit from the defence.” Ibid.

\textsuperscript{392} Ibid., 160.

\textsuperscript{393} Ibid., 141.

\textsuperscript{394} Whilst this line of argument seems promising, one possible problem with Frowe’s position is that aggregation is entirely a matter of raw numbers. Her assessment seems to imply that for instance Australia’s interests in defending its political sovereignty or territorial integrity is roughly five times greater than New Zealand’s. Whilst a hostile takeover of the Australian government would probably lead to overall more harm than a hostile takeover of the New Zealand government in virtue of the fact that more individuals would be affected, this fact does not intuitively bear weight on the question of whether or not either state has the right to resist aggression. Thank you to Nicholas Evans for this suggestion.
Probability of Success criterion. For, if such a criterion does not seem appropriate in a domestic setting, and if the principles governing resorting to defensive force are the same regardless of the setting, then it seems inappropriate to require a Reasonable Probability of Success for states resorting to war. However, it can be argued that Statman’s criticism does not rely on reductivism. It can also constitute a problem for those just war theorists that endorse an exceptionalist understanding of the ethics of war.

**The relevance of intuitions related to domestic instances of self-defence for the ethics of war for exceptionalists**

The explanatory gap between widespread intuitions regarding when it is ethically permissible to resort to war (the ‘bloodless invasion’ argument) and the reductivist outlook is one reason why many just war theorists have abandoned reductivism for an exceptionalist theoretical model of warfare. This is not to suggest that exceptionalism is a modern phenomenon. It has only been in the last decade that just war theorists have begun to take seriously the reductivist claim that war is not a *sui generis* state of affairs that is governed by its own ethical framework. The alternative position is labelled ‘exceptionalism’ because it asserts that some of the ethical principles applicable to war are exceptional relative to the ethical principles that are applicable to domestic interactions. Walzer was a chief proponent of this view, declaring that the application of domestic ethical constraints onto decisions in the context of war would only be appropriate “if war was a peacetime activity.”^395^ The strength of this condemnation is apparent when it is remembered that *by definition* war is not a peacetime activity.

One reason many just war theorists favour an exceptionalist outlook is their ontological belief that war is essentially a collective enterprise. It has been contended that given the fundamentally collective nature of warfare, such an endeavour ought to be subject to a different set of ethical principles than those that are appropriate for individuals in domestic society. Walzer maintained that “war itself isn’t a relation between persons but between political entities and their human instruments.” This distinction was also advanced by Rousseau in the eighteenth-century. He believed that individuals abandoned their private status when they became combatants acting on behalf of the state. As agents for a collective, statesmen’s decisions and combatants’ actions ought to no longer be judged by the ethical standards that apply to individual agents in domestic society. Criticising reductivism, Zohar concluded that “[t]rying to make sense of warfare as though it were an aggregate of individual confrontations can only produce moral vertigo.” For this reason, he maintained that ethical “deliberation about international relations in general, and about the conduct of warfare in particular, must include explicit recognition of the moral status of collectives.”

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396 The notion of ‘collective’ self-defence in Just War Theory is different from the notion of ‘collective’ self-defence in international law. In the latter the term refers to a group of states fighting together to achieve common interests. The term in Just War Theory applies to the agents that international law would label as acting in ‘individual’ self-defence.

397 Orwell famously declared: “Above all, war brings it home to the individuals that he is not altogether an individual. It is only because they are aware of this that men will die on the field of battle.” George Orwell, “The Lion and the Unicorn: Socialism and the English Genius,” in Essays (London: Penguin Classic, 2000), 174.

398 Walzer, Just and Unjust Wars, 36.

399 To underscore this point, Garner maintained that war “creates a wide and deep rupture with everyday morality” and that to “understand war as an aggregation of acts of self-defense is like trying to understand friendship as the aggregation of acts of self-interest.” Renaud-Philippe Garner, “A Tale of Two Moralities,” The Journal of Philosophy vol. 113, no. 9 (2017), 458.

400 Noam J. Zohar, “Collective war and individualistic ethics: Against the Conscription of ‘Self-Defense’,” Political Theory vol. 21, no. 4 (1993), 615.

401 Ibid., 619.
There are other noteworthy factors that seem to support the claim that the difference between the ethics of war and the ethics of other instances of self-defence is a difference in kind (and not simply degree). One is the complex nature of the agents that wage war. States fighting both aggressive and defensive wars pose distinct multifaceted threats that are comprised of many different offensives. Further, after a state has declared war it typically attacks repeatedly until a ceasefire is accepted. This entails that retreating or even sleeping adversary combatants may be targeted because they will pose a threat in the future, a situation that is not typical of most instances of interpersonal conflict. Lazar has pointed out that war is fought “through a specialised institutional division of labour that enables individuals to accomplish together lethal results unattainable if they were acting apart.”

For this reason states that wage unjust war can generate a greater sum of wrongs than can be appropriately attributed or allocated to the aggregate of individuals that prosecuted the war. In other words, the individuals that fight on behalf of the state may be collectively responsible for wrongs that exceed the accumulation of each individual’s fault.

A related argument in favour of exceptionalism is that the goods (or interests) that are at stake when a state wages war are irreducibly collective. These goods are distinct from the goods of the individuals that reside in the state (the significance of these collective goods cannot be reduced to a contribution to the well-being of each individual). This claim is often asserted to explain the widespread intuition that it would be ethically permissible to wage war in the ‘bloodless invasion’ case. It is contended that state-based self- or other-defence operates under exceptional moral constraints because there is no other context whereby collective goods such as territorial integrity and political sovereignty are in

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jeopardy. There is simply no domestic equivalent of a state having its territory annexed or government taken over. The fact that other collectives (such as a cricket club or the Girl Guides) cannot defend these political collective goods also explains why it is only states (and perhaps state-like entities) that are governed by exceptional moral principles. It is not enough to merely be a collective.\textsuperscript{403} These exceptional moral principles governing war are more permissive than the moral principles commonly taken to govern violent conduct in domestic society.

Exceptionalists still owe an account of why defence of these allegedly collective goods such as political sovereignty or territorial integrity justifies the use of lethal force. It is not enough to simply rely on the widespread intuition referred to in the ‘bloodless invasion’ argument.\textsuperscript{404} After all, human societies have existed in the past without states, and the existing political arrangements are relatively arbitrary and historically contingent. Typical exceptionalist explanations have gestured towards the internal and external impersonal benefits of having political communities that are not subject to outside interference. The internal benefits of having an institutional arrangement whereby a political community has political control over its own territory have to do with the ‘fit’ between citizens and the particular political system. Exceptionalists also highlight the disruption to civilian life that even a ‘bloodless’ government take-over would entail, the benefits of maintaining a shared notion of justice, and the feeling of solidarity generated in a self-governing community. A commonly invoked external benefit is that licensing defence of territorial integrity and

\textsuperscript{403} For Lazar this is crucial, as he believed an “adequate theory of the morality of war should also recognise that warfare is different from a riot or melee. There is a difference between Hobbesian war of all against all and systematic military engagement between two or more political communities.” Lazar, “Complicity, Collectives, and Killing in War,” 30.

\textsuperscript{404} Rodin actually believed that exceptionalists could not justify resistance in his ‘bloodless invasion case’ either. He maintained that argument by analogy was susceptible to the same problems as the reductivist approach.
political sovereignty contributes to perpetuating a relatively stable international system. This will be explored in more detail in a later chapter.

Exceptionalists have also provided an argument for the widespread intuition that combatants waging war should be subject to exceptional moral principles. This is often referred to as the doctrine of moral equality (or symmetry). It is argued that combatants operate under an exceptional set of moral principles in virtue of the fact that they mutually consent to join a special class. These exceptional moral constraints recognise that combatants consent to being targets, creating a reciprocal suspension of domestic rights between adversaries. Walzer famously summarised: “when soldiers fight freely, choosing one another as enemies and designing their own battles, their war is not a crime; when they fight without freedom, their war is not their crime.” The basic analogy that is often appealed to gestures towards two professional boxers fighting in a ring. By voluntarily agreeing to fight they consent to suffering harm, and they are no longer liable for any legitimate harm they inflict. It is argued that similarly, combatants on the battlefield consent to being targets and are no longer liable for any legitimate harm inflicted on adversary combatants. Some exceptionalists have offered more technical explanations of this basic idea that relate to institutionally conferred rights and duties that combatants acquire. A key benefit of this model is that it allows combatants to discriminate between legitimate and illegitimate targets on the basis of readily observable features (such as an adversary wearing a uniform or holding a weapon).

405 Miller has summarised the distinctive features of an army as opposed to merely a group of individuals. The former is: “(i) comprised of combatants with task-defined roles; (ii) with a command and control structure; (iii) which reproduces itself, e.g. by way of recruitment and training; (iv) engaged in a collective enterprise, namely, armed conflict against another armed force; (v) to realize a collective military end (or ends), e.g. incapacitate the enemy armed force; (vi) which collective military end is ultimately in the service of a collective political end(s) of the political entity of which the armed force is the military wing.”

If exceptionalism is tenable and war is governed by different moral principles than those applicable to domestic instances of violence, then some work needs to be done to demonstrate that Statman’s case is troubling for the Reasonable Probability of Success criterion. This work can be done by employing the chief theoretical tool of exceptionalists just war theorists; the domestic analogy. Although exceptionalists hold that there are at least some differences between the ethical principles applicable to domestic self or other-defence and state-based self- or other-defence, they still accept that intuitions towards domestic cases of self-defence can be relevant to determining the ethics of war. Domestic cases may be relevant if they are analogous to state-based cases. Almost every exceptionalist has employed the domestic analogy when formulating their theories of the ethics of war. This methodology grants states a form of artificial personhood, and it is utilised because often intuitions towards domestic instances of self-defence are clearer than intuitions towards state-based self-defence.

The domestic analogy is an intellectual tool that is ubiquitous in the just war tradition. Some influential theorists who explicitly invoked the analogy are Plato, Thucydides, Augustine, Aquinas, Machiavelli, Grotius, Vattel, Wolff, Vitoria, Hobbes, Montesquieu, Kant, Mill, and Morgenthau. For instance, Montesquieu succinctly declared that the “life

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407 The other means exceptionalists have for generating the moral principles of war include analysing the testimony of combatants who have experienced conflict, unpacking historical instances of war, and drawing from existing international law and treaties.
408 Interestingly, international law also grants states a form of artificial personhood, according them legal interests, rights, responsibilities, and also holding them accountable for actions. However, it must be emphasised that just war theorists are interested in drawing from the moral rights of individuals in domestic society, not their legal rights.
409 This was aptly summarised by Orend, who wrote that the domestic analogy “draws its vitality from the sheer difficulty of speaking about the behaviour of complex entities like states without employing simplifying assumptions—such as that they have a discernible identity, have intentions, face choices between alternatives, are thus responsible for their choices, and so on… It is an irreplaceable aid to understanding in this regard.” Orend, The Morality of War, 50.
410 Augustine famously rejected the analogy because he believed it is immoral for an individual to employ lethal force in self-defence. He argued a readiness to kill in self-defence represented an inordinate lust for
of states is like that of men… [m]en have the right to kill in the case of natural defense; states have the right to wage war for their own preservation.”

More recently, Walzer maintained “[t]erritorial integrity and political sovereignty can be defended in exactly the same way as individual life and liberty” and that “[o]ur primary perceptions and judgments of aggression are the products of analogical reasoning.” The analogy is often drawn between an individual’s right to defend their life and their liberty (or autonomy) and a state’s right to defend its territorial integrity and political sovereignty. The general idea is that the ethical principles appropriate for individual self-defence often mirror, or have parallels to, the ethical principles appropriate for justifying war. Beitz observed that “perceptions of international relations have been more thoroughly influenced by the analogy of states and persons than by any other device,” and Rodin concluded that “it is difficult to overstate the importance of this idea in the history of international ethics, international law, and political philosophy.”

There is a certain naturalness to employing the domestic analogy when attempting to determine the ethics of war. Perhaps this is derived from the fact that it is common to speak about states as if they are the kind of entities that have intentions, choices, and responsibilities. However, like all straight-forward arguments by analogy, the domestic

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413 Many just war theorists believe that political sovereignty, like life for an individual, is a property that if lost by a state then the state will cease to exist in an important respect.
415 Rodin, *War and Self Defense*, 141.
416 This personification of the state is evident in Hobbes’ frontispiece for the *Leviathan*, which features the sovereign depicted as a large man.
analogy is susceptible to the existence of salient differences between the cases being analysed. As Grotius acknowledged in the seventeenth-century, “what has been said by us up to this point, concerning the right to defend oneself and one’s possessions, may be applicable also to public war, if the difference in conditions be taken into account.”\textsuperscript{417} In fact, the exceptionalists who employ the domestic analogy seemingly must believe there to be salient differences between some cases of domestic self-defence and state-based self-defence, because if they did not their ethical theory would be exactly the same as the reductivists’ and they would not need to use an analogy. Most exceptionalists take cases of domestic self-defence to be analogous to state-based self-defence, unless there is a compelling argument to the contrary. The outstanding issue is whether or not there are any morally salient differences that render the case depicted by Statman disanalogous to state-based self-defence.

For exceptionalists, the most commonly appealed to morally salient difference between domestic cases of self-defence and state-based self-defence is the lack of effective legal recourse in the latter.\textsuperscript{418} When individuals consider vignettes like Statman’s they naturally assume that the action occurs within a stable institutional context, which has an effective police force and functioning judicial system in the background. Fletcher and Ohlin highlighted that states are not situated in such a context, as the “response time of the

\begin{footnotesize}
\textsuperscript{417} Hugo Grotius, “De jure belli ac pacis,” Prolegomena 11, (1625).
\textsuperscript{418} Fishback maintained that failure to recognise this is a “fundamental mistake [which] is the progenitor of a great deal of (but not all) revisionist overstatement about the degree to which the ‘true’ morality of war comes apart from mainstream moral beliefs about war.” Ian Fishback, “Necessity and Institutions in Self-Defense and War,” in The Ethics of Self-Defense, ed. Christian Coons and Michael Weber (New York: Oxford University Press, 2016), 286. It must be noted that Fishback is still a reductivist. He simply believed that it is more common for instances of state-based self-defence to satisfy the Necessity criterion than instances of individual-based self-defence in domestic society because of the lack of judicial recourse in the former. He also added that it may be easier for states to satisfy the Proportionality criterion because of the importance of deterrence in the international setting.
\end{footnotesize}
Security Council pales in comparison to the local police department.” The international scene is much closer to Hobbes’ state of nature, or to the time in human history when it was more common for individuals to live on inaccessible, scarcely populated frontiers. However, this distinction that renders many domestic instances of self-defence disanalogous to state-based self-defence is not a problem for Statman’s case. If anything, stipulating that the victim in Statman’s vignette is threatened in an anarchic setting only makes the intuition that they can resist even more robust. It is often asserted that victims ought to appease their aggressors in domestic instances of self-defence because they have the option to resort to the law after the fact to redress any losses. In contrast, Fishback recently demonstrated that “it is necessary to inflict more moral harm in anarchy, including war, to defeat continuous threats and achieve deterrence.”

The strongest case that can be mounted in favour of the view that Statman’s hypothetical is disanalogous to war relates to the fact that in his domestic case the victim deciding to resist only increases their own risk of harm. In contrast, a political leader’s decision to wage war commits all of the individuals in their jurisdiction to potentially suffering harm. Due to the nature of the weapons utilised in war, and due to the tendency of war to escalate, it is almost certain that the decision to wage war will lead to collateral damage. This is not the case in Statman’s example. Further, a feature of war that is often overlooked in Just War Theory is that a decision to wage war also increases the risks that one’s combatants

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419 Fletcher and Ohlin. Defending Humanity: When Force is Justified and Why, 79.
420 This difference in context was observed by Hegel, who wrote there “is no Praetor to judge between states.” Georg Wilhelm Friedrich Hegel, as cited in Arthur F. Holmes, War and Christian Ethics: Classic and Contemporary Readings on the Morality of War, 2nd ed. (Michigan: Baker Academic, 2005), 288.
421 Fishback, “Necessity and Institutions in Self-Defense and War,” 290. Although Statman stipulated that resistance would have no deterrent effect this also seems to count in favour of resistance for states. If most individuals already hold the intuition that the victim in Statman’s case is ethically permitted to resist, then once again this intuition would be even more robust in the international setting where all instances of self-defence are observed by other parties.
will suffer the moral and psychological costs associated with causing death and destruction. Again, in Statman’s case the individual who will be causing harm in self-defence is making the decision to resort to violence themselves. It seems to be a morally salient difference between Statman’s case and most instances of war that in the latter political leaders will be sacrificing the lives of others. This is particularly salient given that the situations under discussion are ones in which resistance will most likely not avert or mitigate the perceived threat.

If this is a morally salient difference then it could be argued that the Reasonable Probability of Success criterion is still appropriate for collective self-defence, regardless of the widespread intuitions towards Statman’s case. However, this does not consider the historical instances of collective resistance whereby the individuals who would suffer the costs of resistance knew that such resistance would be futile, but chose to fight regardless. In many instances a state’s decision to wage war had the support of those who would be harmed by this decision. It will be argued that most commentators believe that resistance was ethically permissible in these cases that also violated the contemporary understanding of the Reasonable Probability of Success criterion. For this reason, the contemporary understanding of the Reasonable Probability of Success criterion is contrary to widespread intuitions and requires modification or rejection even for those who believe that reductivism is not tenable, and that Statman’s case is not analogous to war. The two instances of collective resistance that will be explored are the Warsaw ghetto uprising of 1943 and Belgium’s decision to resist German aggression in 1914. Evidence will be presented that the victims in each of these cases knew that they could not mitigate or avert
the threat they faced, that they voluntarily decided to resist, and that most individuals intuitively believe that resistance in each of these cases was ethically permissible.

**The historical cases of collective resistance that are troubling for the Reasonable Probability of Success criterion**

Prior to analysing these historical cases a few benefits of utilising real-world examples will be noted. This may seem peculiar after previously defending the use of unrealistic hypotheticals in Just War Theory. However, there are several factors that support also exploring actual incidence from history. Firstly, studying international affairs and military history is important because this helps demonstrate the significance of Just War Theory. Cases from history highlight the fact that the problems under discussion can actually occur. Demetriou noted that any account of the ethics of war that did not reflect on soldiers’ testimony and historical incidents could be accused of being “an ‘ivory tower’ theory of war, invented and promulgated by academic monks, monkish academics, and legalistic jurists, each of whom made the mistake of foisting ethical outlooks of the cathedral or courtroom onto war.” Further, utilising historical cases also aids in predicting how conflict situations will unfold. Dougherty and Pfaltzgraff Jr. explained that: “History is the great laboratory within which international action occurs… Most experienced scholars in international relations realise that a knowledge of history is essential because it broadens

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immensely the database from which extrapolations into the future are likely to be made, and it also refines our ability to formulate hypothesis that approximate social reality.”

The most influential just war theorists from the past were all motivated to enter this field by pressing conflicts in their lifetimes. Some just war theorists who wrote extensively on contemporary international affairs during their lifetimes include Ambrose, Aquinas, Augustine, Grotius, Suarez, and Vitoria. Walzer was also an advocate of utilising historical events and testimony in order to determine the ethics of war. He was primarily interested in the way “men and women who are not lawyers but simply citizens (and sometimes soldiers) argue about war,” because his “main concern [was] not with the making of the moral world but with its present character.” Although Just and Unjust Wars is not historically exhaustive and often forgoes systematic analyses of the events it discusses, its focus on the realities of conflict imbues it with a practical relevance and concreteness that much recent literature in Just War Theory lacks. This was crucial for Walzer, who wrote: “it is important to my own sense of enterprise that I am reporting on experiences that men and women had really had and on arguments they have really made.” For these reasons the following analysis of the Warsaw ghetto uprising and Belgium’s decision to resort to force in 1914 may be fruitful. This would have contented Collingwood, who famously wrote in his autobiography that “the chief business of twentieth century philosophy was to reckon with twentieth century history.”

423 Dougherty and Pfaltzgraff Jr., Contending Theories of International Relations, 21.
424 Testimony was also especially important for Garner, who (paraphrasing Walzer) declared that “many of the claims and arguments of the lawyers and the theorists who have constructed the law and morality of war will appear bizarre or incomprehensible if we do not start by first understanding what it is like to be a soldier at war.” Garner, “A Tale of Two Moralities,” 449.
425 Walzer, Just and Unjust Wars, xxii.
426 Ibid., xxiv.
One case of collective resistance that seems troubling for the contemporary understanding of the Reasonable Probability of Success criterion is the Warsaw ghetto uprising in April 1943.\textsuperscript{428} This historical case is especially illuminating due to the numerous primary sources recovered from the incident. These documents have consequently enabled the production of a vast array of secondary sources concerning the conflict, including ethical appraisals. The Warsaw ghetto uprising occurred in response to the German decision to begin sending Jewish residents of the Warsaw ghetto to a concentration camp in Treblinka in July 1942. News filtered back to the Warsaw ghetto that approximately 300,000 of those sent to this concentration camp had been killed. Many of the remaining Jewish residents of the Warsaw ghetto decided to band together and utilise the small arsenal of weapons that had been smuggled to them to violently resist the ensuing S.S. \textit{Aktion}. The Warsaw ghetto uprising is a clear case of a conflict that failed to mitigate or avert the perceived threat. It took less than a month for the S.S. troops to comprehensively suppress the rebellion. In Statman’s discussion of the Reasonable Probability of Success criterion, he declared that the “actual contribution of the uprising to the saving of Jewish lives was nil… [a]lthough a small number of Jews did survive the destruction of the ghetto, one could almost say that they survived in spite of the uprising, not because of it.”\textsuperscript{429}

\textsuperscript{428} As noted previously, this case is discussed in relation to the Reasonable Probability of Success criterion in Statman, “On the Success Condition for Legitimate Self-Defense.”

\textsuperscript{429} Ibid., 665.
Crucially, it is clear that the relevant decision-makers knew prior to commencing hostilities that they could not mitigate or avert the perceived threat. At the onset of the uprising a Z.O.B. combatant is quoted as describing the initiation of hostilities as “the most hopeless declaration of war that has ever been made.” Another Z.O.B. member acknowledged: “We realize that our armament compared with that of the enemy reminds one of a fly facing an elephant.” This sentiment is reinforced by the fact that the Z.O.B. did not choose to build bunkers, planning instead to fight to the death. Adler’s memoirs maintained that those who fought decided “to engage in a heroic fight irrespective of the outcome and without any chance for even partial success.” In fact, Einwohner has convincingly argued that the Warsaw ghetto uprising only occurred because the relevant agents knew that they could not mitigate or avert the threat they faced. Her study argued that “collective action in the Warsaw Ghetto emerged not in response to opportunity but to a lack thereof; in fact, it was only once the ghetto fighters became aware of the hopelessness of their situation that they began to plan resistance.”

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430 It must be noted that many captives did take action to attempt to save their lives. Some forged identification papers, or hid their children in designated safe houses. It is simply being asserted that those who took part in the uprising knew that they could not mitigate or avert the threat they faced.


433 At the outset of the uprising Arie Wilner, one of the founders of the Jewish Fighting Organisation, declared: “Not one of us will leave here alive.” Arie Wilner, as quoted in van der Linden, “Just War Theory and U.S. Military Hegemony,” 57.

434 Stanislaw Adler, as quoted in Rachel L. Einwohner, “Opportunity, Honor, and Action in the Warsaw Ghetto Uprising of 1943,” American Journal of Sociology vol. 109, no. 3 (2003), 660. He continued that the “kind of heroism required by [this] choice nobody in the whole world would attempt as long as one spark of hope existed that they could last out.” Ibid.

435 Einwohner cited the fact that collective resistance did not occur until July 1941, before gesturing towards several primary sources that support her conclusion. For instance, Klajman’s memoirs maintain: “Everyone knew the chance of victory was zero, but winning wasn’t the goal.” Ibid., 667

Despite the fact that those who took part in the Warsaw ghetto uprising knew that their violent resistance could not mitigate or avert the threat that they faced most individuals regard their action to be ethically permissible. Van der Linden maintained that the “Warsaw Ghetto uprising in 1943 provides a good example of a morally courageous struggle doomed to failure.”\textsuperscript{437} Also employing this case as an illustration, Lango asserted that “a military operation that is demonstrably hopeless can still be just- for example, the Warsaw Ghetto Uprising.”\textsuperscript{438} Similarly, Lee concluded his discussion of the requirement of a Reasonable Probability of Success by stipulating that: “a state or group is morally entitled to fight for the very survival of its citizens, even if failure is very likely… For example, the violent efforts of the Jews in the Warsaw Ghetto to resist their being slaughtered by the Nazis in the spring of 1943 was surely justified, despite it being a lost cause.”\textsuperscript{439} Lastly, Kamm contended that “[e]ven if Nazi plans had not been extermination but only confinement to ‘model’ camps, a doomed uprising would have been permissible, I believe.”\textsuperscript{440} The sentiments of these just war theorists seem to capture widespread intuitions towards this historical case.

Once again, the problem for the Reasonable Probability of Success criterion is that it seemingly conflicts with widespread intuitions. According to the contemporary understanding of this requirement the decision to violently resist deportation (and subsequent extermination) was ethically impermissible. However, there are several features of the Warsaw ghetto uprising that may detract from the usefulness of intuitions

\textsuperscript{437} Van der Linden, “Just War Theory and U.S. Military Hegemony,” 57.
\textsuperscript{439} Lee, \textit{Ethics and War: An Introduction}, 97.
derived from this case. Firstly, it must be noted that it was a case of collective private resistance rather than state-based resistance. Unlike most instances of state-based war, those who chose to resist the S.S. troops were not ordered to fight or conscripted by a higher authority. Further, those who took part in hostilities believed that they were going to be killed regardless of their actions. Again, this is not usually the case in state-based self-defence. In addition, given the unusual circumstances of the uprising, there was a much lower than usual chance that the decision to violently resist aggression would lead to increased non-combatant casualties. There is also much debate within academia concerning the possible uniqueness of the Holocaust, and whether or not it is theoretically useful to gesture towards this tragedy as evidence in favour of a theory.\textsuperscript{441}

Despite these possible limitations of the Warsaw ghetto uprising case, it seems that the Reasonable Probability of Success criterion also conflicts with intuitions towards characteristic instances of state-based war. A prime example of this tension concerns Belgium’s decision to resist German aggression in 1914. On the 2\textsuperscript{nd} of August 1914 the German minister to Belgium delivered an ultimatum to King Albert and the Belgian government. Put simply, Germany demanded unfettered passage through Belgian territory for German troops. Germany’s rationale for such an incredible demand was that they had purportedly received ‘reliable information’ that French troops were going to be deployed across Belgian territory, and that Belgium would be incapable of repelling such an ‘invasion’ from the west.\textsuperscript{442} German officials claimed that they had no choice other than to violate Belgian territorial integrity, and that they were prepared to settle ‘relations between

\textsuperscript{441} See for example Alan S. Rosenbaum, \textit{Is the Holocaust unique?: perspectives on comparative genocide} (Routledge, 2018).
\textsuperscript{442} Interestingly then, Germany attempted to justify invading Belgium by highlighting the fact that Belgium did not have a reasonable probability of mitigating or averting the alleged threat posed by France.
the two states to the arbitration of the sword’ if required.\textsuperscript{443} King Albert and the Belgian government promptly refused Germany’s demand. What transpired as a result is commonly referred to as the ‘Rape of Belgium,’ with 5,000 civilian casualties in August alone, and an estimated 30,000 over the course of World War I. Over 1,000,000 Belgians were also displaced to foreign states, and 20,000 Belgian structures were destroyed. The resistance only managed to delay the German forces for two days, and Germany maintained control of Belgium until the end of the war.\textsuperscript{444}

Prior to turning to the three questions ‘did Belgian decision-makers know resistance would be futile,’ ‘how do most individuals intuitively appraise the case,’ and ‘did resistance have the popular support of those who would suffer the costs of initiating hostilities,’ a few interesting features of Belgium’s decision will be noted. Firstly, it is not clear that Belgian resistance played no part at all in Germany’s overall defeat in World War I. It is difficult to determine the impact of this resistance, especially given Germany would later end up waging war on several fronts. It is certainly clear that Belgian appeasement would have been in Germany’s strategic interests when they made the ultimatum. However, this does not alter the fact that the Belgian decision to initiate hostilities did not mitigate or avert the threat that Belgium itself faced, and therefore that this decision violated the contemporary understanding of the Reasonable Probability of Success criterion. Secondly, it is conceivable that Belgium could have been invaded by other countries if it chose not to offer resistance to German aggression. Belgium was bound by treaty to remain neutral, and this neutrality was ‘guaranteed’ by Austria, France, Great Britain, and Russia (and

\textsuperscript{443} It must be noted that the German ultimatum insisted that Belgium would remain independent if it allowed German troops to pass through its territory, and that Belgium would be compensated for any damages accumulated through any later hostilities on Belgium soil.

\textsuperscript{444} Although the resistance at Liege lasted longer than most initially anticipated.
Germany). Accordingly, if Belgium had allowed German troops to pass across its territory then it was the duty of Austria, Great Britain, France, and Russia to prevent this passage.\(^{445}\) Given the nature of hypotheticals, suggesting what would have occurred if Belgium had not resisted amounts to pure speculation. Yet it is possible that war may have broken out on Belgium territory regardless of its decision to resist Germany.

Returning to Belgium’s decision, this was not simply a case of the relevant decision-makers over-estimating the prospects of mitigating or averting the German threat. Belgian agents knew that their six divisions were hopelessly overmatched by the might of the German army.\(^{446}\) During the Crown Council meeting on the 2\(^{nd}\) of August to decide how to respond to the German ultimatum, the Belgian Chief of Staff was asked “can our army fight a defensive battle alone with a chance of halting the enemy?” and “is our army completely ready to meet the attack?” He emphatically responded: “No, the war has caught us in the very act of reorganizing the army; our officer cadres, especially those in the reserve, are still inadequate, our field artillery is still below establishment; we have absolutely no heavy guns.”\(^{447}\) It was also not the case that the Belgian decision-makers were naïve of the costs that would be incurred by the decision to resist. Although there was widespread misapprehension across Europe prior to World War I concerning what their contemporary military technology was capable of achieving, the brutal German policy of

\(^{445}\) There is a lack of precision in the terms of the Treaty of London (1939) concerning whether each guarantor state was individually bound to protect Belgium’s neutrality, or whether they were collectively bound to respond together. A problem with the latter interpretation arises if it is one of the guarantor states that threatens Belgium’s permanent neutrality, as was the case when Germany invaded in 1914.

\(^{446}\) Ironically, Belgian politicians had regularly debated whether or not they should increase military spending and preparedness in the years prior to World War I, but had decided against this because according to one politician this “would be to weaken the force of the treaties which guarantee the inviolability of Belgium, and to throw doubt upon them.” Unnamed Belgian politician, as quoted in Emile Maxweiler, *Belgium Neutral and Loyal: The War of 1914* (New York: G.P. Putnam’s Sons, 1915), 16.

Schrecklichkeit was well-known at the time and it was anticipated that Belgian civilians would suffer.

Despite the fact that Belgium decision-makers knew prior to commencing hostilities that they could not mitigate or avert the German threat, most individuals believe that their resistance was ethically permissible (some even claim ethically praiseworthy). For instance, Fabre declared that “if any country ever had a case for going to war, Belgium in 1914 certainly did.” Employing the broader notion of Just Cause (using the term to refer to the overall headline judgement of a war rather than one criterion of jus ad bellum), Ceulemans maintained that: “Nobody doubts for an instance that Belgium during World War I had a just cause in defending itself militarily against the German invasion.” Similarly, Steele declared that “even though Belgium’s decision contradicts… the just war ‘reasonable chance of success’ condition, few scholars or theorists would interpret the Belgian decision in normatively negative terms.” Lastly, McKenna vaguely claimed that there are cases when “the moral value of national martyrdom may compensate for the material destruction of unsuccessful war, as with Belgium in 1914.”

A crucial element of an ethical appraisal of Belgium’s decision to resort to war concerns whether or not those who would suffer from this decision supported the war effort. A

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448 Interestingly, even at the time of the invasion German officials acknowledged that what they were doing was unjust. From the outset the Chancellor of Germany declared: “This is contrary to the prescriptions of international law… We shall repair the injustice we are committing as soon as our military object is attained.” The Chancellor of Germany as quoted by Adrien de Gerlache, Belgium in War Time, trans. Bernard Miall (London: Hodder and Stoughton, 1915), 24.
451 Steele, Ontological Security in International Relations, 15.
possible difference between Statman’s domestic case, the Warsaw ghetto uprising, and Belgium’s decision to violently resist could be that in the latter case those who made the decision were causing other innocent individuals to incur harm. When a state chooses to wage war there are many implications for its own polity. Such a decision typically exposes those under their jurisdiction to great risks and also forces many of them to engage in violent acts.\textsuperscript{453} For this reason the question of whether or not the Belgian decision-makers were sensitive to the will of the people is pertinent. This was emphasised by Walzer in his discussion of Finland’s decision to resist Russian aggression in 1942 when they seemingly did not satisfy the Reasonable Probability of Success criterion. He declared: “It is probably less important, then, that these calculations be rightly made than that they be made by the right people… Finland was a democracy; its people knew the exact nature of the Russian demands, and the government’s decision to fight apparently had overwhelming popular support… the decision to reject appeasement is best made by the men and women who will have to endure the war that follows.”\textsuperscript{454}

There are ample primary sources that suggest that the Belgium people supported the decision to resist German aggression. This attitude would have surprised the German ambassador in Brussels, who declared prior to the conflict that “the Belgians will line up to see us pass.”\textsuperscript{455} At the outbreak of hostilities the King of Belgium asserted: “ Everywhere in Flanders and Wallonia, in the towns and countryside, one single feeling binds all hearts together… One single vision fills all minds… One single duty imposes itself upon our

\textsuperscript{453} At the time in Belgium all citizens who could afford to pay for their own military equipment between the age of twenty and forty were liable for service in the Civil Guard.
\textsuperscript{454} Walzer, \textit{Just and Unjust Wars}, 71.
\textsuperscript{455} Von Below Saleske, as quoted by Steele, \textit{Ontological Security in International Relations}, 179.
wills: the duty of stubborn resistance… [this represents] the close union of all Belgians.”

This proclamation is supported by a traveller’s testimony from March 1915, which stated “for seven months I have been travelling through our beautiful land of Belgium, from Gand to Arlon, from Liege to Mons; going on foot or by tram from town to town, from village to village. I have seen and spoken to hundreds of men of all classes and all parts of the country. And all these people, taken singly or united in groups, display a very definite frame of mind.” Separate testimony reiterated that for foreigners visiting Belgium during the occupation, “[n]ot only will they see the street-urchins imitating the parade-step under the noses of the German officers; but they will find the whole population, admirable in its dignity, implacable in its contempt for the enemy who holds it under the threat of his regiments.”

Such a sentiment was also observed by both Maxweiler and Gerlache, who were both living in Belgium during the war and published separate works on the conflict in 1915. In reference to the decision to resort to force, Maxweiler claimed the “man in the street would have found himself in agreement with the Government as to that program, for it came from the very soul of the people.” He explained that not “for one moment was there in Belgium any hesitation on the part of those who direct the policy of the country or on the part of the people, and nobody imagined that it would be possible to adopt the attitude of

456 King Albert, as quoted in Gerlache, Belgium in War Time, 22. In his discussion of this announcement, Gerlache maintained that the “Belgian people approved unreservedly of the proud and dignified reply which its rulers had made to the German proposals. Immediately and unanimously, it felt that it represented justice…” ibid., 21. He added that “on the morning of the 4th of August, when the King, in campaigning kit, visited Parliament, where the representatives of the nation were awaiting him, there were frantic acclamations all along his route.” Ibid.
457 Ibid., 229.
458 Ibid., 230.
the money dealers in the temple.”\textsuperscript{460} This was again reinforced by the testimony of Gerlache, who stated “it was our sole voice, the voice of an entire people, which rose, vibrating, in a single impulse of patriotism… as one man… its first thought and first care were to make ready for battle.”\textsuperscript{461} He then emphatically maintained that this attitude remained even after hostilities had ceased.\textsuperscript{462} Gerlache declared:

\begin{quote}
There is not at the present moment a single Belgian family which has not been horribly tried by this war, for which we were not prepared. All are mourning...
Ask any Belgian, whether he be a minister or a modest clerk, a manufacturer or an artisan, a wholesale merchant or a small shopkeeper, a great stockbreeder or a poor tenant-farmer: ask the widow, or the orphan, or the parents who have lost one or several sons, ask any Belgian, no matter whom, be he Catholic, Liberal, or Socialist, if he does not feel to-day that it would have been better to have accepted the bargain which Germany proposed to us on the 2\textsuperscript{nd} of August, 1914. There is not one who will not reply, without hesitation: ‘No, we could not have done otherwise than we did, and if it had to be done again we should do the same.’\textsuperscript{463}
\end{quote}

This constitutes evidence in favour of the view that the individuals who suffered as a result of Belgium’s decision to resist German aggression supported this decision. This is crucial, as the harms that would be suffered by innocent non-decision-making individuals

\begin{enumerate}
\item\textsuperscript{460} Maxweiler, \textit{Belgium Neutral and Loyal}, 59.
\item\textsuperscript{461} Gerlache, \textit{Belgium in War Time}, 27.
\item\textsuperscript{462} The fact that this sentiment remained even after the hostilities is important, for as Russell noted: “At the beginning of a war each nation, under the influence of what is called patriotism, believes that its own victory is both certain and of great importance to mankind.” Russell, “The Ethics of War,” 130. This fervour typically dissipates once citizens begin experiencing the consequences of war. Walzer observed that often those who have actually experienced the horrors of war are much more averse to initiating or continuing hostilities. He noted that in an opinion poll in Great Britain in 1941 “the most determined demand [for reprisal raids against Germany] came from… rural areas barely touched by bombing, where some three-quarters of the population wanted them… in central London, conversely, the proportion was only 45 percent.” Walzer, \textit{Just and Unjust Wars}, 325. The fact that this did not occur in Belgium emphasises the popular support that the decision to resist enjoyed. Critically, it also demonstrates that this was not a case whereby those who consented to suffer the costs of war did so because they lacked sufficient information about the threat they faced. In other words, there seems to have been informed consent.
\item\textsuperscript{463} Gerlache, \textit{Belgium in War Time}, 238.
\end{enumerate}
constituted the strongest possible morally salient difference between Statman’s case and collective cases of self-defence.

To summarise, Statman demonstrated that the contemporary understanding of the Reasonable Probability of Success criterion conflicts with widespread intuitions towards domestic instances of self-defence. It can be argued that this alone demonstrates that the Reasonable Probability of Success criterion requires modification or rejection from *jus ad bellum*. The argument is straightforward for reductivists who believe that the principles governing the ethics of self-defence remain consistent regardless of the context. For exceptionalists, it can be argued that Statman’s case is analogous to collective self-defence. However, it remains possible to deny the claims that reductivism is a tenable theory, and further that Statman’s case is analogous to collective self-defence. For this reason, it has been argued that the contemporary understanding of the Reasonable Probability of Success criterion also conflicts with widespread intuitions towards historical cases of collective self-defence. In light of this evidence, the contemporary understanding of the Reasonable Probability of Success criterion must be either reformulated, or removed entirely from *jus as bellum.*
Chapter Seven: Problems with Statman’s Honour Solution for the Reasonable Probability of Success criterion

Chapter overview

This chapter will critically evaluate Statman’s proposed Honour Solution for the Reasonable Probability of Success criterion. It will begin by briefly outlining the problem that the Honour Solution is attempting to resolve. The problem will receive only a cursory examination because it has been outlined in a previous chapter. This chapter will then present Statman’s proposed modification to the contemporary understanding of the Reasonable Probability of Success criterion. Statman believed that this modification, which has gained traction in recent Just War Theory literature, enables the Reasonable Probability of Success criterion to be consistent with widespread intuitions, and thus be retained as a constraint on when it is ethically permissible to resort to force in self-defence.

This chapter will then propose a series of problems with Statman’s Honour Solution when it comes to determining whether or not it is ethically permissible to resort to war. These are: that it renders the requirement of a Reasonable Probability of Success redundant, that the temporal scope for employing force that it sanctions is too permissive, that the parasitic requirement is implausible, that it violates the Right Intention criterion, and several related issues to do with the concept of honour itself. The purpose of this chapter is to demonstrate that Statman’s reformulation of the Reasonable Probability of Success criterion suffers from more defects than the contemporary understanding of this criterion upon which he is attempting to improve.

Statman’s Problem
According to the contemporary understanding of the Reasonable Probability of Success criterion it is not ethically permissible to resort to force unless there is a reasonable probability that such force will achieve self-defence or defence of others. Self-defence and defence of others are narrowly interpreted to mean mitigating or averting a perceived imminent physical threat. Gesturing towards three separate cases, Statman argued that there is a normative problem with the contemporary understanding of this criterion. According to Statman, these cases highlight the fact that a reasonable probability of mitigating or averting a physical threat is not intuitively considered necessary for it to be ethically permissible to resort to force in self-defence. For this reason, Statman believed that the contemporary understanding of the Reasonable Probability of Success criterion must be either amended, or removed from jus ad bellum entirely. This chapter will only briefly unpack one of Statman’s three cases, as two are discussed at length in a previous chapter, and the intuitions invoked are relevantly similar in each scenario.

Statman’s primary case depicted an individual confronted with the threat of rape by a group of five assailants. In this scenario the victim possesses a gun with two bullets. The victim knows that shooting (and incapacitating) two of the aggressors will not deter the other three, and that if anything, they may even be spurred on to carry out the threat more brutally. To employ familiar terminology, the victim knows that they cannot mitigate or avert the physical threat they face. The victim also knows that shooting two of the aggressors will not have any effect on the incidence or severity of similar acts of aggression in the future. Given these stipulations, according to the contemporary understanding of the

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Reasonable Probability of Success criterion, it would not be ethically permissible for the victim to resort to force. Statman contended that this case (and two others involving John Wayne and the Warsaw ghetto uprising) reveals that there is a clear problem with the contemporary understanding of this criterion. The problem, according to Statman, is that most individuals intuitively believe that it would be ethically permissible for the victim to shoot two of the assailants in this scenario. For the purpose of this chapter it will be assumed that Statman’s problem with the Reasonable Probability of Success criterion is forceful. This will enable a comprehensive critical evaluation of Statman’s proposed solution.

Statman’s Honour Solution

Statman believed that the Reasonable Probability of Success criterion should be retained as a constraint restricting when it is ethically permissible to resort to force in self-defence. He suggested an innovative solution that aligns this criterion with the widespread intuitions elicited by his cases. He first posited the descriptive claim that in the situations he described the victim’s honour is threatened by being treated as a mere means by the aggressors. He maintained that “[w]hen we are attacked by people who want to kill us, rape us, or steal our possessions, we face two kinds of threat… One is the direct threat to our life, bodily integrity, property… the other is the threat to our honour.”\textsuperscript{465} He then postulated that the intention of the victim who resorts to force in cases similar to the one depicted is not to mitigate or avert the physical threat that they face, but to mitigate or avert the threat to their

honour. Statman declared that having a reasonable probability of defending one’s honour ought to satisfy the Reasonable Probability of Success criterion and justify resorting to force in self-defence. According to Statman, resistance to aggression necessarily mitigates or averts a threat to a victim’s honour. As such, he concluded that “despite appearances, the Success condition is actually satisfied in the cases under discussion.”

Several just war theorists agree with Statman both that resistance that cannot mitigate or avert a physical threat can mitigate or avert the threat to a victim’s honour, and, that mitigating or averting the threat to a victim’s honour can justify inflicting harm. Writing prior to Statman’s article, Benbaji asserted: “Murder is wrong, not just because of it being materially harmful, but also because the murderer does not give due weight to the victim’s interests… when the victim defends himself against a villainous threat, he is trying to avoid both the harm of death and also disrespectful treatment at the hands of the aggressor.” In the same way, Tadros argued: “I have a good reason to prefer going down with a fight to going down passively because in that way I demonstrate self-respect- I demonstrate I have great moral significance.” Following Statman, Frowe has maintained that “what explains the permissibility of inflicting harm in insufficiency cases… is that the victim is defending her honour, even if she cannot avert or mitigate the physical threat.” Similarly, McMahan also supported Statman’s contention, writing that a victim’s resistance “can be

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466 Ibid.
469 Frowe, Defensive Killing, 119. Frowe also noted that an appealing implication of this account is that it is only ethically permissible to harm culpable aggressors if one cannot mitigate or avert a physical threat, because she believed only culpable aggressors threaten a victim’s honour. Statman observed a peculiar implication of this view; “in cases of negligent rape (typically having sex with a women whom one negligently assumed to have consented) the woman’s right of self-defense would be more limited.” Statman, “On the Success Condition for Legitimate Self-Defence,” 675.
understood in a different way, as an assertion of her status as something more than a helpless victim… It is its own just aim, independent of the forward-looking aim of defense.” The sentiments of these latter two just war theorists underscores the intuitive nature of Statman’s account, and the fact that it has gained traction in recent Just War Theory literature.

In formulating the Honour Solution, Statman anticipated the objection that “the moral loss involved in the taking of human life, certainly of several human lives, seems disproportional to the loss involved in an offense to honour.” He believed that sanctioning the use of force to mitigate or avert a threat to honour simpliciter was too permissive. In light of this, Statman included an intricate restrictive clause in his Honour Solution labelled the parasitic requirement. To assist in illustrating the substance of this clause Statman gestured towards a distinction discussed by McKim and McMahan, and later adopted by Hurka, between sufficient and contributing Just Causes for war. A sufficient Just Cause for war is the type of cause that can satisfy the Just Cause criterion of *jus ad bellum* (for instance, a war against aggression to save the lives of non-combatants). A contributing Just Cause for war is a morally laudable cause that is not sufficient to satisfy the Just Cause criterion (for instance, ensuring women in a foreign state have access to an adequate education). McKim and McMahan argued that once the Just Cause criterion has been satisfied (a sufficient Just Cause exists), then it is ethically permissible for a state to

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470 McMahan, “Proportionality and Time,” 22.
pursue a contributing Just Cause.\textsuperscript{473} Hurka added that in these situations a contributing Just Cause can also figure in calculations for the Proportionality criterion of \textit{jus ad bellum}. Employing Statman’s terminology, contributing Just Causes are ‘parasitic’ on sufficient Just Causes, in that they rely on the latter in order to be legitimate considerations.

Statman argued that in the same way, the threat to honour must be accompanied by a weightier threat (which alone would satisfy the Just Cause criterion) in order for defence of honour to be a legitimate aim of self-defence. He wrote that “when the threat to [a] victim’s honour is parasitical, so to say, on other threats- to her property, bodily integrity, or life, the measures she is allowed to take should be proportionate to the primary objects of harm, rather than to the offense to honour.”\textsuperscript{474} To clarify, if the threat to a victim’s honour is not accompanied by a physical threat (for instance, if an individual suffers defamation), then it is not ethically permissible for a victim to resort to force to defend their honour. However, if the threat to a victim’s honour is accompanied by a weightier threat (for instance, if an individual is in the situation Statman described), then it is ethically permissible for a victim to resort to force to defend their honour. Statman continued: “The more culpable the aggressor collective and the more severe and oppressive the threat it poses, the more probable it is that the attacked collective would enjoy moral permission to wage war.”\textsuperscript{475} It is implied by Statman’s parasitical requirement that a threat to one’s honour rises and falls in proportion to the severity of the physical threat one faces. Frowe embraced this implication, asserting: “Thinking that you are the sort of thing that I can slap

\textsuperscript{473} There is an interesting parallel between this theory and some theories of criminal justice, which state that individuals cannot be incarcerated for the purpose of deterrence simpliciter, but once they have committed a significant offense they can be legitimately incarcerated for the purpose of deterrence.


\textsuperscript{475} Ibid., 684.
because I feel like slapping you is not as significant a threat to your honour as thinking that you are the sort of thing I can rape or kill or seriously assault because I feel like raping, killing, or seriously assaulting you.”

Problems with Statman’s Honour Solution

Whilst believing that the Honour Solution remedies the purported problem with the Reasonable Probability of Success criterion in cases of individual self-defence, Statman only tentatively suggested that it is also applicable to state-based self-defence. The remainder of this chapter will endeavour to vindicate Statman’s lack of confidence that the Honour Solution is appropriate for determining whether or not it is ethically permissible to wage war. The first issue with Statman’s account is that it effectively renders the Reasonable Probability of Success criterion redundant as a constraint restricting when it is ethically permissible to resort to war. Statman wrote: “Whenever victims of aggression… find the courage to rise against [aggression] through some form of determined resistance, however hopeless, they are thereby reaffirming their honour… such actions necessarily succeed.” As such, by definition there are no circumstances whereby a state will not have a reasonable probability of mitigating or averting the threat to its honour posed by aggression. The Reasonable Probability of Success criterion will thus no longer operate as a constraint preventing states from recourse to war because it will necessarily be satisfied.

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476 Frowe, The Ethics of War and Peace, 112.
477 It should be noted that Frowe stated: “Given the collateral harm of war, I’ll assume here that the defense of honour that might make it permissible to inflict otherwise unnecessary harm in response to an interpersonal attack will not suffice to make a non-defensive war permissible.” Frowe, Defensive Killing, 151.
This was also observed by Kuo, who concisely summarized: the “Honour Solution solves the problem by removing the problem.”\textsuperscript{479} This is an issue for Statman because he explicitly stated that he wanted to retain the Reasonable Probability of Success criterion as a restraint on when it is ethically permissible to resort to force.

A second problem with Statman’s reformulation of the Reasonable Probability of Success criterion is that it sanctions an implausibly permissive temporal scope for resorting to force. By detaching the permissibility of responding with force from the intention of mitigating or averting a specific physical act, Statman seemingly permits any state to retaliate with force to any perceived imputation of its honour (that was accompanied by a weightier threat) that has ever occurred (if the weightier threat was not mitigated or averted). Statman acknowledged this implication of his theory, noting that “[u]nlike the defense of life, in which [case the v]ictim must act before the threat materializes, acts to restore honour can take place afterward… it might never be too late to get even.”\textsuperscript{480} Statman’s concession seems too permissive, as it conflicts with the modern central tenet of Just War Theory that only an ongoing or imminent act of aggression can justify a violent response.

Although Statman conceded this negative implication of his view, Frowe believed this was not necessary. She argued that he was only forced to do so because he was “ambiguous about whether the harms that he is trying to justify ‘defend,’ or ‘protect’ honor, or ‘re-assert’ or ‘restore’ honor.”\textsuperscript{481} Frowe maintained that if he characterised the victim’s action

\textsuperscript{479} Kuo, “Success and the aftermath of surrender,” 112.
\textsuperscript{481} Frowe, “The Role of Necessity in Liability to Defensive Harm.”
as a ‘defense’ of their honour, then “[o]nce the primary, physical threat is over, the threat to honour (notice: not the harm to honour) is also over.” 482 This qualification seemingly limits the length of time that victims of aggression have to ethically resort to force for the sake of their honour. It thus seemingly removes the counter-intuitive temporal implication of Statman’s Honour Solution.

However, it can be argued that Frowe owes a more substantial explanation for why the victim’s action ought to be characterised as ‘defense’ of their honour. Such a stipulation appears to be simply ad hoc and is not grounded in any mainstream honour code. Ferzan was critical of this idea, questioning “why does the communication have to be contemporaneous with the attack?” 483 Kaufman’s detailed analysis of the concept of honour revealed that “it has been a universal feature of honour cultures that the failure to seek retribution after an unjustified attack is indeed a continuing reflection on one’s lack of honour.” 484 This would sanction almost every state to resort to force because of some historical act of aggression. It is irrelevant that the individuals residing in a state that had its honour slighted centuries ago are now deceased, because Kaufman added: “this applies as well to those who are expected to take retribution on behalf of the victim (e.g. relatives, where the victim has been killed).” 485 Kaufman emphatically concluded that “it is by no means obvious that an attack on one’s honor should be construed along the model of a physical attack, that is, as having the same duration as the physical attack.” 486 As such, the

482 Frowe, Defensive Killing, 114.
483 Kimberly Kessler Ferzan, “Defending Honor and Beyond: Reconsidering the Relationship between Seemingly Futile Defense and Permissible Harming” (2017), 15.
485 Ibid.
486 Ibid.
counter-intuitive implication that a state could resort to force to defend their honour ‘after the fact’ remains a problem for Statman’s Honour Solution.

The third problem with Statman’s Honour Solution is that whilst his parasitic requirement may seem superficially plausible, once it is actually unpacked it is untenable. A preliminary minor issue is that it does not seem that the magnitude of the threat to a victim’s honour need necessarily rise or fall in proportion to the magnitude of the physical threat that they face. This was demonstrated by Bowen through the use of an example. Bowen depicted an individual from a persecuted minority race who has their ear flicked by an aggressor because the aggressor believes that individuals of this minority race deserve lesser moral consideration. Although being treated in this manner causes only minor physical harm, Bowen argued that it could constitute a substantial threat to the persecuted victim’s honour. In fact, the victim could suffer greater physical harm at the hands of another third-party, but this could produce a smaller threat to their honour because they are harmed for a different motive (for example, suppose every day the third-party decides to kick a different stranger completely at random). The threat to a victim’s honour is also often much greater than the physical threat that they face (for instance, if they are verbally abused). The magnitude of physical harm that a victim is threatened with simply does not necessarily correlate to the magnitude of the threat to their honour.

A stronger problem with the parasitical requirement is that it sanctions inflicting substantial harm (including killing) for causes that do not justify the infliction of substantial harm. Although McKim and McMahan claimed that the existence of a sufficient Just Cause justifies a state pursuing a contributing Just Cause, it is implicit that the sufficient Just

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Cause must still be actively pursued. If state A is preparing to commit genocide on a large portion of its population (assuming preventing this is a sufficient Just Cause) and also does not allow women to be educated (assuming rectifying this is a contributing Just Cause), McKim and McMahan would not accept that it is morally permissible for state B to violently invade state A (because a sufficient Just Cause exists) and then ignore the genocide and exclusively focus on ensuring women have access to an education. However, Statman’s claim that a victim can employ force to successfully defend their honour simply because successfully mitigating or averting the accompanying physical threat would have justified resort to force amounts to a defence of state B’s action. In other words, Statman believes a victim is ethically permitted to resort to force when such force cannot achieve the Just Cause that actually justifies the use of this very force.

Statman was seemingly somewhat aware of the peculiarity of this proposal. He noted that: “Some oddity, however remains. To protect herself from the lesser of two threats, regarding which the Victim has a reasonable hope of success, she is permitted to take measures that would be proportionate to the other, greater threat, which she has no hope of averting.”488 Just as McKim and McMahan’s distinction does not permit a state to use the existence of a sufficient Just Cause as a pretext to only pursue a contributing Just Cause, the ‘parasitical requirement’ ought not permit a state to use the existence of an unachievable sufficient Just Cause as a pretext to pursue defence of honour.

An additional problem with Statman’s parasitical requirement is that it is a clear violation of the jus ad bellum Right Intention criterion (in cases such as the one he describes when the physical harm cannot be mitigated or averted). Right Intention is one of six

conditions of *jus ad bellum* that is widely accepted. According to this criterion, it is not enough to have satisfied the principle of Just Cause for a war to be ethically permissible. Resorting to force is only ethically permissible if mitigating or averting the threat that justifies employing force is the goal of resorting to war. As the United States Catholic Bishops’ Pastoral Letter declared: “War can be legitimately intended only for the reasons set forth as a just cause.”\(^{489}\) It would be absurd to suggest that the intention of the victim in Statman’s example is to mitigate or avert the physical threat that they face, for they know that this is unachievable. Whilst it may be the case that the victim would intend to achieve this goal *if it were possible*, it is clear that, pursuant to Statman’s interpretation, the intention of the victim in his case is solely to defend their honour. As defence of honour does not constitute a Just Cause, the victim in Statman’s case does not satisfy the Right Intention criterion. Violation of the Right Intention principle alone is sufficient to render a decision to wage war ethically impermissible.

The only way that Statman could rescue his Honour Solution would be to dispense with his parasitic requirement and argue that defence of honour alone ought to satisfy the Just Cause criterion. The existence of a substantial physical threat cannot do any justificatory work in his cases because resort to force cannot mitigate or avert this physical threat. Statman would not be the first just war theorist to argue that defence of honour alone is sufficient to render it ethically permissible to wage war.\(^{490}\) In the first century B.C.E.

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\(^{490}\) This is not to suggest that most (or even that many) just war theorists in the past have argued that defence of honour constitutes a Just Cause for war. For instance, Luther emphatically declared: “What is to be said about the man who goes to war not only for the sake of wealth, but also for the sake of temporal honor… Greed for money and greed for honor are both greed; the one is as wrong as the other. Whoever goes to war because of the vice earns hell for himself.” Martin Luther, as cited in Holmes, *War and Christian Ethics: Classic and Contemporary Readings on the Morality of War*, 161.
Cicero asserted “a war is never undertaken by the ideal State, except in defence of its honour or its safety.”\textsuperscript{491} Suarez later agreed, contending: “There are various kinds of injuries which are causes of a just war… any grave injury to one’s reputation or honour… It should be added that it is a sufficient cause for war if an injury of this kind be inflicted either upon a prince himself or upon his subjects; for the prince is guardian of his state and also of his subjects.”\textsuperscript{492} In a statement reminiscent of the just war theorist’s views put forward supporting Statman’s appraisal of his scenario, Mushkat maintained that “even if a nation has a good reason to believe that it will be defeated, its spirited resistance may preserve significant values- such as self-respect- beyond the number of lives lost and retention of territory and sovereignty.”\textsuperscript{493}

One factor in favour of the claim that defence of honour ought to satisfy the Just Cause criterion is the potent motivational force of this value.\textsuperscript{494} It is empirically observable that individuals across societies and throughout history have believed that honour is worth dying for and killing to protect.\textsuperscript{495} Realists writing on international relations have long

\textsuperscript{491} Marcus Tullius Cicero, as cited in Holmes, War and Christian Ethics: Classic and Contemporary Readings on the Morality of War, 25.
\textsuperscript{492} Francisco Suarez, as cited in Holmes, War and Christian Ethics: Classic and Contemporary Readings on the Morality of War, 206.
\textsuperscript{494} Interestingly, Demetriou has argued that ‘Honour War Theory’ better explains that causes of historical conflicts and better aligns with widespread intuitions than Just War Theory. He also noted that there “is no shortage of historical precedent for honor-motivated war.” See Demetriou, “Honor War Theory: Romance or Reality?” 307.
\textsuperscript{495} Kagan’s influential work On the Origins of War concluded that the most fundamental causes of war were “honor, fear, and interest,” and that in a surprising number of cases “honor is decisive.” See Donald Kagan, On the Origins of War and the Preservation of Peace (New York: Anchor, 1995), 6-9. This notion echoes Thucydides’ claim that when it comes to ceding territory to another state: “Three very powerful motives prevent us from doing so- security, honour, and self-interest.” Thucydides, History of the Peloponnesian War, trans. Rex Warner (London: Penguin, 1972), I.76. Evidence of this can be found in Shakespeare’s Richard II, where the Duke of Norfolk declared: “Take honour from me and my life is done.” This remark is interestingly contrasted by Falstaff’s remark in Henry IV. He stated: “What is honour? A word. What is that word honour? Air… Honour is a mere scutcheon.” William Shakespeare, Henry IV, V.i. 135-141.
emphasised honour as a motivational force behind the behaviour of states. Further, Einwohner has demonstrated that the Jewish residents of the Warsaw ghetto decided to resist deportation for the sake of their honour. She concluded: “The hopelessness of their situation helped construct a motivational frame that equated resistance with honor… The main goal of resistance, therefore, was not necessarily to beat the S.S. troops and secure safe passage out of the ghetto. Instead, it was to act honorably.” These views are opposed by the modern normative belief that honour is an archaic value that has been rendered obsolete. Disputing this belief, Kaufman concluded “even if we have largely abandoned the vocabulary of honor, it still implicitly (and to some extent unconsciously) guides our thoughts and practices.”

However, there are several important considerations that count against defence of honour satisfying the Just Cause criterion and justifying resort to war. The first is that such a concession tracks against the overall trend of Just War Theory throughout history. Over time Just War Theory has progressively become more restrictive in the types of interests that can justify waging war. The purpose of *jus ad bellum* is to limit the occasions of war, and any revisionism that expands the amount of instances when a state can legitimately resort to war is in danger of appearing insensitive to the philosophical motivations of the project. A key factor driving the narrowing of the right to wage war was the sheer destructiveness of World War I and World War II. It was not the case that over the course of time interests that were believed to have had moral value were found to lack such value. Rather, it was realised that anything less than vital interests (such as life and

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498 An exception to this trend has been the widespread push in the last two decades to expand Just Cause to include humanitarian intervention.
freedom) cannot be weighed against the vast devastation that resort to war necessarily entails.\[^{499}\]

Further, an immediate problem with applying Statman’s Honour Solution to war is the necessary differences between his primary case and cases of state-based self-defence. In Statman’s case the only individuals who can suffer increased harm due to the victim’s decision to resist for their honour are the aggressor and the victim who is making the decision. In contrast, a state’s decision to resort to war for the sake of its honour will almost certainly entail increased harm suffered by non-combatants in both the aggressor state and the victim state, and also combatants in the victim state who are not responsible for the decision to resist. There is also a morally important difference between the fully-culpable aggressor in Statman’s case and the combatants fighting for an aggressor state. Whilst one could argue that combatants fighting for an aggressor state are not ‘innocent’ in the relevant sense, not many would claim that they are fully-culpable. Another important and often overlooked difference between individual self-defence and state-based self-defence is that in the former the person making the decision is also the person who will suffer the moral costs of inflicting harm on another human being. This is not the case in war. It does not seem that these morally salient differences can be outweighed by the importance of a state mitigating or averting a threat to its honour.

Thirdly, the honour code Statman implicitly asserted through his evaluation of his case requires a more extensive defence than what is provided.\[^{500}\] An honour code is a set of

\[^{499}\] Lots of things have a moral value that is not sufficient to justify killing- friendship seems to be one such value. It would not be ethically permissible to kill someone who is spreading lies in order to poison your friendship with someone else.

\[^{500}\] This point was also noted by Miller, who wrote that “[n]either Statman nor Frowe say very much in the way of explicating the notion of honour and how it can be threatened… they are silent on the nature of threats to honor.” Miller, “‘Ineffective’ Aggression, Symbolic Protest, and Self-Respect,” 6.
standards by which individuals have their honour measured. Although Statman does not make reference to any particular honour code, he seemingly must endorse one that includes ‘reflexive honour.’

Stewart explained that reflexive honour is that thought that “if A impugns B’s honour, then B’s honour is ipso facto diminished or destroyed unless B responds with an appropriate counter-attack on A.” In relation to Statman’s primary case this notion seems counter-intuitive. For it seems strange to suggest that a victim who is raped by an aggressor whom they cannot physically resist has lost their honour. Further, Statman emphasised that an important element of the threat to the victim’s honour is that they are being used as a means. However, it is not immediately obvious how inflicting some harm on an aggressor entails that the victim is no longer being treated as means. Ferzan has questioned: “If the most abhorrent thing about rape is its use of a person as a means and that cannot be stopped, in what sense is honor truly being defended?” As Coppieters and Fotion remarked in regard to state-based defence, “it is not clear that honor or self-respect is lost in the first place when a nation surrenders in the face of absolutely overwhelming odds.”

Rather than it being a lack of courage that causes a victim to not offer resistance that will not mitigate or avert the physical threat they face, it may be that they believe that violently resisting will not serve any purpose (other than perhaps causing themselves to suffer further brutality). This is the reason that police often advise potential rape victims to yield and not resist their assailants. Frowe’s defence of Statman’s appraisal of his case

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501 This is not to be confused by reflective honour, which is the idea that one can lose or gain honour through the actions of others who they are closely tied to.
503 Ferzan, “Defending Honor and Beyond,” 11.
highlights the counter-intuitive nature of his account. In explaining why futile resistance amounts to a defence of honour, Frowe maintained that it conveyed “a refusal to be complicit” in the rape.\footnote{Frowe, \textit{Defensive Killing}, 113.} Ferzan has aptly pointed out that “this is a staggering observation” because it is both “conceptually and normatively unattractive.”\footnote{Ferzan, “Defending Honor and Beyond,” 12.} She explained: “Conceptually, we tend to think of complicity as requiring a purpose… Normatively, it seems to add insult to injury to say that someone who is being attacked is also required to fight against the attack, lest she be dishonouring herself.”\footnote{Ibid.} Even under the most charitable understanding of the notion of complicity it does not make sense to say the victim is complicit, especially given that per hypothesis they cannot possibly mitigate or avert the threat that they face.

Statman’s account also fails to specify whether the morally important aspect of resistance is that the \textit{victim believes} that their honour has been defended, or whether it is that \textit{onlookers observe} that the victim has defended their honour. There seems to be problems with either interpretation of what is occurring.\footnote{Statman could also propose some form of bipartite theory, however, this would seemingly suffer from all of the defects of both accounts.} If the former, then whether or not it is ethically permissible for the victim to resist is purely contingent on whether or not the victim actually subscribes to Statman’s honour code. For if the victim does not think that their honour is being threatened through rape, or they do not believe that resistance will defend their honour, then their resistance will not serve its morally important purpose.\footnote{As Ferzan explained, not all “reasons are reasons that have force merely by existing. Rather, sometimes these reasons need to be intended or known before they are available.” Ferzan, “Defending Honor and Beyond,” 20.} It is counter-intuitive to suggest that a victim who does not hold credence in
the notion of honour, or who perhaps has simply never considered how one can lose their honour, would not be permitted to resist for these reasons.

There are also problems if Statman instead thought that the morally important part of a victim’s resistance is that the victim has not lost honour from the point of view of onlookers. Such an interpretation is implied by Statman’s controversial claim that “the reason we care about the eyes of society is that we realize in some real sense our worth depends on the judgments of others within society.”510 This alternative interpretation now renders the ethical permissibility of resisting contingent on the existence of not just an audience, but an audience who subscribe to Statman’s honour code. Once again, whether or not there are onlookers present, and whether or not they share Statman’s beliefs about how honour can be threatened and how it can be defended, do not seem to be morally salient factors for determining whether or not the rape victim is justified in employing force.

There also seems to be issues when third-party intervention is considered. Traditionally, if it is ethically permissible for state A to defend itself against state B, it would also be ethically permissible for state C to intervene and resort to force to defend state A against state B. Fabre summarised that according to orthodox Just War Theory: “a victim’s war is exactly the same as the same war waged against this aggressor by third parties… if the justification for war is that [the aggressor] acts wrongly and may be stopped, then [the victim] has no stronger a moral reason than anyone else to wage war against [the aggressor].”511 However, according to any mainstream honour code a victim of aggression

does not have their honour defended if they choose to submit whilst a third-party intervenes and employs force on their behalf against the aggressor. Accordingly, for Statman’s view only the victim of aggression, and not a third party, would be ethically permitted to resort to force against the aggressor (if this force cannot mitigate or avert the assault). This restriction on who is permitted to resort to force tracks against the intuitively plausible and widely accepted view articulated by Fabre.

Further, Statman owes an explanation as to why physical violence is the only way that the victim can defend their honour in his scenario. Victims of aggression remain constrained by the Necessity criterion of individual self-defence, which prohibits causing gratuitous harm. Overland argued that “killing aggressors doesn’t seem a more effective way to vindicate one’s honour than treating them with contempt… what matters for saving one’s honour, I would think, is the attitude you have towards what’s facing you, not whether you are able to get in a few futile shots.”512 If what is important for the victim is demonstrating to onlookers that their honour is worthy of moral consideration, Hart observed “the normal way in which moral condemnation is expressed is by words: if denunciation is really what is required, why a solemn public statement of disapproval would not be the most ‘appropriate’ or ‘emphatic’ means of expressing this [requires explanation].”513 In his article Statman considered a Gandhi-like non-violent defence of honour, but ultimately rejected this notion because he believed: “It is not the nonviolence itself that would protect Gandhi from degradation, but his prior overcoming of his concern

about honour.” However, if such an ‘overcoming’ is possible, surely resorting to violent force to mitigate or avert the threat to one’s honour violates the Necessity constraint.

Each of these issues related to the concept of honour can be linked to the broader concern that honour is simply too ambiguous to function as a pivotal determining standard permitting resort to war. The noun ‘honour’ and its equivalents in other major modern languages is employed in different and often contradictory ways. In Hobbes’ influential philosophical work *Leviathan* he maintained that amorphous concepts such as honour are “ever used in relation to the person that useth them,” which is “most apparent” with Spartans, who “hold for honourable that which pleaseth them.” He continued his discussion on the anarchy of moral meaning by again referring to honour, lamenting “in Common-wealths, where he, or they that have supreme Authority, can make whatsoever they please, to stand for signes of Honour.” The essential elasticity of honour is troubling for Statman’s account. As Walzer noted: “It is only when their substantive content is fairly clear that moral and strategic terms can be used imperatively, and the wisdom they embody expressed in the form of rules.” As honour is open to unconstrained interpretations, it is simply a matter of subjective opinion whether or not the victim’s honour is threatened in his case, and whether or not their honour can be defended through violent resistance (and that this is in fact the only way it can be defended).

This fact that honour is so “rich in connotations, but poor in denotation” has led to the concept being abandoned in most disciplines. Anthropologists have moved away from

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516 Ibid.
517 Ibid., 14
theories based on honour. It is now widely accepted that the term cannot be applied cross-
culturally, as its meaning depends entirely on prevailing local cultural standards. Pitt-
Rivers’ often-cited treatise explained that “ethnographers ceased attempting to build a
generalizable analytic model of honour and shame by the late 1980’s.” 519 The same has
occurred in criminal legal theory, which Stewart noted “never even came close to its main
objective, which is to produce a theory of honour that will make sense of the law and gain
general acceptance.” 520 The notion of honour has been removed almost entirely from
modern criminal justice systems. 521 Pitt-Rivers has stated that “the conflict between honour
and legality is a fundamental one which persists to this day.” 522

The concept of honour has also been largely done away with in ethical theory. One
reason for this is that honour is typically taken to be relative and local, with honour codes
only believed to be applicable to specific groups within individual cultures at certain times.
It has been observed that individuals in honour groups only care about whether or not
people within their particular honour group adhere to the standards. In contrast, most ethical
theorists believe moral principles to be absolute and applicable to everyone regardless of
their group membership, location, or time. Sessions’ comprehensive philosophical analysis
of the concept of honour concluded: “honor’s various kinds of relativity are not necessarily
worrysome, [however]… It would be worrysome, of course, if something relative were
taken to be absolute, if local honor codes overrode moral requirements.” 523 This latter
worry seems to be exactly what Statman is attempting to do with his Honour Solution.

519 Ibid.
520 Stewart, Honour, 14.
521 German law seems to be a notable exception to this trend.
523 William Lad Sessions, Honor For Us: A Philosophical Analysis, Interpretation and Defense (A&C Black, 2010), 162.
The problem with the concept of honour is not merely that there can be actions on the margin of being honourable and not honourable. Rather, the problem is that almost any given conceivable action that can plausibly be described as honourable could also be plausibly described as not honourable. This supports the contention that honour is the type of concept that Williams referred to as ‘morally thin.’ Williams’ distinction between morally thin and morally thick concepts has been quite influential in ethical theory. Thin concepts are predominantly (or wholly) evaluative, in that they only convey whether a user approves or disapproves of a given act. A prime example is describing an action as ‘good.’ Thick concepts have both evaluative and descriptive content. They can directly indicate the specific moral character of an act. Williams explained that a “concept of this sort may be rightly or wrongly applied, and people who have acquired it can agree that it applies or fails to apply to some new situation.”524 An example is describing an action as honest.

Given the aforementioned ambiguity inherent in the concept of honour itself, it is a clear example of a morally thin concept. As a thin moral concept honour cannot perform the pivotal role that Statman’s theory requires. As Williams explained, “a practice that uses [thick moral concepts] is more stable in the face of general, structural, reflections about the truth of ethical judgments than a practice that does not… the judgments made with these concepts can be straightforwardly true.”525 Statman’s decision to ground his Honour Solution in a thin moral concept entails that the core assertions that underpin his theory cannot be validated. As a character in Fielding’s famous literary work Jonathan Wild

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525 Ibid., 200.
lamented: “What Pity it is, that a Word of Such sovereign Use and Virtue should have so uncertain and various Application, that scarce two People mean the same Thing by it.”

The morally thin nature of honour has allowed the concept to be exploited throughout its history. This is a genuine issue not only for Statman’s Honour Solution, but for any theory that proposes that the notion of honour can justify inflicting substantial harm. Honour norms have often demanded and valorised violence as the only means to respond to transgressions. In the past the concept of honour has been employed to justify duels, blood feuds, filicide (typically if a son is discovered to be homosexual, or if a daughter engages in extramarital relations with or without consent), sororicide, suicide, and the murder of wives (typically if they were caught in flagrante delicto or forcing them to “immolate themselves on the funeral pyres of their husbands”). This issue was even noted by Statman, who acknowledged that honour “lacks internal resources to block abhorrent uses of it.” Honour’s vulnerability to exploitation has not been rectified in recent times. In the last decade there has been a highly-publicised spate of so-called honour killings in Western Europe and the United States. Just war theorists should be wary of Statman’s Honour Solution, for as Coady warned: “Both the morality and legality of political violence must be concerned with the dangerous consequences of allowing justifications or exemptions, that are likely to be exploited by any side to a conflict.”

527 This is not to suggest that every honour code demands violence to restore honour. Stewart explained that some honour groups in the Mediterranean defended their honour through “elaborate verbal displays such as the spontaneous exchange of insulting rhyming couplets, or the skilled telling of tales of sexual prowess or daring animal theft.” Stewart, “Honor and shame.”
530 Coady, Morality and Political Violence, 295.
In summary, Statman’s proposed Honour Solution suffers from several significant defects. It effectively renders the requirement of a Reasonable Probability of Success redundant as a constraint on when it is ethically permissible to resort to war. The fact that it licenses recourse to force after an act of aggression has occurred is too permissive. Statman’s parasitic requirement sanctions inflicting substantial harm for reasons that do not justify inflicting substantial harm. It also conflicts with the generally accepted Right Intention criterion of *jus ad bellum*. Statman could attempt to align the widespread intuitions elicited by his cases with the Reasonable Probability of Success criterion by arguing that defence of honour ought to satisfy the Just Cause criterion, but this is even more problematic. As Statman himself acknowledged, “[a]lthough honour is important, it is not important enough to justify taking measures in its protection, measures that are otherwise seriously immoral, such as killing or badly injuring another.”\(^{531}\) The fact that many individuals are motivated to kill and die for honour is not sufficient to demonstrate that such action is ethically permissible. In the words of Walzer, “the Schoolmen were too accepting of contemporary notions about the honor of states... The moral significance of such ideas is dubious at best.”\(^{532}\) This analysis thus vindicates the wariness Statman felt, which led him to conclude: “I must admit that I feel more certain about the existence of the puzzle than about my ability to offer a convincing solution to it.”\(^{533}\)

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Chapter Eight: Reconceiving the Reasonable Probability of Success criterion

Chapter overview

This thesis began by presenting the substantive content of the Reasonable Probability of Success criterion. It explained that there are strong moral reasons for requiring that this constraint is satisfied for it to be permissible to wage war. Importantly, it was argued that the notion of ‘success’ should be understood to mean ‘successful achievement of one’s Just Cause.’ Orthodox Just War Theory maintains that the only outcomes that can constitute a Just Cause for war are self-defence or defence of others. Many contemporary just war theorists interpret this to mean ‘mitigating or averting a perceived imminent threat.’ Such an understanding has generated a problem that has puzzled several just war theorists. Whilst there are clear moral reasons for including the Reasonable Probability of Success criterion in *jus ad bellum*, the demands of the contemporary understanding of this principle conflict with widespread, robust intuitions. Given the methodology of Just War Theory, this leaves three options available. One must either: argue that the apparent moral reasons for requiring this criterion are specious (or that they are outweighed by competing moral considerations), argue that the widespread intuitions that are troubling for this criterion are distorted or subject to bias, or argue that despite appearances, this criterion could actually have been satisfied in the cases that appear troublesome.

Statman correctly identified that the third option is the most promising. Focusing on a domestic instance of self-defence, he argued that even though resistance will not mitigate or avert the imminent physical threat in his case, the Reasonable Probability of Success criterion could have been satisfied because resistance will mitigate or avert the threat to the
victim’s honour. This thesis asserted several problems with Statman’s proposed Honour Solution. The strongest objection to his account is that it sanctions inflicting substantial harm (including killing) for a cause that does not warrant the infliction of substantial harm. As noted above, the only aims that are widely regarded to constitute a Just Cause for war are self-defence or defence of others. Statman failed to explain why defence of honour ought to be taken to constitute a Just Cause. This defect is sufficient to render his innovative proposal, which has gained traction in recent Just War Theory literature, inadequate as a remedy to the problems stemming from intuitions towards troublesome cases when the Reasonable Probability of Success criterion appears to have been violated.

This chapter will instead argue that the Reasonable Probability of Success criterion could have been satisfied in the historical cases that have proved troubling because resistance could achieve defence of others. To reiterate, it is almost universally accepted that defence of others constitutes a Just Cause for war. However, much work needs to be done to demonstrate that this can be the outcome of resistance that fails to mitigate or avert a present threat. This chapter will initially argue that resistance to aggression may foreseeably prevent future aggression by inflicting military costs on one’s aggressor. This may deter one’s aggressor from pursuing invasive action in the future because it will alter their assessments of the military capabilities at their disposal when compared to those of a potential victim state. It will be noted that this form of deterrence has practical application because it is common for aggressive states to continue pursuing invasive policy. This

534 Statman maintained that inflicting harm to defend one’s honour can be ethically permissible in virtue of his ‘parasitic requirement.’ See the chapter on Statman’s Honour Solution to see why this is not tenable.

535 It may seem peculiar to describe what can be achieved as ‘defence of others,’ given that it will be argued that resistance will make it less likely that people will be threatened at all. However, such a description is beneficial because it is consistent with the contemporary limited interpretation of the Just Cause criterion, and it is still accurate in that it is being argued that lives could be saved through resistance.
This chapter will then argue that resistance that cannot mitigate or avert a present threat may also achieve defence of others by demonstrating a willingness to suffer costs in order to inflict retaliatory harm. It will be maintained that communication of such a willingness is a crucial element of effective deterrence.536

It will then be argued that deterring aggression is vitally important given the contemporary international state system. Drawing from the work of Fishback, it will be contended that the anarchic international conditions ought to be factored into the question of whether or not the Reasonable Probability of Success criterion has been satisfied. The idea that resistance to aggression may deter future acts of aggression and achieve defence of others will be linked to the often proclaimed importance of expressing an affirmation of the values of political sovereignty and territorial integrity. It will be argued that this is a third way that resistance that cannot mitigate or avert a present threat can achieve defence of others. The possibility of deterring future aggression and the benefits of expressing a commitment to the values of political sovereignty and territorial integrity will then be connected back to a case that is troubling for the contemporary understanding of the Reasonable Probability of Success criterion. Some reasons will be presented for thinking that Belgium’s decision to resist German aggression in 1914 may have achieved defence of others.

This chapter will conclude by considering a broad objection that could be levelled against the claims advanced in this chapter. This is that the proposal is insensitive to the

536 Much of this discussion is related to the extensive literature on the philosophical justifications for punishment. For instance, the distinction between specific deterrence and general deterrence will be alluded to within the arguments in this chapter. However, given that this chapter is only discussing a very specific form of deterrence between states, the issues related to the effectiveness of deterrence in regards to punishment need not be discussed.
overall purpose of *jus ad bellum*, as it licenses a more permissive understanding of when resorting to war is justified. In response, it will be highlighted that the broadening of the scope of ethically permissible wars that is advocated is perhaps slighter than it appears. Firstly, this chapter is not advocating the removal of the Reasonable Probability of Success criterion altogether or a shift in the way that the Just Cause criterion is understood. It is simply attempting to demonstrate that some wars of resistance that have traditionally been taken to violate the Reasonable Probability of Success criterion could have satisfied this requirement (because they could have foreseeably achieved defence of others). Further, the key variable ‘probability’ is still in play; there will still be wars that cannot mitigate or avert a present threat whereby resistance will also not have the beneficial effect of achieving defence of others.

It is also important to remember that the Reasonable Probability of Success criterion is only one individually necessary condition governing the ethical permissibility of resorting to war, and further that wars that satisfy each *jus ad bellum* criteria remain only ethically permissible, not obligatory. It will also be reiterated that resistance must have the (informed) popular support of the victim population in cases when the present threat cannot be mitigated or averted for it to be ethically permissible to wage war. This is why the popular sentiment of the Belgium population was canvassed in a previous chapter. Lastly, it will be stressed that although the conditions required for war to be ethically permissible may seem less stringent given the understanding of the Reasonable Probability of Success criterion that has been proposed in this chapter, if the arguments that have been put forward are valid, then these conditions ought to arise less frequently if some of the newly permissible wars are fought.
Deterring aggressors by reducing their capacity to wage war

Deterrence theory has had a prominent impact on international relations and foreign policy formulation for centuries. Jervis observed that it is “probably the most influential school of thought in the American study of international relations.”\(^{537}\) It is concerned with exploiting potential force to prevent a potential adversary performing a certain course of action. In the international sphere deterrence is achieved if a potential aggressor state is dissuaded from initiating invasive military action because its leaders calculate that the costs their state will suffer outweigh the expected gains. Effective deterrence is the aggregate of negative incentives that are sufficient to constitute unacceptable counteraction (from the perspective of the potential aggressor). Much ink has been spilt attempting to specify the mechanisms by which states can be deterred from resorting to war. In light of this, Zagare was apt to warn that for any discussion of deterrence, the “risk of oversimplifying an extensive literature, characterised by nuance and subtlety, is great.”\(^{538}\) Despite this difficulty, this chapter will endeavour to provide a consensus view concerning whether or not resistance that cannot mitigate or avert a present threat can deter aggression in the

\(^{537}\) Robert Jervis, as cited in Dougherty and Pfaltzgraff Jr., *Contending Theories of International Relations: A Comprehensive Survey*, 344. Similarly, Achen and Snidal observed: “Rational deterrence theory has proved itself in practical policy applications. No other theoretical perspective has had nearly the impact on American foreign policy… Far from being an abstract, deductivistic theory developed in a policy vacuum, rational deterrence theory has repeatedly taken inspiration from the most pressing policy questions of the day.” Christopher H. Achen and Duncan Snidal, “Rational Deterrence Theory and Comparative Case Studies,” *World Politics* vol. 41, no. 2 (1989), 153.

future. However, as Moore warned, one “should never underestimate the complexity of effective deterrence.”

Prior to examining military deterrence it must be noted that effective deterrence need not rely on a military component. More often, states are deterred from initiating hostilities simply through threats of economic, diplomatic, or military sanctions. States can also be deterred if they perceive the costs of controlling or exploiting the population of a targeted state to be too great. In many instances conflict resolution can be brought about through negotiation, compromise, conciliation, or through appeal to an international body. Given the Last Resort criterion of *jus ad bellum*, if it is believed that any of these peaceful options will be effective in avoiding future aggression, then a state must pursue this option rather than resorting to a war of resistance. It is important to keep this in mind when assessing the arguments of this chapter. However, despite the effectiveness of these peaceful means of conflict avoidance, most believe that there are some instances whereby military deterrence is the only effective instrument to ensure that an aggressive state does not employ invasive military action in the future. Discussing military deterrence, Moore remarked that “there is strong evidence that deterrence— that is, the effect of external factors on the decision to go to war— is the missing link in the war/peace equation.”

It is widely agreed that there are two key elements to achieve successful military deterrence of a potential aggressor. These work together to influence a state’s expectations of what will occur if it pursues invasive policy. The first and most obvious is

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539 This chapter is only positing that a very specific type of deterrence is effective. Broader issues related to the effectiveness of deterrence in other settings (such as the effectiveness of nuclear deterrence or deterrence in the criminal justice setting) can be set aside.
540 Moore, “Beyond the Democratic Peace: Solving the Puzzle,” 379.
541 Moore, “Beyond the Democratic Peace: Solving the War Puzzle,” 380.
542 Effective communication of these two elements is occasionally considered a distinct third element.
an assessment of a potential victim state’s ability to respond with military force. For a potential aggressor, this typically takes the form of a comparison between their own military hardware and the military capabilities of a potential victim state. The second is an assessment of a potential victim state’s will to respond with military force if attacked.\textsuperscript{543} Miscalculations of this second crucial variable have resulted in a large percentage of conflicts throughout history. It will be argued that states that resist aggression, even when they cannot mitigate or avert the imminent threat they face, can positively alter assessments of both of these variables for states contemplating aggression in the future. For this reason, states that cannot mitigate or avert the imminent threat that they face can still achieve defence of others through violent resistance, thus entailing that such resistance can satisfy the Reasonable Probability of Success criterion.

The first way that defence of others can be achieved through waging a war that cannot mitigate or avert a present threat is by deterring one’s specific aggressor from invading one’s own state, or other states, in the future.\textsuperscript{544} Failed military resistance can deter an aggressor state by damaging its military hardware to such an extent that it will doubt the value of future aggression. In other words, it will alter future comparative assessments made by one’s aggressor of their own military capabilities and those of a potential victim state. Inflicting military costs on an aggressor can also generate domestic opposition to wars of aggression in the adversary state, making it more difficult for that state to adopt

\textsuperscript{543} This dual theory of deterrence is evident in Dulles’ (the Secretary of State under President Eisenhower) statement that the “way to deter aggression is for the free community to be willing and able to respond vigorously at places and with means of its own choosing.” John Foster Dulles, as quoted in Dougherty and Pfaltzgraff Jr., \textit{Contending Theories of International Relations}, 347.

\textsuperscript{544} It must be noted that inflicting costs on one’s aggressor through failed resistance can only deter them from invading one’s own state again in the future if the aggressor state does not decide to permanently occupy one’s territory after successfully invading. This could be the case if the aggressor has a more limited military objective than permanent occupation.
aggressive military policy in the future. Interestingly, Blum believed that the benefits of inflicting costs of these sorts justified discarding the Reasonable Probability of Success criterion altogether. She maintained that a “present-day victim of aggression has the right to respond in armed force even if it has no real prospect of success in repelling it, if only for the sake of inflicting costs on the aggressor.”545 Weakening this claim, it is being contended that the Reasonable Probability of Success criterion can be satisfied if it is believed that resistance will inflict sufficient military costs to make it probable that it will prevent one’s aggressor from harming individuals in one’s own state, or other states, in the future. Crucially, achievement of this outcome through the infliction of these costs does not require the victim state that is currently being invaded to mitigate or avert the present threat that it faces.546

This element of deterrence is only worth pursuing if it is likely that an aggressor state will pursue invasive policy again in the future. Sjoberg emphasised the importance of this calculation in her discussion of the Reasonable Probability of Success criterion. She declared that this criterion ought to be concerned with “not only whether or not the opponent will lose the war, but whether or not fighting the war would make it more likely that the opponent will behave in a way more conducive to justice in politics in the future… This part of success is crucial; in a feminist ethic of war, war is… a way to try and fix a problem.”547 Several international relations theorists have maintained that when aggressive states are unopposed, they often continue to act in a hostile manner. For instance, Fletcher

546 This was noted by Seybolt, who wrote that “as a strategic matter action that seems futile can stop aggression by raising the cost to the aggressor.” Seybolt, Humanitarian military intervention: the conditions for success and failure, 41.
547 Laura Sjoberg, “Gender, Just War and Non-State Actors,” in Ethics, Authority and War: Non-state Actors and the Just War Tradition, ed. Eric Heinze and Brent Steele (Springer, 2009), 108.
and Ohlin explained that frequently an “attack is evidence of a hostile purpose and may be a prelude to a larger campaign against other countries in the region.”548 Whilst it is not being suggested that armed resistance will always prevent states from pursuing invasive policy in the future, resistance can achieve this outcome, and aggressive states will be more likely to continue adopting invasive policy if they achieve costless success.

This trend has also been observed by several just war theorists. Writing in the sixteenth-century, Vitoria noted that “wrongdoers would become readier and bolder for wrongdoing, if they could do wrong with impunity.”549 Similarly, Brown recently asserted that: “For a weak state to offer no resistance at all… is to invite further aggression with impunity,”550 and Biggar has observed that “[l]ong experience and history tell us that wickedness unchecked tends to wax.”551 McMahan has aptly cautioned that if “the victims of lesser aggression capitulate without resistance, both the successful aggressor and other potential aggressors may be emboldened to engage in further aggression… in the hope of achieving a similar costless success.”552 Lastly, writing specifically on the contemporary understanding of the Reasonable Probability of Success criterion, Lee warned that it “can lead to appeasement of aggressors, as was shown by the period prior to World War II in Europe, whetting their appetites and making the eventual war more costly.”553

548 Fletcher and Ohlin, Defending Humanity: When Force is Justified and Why, 68.
549 Francisco de Vitoria, as quoted in Davis Brown, The Sword, and the Eagle: The American Christian Just War Tradition (Lanham, MD: Rowman and Littlefield, 2008), 65. Whilst this may not necessarily mean impunity from violent resistance, most believe that employing violence is sometimes the only available means to prevent future aggression.
551 Biggar, In Defence of War, 140.
553 Lee, Ethics and War: An Introduction, 95. In modern usage the term ‘appeasement’ itself now carries negative connotations in political discourse, related to sacrificing principle in order to purchase peace.
To summarise this form of deterrence, states can be dissuaded from initiating wars of aggression if their leaders believe that it will be too costly to subdue a potential victim state. Wars of resistance can render future aggression more costly for a potential aggressor by damaging its military capacity. This can be achieved even if such resistance fails to mitigate or avert the present threat faced. For this reason, it is possible that a war of resistance can achieve defence of others even when it does not mitigate or avert the present threat faced. This has practical relevance because it has been widely observed that when states pursue invasive policy they tend to continue to act in an aggressive manner. This is especially the case if they are not resisted militarily. Factoring in the harms that can be averted in the future entails that it is possible that the Reasonable Probability of Success criterion can be satisfied by a war of resistance that cannot mitigate or avert a present threat.

**Deterring potential aggressors by demonstrating a will to resist**

The second way that defence of others may be achieved through waging a war that cannot mitigate or avert a present threat is by demonstrating a will to inflict retaliatory costs on an aggressor. It was noted previously that two of the key variables that determine whether or not a potential aggressor is deterred from invading a state are estimates of the potential victim’s comparative military capacity, and estimates of their will to inflict costs if invaded. Historical analysis has demonstrated the importance of the latter

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554 Achen and Snidal stressed the important role that one’s will can play in deterring aggression, writing that “successful deterrence turns on the defender’s credibility… [if they] can convince the attacker that he has the political and military ability to fight, and that the prize (or his reputation for fighting when challenged) is worth more to him than the costs of the war, then, and only then, will a deterrable initiator be deterred.” Achen and Snidal, “Rational Deterrence Theory and Comparative Case Studies,” 152.
variable. Discussing the causes of the major conflicts of the twentieth-century, Fearon wrote that “Germany miscalculated Russian and/or British willingness to fight in 1914; Hitler miscalculated Britain and France’s willingness to resist his drive to the east; Japanese leaders in 1941 miscalculated U.S. willingness to fight a long war over control in the South Pacific; South Korea miscalculated China’s willingness to defend North Korea; and so on.”

Whilst each of these conflicts had many other contributing causes, it has been argued that they would have been prevented if the relevant actors communicated a strong will to resort to military force.

Further, Stranksy’s detailed analysis of the Falkland’s war revealed that the occurrence of this conflict can be attributed to Great Britain’s inability to effectively communicate its will to respond to aggression with military force. In the months preceding hostilities, Argentina engaged in a number of limited probes in the South Atlantic. These did not elicit a firm response from Great Britain. Drawing from this evidence, Stranksy argued that the “British government simply did not demonstrate a will to use force to protect the Falklands, which contributed to an escalation of Argentine aggression.”

This is supported by the testimony of Galtieri, the President of Argentina, who acknowledged that: “though an English [military] reaction was considered a possibility, we did not see it as a probability. Personally, I judged it scarcely possible and totally improbable.”

In light of evidence such as this, Stranksy concluded that despite the fact that “Great Britain had the ‘ability’ to defeat Argentina with military force, it repeatedly failed to demonstrate the ‘will’ to do

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557 Leopoldo Galtieri, as quoted in Stransky, “Re-Examining the Falkland Islands War,” 486.
so, a key aspect of military deterrence.” In other words, this conflict (that included 907 deaths) could have been avoided if Great Britain had broadcast their incentives for action effectively.

Basic game theory supports these historical interpretations. Game theorists have long employed the surprisingly complex game of *Chicken* to demonstrate that a player can deter their opponent by simply communicating a willingness to suffer costs. Briefly, the basic version of this game involves two players driving a car towards each other, with each of them having the choice to either continue driving straight or swerve out of the way. The three possible outcomes for each player listed in preferential order are to successfully continue driving safely, swerve and be a ‘chicken,’ or continue driving straight and crash. Schelling maintained that the best tactic in order to deter your opponent from continuing to drive straight is to signal a strong willingness to accept the costs of not swerving. He suggested feigning irrationality, an effective tactic that does not actually alter the force at one’s disposal. Paraphrasing Jervis and applying this logic to international conflict, Zagare summarised that “a leader could dramatically increase the probability of prevailing in a crisis by ‘making a commitment to stand firm.’”

Through violently resisting aggression a state demonstrates its willingness to forgo immediate harm reduction in order to inflict costs on an aggressor. In cases where permanent occupation is not the objective of the militarily successful aggressor state, this

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558 Stransky, “Re-Examining the Falkland Islands War,” 524
559 Thomas C. Schelling, *The Strategy of Conflict* (Massachusetts: Harvard University Press, 1960). Parfit also discusses the interesting phenomenon whereby when threatened it often becomes ‘rational to act irrationally.’ He makes reference to a hypothetical case that involves a man who has his house invaded, and who has a drug that forces him to act irrationally for a period of time. The home invader threatens to kill the man’s family unless he hands over some gold, but this threat loses all of its persuasive force when the man conspicuously takes the drug in front of him. Derek Parfit, *Reasons and Persons* (Oxford: Oxford University Press, 1984), 13.
strengthens the credibility of any deterrent threat that the victim state makes in the future. Inflicting costs through armed resistance sets a precedent that aggression is costly. States that otherwise may have been tempted to instigate acts of aggression may be dissuaded after observing that victims state tends to inflict retaliatory costs when attacked. This was observed by Clausewitz, who noted that a “conqueror is always a lover of peace (as Bonaparte always asserted of himself); he would like to make his entry into our state unopposed…”561 Crucially, a victim state does not have to mitigate or avert the present threat that it faces in order to communicate its willingness to resist. In the words of Seybolt, a state can achieve effective deterrence by simply “backing its words with actions, by enhancing its capabilities, and by showing a willingness to accept risks and costs.”562

In fact, Fearon has argued that this rationale actually explains why militarily weak states have waged wars historically when they knew that they could not mitigate or avert the threats that they faced. According to Fearon, this was done “in order to develop a reputation for being hard to subjugate.”563 He continued by explaining that “states employ war itself as a costly signal of privately known and otherwise unverifiable information about a willingness to fight,” pointing to Finland’s resistance to the Soviet Union in 1939 as a case in point.564 Fearon believed that such a communication of a state’s incentives for action is invaluable. It is not just one’s current aggressor that may be deterred from resorting to force

561 Carl von Clausewitz, as quoted in Walzer, Just and Unjust Wars, 53. Clausewitz also provided a concise explanation of the rationale behind deterrence: “Since war is not an act of senseless passion but is controlled by its political object, the value of this object must determine the sacrifices to be made for it in magnitude and also in duration. Once the expenditure of effort exceeds the value of the political object, the object must be renounced and peace must follow.” Carl von Clausewitz, On War ed. and trans. Michael Howard and Peter Paret (Princeton: Princeton University Press, 1976), 92.
562 Seybolt, Humanitarian military intervention, 41.
564 Ibid.
again in the future after observing a victim state resist aggression. Third-party states that may otherwise have considered invasive policy may also be deterred.

Fishback noted the possibility of deterring third-parties in his discussion of a domestic case whereby an individual responded to a threat of robbery by shooting some of the assailants. He maintained that by “threatening unjust harm, the four [aggressor] youths probably encouraged others to commit unjust harm, compromising deterrence.” He continued: “Shooting the four youths probably protected others indirectly by generally deterring unjust aggression. Appeasement of conditional threats invites aggression, and standing up to conditional threats prevents aggression.”

The likelihood that any relevant third-party will receive this message is even greater in the international context, given the exposure that all acts of war receive. The importance of communicating one’s will to resort to military force if invaded was also emphasised by Hobbes. He maintained that “Warre, consisteth not in Battel onely, or the act of fighting; but in a tract of time, wherein the Will to contend by Battel is sufficiently known.”

To summarise this second form of deterrence, it has been argued that a potential aggressor state can be deterred from employing invasive policy if its decision-makers believe that a potential victim state has the will to inflict retaliatory harm. Many theorists believe that a large proportion of conflicts throughout history could have been avoided if

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566 Ibid. It must be noted that this chapter is not claiming that shooting an aggressor in order to deter threats in domestic society is ethically permissible. In civil society reliable security and judicial institutions are often adequate to deter most aggression. Responding with violence in a case such as Fishback’s also risks promoting the idea that one ought to escalate violent behavior in order to solve personal or political difficulties. In denouncing vigilantism, Bacon explained that “[r]evenge is a kind of wild justice; which the more mans nature runs to, the more ought law to weed it out. For as for the first wrong, it doth but offend the law; but the revenge of the wrong putteth the law out of office.” Francis Bacon, as cited in Darcy, “The Evolution of the Law of Belligerent Reprisals,” 184. Fishback’s discussion is simply being put forward because he aptly recognised an important broader consequence of responding to aggression.
the existence of such a will was known by the relevant parties. Through resisting aggression a state clearly communicates its will to inflict costs if attacked. Such a communication does not require the victim state to mitigate or avert the threat that it presently faces. Resistance not only communicates a willingness on behalf of the specific victim state that is attacked. Resistance also conveys the broader message the victim states in general will inflict retaliatory costs if they are invaded. This constitutes a second mechanism by which states can defend others and thus satisfy the Reasonable Probability of Success criterion in circumstances when they cannot mitigate or avert the present threat that they face.

The importance of deterrence in the international system

Resistance to aggression that cannot mitigate or avert a present threat may achieve defence of others by deterring future aggression. This can be achieved by inflicting sufficient costs on an aggressor to prevent them from harming individuals again in the future, and by demonstrating a willingness to resort to force. Deterrence is both more likely to be brought about, and is of much more significance, when states resort to force (rather than individuals in domestic society) given the international state system that exists. Fishback has recently shone some much-needed light on the necessity of factoring the conditions of the international state system into any discussions concerning the ethics of war.\(^\text{568}\) As noted in a previous chapter, a crucial difference between interactions in domestic

\(^{568}\) Fishback declared that many troubling intuitions towards instances of self-defence are “parochial manifestations of norms adopted by societies in environments radically disanalogous to anarchical social contexts, such as war,” and that this “fundamental mistake is the progenitor of a great deal of (but not all) revisionist overstatement about the degree to which the ‘true’ morality of war comes apart from mainstream moral beliefs about war.” Fishback, “Necessity and Institutions in Self-Defense and War,” 286.
society and interactions between states is that the latter occur in a context without reliable security institutions. The international state system can best be described as a self-help anarchic society. By describing the situation as anarchic it is not meant that there exists chaotic disorder. Rather, it is simply meant that there is no security apparatus or sufficiently effective governing body to resolve disputes and protect vital interests.

Balancing principles buttress the anarchic international state system and ensure that it remains relatively stable and peaceful. Hurrell explained that “[c]entral to the ‘system’ is a historically created, and evolving, structure of common understandings, rules, norms and mutual expectations.” One of the most important principles is that states will resist aggression and inflict costs on any state that disrupts the existing equilibrium. According to Dougherty and Pfaltzgraff, this is critical in order to “prevent the establishment of a universal hegemony... ensure stability and mutual security in the international system, and... strengthen and prolong the peace by deterring war.” In other words, wars of resistance are prescribed as instruments for maintaining order and the balance of power in international society.

Not only do wars of resistance become critically important given the contemporary international state system, but wars of aggression become more damaging than aggression in a domestic society that has a functioning security apparatus. Wars of aggression do not just threaten the individual victim state that is invaded. They also damage the entire

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569 Whilst it is true that international law may affect the behaviour of states in certain circumstances, there remains no effective means to enforce international law (although the International Criminal Court has managed to convict some state leaders for their conduct in war in retrospect).

570 The United Nations and related international bodies are routinely ignored by states that disagree with their decisions. However, this does not mean that such decisions are completely without merit. Such decisions often provide a means to criticise states that choose to ignore them.


572 Dougherty and Pfaltzgraff Jr., Contending Theories of International Relations, 42.
international system itself. The precedent of aggression destabilises the balance of power and erodes security. This is especially the case if aggression is costless, and if it is witnessed by a wide range of actors (as any act of aggression on the international stage inevitably will be). Waltz’s influential work on international relations maintained that “the fate of each state depends on its response to what other states do.”⁵⁷³ In other words, states ‘socialise’ and adopt similar policies and strategies to each other. This feature of the international state system was underscored by Dinstein, who wrote that it “may be said that an armed attack is like an infectious disease of the body politic of the family of nations… Every state has a demonstrable self-interest in the maintenance of international peace, for once the disease starts to spread there is no telling where it will stop.”⁵⁷⁴

This comment by Dinstein is also alluding to the idea that third-party states benefit from assisting victim states resist aggression given the international state system that exists. This was pointed out by Walzer, who stated that the “victim of aggression fights in self-defence but he isn’t only defending himself, for aggression is a crime against society as a whole… Other states can rightfully join the victim’s resistance; their war has the same character as his own… the ‘citizens’ of international society must rely on themselves and on one another.”⁵⁷⁵ Walzer’s view is not without political precedent historically. Fletcher and Ohlin explained that at the negotiations finalising the United Nations Charter “the New Zealand delegation proposed an amendment that imposed a duty on all members to ‘collectively resist’ all acts of aggression against any member state… this proposal was rejected, although it did garner a surprising amount of support (a majority in fact).”⁵⁷⁶

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⁵⁷⁴ Yoram Dinstein, as quoted in Fletcher and Ohlin, *Defending Humanity*, 68.
⁵⁷⁶ Fletcher and Ohlin, *Defending Humanity*, 7.
Whilst this amendment to the United Nations Charter would have constituted a legal obligation, some international relations theorists have argued that such a moral obligation also exists. Strasky declared that in “order to avoid future aggression, collective and regional security arrangements need to demonstrate a cohesive will to respond to acts of aggression… Aggression must be confronted immediately in order to deter further or similar acts by other governments.”

The wider ramifications of unopposed aggression have also been noted by several just war theorists. Writing in 1939, Vann criticised the “false assumption that war to-day affects only the combatant nations.” He declared: “To-day the order and prosperity of each nation is indissolubly bound to the order and prosperity of the rest… The common good of humanity as a whole has to be taken into consideration” Similarly, Biggar’s discussion of the damage brought about by state-based aggression concluded that the “injustice includes wrongful physical harm to, and killing of, individuals, but it is not reducible to [this]… It also includes wrongful harm to the social and political matrices upon which the flourishing of individual persons also depends.” Utilising the ‘contributing causes’ distinction proposed by McKim and McMahan, Hurka also tentatively suggested that the “benefits of incapacitation and deterrence also count toward the war’s proportionality, and wars that are not proportionate in themselves… can become so given their effects on international security.”

577 Strasky, “Re-Examining the Falkland Islands War,” 525. This is not to suggest that intervention in war between other states cannot be extremely problematic. Intervention is often complicated by ignorance of the causes of war in distant cultures and thinly veiled imperialist motivations. For more see C.A.J. Coady, Ned Dobos, Sagar Sanyal, Challenges for Humanitarian Intervention: Ethical Demand and Political Reality (Oxford University Press, 2018).
578 Gerald Vann, Morality and the War (Burns Oates & Washbourne, 1939), 36.
579 Ibid., 34.
581 Hurka, “Proportionality in the Morality of War,” 42.
Recently, Fishback aptly observed that this social aspect of resistance to aggression would also license a more permissive understanding of when resort to force is justified in domestic society, if it too lacked a reliable policing structure. He suggested that “confronting conditional threats and standing one’s ground can be important to achieving deterrence and maintaining order… [in] anarchic situations, where necessity often permits citizens to inflict severe harm as a means to defeat and deter nonimminent threats because there are no less harmful means of achieving the same defensive end.” To reiterate, the international state system is such an anarchic society.

These features of the international state system actually prompted some just war theorists to claim that resistance to aggression is actually ethically obligatory, rather than simply permissible. This view was more prominent in the classical just war tradition. Suarez famously asserted that the “common good must take precedence over the private good, and a man is bound to lose his life for the sake of the common good.” Similarly, Vattel declared that: “Self-defence against unjust violence is not only the right, but the duty of a nation, and one of her most sacred duties.” This sentiment was echoed more recently by Vann, who contended that “members of a natural society of nations… are under a positive duty to make their contribution to the good of the community… In case of need they are duty bound to subordinate and even to sacrifice their individual interests to this common good.” Walzer also asserted that states that have the capacity to repel an aggressor have such an obligation. He believed when “it comes to resisting aggression [Just War

582 It should be noted that it is not being contended that any civil society actually approaches Locke or Hobbes’ version of a state of nature.
Theory] is at least permissive, sometimes imperative… states have an interest in global stability and even in global humanity, and in the case of wealthy and powerful states… this interest is seconded by obligation… [because any] danger that is shared by all the members of international society is morally coercive, even if it is not yet materially present, for them all.”

However, despite the strong claims put forward by these just war theorists, it must be stressed that this chapter is not suggesting that any war can be morally obligatory, regardless of the positive effect it will have on the international state system. To summarise, given the fact that power is decentralised in the anarchic international system, it is crucial that states take action to deter aggression. Any such action contributes to the stability of the international landscape. Resistance to aggression that cannot mitigate or avert the imminent threat that a state faces can still have this positive impact. As such, it can achieve defence of others by decreasing the instances of violent aggression in the future. Significantly, this means that resistance to aggression that cannot mitigate or avert an imminent threat may still satisfy the Reasonable Probability of Success criterion. This entails that the contemporary understanding of this criterion is mistaken.

The benefits of expressing an affirmation of values of political sovereignty and territorial integrity

586 Walzer, Just and Unjust Wars, 91, 74, 238. This idea has also been posited by Dower, who wrote the “maintenance of international order, though partly motivated by national interests… has been seen as the duty particularly of powerful nations to intervene in various ways, including military action, to maintain the conditions of international order where they appear to be threatened.” Nigel Dower, The Ethics of War and Peace: Cosmopolitan and Other Perspectives (Malden: Polity, 2009), 88.
A third way that resistance to aggression that cannot mitigate or avert one’s present threat can achieve defence of others is through expressing an affirmation of the values of political sovereignty and territorial integrity. The often-cited benefits of such an affirmation can be linked to the importance of communicating a will to resist aggression, but they are also broader. Lazar provided a helpful explication of the values of political sovereignty and territorial integrity. He wrote: “Each of these are complex concepts, and I can define them only heuristically and stipulatively. Political sovereignty is, roughly, the ability of a group to exercise primary political authority over itself. Territorial integrity is the territorial expansion of this control. Neither sovereignty nor territorial integrity are binary concepts: each is composed of a range of different powers, and can be realised to a greater or lesser degree.”

The fact that state-based aggression threatens these values was also highlighted by Lazar. He maintained that “[a]gressors target not only lives and well-being, but also the state itself… and the international society of states of which it is part. Attacking an adversary’s political sovereignty and territorial integrity amounts to an attack on the institution of the state. And any attack on one state is an assault on the society of states because that society is held together by a principle of non-aggression.”

It must be noted that there is a tendency to romanticise the concepts of political sovereignty and territorial integrity. Most contemporary territorial borders are the result of aggressive conquests, and many groups that exist within them feel alienated from their existing political sovereign. However, it is also clear that most times these values are threatened through military aggression individual lives are also threatened. Violation of

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589 Some examples are the Catalan and Kurdish people.
political sovereignty or territorial integrity typically entails that individuals are harmed. It does not seem controversial to suggest that overall individuals would benefit from there being less frequent violations of political sovereignty and territorial integrity. It will be argued that resistance to aggression affirms the values of political sovereignty and territorial integrity, thus making it less likely that these values will be threatened in the future.

Lazar is not the only prominent just war theorist to recognise these secondary benefits of resisting aggression. Fabre also observed the importance of expressing an affirmation of the values of political sovereignty and territorial integrity. She stated that resistance to aggression can “defend norms which are universal in scope and which we all have an interest in upholding,” and that in so doing, states “act on behalf of humanity as a whole.”\(^{590}\) She explained that according to many cosmopolitan theorists “the right to wage war should not just be seen as a right to kill in defence of one’s collective rights but, also or indeed mainly, as a right to stop ongoing violations of fundamental and universal norms - in this instance, the norm of non-aggression.”\(^{591}\) This notion was also alluded to in Walzer’s *Just and Unjust Wars*. He declared that the values of political sovereignty and territorial integrity “must be vindicated, for it is only by virtue of those rights that there is a society at all… If they cannot be upheld, international society collapses into a state of war or is transformed into a universal tyranny… Resistance is important so that rights can be maintained and future aggressors deterred.”\(^{592}\)

\(^{590}\) Fabre, “Cosmopolitanism and Wars of Self-Defence,” 96.
\(^{591}\) Ibid.
Through referencing the international state system, Walzer is reminding readers of the aforementioned conditions that ought to be factored into considerations concerning the ethics of war. Given that power is decentralized, there is no overarching authority capable of enforcing norms. Bull’s work on international relations discusses the importance of formulating norms (or rules) between states. He believed that this was crucial in order for the international state system to remain relatively stable. Bull maintained that if political sovereignty and territorial integrity are to be reckoned as factors when states make decisions, then the significance of these values must be clearly communicated. The only way that a norm prohibiting aggression will have uptake is if it is (i) “formulated and promulgated,” (ii) “stated or advertised in such a way that [its] content is known to whom [it] applies,” and (iii) “must be administered…” In other words, a belief in the significance of these values can only be engendered by states behaving in such a manner that emphatically communicates a commitment to these values. Resistance to aggression can ensure the continued efficacy of the values of political sovereignty and territorial integrity, and the perception that they are of vital importance.

Expressing a commitment to these values can also achieve defence of others by generating circumstances in which the possibility of invading another state does not exist.

593 Hedley Bull, *The Anarchical Society: A Study of Order in World Politics* 4th ed. (New York: Columbia University Press, 1977), 54. Bull’s overview is echoed by the work of Sharp, who stated that: “Effective deterrence within the international legal order is comprised of three indispensable elements: First, the fundamental cornerstone of deterrence is a set of clear proscriptive norms… Second, these proscriptive norms must be built upon by an established mechanism that facilitates… accountability for violations of those norms… Third, the world community’s demonstrated commitment to condemn all violations of these proscriptive norms consistently and unequivocally is the capstone that completes this deterrence structure. Without this capstone, proscriptive norms and organizations are without effect- that is, ‘unenforced law is ineffective.’” Walter Gary Sharp, *Democracy and Deterrence: Foundations for an Enduring World Peace* (Maxwell Air Force Base Alaska: Air University Press, 2008).  
594 This perception also adds to the credibility of deterrence threats, by convincing would-be aggressors that these values mean more to a potential victim state than the costs of war.
in a would-be aggressor state’s choice-set. In other words, the very inclination to threaten these values will develop less frequently. This may result from states holding these values in high esteem. Further, affirming these values may also encourage victim states in the future to similarly resort to force to defend their political sovereignty and territorial integrity. Such future resistance may actually be capable of mitigating or averting the threat faced, and at the very least it will again assist in promoting deterrence. This possibility was actually noted by Statman in his paper on the Reasonable Probability of Success criterion. He suggested that by “seeing an example of a victim rising up against evil and wrongdoing, other victims would be empowered to act thus themselves, thereby refusing to submit to domestic or other violence.”

Linking this idea back to the benefits of deterrence, Statman then noted that “the deterring and empowering aspects of resistance work together to reduce crime and violence.” This is critical in the context of the anarchic international state system.

Several prominent just war theorists have contended that resistance to aggression can effectively express the values of political sovereignty and territorial integrity even if such resistance does not mitigate or avert the threat faced by the victim state. For instance, Childress argued that “if a nation has a good reason to think that it will be defeated anyway, its vigorous resistance may preserve significant values beyond the number of lives and retention of territory or sovereignty.” In other words, these values can be affirmed even if a victim state ultimately has some (or even all) of its citizens killed or has part (or even

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596 Ibid.
all) of its territory annexed. Coates’ extended discussion on the Reasonable Probability of Success criterion also reinforced this idea. He stated that “when military failure or defeat seems certain, just recourse to war is not thereby excluded… A war that is fought to defend fundamental human values can be successful even though it ends, predictably, in defeat… In such a case war is thought to be worthwhile precisely as a vindication of values- a vindication that does not require victory in a military sense, a vindication that may in fact be more complete the greater the certainty of military defeat.”598 It is interesting to note that Coates believed that resistance to aggression that cannot mitigate or avert a present threat may express a stronger affirmation of the values of political sovereignty and territorial integrity than resistance that can.599

When considering the contemporary understanding of the Reasonable Probability of Success criterion it is worth considering a possible implication of preventing states from inflicting costs on their aggressor. It is not difficult to foresee expansionist states taking advantage of this criterion if its prescriptions are widely endorsed. States have long undertaken so-called ‘limited probes’ to militarily test how committed other states are to

598 Coates, *The Ethics of War*, 198. This can be linked to Coates’ view that “the moral context of war is always a global one embracing the human community with a common good that transcends and takes precedence over the goods of particular states.” Ibid., 193.
599 Interestingly, this is supported by empirical research which suggests that the norm enforcing capacity of harm infliction is greater when the entity inflicting harm does not gain from resorting to force. Researching the impact of police corruption on societies, Xiao demonstrated that the “norm communication function of punishment is greatly diminished if people know that enforcers can potentially earn benefits from punishing… The result is that punishment loses its ability to influence behaviour.” This is relevant because states that wage war when they cannot mitigate or avert the threat that they face do not stand to gain from enforcing the norm of non-aggression. Also promisingly, experimental research has revealed that “in a public goods environment compliance improves greatly when punishment is imposed by group members rather than exogenously.” This is the case when states wage war against other states. However, in drawing these comparisons, it must be emphasised that the expressive benefits of resistance should not be understood to be justified for punitive reasons. As stated above, these benefits should be construed as achieving defence of others, and justified insofar as they prevent instances of aggression in the future. See Erte Xiao, “Profit-seeking punishment corrupts norm obedience,” *Games and Economic Behaviour* vol. 77, no. 1 (2013), 321.
resisting aggression. Strict restrictions governing resistance would quickly be observed and then could be exploited. Lazar considered this so-called ‘rule consequentialist’ argument when discussing the permissibility of resisting bloodless invasions. He noted that “defenders are fighting not only for their own purely political interests, but for the purely political interests of all people everywhere, who are made more vulnerable each time a purely political aggressor claims territory unchallenged.” States that resist aggression are countering this threat by expressing an affirmation of the values of political sovereignty and territorial integrity.

Whilst not explicitly mentioning the Reasonable Probability of Success criterion, some of Walzer’s remarks are directly applicable to this discussion. Commenting on states that have practised appeasement, Walzer noted that “we feel badly in such cases, not only because we have failed to serve the larger communal purpose of deterrence, but also and more immediately because we have yielded to coercion and injustice… in international society appeasement is hardly possible unless we are willing to surrender value far more important.” Concerning the idea that failed military resistance can effectively express the values of political sovereignty and territorial integrity, Walzer declared that there is “a natural sympathy for the underdog in any competition, including war, and a hope that he can pull off an unexpected victory… But in the case of war, this is specifically a moral

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600 A prime example of such a probe is China’s bombing of Quemoy in 1958.
601 Seth Lazar, “National Defence, Self-Defence, and the Problem of Political Aggression,” in On the Morality of Defensive War, ed. Cecile Fabre and Seth Lazar (Oxford: Oxford University Press, 2014), 34. Lazar went on to note that when justifying a war of self-defence one could “appeal not only to the immediately implicated individual interests, but also to the long-term interests of all people.” This logic stems from the idea that “submission to aggression now, even if it is purely political, will invite future harms, to avert which we are justified” in resorting to war. Lazar stated that this “is undoubtedly an important constituent in the justification of wars of national defence in general.” See Lazar, “National Defence, Self-Defence, and the Problem of Political Aggression,” 35.
602 Walzer, Just and Unjust Wars, 68. Walzer interestingly couples the ideas that resistance serves an expressive function and that it serves a vital instrumental role.
sympathy and a moral hope… Our common values are confirmed and enhanced by the struggle, where appeasement, even when it is the better part of wisdom, diminishes those values and leaves us all impoverished.\textsuperscript{603} To emphasise, it is not being claimed that states have any sort of obligation to suffer the costs of resisting aggression in order to affirm the values of political sovereignty and territorial integrity. It is simply being asserted that this is a positive outcome of resistance to aggression, an outcome that does not require the victim state to mitigate or avert the threat that it faces.

**Applying these arguments to the case of Belgium in 1914**

This chapter has argued that resistance to aggression that cannot mitigate or avert a present threat can achieve defence of others. This can be achieved through inflicting costs on one’s aggressor, through communicating a will to inflict retaliatory costs if attacked, and by expressing an affirmation of the values of political sovereignty and territorial integrity. It was asserted that these outcomes of resistance are both likely to be brought about, and are of great significance, because of the anarchic international state system. For this reason, resistance to aggression that cannot mitigate or avert a present threat can satisfy the Reasonable Probability of Success criterion. Recognition of these factors alone constitutes a significant shift in the way that this principle is understood. It will now be suggested that conceiving of this criterion in this manner can alleviate the problems that stem from intuitions towards historical cases. Belgium’s decision to resist German aggression in 1914 will now be reconsidered.

\textsuperscript{603} Ibid., 71. Walzer ultimately concluded that: “Aggression is a singular and undifferentiated crime because, in all its forms, it challenges rights that are worth dying for.” Ibid., 53.
In a previous chapter it was asserted that prior to waging war in 1914 the relevant Belgium decision-makers knew that resistance could not mitigate or avert the threat posed by Germany. Further, they were aware that a military response would result in the citizens of Belgium suffering more harm than they would suffer if Belgium did not resist. Crucially, evidence was presented that suggests that Belgium’s decision to violently resist had the strong support of the Belgium population who would endure the costs of hostilities.\textsuperscript{604} It was then highlighted that even though resistance could not mitigate or avert the threat posed by Germany, most commentators intuitively believe that resistance was ethically permissible. This thus generated a tension between the contemporary understanding of the Reasonable Probability of Success criterion and widespread intuitions.

However, this tension can be avoided if the relevant Belgium decision-makers believed that resisting the German aggression could achieve defence of others. It is difficult to assess whether or not Belgium’s decision to resist German aggression successfully deterred any instances of aggression in the future. It must be noted that after suppressing the Belgium resistance, Germany immediately continued on with its invasive policy. Further, Germany actually invaded Belgium again 26 years later. However, as with any appraisal of deterrence when it comes to war between states, this does not constitute decisive proof that war was not deterred. An essential problem with appraising the success of deterrence is that when it succeeds nothing happens.\textsuperscript{605} This phenomenon is often referred to as the

\textsuperscript{604} It is difficult to ascertain whether or not the support that resistance received constituted ‘informed’ consent. However, the evidence presented in a previous chapter indicating that the decision to resist maintained widespread support even after hostilities have concluded (and the costs of resistance were apparent) is quite telling.

\textsuperscript{605} The difficulties inherent in the task of determining whether war was successfully deterred have been highlighted by several commentators. Lebow and Stein pointed out that “[l]eaders are less likely to write and to speak, even privately, about an adversary’s success in deterring them.” Further, Jervis raised the issue that “it is not clear what the relevant sample should be. For instance, if we examine only cases in which the state had a marked desire to challenge another, we exclude cases in which deterrence suppressed
'problem of the dog that did not bark in the night.' Without attempting the fruitless task of analysing counterfactuals, it is impossible to verify whether or not Belgium’s resistance did in fact prevent more conflicts breaking out than what actually occurred. However, there is evidence to suggest that concern for the safety of others constituted part of the Belgium decision-makers’ reasoning when deciding to resort to war.

At the Crown Council meeting held to determine a response to Germany’s ultimatum the Liberal Party leader described appeasement as “a betrayal of our duty to Europe.” He continued: “The army may be beaten, but we must resist an action that will revolt the world. We must say no and do our duty.” In the same manner, the official reply to Germany referenced Belgium’s “international obligations.” King Albert’s speech to parliament also maintained the “necessity of [Belgium’s] autonomous existence in respect of the equilibrium of Europe.” This theme was also reiterated in a telegram from the Foreign Minister that was sent to all Belgian ministers who were abroad when Belgium received the ultimatum from Germany. The telegram stated: “All necessary steps to ensure respect of Belgian neutrality have nevertheless been taken by the Government… The Belgian army has been mobilized and is taking up such strategic positions… They are intended solely to enable Belgium to fulfil her international obligations.”

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606 This is a reference to an observation made by Sherlock Holmes in The Adventure of Silver Blaze, written by Arthur Conan Doyle.
607 Paul Hymans, as quoted by Steele, Ontological Security in International Relations, 103.
608 Ibid.
609 Ibid., 104.
610 Albert I, as quoted in ibid.
decision-makers seemingly believed that their decision to resist aggression would have broader effects, even though it would not mitigate or avert the physical threat that they faced.  

Further, some just war theorists who have considered Belgium’s decision believe that it may have achieved defence of others through deterrence, and also through affirming the values of political sovereignty and territorial integrity. For instance, Fotion believed that Belgium’s resistance may have had a deterrent effect not just on Germany, but also on other third-party states. He maintained that “[o]ne good thing in having the Belgians and their allies resist the Germans is to teach them a lesson that aggression is costly… The lesson will even apply to nations not involved in the war, but who are contemplating aggression.” Significantly, Fishback also employed the case of Belgium as an example in his discussion of the anarchic international state system. He declared that “even lost wars can achieve deterrence so long as they inflict harm, such as Belgium’s resistance to Germany’s invasion in the First World War.” This recent claim essentially reinforces one of the primary contentions of this chapter.

Steele wrote at length on the valuable expressive function of Belgium’s decision to resist German aggression in 1914. According to Steele, the “Belgian case demonstrates that small powers possess the ability to influence the social structures of their community, or that, in short, the actions of such small states also have important societal consequences.”

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612 This conviction was also seemingly held by Churchill, who proclaimed: “At this moment when their cities are captive, their country under yoke, their government and army forced into exile, the Belgian nation is exerting an influence upon the destinies of Europe and of mankind beyond that of great States in fullness of prosperity and power.” Winston Churchill, as quoted in Steele, *Ontological Security in International Relations*, 106.


The societal consequences Steele is alluding to notably includes reducing acts of aggression in the future. Adding to this empirical claim, Steele posited the normative point that “sacrifice is hardly unjust if it serves to strengthen community-based principles… suffering can be a useful method for demonstrating adherence to principles, especially when it acquires moral significance in the eyes of a community of observers.” He then ultimately summarised: “The fact that Belgium was so overmatched by the Germans, the fact that it was so materially incapable of defending territory but its agents chose to do so anyway, strengthened the principles of sovereignty and independence even more than if such principles had been ensured by one of Europe’s ‘great power’ states.” Whilst it is impossible to ascertain whether or not Belgium’s resistance actually achieved defence of others, it is clear that some notable just war theorists believe that it did. More importantly, the evidence presented suggests that the leaders of Belgium (reasonably) believed that it could achieve this outcome, and this is what is required for the Reasonable Probability of Success criterion to be satisfied.

**Objection to broadening the scope of ethically permissible wars**

A final possible objection to the views that have been asserted in this chapter is that they are in danger of appearing insensitive to the overall goal of *jus ad bellum*. This chapter has proposed a more permissive understanding of when resorting to war is ethically permissible. It has maintained that some of the wars that seemingly violated the Reasonable Probability of Success criterion could have been ethically permissible because they could

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615 Ibid., 110.
616 Ibid., 106.
have achieved defence of others. If this view is widely endorsed, this will lead to more instances of war being deemed ethically permissible in the future than would have been the case if the contemporary understanding of the Reasonable Probability of Success criterion remained in force. This is despite the fact that an important purpose of *jus ad bellum* is to limit the frequency of war. This field is meant to provide moral principles that can constrain agents, and it implies a strong presumption against resorting to force. For this reason, it could be argued that the prescriptions of this chapter are contrary to the very purpose of Just War Theory.

The proposals of this chapter also run counter to the general direction of the just war tradition in the last few centuries. Coady has summarised that the “history of just war theory has shown a distinct, though not altogether uniform, tendency to limit the right of war under the pressure of increasing scepticism about the motives of statesmen, the reliability of their calculations and the supposedly beneficial effects of war.” ⁶¹⁷ In other words, there has been a progressive narrowing of the scope of Just Cause, which in turn has restricted what constitutes ‘success’ for the Reasonable Probability of Success criterion.⁶¹⁸ Almost all commentators take this trend to represent moral progress and advancement. Conversely, this chapter has proposed a more expansive understanding of the Reasonable Probability of Success criterion in light of the fact that some wars that cannot mitigate or avert an imminent threat can achieve defence of others. Whilst Just Cause is still interpreted to mean self-defence or defence of others, this chapter has advocated a reunderstanding of when

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⁶¹⁸ One possible exception to this has been the controversial development of the idea that so-called ‘humanitarian interventions’ satisfy the Just Cause criterion of *jus ad bellum*. 
this is achieved. Again, it may seem peculiar that the proposals put forward in this chapter are not in line with the general development of Just War Theory throughout history.

In response, firstly it must be reiterated that this chapter is not advocating the removal of the Reasonable Probability of Success criterion altogether. It is also not advocating a shift in the way that the Just Cause criterion is understood. In order for it to be ethically permissible to wage war a state is still required to have a reasonable probability of achieving its Just Cause, and Just Cause is still narrowly interpreted to mean self-defence or defence of others. This chapter is simply attempting to demonstrate that some wars of resistance that have traditionally been taken to violate the Reasonable Probability of Success criterion because they could not mitigate or avert the threat faced could have satisfied this criterion because they could have foreseeably achieved defence of others. As such, the broadening of the scope of ethically permissible wars may actually be slighter than it seems.

In addition, it is crucial to note that the key variable ‘probability’ is still in play. There will still be wars that cannot mitigate or avert the present threat whereby resistance will also not have the beneficial effect of achieving defence of others. Civil wars, wars fought for religious reasons, and humanitarian interventions are some instances of war where the deterrent and expressive value of resistance may not occur, or they may be minimised because hostilities will not impact the international state system.619 It is also conceivable that some wars of resistance fought between states will not achieve defence of others

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619 Relevant to this point regarding wars fought for religious reasons, Statman aptly noted that: “Deterrence functions differently in different contexts. Particularly relevant to the present discussion is the distinction between the measures that might deter potential wrongdoers who are motivated by sheer self-interest and those that might deter wrongdoers who are ideologically motivated. For the former, a moderately higher cost than benefit would usually be sufficient to deter them. For the latter, a much higher cost would be required.” Daniel Statman, “Can Wars Be Fought Justly? The Necessity Condition Put to the Test,” Journal of Moral Philosophy vol. 8 (2011), 85.
because they lack a sufficient audience of observers (this is true of many historical wars from the distant past, and will impact ethical appraisals of them), or because the costs that can be inflicted on an aggressor are too small to have an impact on potential aggressors. It is only being asserted that some wars can achieve defence of others even when they fail to mitigate or avert the present threat.

It is also important to remember that the Reasonable Probability of Success criterion is only one of the individually necessary conditions governing the ethical permissibility of resorting to war. Each of the other criteria must still be satisfied. For instance, a state may find itself in the same situation as Belgium in 1914, but it will not be ethically permissible for it to resort to war unless it satisfies Right Intention. In this case, the intention of those resisting must be to achieve defence of others (rather than some sort of retribution or for punitive reasons). The Proportionality criterion is another requirement that will weigh heavily on a state’s decision to resort to war when it cannot mitigate or avert the imminent physical threat that it faces. Although violent resistance may satisfy the Reasonable Probability of Success criterion because it will achieve defence of others, such resistance may still be ruled out because the costs that will be suffered by the victim state will be too great. In light of the check-list approach to jus ad bellum that was advocated in a previous chapter, the interpretation of the Reasonable Probability of Success criterion defended in this chapter will alter the headline judgement of very few wars. In other words, very few wars will be rendered overall ethically permissible as a result of this amendment.

It must also be emphasised that wars that satisfy each of the jus ad bellum criteria remain only ethically permissible. Actions can be taxonomised into four ethical categories. These are: actions that are ethically forbidden, actions that are ethically permitted, actions that are
ethically obligatory, and actions that are ethically supererogatory. It is not being argued that it is ever obligatory for a state to wage war. Whilst it has been argued that there can be moral benefits reaped when a state resists aggression even when it cannot mitigate or avert the present threat it faces, such resistance typically entails significant costs for the victim state (the extensive costs accrued by Belgium were outlined in a previous chapter). It is too much to demand that any state suffer such devastation. The decision-making leader of a state has an obligation to prioritise their own citizens’ well-being. This is why it was stipulated that resistance must have the (informed) popular support of the victim population in cases when the present threat cannot be mitigated or averted for the Reasonable Probability of Success criterion to be satisfied. A leader has not acted wrongly if they decide to preserve the innocent lives of their citizens, even when this entails that more lives may be threatened in the future. In the words of Walzer: “Only saints are likely to act differently, and sainthood in politics is supererogatory, a matter of grace, not obligation.”

Moreover, although the conditions required for war to be ethically permissible may be less stringent given the understanding of the Reasonable Probability of Success criterion that has been proposed in this chapter, if the arguments that have been put forward are valid, then these conditions ought to arise less frequently if some of the newly permissible wars are fought. In other words, the overall instances of war should actually decrease. This idea was succinctly put by Walzer, again invoking the domestic analogy. He explained: “When people talk of fighting a war against war, this is usually what they have in mind… The domestic maxim is, punish crime to prevent violence; its international analogue is, punish aggression to prevent war.”

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620 Walzer, *Just and Unjust Wars*, 57.
621 Ibid., 62-63.
ethical capacity to inflict costs on their aggressor can decrease the frequency of state aggression and harm that this entails. This can be brought about by damaging the aggressors’ military hardware (and increasing domestic opposition to wars of aggression), through demonstrating a will to resist aggression, and by expressing an affirmation of the values of political sovereignty and territorial integrity. This is both more likely to be brought about, and is of great significance, given the anarchic nature of the international state system.
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