

# Justice between Wars

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One way to tell the story of contemporary ethics of war is as a gradual broadening of the periods of time to which theorists attend. Traditional just war theory is famously divided into two parts: *jus ad bellum* explores the conditions for justly going to war; *jus in bello* identifies the rights and responsibilities of combatants in prosecuting the war. This twofold schema was always an oversimplification. The just war tradition has long contained a rich seam of thought on what is now called *jus post bellum*. This refers to the range of ethical issues bearing on postconflict operation and decisions, including the obligations owed to occupied populations, rights to lands and property of the vanquished party, and considerations of punishment and reparation for aggressors and war criminals. So, the historical tradition is better seen as a triad, dividing ethical issues of war into conceptual components covering the *ad bellum*, *in bello*, and *post bellum* contexts of war. More recently, scholars have identified a genuinely novel set of ethical questions that has been called variously *jus terminatio* or *jus ex bello*. Both labels refer to the ethics of terminating, or bringing to an end, a war. The principal issue of *jus terminatio* is when a combatant party is permitted—or required—to cease fighting and sue for peace, or alternatively to continue prosecuting a conflict in pursuit of a war objection.

One of the most important contributions of Ned Dobos's new book *Ethics, Security, and the War-Machine* is to invite us to extend our theoretical gaze further still, to encompass the periods between the prosecution of wars. Dobos refers to this new domain of ethical theory as *jus ante bellum*, but for reasons that I hope to make clear below I prefer to think of this as *jus inter bellum*—justice between wars. This extended focus turns out to be an extraordinarily fruitful theoretical

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move—one that has broad and important implications across many areas of military activity and policy-making. Indeed, it will be my contention that Dobos understates the reach and power of his central insight and the novel and perhaps unexpected areas of inquiry that it opens.

Dobos's argument is structured around five considerations that show that maintaining a war machine is morally more costly than has often been appreciated. Each is important, but of the five I find two of them particularly compelling. First is the observation that maintaining a standing army creates a significant risk that the legitimate government will be toppled in a coup. Second is the argument that standing armies, rather than deterring foreign aggression as intended, will often induce it by creating an incentive for preemptive attack on the part of fearful neighbors.<sup>1</sup> Both observations are well supported by empirical evidence and are obvious once attended to, and yet their impact is quite devastating. What they show is not simply that standing armies have countervailing moral costs, but that in important respects they are *self-defeating*: A policy tool that has been established (at great expense) to further security and the right of collective self-determination can itself be a major cause of insecurity, oppression, and foreign aggression. It is hard to think of another morally legitimate policy area where this self-defeating dynamic is present. It would be as if our healthcare system was itself a major cause of disease and disability, or if our education system caused children to become illiterate, or the operation of the department for transport caused the road network to degrade, or the environmental protection agencies were a systemic cause of pollution. There is truly something aberrant about the ways that standing militaries function that sets them significantly apart from other policy areas of the modern state.

Such considerations lead Dobos to question whether standing militaries can be regarded as a morally legitimate instrument at all, and to suggest that we consider their wholesale abolition. This is clearly an important question—but it is also an extremely narrow one. Once we attend to the periods between active hostilities, we see that the question of abolition is but one component of a broader set of ethical questions. This broader ethical domain includes not only the question of *whether* we should have a standing military but also importantly includes *how* a military or defense institution should be configured and managed if we do have one. Positioning the argument in this way both ensures its relevance for those who are not willing to follow Dobos into abolitionist territory and allows for the

possibility that even if the current “war-machine” is not morally tenable, a war-machine configured in alternative ways may be.

The question of how the institutions of collective defense should be configured and managed outside of active combat has been oddly neglected by just war theorists. It is precisely this gap that extending just war theory to include a body of *jus inter bellum* theory might address. I prefer the term “inter bellum” to “ante bellum” because it makes clear that what is at stake is not simply a specific set of activities leading up to a particular war but rather the activities—beyond active combat—through which states and military institutions approach collective defense. An analogy might be the difference between the ethics of whether and how to undertake a particular medical procedure (akin to *ad bellum* and *in bello* questions in war) vs. the ethics of how to manage health policy more broadly (akin to the *jus inter bellum*).

The scope of important questions to be addressed by a theory *jus inter bellum*, thus understood, is vast. But a preliminary taxonomy would certainly include the following:

***The ethics of weapons systems design and procurement.*** What principles govern the design, acquisition, deployment, maintenance, interoperability, and retirement of weapons systems? How should limited budgets be allocated, particularly in trade-offs between spending that will serve to protect the lives of one’s own service members and spending that will protect enemy or compatriot civilians? Given the long periods of defense procurement cycles, should future costs and benefits be discounted compared with present costs and benefits, as is common in other areas such as infrastructure and climate change policy? If so, by how much? What ethical principles and baselines should we use in decisions about weapons safety and risk, including potentially existential-level risks arising from a nuclear or bioweapons accident?

***The ethics of force posture and strategic doctrines.*** This involves questions relating to where forces are positioned and how we should plan or commit to using them. “Forward defense” postures, which envisage using mobile forces or troops stationed abroad to engage an adversary in enemy territory or the territory of third parties, impose a very different distribution of costs and risks on citizens and foreigners than a posture that seeks to defend the homeland on home territory. How should we think about the ethics of allocating these risks? Use and retaliation doctrines also raise important ethical issues: Are nuclear counterstrike doctrines permissible? Is it permissible to maintain a policy to retaliate against a cyberattack with kinetic force? Are there ethical constraints on whether such doctrines should be publicly disclosed, or may they remain secret?

***The ethics of alliance and force diplomacy.*** States can use their militaries to create coercive political effects without actively deploying them in hostile operations. Alliance relationships, military exercises, and weapons tests can all be used to signal intent and

communicate implicit threats. Holding military exercises near the border of an adversary has long been the diplomatic equivalent of walking around your neighbor's front lawn whacking a baseball bat menacingly against your palm. Are such uses of the military to signal threat morally justified? What principles govern the making of and adherence to alliance commitments, given the complex allocations of risk, cost, and benefit they entail?

**Personnel ethics.** How should military personnel be recruited, remunerated, and trained? What duties of care are owed for the physical and psychological safety of soldiers, given that facing mortal risk is an intrinsic part of a soldier's job? Should militaries be professional or volunteer? Are there moral objections to the use of contractors or mercenaries? What is the obligation to ensure that military forces reflect society and that the burdens of service fall equitably across different social and demographic groups?

**The ethics of civil military relations.** What moral norms govern the relations between civilian and military authorities? Civilian control has long been a foundational norm in democracies, but are there limits to this norm? Are military coups ever justified, and are there conceptual or ethical reasons to attempt to construct a just coup theory? What ethical norms should govern the conduct of retired service members and officers, particularly relating to their participation in politics and business?

**Ethics and military culture.** What are the cultural resources required of a just ethical military institution? How can such a culture be fostered and maintained, not only through training and development but also through performance assessment, promotion decisions, military justice, leadership, and communications? What is required for military culture to be equitable and inclusive for different races, genders, sexual orientations, and ethnicities?

It may be argued—with some justification—that none of these issues is novel and each has already been addressed somewhere in the ethics literature. Dobos himself tangentially acknowledges that more purely defensive force postures and weapons systems may mitigate some of the moral costs associated with fear-induced aggression.<sup>2</sup> However, most of these issues have not been addressed as ethics problems with the depth and sophistication they merit. Second, they have not been addressed systematically as a core part of the *ethics of war*. This is crucial. Like Olympic athletes, soldiers spend far more time and energy on preparation than they do on the main event, and in both cases, their performance depends critically on how they are equipped, prepared, and trained. If you want a theory of how athletes can compete competitively and ethically, you will not get very far if you focus entirely on the competition and ignore everything the athlete does to prepare before the opening ceremony. Similarly, if we want to understand how soldiers and officials can perform ethically in war, we will need a comprehensive view of the activities undertaken to train and prepare between wars, and this

view will need to be fully integrated with our view of the ethics of combat. For example, whether a fighting force is able to undertake a given operation in a proportionate and discriminate manner will depend on a wide range of inter bellum considerations: the weapons and equipment at their disposal; their training, leadership, and culture; the relevant strategic doctrines; and the alliance dynamics. These features are all set in place months, years, or decades before the shooting starts. If ethical oversight only begins with the *jus ad bellum*, we fail to attend to the great majority of the acts and decisions that actually determine the justness of the war.

But *jus inter bellum* is relevant to the justice of war not simply as an ethics of preparation. There are deeper connections between the justice of action taken between wars and the justice of war itself. If military institutions and policy-makers fail to appropriately execute their inter bellum responsibilities, this may make it impossible to morally justify a war, even if the conflict otherwise appears to fulfill all the relevant *ad bellum* and *in bello* conditions. This gives a powerful pacifist potential to arguments of the form made by Dobos.

Dobos himself is keen to separate military abolitionism from pacifism. He points out that it is possible to believe that maintaining a standing military is impermissible while also believing that it can sometimes be permissible to engage in war.<sup>3</sup> Although he does not say so, the converse is also true: one may hold that it is permissible to maintain a standing army but impermissible to use it in war. That might seem like an odd position, but it parallels the view that many people actually hold about nuclear weapons: that it is permissible to possess them, permissible to threaten to use them, but impermissible to actually use them.

Notwithstanding the conceptual possibility of separating the two, there is a strong normative argument that runs from military abolitionism to pacifism via the principle of necessity. The normative principle of necessity, a core component of both *jus ad bellum* and *jus in bello*, states that no harm-producing action is permissible if there exists a morally less costly means of achieving the same good outcome. Dobos's five considerations show that the moral costs of maintaining a standing army are very high indeed—not only during active deployment in war but also beforehand.

High cost alone is, of course, not sufficient to demonstrate that an action is unnecessary since there may be no equally effective alternative with a lower moral cost. However, there is suggestive evidence that a significantly lower-cost

alternative to the war machine does in fact exist. In a short epilogue to his main argument, Dobos reviews the case for a “civilian defense system,” or CDS. A CDS is a form of nonmilitary collective self-defense strategy based on principles of organized civil disobedience first systematically theorized by Gene Sharp in the 1970s and drawing on the experience and writings of Mahatma Gandhi and Martin Luther King Jr.<sup>4</sup> The basic insight of CDS strategy is that no aggressor or potential occupier can govern by force alone—all of them depend on the tacit consent of the occupied population. A CDS seeks to systematically withdraw this consent, thereby raising the costs and lowering the rewards of occupation. The key elements of a CDS strategy are popular protest against potential occupiers and widespread noncooperation, for example, consumer boycotts, organized strikes, and “go slows,” as well as withholding information and payment of taxes; and additionally, nonviolent interventions designed to obstruct the occupier’s ability to govern, such as sit-ins, blockades, and the sabotage of vital equipment and infrastructure. While still under-researched, empirical studies suggest that CDS strategies really do work, especially when supported with systematic training and communication assets. As well as producing far lower moral costs in terms of death and destruction to property, nonviolent civilian defense has been shown to be between two and six times more likely to succeed in achieving its political objective compared to traditional military force.<sup>5</sup> If the use of a traditional military is both more morally costly and less effective than an alternative, this is sufficient to demonstrate that its use is morally unnecessary—and if unnecessary, then impermissible.

One could suggest in response that this argument misunderstands the distinction between *jus inter bellum* and *jus ad bellum*. Whatever the moral merits of developing a full-fledged CDS capable of defeating foreign aggression without military force, no state has yet done so. This may be a failure at the level of *jus inter bellum*, but when a state faces an *ad bellum* decision of whether to go to war, it must consider the costs and benefits of the alternatives that actually exist, not the alternatives that might otherwise have existed. There may be an *inter bellum* case to abolish standing armies and replace them with CDSs, but in the meantime it can be permissible for states to use the military forces they already have to defeat aggression. This is exactly the military abolitionism combined with anti-pacifism that Dobos advocates.

However, this position neglects the way in which prior wrongful action can serve to defeat future claims of justification. Consider the following hypothetical case: I am a doctor for an expedition operating in a remote territory. One member

of the party develops a dangerous infection and I judge that in order to save her life I must amputate her leg. Provided there is no alternative, this action would clearly be considered necessary and therefore justified. Now suppose that the infection could easily have been treated with antibiotics, but that I had culpably omitted to bring any on the expedition because I am an advocate of an “anti-penicillin” conspiracy theory. The context of my prior actions changes the normative status of the amputation from a justified action to one for which I bear moral culpability. That is because I cannot claim moral justification for inflicting harm on the basis of conditions of necessity that I myself am at moral fault for creating. My prior wrongful action defeats my ability to claim justification on the basis of conditions of necessity.

Note that performing the amputation remains the lesser evil, and it remains the course of action that others have a moral reason to desire that I take. Performing the amputation is less wrongful than not performing it—but it is a culpable act nonetheless, for which justifying conditions are not satisfied. Note also that the culpability that attaches to performing the amputation is separate from, and additional to, the culpability of omitting to bring the antibiotics. If I fail to bring the antibiotics and no one falls sick, I am culpable of exposing the expedition to a wrongful risk. If omitting to bring the antibiotics forces me to perform the operation, I am responsible for the more significant wrong of culpably amputating a limb. Ethical failures of preparation can erode the grounds of justification for future performance.

I believe that the same is true of the relationship between *jus inter bellum* and *jus ad bellum*. They are separate domains of ethical assessment, but—as with the other domains of just war theory—they are normatively connected. If it is true that, *inter bellum*, the state has an obligation to develop and deploy an effective civilian defense system, then its absence cannot be relied upon to justify the use of conventional military force as *ad bellum* necessary. The prior ethical failure reaches forward to contaminate with wrongdoing actions that would otherwise have been permissible. The *inter bellum* arguments for military abolition lead directly to the *ad bellum* pacifist conclusion that the use of military force is morally unjustified.

Many will resist the argument that the state has an obligation to develop and deploy a CDS on the grounds that the empirical evidence for its effectiveness is still weak and undeveloped. There has simply not been enough research or institutional experimentation to know conclusively whether a CDS would be preferable to military force in defending against real-life large-scale acts of international aggression. This observation is certainly true. But rather than mitigating the

culpability of military planners, it actually exacerbates it. Gene Sharp's seminal treatise on CDSs was published in 1973—nearly fifty years ago. The failure of policy-makers to investigate, validate, or develop the observations made by Sharp and his colleagues is an inter bellum failure of colossal magnitude. It is as if fifty years after Alexander Fleming discovered the efficacy of penicillin in the laboratory, no healthcare system had bothered to conduct a large-scale trial of antibiotics in a therapeutic setting, preferring instead to stick to their tried-and-true amputation procedures. The failure to gather rigorous evidence on what is potentially a morally significant breakthrough in defense policy should be seen for what it is—a grave moral failure.

Extending our scrutiny to the period between wars yields great theoretical and practical dividends. It enables us to see that there is a large domain of ethical issues concerning the preparation for war that have been oddly neglected by just war theorists and that are of vital importance—whether or not you follow the argument through to an ending point involving abolitionism or pacificism. It enables us to see that just action between wars can be a precondition for just action during war, and that acts that may appear justified when viewed narrowly through an *ad bellum* or *in bello* lens may turn out to be morally unjustified when placed in their broader inter bellum context. This is a profoundly important contribution.

#### NOTES

- <sup>1</sup> The three other considerations that Dobos develops are the potential for soldiers to be morally harmed or impaired by their military conditioning, the risks of misusing military power for purposes it was not designed for, and the corrupting effect that martial values can exert on civilian life.
- <sup>2</sup> Ned Dobos, *Ethics, Security and the War-Machine: The True Cost of the Military* (Oxford: Oxford University Press, 2020), pp. 65–66.
- <sup>3</sup> *Ibid.*, pp. 3–4.
- <sup>4</sup> See Gene Sharp, *The Politics of Non-Violent Action* (Boston: Porter Sargent, 1973).
- <sup>5</sup> Maria J. Stephan and Erica Chenoweth, “Why Civil Resistance Works: The Strategic Logic of Nonviolent Conflict,” *International Security* 33, no. 1 (Summer 2008).

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Abstract: One way to tell the story of contemporary ethics of war is as a gradual expansion of the period of time to which theorists attend in relation to war, from *ad bellum* and *in bello* to *post bellum* and *ex bello*. Ned Dobos, in his new book, *Ethics, Security, and the War-Machine*, invites us to expand this attention further to the period between wars, which he calls *jus ante bellum*. In this essay, I explore two significant implications of this shift in normative focus. First, I argue that it opens up an important and productive field of the ethics of military policy-making outside of conflict, including procurement, training, force posture, and military diplomacy. Second, I argue that attending to the relationship between ante bellum and ad bellum considerations contains the seeds of a powerful pacifist argument.

Keywords: *jus inter bellum*, pacificism, just war theory, civilian defense systems