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The Limited Reach of *Ad Bellum* Proportionality

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ABSTRACT

There is wide agreement that although *ad bellum* proportionality (ABP) does not constitute a legal constraint on waging war, it constitutes a moral one, implying that a state ought to refrain from waging an otherwise justified war if it estimates that the war will be disproportionate. Against this view, I argue that the same considerations that tell against regarding ABP as a legal rule tell also against regarding it as a moral one; (a) as a matter of fact, such a rule would be ignored and (b) if it is *not* ignored, it would significantly undermine deterrence. In addition, there seem to be insurmountable epistemic difficulties in establishing *ex ante* whether a war will be disproportionate or not. I conclude by arguing that this understanding of ABP is best captured within a contractarian view of the ethics of war. It is mutually beneficial for all international players to agree on a rule that exempts them from the requirement to make sure that the (defensive) wars they wage are *ad bellum* proportionate.

KEYWORDS

Proportionality in war; McMahan; necessity; Ukraine; contractarianism

Introduction

Although all contemporary lists of the conditions for just war – the *ad bellum* conditions – include proportionality, surprisingly little has been said about its practical implications. In particular, there has been too little discussion of what countries are expected to do when confronted with a significant unjust threat that can only be averted by a disproportionate war. For the sake of investigating this question, I remain neutral as to what goods and harms should be included in the proportionality calculus, for instance, whether it should include only civilians or also soldiers,[1] whether or not it should include damage to infrastructure, harm to the economy, harm to third parties, and so on.[2] Since everybody agrees that harm to enemy civilians should be included in the proportionality calculation, in what follows I shall focus on this kind of harm when I talk about *ad bellum* proportionality (hereafter "ABP"), without ruling out the possibility that other harms count as well. My point is that, however *ad bellum* proportionality is calculated, there might be cases of just wars, by which I mean wars that satisfy the just cause condition, that fail the test and are therefore disproportionate. The question is what countries ought to do in such circumstances.

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The moral validity of ABP is taken for granted by moral philosophers, for instance, by Christopher Eberle who contends that "fundamental to the JWT [Just War Theory] is the claim that a community can have a fully sufficient just cause to respond to an enemy attack and yet be morally forbidden to do so" (2016, 70–71). Jeff McMahan agrees that this is the case with regard to the deep morality of war, but argues that – in law, the situation is rather more vexed. Although there are references in the legal literature to the notion of proportionality in *jus ad bellum,* in neither statutory nor customary international law does there seem to be a legal prohibition on the resort to war when the war's expected bad effects would be excessive in relation to its expected good effects.[3]

The question I put on the table, then, is whether, in spite of the fact that there is no legal constraint on launching a war that violates ABP, doing so is morally prohibited.[4]

Two kinds of disproportionate war

Let us start by distinguishing between two kinds of threats; threats that consist of a relatively trivial violation of sovereignty or of territorial integrity, and threats that consist of a significant violation of these values. An example of the former would be a very limited invasion of country A into country B, aimed at conquering a tiny piece of land which is historically precious to country A but holds no special value, material or symbolic, to country B. An example of the latter would be an attempt by country A to annex a significant part of country B or to conquer it completely and make it part of country A.

The thesis stating that, morally, countries ought not to go to disproportionate wars (hereafter "the Thesis") sounds most convincing in the case of trivial threats. This is why the Falkland war is the favorite example for those who support the Thesis or seek to illustrate its attraction.[5] However, such cases are less common than one might think because, often, even if, in terms of territory or sovereignty, the immediate threat is marginal, not responding militarily might have long-term strategic results. As in individual self-defense, refraining from responding to unjust threats, even trivial ones, might signal weakness and invite more and worse threats in the future. In the international domain, this also has to do with the fact that, typically, when country A seeks to conquer some territory of country B, this is against a background of an historical conflict between the two countries, and is often part of a more ambitious claim or plan. Against such a background, country A's refraining from going to war – in effect submitting to the unjust requirements of country B – might have serious consequences for its status vis-à-vis country B in the long conflict between them. It is also often the case that not responding at t1 will make it much harder to respond at t2, when the threat becomes *non*-trivial. The appeasing policy of France and Britain towards Nazi Germany in the 1930s is a standard example of such a strategic mistake because had they threatened or actually waged war against Germany in, say, 1934, that would have probably prevented WWII (Ripsman and Levy 2009).

Interestingly, even with regard to the Falkland war, McMahan appears rather permissive in the casualties he is ready to (morally) license short of breaching ABP. He says that the actual killing of 650 Argentinian soldiers did not make the war disproportionate, but that had the UK killed 500,000 soldiers, that *would* have been disproportionate (2017, 142–143). The fact that the number of military casualties that McMahan mentioned to illustrate disproportionality was 500,000 lends the impression that he would have

regarded ten to twenty thousand Argentinian casualties as proportionate, probably because of the importance of preserving Britain's sovereignty and because of the potential damage that inaction would have caused to Britain's deterrence capabilities.

It would also seem that, in cases of trivial threats, counter-aggression might not be the last resort. This is because in at least some such cases there is an option of calling for international responses and subsequent negotiations before counter-attacks are initiated, or of addressing the issue by oneself (or with allies) politically and diplomatically.

To conclude, in the face of trivial threats, I accept that ABP poses a valid moral constraint on the launching of war (provided that refraining from military action is not expected to have serious results for the country attacked). Bringing about a lot of death and destruction for the sake of a trivial gain is indeed morally unwarranted. In the next section, I turn to the case of serious threats.

ABP and serious threats

Let us begin with the well-known case of BLOODLESS INVASION:

> Country A long believes, incorrectly, that country B controls a territory that historically belonged to her. Country A's army invades country B in order to annex this territory. It has no intention of killing civilians or soldiers of country B, and the regime it would implement in B's territory after annexing it would not be significantly (if at all) worse than the existing one in terms of respect for human rights, the rule of law, and so on.

According to Norman (1995, ch. 4) and Rodin (2002), even if country B could successfully defend itself against annexation (thus satisfying Statman's 2008 success condition) and even if war is the only means to do so (thereby satisfying the last resort condition), country B morally ought to refrain from engaging in war because the harm prevented by it would be significantly less than the harm it would cause.[6]

Thus understood, the Thesis seems to bring us close to pacifism, a conclusion explicitly drawn by John Yoder. In his view, the burden of proof to establish that the killing and the destruction caused by war are proportionate lies on those who want to go to war. The problem is that the conflicting values – the different types of good and evil that need to be compared under ABP – are incommensurable, hence ABP is hopelessly vague and indeterminate.[7] This entails that countries cannot be reasonably certain that their war is proportionate, and should therefore never (or hardly ever) go to war.[8]

While Yoder went all the way to pacifism, Norman and Rodin refuse to do so even though they realize that this is what the Thesis seems to entail. Norman says that "since the waging of war almost invariably involves the deliberate taking of life on a massive scale, it will be immensely difficult to justify," and the philosophical failure to do so pushes us "in the direction of a pacifist conclusion" (1995, 202). Similarly, Rodin argues that the failure of most wars of national-defense to satisfy ABP seems to imply that, morally, they ought not to be fought, which again makes pacifism a natural choice (2002, 196–197). The basis for their refusal to follow the argument all the way through is their thought that requiring countries to submit to unjust threats when ABP is violated is not just overly demanding, but morally outrageous – "morally unacceptable," in Rodin's words (2002, 198), or "morally unthinkable" in Norman's (1995, 219).[9] Thus, although neither of them *explicitly* rejects ABP, in effect this is what they do.

A possible response might be to limit ABP to wars that are expected to significantly violate the *in bello* requirements. What I have in mind are cases in which country B can avert A's attack without intentionally attacking civilians, but, due to various factors – the inaccuracy of its weaponry, the proximity of most of A's military targets to residential areas, the long duration of the war, and so on – it can do so only by bringing about excessive, yet *collateral*, harm to civilians and by intentionally attacking country A's infrastructure (electricity facilities, dams, bridges, and so on).

Given these circumstances, does country B have a right to go to war against country A, or is B morally required to refrain from doing so, which means surrendering to the unjust attack of country A? I make two claims in response. First, I estimate that no country in the world would opt for the surrendering option. Faced with an invasion by an enemy threatening its sovereignty or territorial integrity, all countries would go to war to defend themselves even if they realized that in the course of the war they would have to bring about excessive collateral harm to enemy civilians and serious damage to enemy infrastructure. That doesn't mean that countries would do *anything* to defend themselves – I remain neutral about this factual assessment – but they would definitely do the sort of things just mentioned. It would, therefore, be pointless to require them to submit in such circumstances rather than fight.[10]

Note again that, in the circumstances I am imagining, the success condition is satisfied, namely, country B has good reason to believe that it *can* win the war against country A if it took the above measures. According to the Thesis, even if B *can* defeat country A, and even if B has no other way of doing so, it nonetheless ought to refrain from war if it estimates that the war will bring about disproportionate harm to its *enemy* (particularly its enemy civilians, which, as you recall, is what I'm focusing on here). Surely no country would opt for surrendering in these circumstances.

Second, the intuition underlying Norman and Rodin's decision to stop short of the pacifist conclusion that follows from their application of ABP is relevant to the case before us as well. In their view, the conviction that states have a right to militarily defend themselves "may arise from the feeling that to fail to resist aggression is to somehow acquiesce morally to it in an unacceptable way" (Rodin 2002, 198). The same feeling would apply to a failure to resist when the resistance is estimated to involve excessive harm to enemy civilians, or serious damage to its infrastructure. Suppose that, in February 2022, Zelensky believed that Ukraine had no choice but to go to war in order to block Russian invasion, that a war *would* ultimately drive out the Russians, but that it would lead to excessive collateral harm among Russian civilians. The thought that, because of this latter belief, he should have submitted to Putin is, to use again Norman's words, "morally unthinkable."

To conclude this point, if ABP requires that countries refrain from going to war in order to defend themselves from serious threats to their territorial integrity or sovereignty when the estimated collateral harm to their enemy civilians is excessive, then ABP should be abandoned. I mentioned two arguments for this conclusion: First, such moral advice would be simply ignored by real-world countries. Second, a requirement not to fight in such circumstances means to acquiesce to aggression, which seems morally outrageous.[11]

Interestingly, as indicated above, McMahan agrees that it is unreasonable to impose a *legal* prohibition on going to wars that violate ABP, but contends that a *moral* prohibition nonetheless exists. He offers two reasons why a legal prohibition would be a bad idea:

> One derives from the fact that there is as yet no mechanism for the coordinated international enforcement of the prohibition of unjust war. It is therefore necessary for the deterrence of unjust war that victims of unjust aggression fight defensively rather than submit. And a legal *ad bellum* proportionality requirement, whether narrow or wide, that might inhibit defense against unjust aggression would therefore threaten to weaken deterrence. The second … is that such a requirement would be pointless because it would not be taken seriously. It is hard to imagine any state refraining from engaging in an otherwise just war on the ground that the war would require harming enemy combatants to an extent that would be disproportionate in relation to the importance of achieving the just cause (McMahan 2017, 143).

A similar point about the futility of a legal rule that prohibited wars that violate ABP is made by Newton who says that "proportionality as applied *must remain practicable* because rules that are incompatible with the survival of sovereign nations and, by extension, all effective military action risk being ignored and, thereby, not preventing any harm from occurring" (2020, 84, italics added). Lieblich (2020, 70–71) makes the same point, leaving open the possibility that ABP would still be *morally* binding:

> Any harm-benefit proportionality analysis, if adopted in law, would entail that in some cases, self-defense would be legally prohibited, even if a significant armed attack would take place. While this approach could be morally virtuous, it is doubtful whether states would accept, in the foreseeable future, such restrictions as a matter of positive law, or if any state ever refrained from responding to an armed attack because of the results of a universal harm-benefit analysis. This is probably because such a standard would require states to exercise a degree of impartiality in matters to which state constituencies afford utmost importance, especially in my world of increasing nationalism.

But, in my view, this distinction between morality and law is untenable because the same arguments that tell against the imposition of a legal constraint on fighting disproportionate wars tell also against the imposition of a moral constraint on doing so. Assuming that morality is supposed to be action-guiding, there is not much point in formulating moral rules which will be universally ignored.[12] Rodin's argument too is relevant because it seems morally unacceptable not only to impose a legal demand to submit to unjust aggression, but also to impose a moral demand in this spirit. Finally, the deterrence argument raised by McMahan would also apply to a moral prohibition on going to disproportionate wars, because obeying this prohibition would have disastrous consequences in terms of deterrence. It is hard to believe that McMahan or Lieblich would genuinely want countries to comply with this moral requirement and submit to unjust aggressors in the face of serious threats, with the risk to world peace which would ensue.

This is another illustration of the problematic distinction between the laws of war and the deep morality of war, a distinction that appears attractive only if a rather narrow notion of morality is in mind, excluding, for instance, a concern for deterrence. But this concern is evidently a *moral* one, not only "pragmatic," hence, if considering it yields the conclusion that countries have a right to go to war, this is what *morality* licenses. McMahan might concede the point, but insist this is only "shallow" morality while "deep" morality offers different advice. But I can't see in what sense a concern

for reducing wars by strengthening deterrence is less deep than a concern for the collateral killing of enemy civilians.[13]

Contrary to Lieblich, then, in the case of serious threats, refraining from going to war just because it is predicted to involve disproportionate harm to one's enemy is not "morally virtuous" (2020, 70) and should not be encouraged. It will make the world less safe and will undermine trust in morality, that would be seen as detached and unreasonable.

Proportionality and *jus ex bello*

The moral logic that underlies the Thesis seems to entail that, regardless of whether the initiation of war was compatible with ABP or not, it should come to an end at the point in which it becomes disproportionate. Assume, for instance, that when Ukraine went to war against Russia in February 2022, it had good reason to believe that the goods caused by the war would outweigh its harms, but then, three years later, the harm has become so severe, especially in terms of civilian casualties, that it is no longer proportionate. If this were the case, taking proportionality seriously would require that Ukraine cease its fire and submit to Russia. *Ad bellum* proportionality, in other words, seems to entail *ex bello* proportionality. This is what McMahan (2015) calls "The Quota View," which he himself rejects.

However, the two arguments mentioned above against the expectation to refrain from going to disproportionate wars apply also to the expectation to exit wars that seem to have *become* disproportionate. First, this is the kind of moral advice that no country would take seriously. If a country faces an unjust enemy invasion and goes to war in order to push the invaders out of its territory, the odds of it ceasing the war short of achieving this goal just because it has reached a point in which the war has become (and can be assumed to remain) disproportionate – in terms of harm to its *enemy* – are extremely low. Second, it seems morally outrageous to expect a country that has been the victim of an unjust attack and has already paid a high toll in her attempt to defend herself, to put down her weapons and submit to her aggressor just because the war has become disproportionate. And third, a proportionality constraint on continuing to fight (just) wars would make it much harder to deter potential aggressors. This is especially troubling in the case of leaders, typically of nondemocratic regimes, who have little compunction in sacrificing large numbers of their soldiers and civilians in order to win the wars they fight. Paradoxically, the more casualties the aggressive side suffers, the harder it becomes for the attacked side to satisfy the proportionality requirement and the likelier it is that it – the attacked country – would be morally required to stop fighting and submit to the aggressor. Within such an understanding of *jus ex bello*, aggressors would not only be undeterred but would be *encouraged* to attack while undertaking serious risks to their civilians and soldiers, thereby making the war against them disproportionate, and morally forcing their victims to surrender.[14]

ABP, IBP and individual self-defense

A central argument against ABP as a constraint on going to war against serious threats has been that no state would take such a constraint seriously if it believed that war was

necessary in order to defend its very existence or its critical interests. This, however, raises the question of how the proportionality condition *is* often taken seriously (or at least much *more* seriously) in different domains of self-defense; in the morality of warfare (*in bello* proportionality) and in individual self-defense. Let us take each in turn.

Regarding *jus in bello*, proportionality requires refraining from attacking a legitimate military target if it is estimated that the collateral harm to civilians will be excessive relative to the military value of the attack. The main reason that this requirement can be and often is taken seriously is that, in most cases, refraining from an attack on a specific military target is not critical to winning the war (Lieblich 2020, 71, n. 126). While the price of subscribing to ABP is – sometimes – avoiding war altogether, in effect surrendering to one's enemy, subscribing to IBP requires only refraining from specific attacks in specific circumstances, which usually has only a marginal effect on the odds of winning the war. But there are additional reasons why IBP is taken seriously. First, the parties realize that *in bello* violations by one side can escalate the conflict, leading to reciprocal violations that harm everyone involved. Second, disregarding the *in bello* rules of war endangers a military's own discipline.

Regarding individual self-defense, the price of refraining from attacking one's aggressor when such an attack would be disproportionate is usually not that high because, in a well-ordered society, the attacked individual is not on her own, so to say. She has various public institutions to rely upon to come to her aid or, more typically, to make sure that she is post factum compensated. But, obviously, there are cases in which victims cannot be reasonably expected to acquiesce to their aggressors just because post factum they will be compensated (and the aggressors punished), for instance, a case of being sexually touched without one's consent. The question, then, is whether a victim's right to defend herself against her aggressor by, say, seriously injuring him, is subject to the proportionality constraint, in circumstances in which the victim does not have a less harmful way of defending herself. May she opt for a disproportionate defensive action or is she morally required to submit to her aggressor?

Here too, like with ABP, writers who defend the proportionality constraint tend to refer to easy cases, in which the threat posed is trivial and the (necessary) defensive action severe, for instance, when an orchard owner can prevent a thief from stealing an apple only by shooting him,[15] or when a person can defend herself from a robber who demands her money only by killing him.[16] Note that, like with ABP, even in cases like these, the answer to the question of whether the victim is allowed to use disproportionate force is not always that easy, because often not responding would lead to more serious and continuous attacks in the future. As Ken Simmons put it, "even slight harms entail a risk of greater harms."[17] At any rate, what may the victim do when the threat is *non*-trivial, but can be averted only by disproportionate harm?

In some legal systems, the right to self-defense is not constrained by a proportionality condition which surely has to do with the fact that, again like in ABP, proportionality in such claims seems over-demanding; an aggressor, A, intentionally and unjustly attacks B, B *can* defend herself by harming A, but she is nonetheless barred from doing so because of the anticipated harm to A, the *aggressor*! Realizing how demanding this expectation is encourages the thought that refraining from defensive action in such cases is not a matter of duty, but is supererogatory.[18]

The language of supererogation lends the impression that undertaking a proportionality constraint is morally worthy, if not admirable. At times it indeed is – when the threat is minor, the only available defensive action severe, the aggressor's responsibility low, and the cost of not responding bearable. But, as indicated above, often it is not, because letting wrongdoers carry out their aggression without being stopped might have adverse results both for the victim and for society in general. Even more so with regard to political leaders who opt for surrender instead of for fighting in the face of serious threats. Such leaders would be neglecting their duty towards their citizens, would weaken deterrence against potential aggressors, and would make the world a less safe place to live in.

ABP and contractarianism

My conclusion regarding the limited reach of ABP might give rise to the following objection: Notwithstanding the over-demandingness of the requirement to surrender when ABP is not satisfied and notwithstanding the potential consequences of such surrender on deterrence and on world peace, it is still a fact – a moral fact – that fighting a disproportionate war unjustifiably violates the rights of many people, particularly innocent people, on the enemy side. It is, therefore, unclear how a permission to do so along the lines developed above is compatible with a genuine commitment to human rights.

I believe that the best way to address this problem is by relying on a contractarian ethics of war of the kind we develop in *War by Agreement* (Benbaji and Statman 2019). The book starts with the assumption that respect for rights is compatible with trading with them, so to say; giving up certain rights, in defined circumstances, vis-à-vis certain people, in exchange for certain benefits in terms of welfare and of reducing right-violations. To use a standard example, when boxer A hits boxer B in the ring, the correct way to conceptualize this is not that A wrongs B though the hitting is overall justified because of its good consequences, but that A *does no wrong to B*. And the reason that this is so is that by entering the ring with the appropriate gear under the conditions defined by the boxing rules, B thereby agrees to these rules and gives up his right not to be punched by A (while the competition goes on, subject to the referee's instructions and so on). When A punches B on the nose, he is, therefore, not acting merely within his legal rights, but within his moral rights as well. As we explain in chapter 2 of the book, there are three conditions that need to be satisfied in order for a re-distribution of rights to be morally effective; it must be *ex ante* mutually beneficial, fair, and actually adhered to by the relevant parties.

Let me briefly illustrate the fruitfulness of this theoretical framework by looking at the *in bello* rules. The parties on the international level wish to maintain effective capability for self-defense against potential enemies. If soldiers had to verify that each enemy combatant they attack is morally liable to be killed, they would not be able to fight effectively. It is, therefore, in their interest to agree upon a rule that exempts soldiers from this obligation – one that *does* apply outside the domain of war – and allows them to kill enemy combatants almost indiscriminately. When citizens become soldiers, then, they subscribe to this rule and therefore are not wronged when they are attacked by enemy soldiers, regardless of their individual responsibility for the war or their actual contribution to it.

The contractarian logic applies to the *ad bellum* level as well. The main goal of the *ad bellum* regime is to preserve peace; hence it introduces a strong presumption against the

use of force. The presumption is based on the fact that, in terms of pre-contractual morality, peace is almost always better for the international players, even when the status quo ante is unjust (as it often is). States agree on a legal rule against the first use of force because they realize that when they face a conflict, they are likely to forget the above fact.

The *ad bellum* agreement addresses the problem of enforcement. The society of states has no political center. Their agreement must therefore rely on self-help. As such, it confers on states a robust right to self-defense. In securing this right, the agreement relaxes the moral constraints on wars of self-defense. Under the agreement, states possess a defensive right to militarily oppose violations of their territorial integrity even if their existing boundaries reflect an unjust distribution of territories and of natural resources. A rule that gives states an automatic right to go to war when they are attacked is an effective way of deterring potential aggressors and, consequently, of preserving world peace. If this right was constrained by a pre-contractual proportionality test, then, as noted by Norman and Rodin, it would fail to apply in many national-defense wars, which means that it would lose its deterrent power. Therefore, *ex ante*, states have an interest in undertaking a rule that exempts all of them from the requirement to make sure before going to war that it is proportionate in terms of the relevant pre-contractual goods and harms. They agree that states have an automatic right to go to war in the face of serious and typically imminent threats to their territorial integrity and sovereignty.

There is an additional reason to adopt such a rule, stemming from the epistemic difficulty of judging the war as a whole, even retrospectively. While the harms caused by war are largely knowable once it concludes, this isn't true for its benefits which should be understood in terms of preventing specific harms, mainly the loss of territory or sovereignty. However, estimating how sever such losses would have been is highly speculative. Consider Ukraine. Assume (however unlikely it seems as I write this in June 2025) that Ukraine receives increased assistance from the U.S. and the EU, and continues to fight until Putin ceases the war in, say, June 2026, without achieving his objectives. By the end of 2026, the harms *inflicted* by the war will be more or less known. But how will one be able to reliably determine what would have happened had Ukraine *refrained* from fighting, instead ceding to Putin much of what he demanded? What would the results have been for Ukrainian civilians? For Ukrainian culture? For the prospects of Ukraine regaining full sovereignty in the future? For world peace and stability? It is hard to see how one could provide reliable answers to such questions. Yet, without such answers, one cannot determine whether or not the war will have been proportionate. If *ad bellum* proportionality is so hard to determine even post factum, it seems hopeless as a guide to whether or not to engage in war in the first place.

Moreover, the unpredictable nature of war makes it unrealistic for political leaders to prospectively obtain the required knowledge about the number of causalities the war they are considering will lead to, the amount of material destruction, and so on. All the more so if *ad bellum* proportionality judgements are supposed to consider not only the *number* of casualties but also "the degree to which they are liable to defensive action" (McMahan 2011, 152).

These epistemic obstacles are compounded by the inherent time constraints typically accompanying decisions to go to war. When nations determine that war constitutes a last resort, the perceived threat is generally both substantial and immediate; an invasion may already be underway, or initial attacks may have been executed. Under these urgent

conditions, a delay in military response by the attacked nation could prove fatal. Consequently, little time is afforded for the exhaustive investigation necessary to ascertain *ad bellum* proportionality.

Finally on this point, if – as shown elsewhere (Statman et al. 2020) – even experts in the ethics and the law war can't reach reasonable convergence on dilemmas regarding IBP, there is no reason to think that they will fare any better when it comes to dilemmas regarding ABP. Judgements on both levels seem be shaky and unreliable.

To conclude this contractarian line of argument, if aggressive countries suffer disproportionate harm by the countries they attack, they cannot complain about their rights – particularly the rights of their *civilians* – being violated, because, by subscribing to the war agreement, they accepted a rule that made their citizens susceptible to disproportionate harm. And why would citizens agree to such a rule? Because, *ex ante*, they prefer a world in which countries that contemplate going to war know that, if they do so, the countries they attack will have an automatic right to fight back regardless of whether the harm to the aggressive country is proportionate, to a world in which attacked countries would be morally required to engage in proportionality calculations as a condition for waging war, and sometimes be morally barred from defending themselves (if the result of the calculation is negative).

So far, I have argued that a rule that exempts countries from making sure that the defensive wars they fight meet the ABP requirement is, *ex ante*, mutually beneficial to all parties. It also satisfies the fairness condition as it does not – again, *ex ante* – create or solidify unjust inequalities between the parties. I can now add that it satisfies the actuality condition too. First, while there are clear legal rules that prohibit the first use of force, on the one hand, and allow defensive wars, on the other, there is no legal rule that makes the right to wage defensive wars conditional on satisfying ABP. Second, it is hard to think of a single case in which some country faced a serious threat to its territorial integrity or sovereignty, estimated that it *could* block the threat by war, believed that war was the only *means* (or the least harmful one) of doing so – and yet refrained from war because of the estimated disproportionate harm to its enemy. It is, therefore, not the case that when countries contemplate going to war, ABP is one of the rules that they actually consider.

While contractarianism supports a right to wage war in the face of serious threats even though in many cases wars turn out to be disproportionate, it yields a prohibition on doing so in the face of trivial threats. Because wars are so destructive, often much more destructive than anticipated, it is *ex ante* mutually beneficial to agree upon a rule that wholly forbids going to war to block or to undo trivial threats. Instead, countries are encouraged to undertake other, non-violent ways of dealing with such crises. Post factum, countries might be disadvantaged by this rule if they happen to be the victims of such trivial threats or injustices, but they might also benefit from it if they are the ones that act in a way perceived by their neighbor as an unjust, yet trivial, violation of territorial integrity. *Ex ante*, the cost of getting involved in a fully-fledged war is greater than the cost of not responding by war to a trivial threat.

This restraining rule is based also on our knowledge of how biased and partial countries tend to be, in particular, on how much they tend to inflate the ill will that motivates their rivals and the magnitude of the threat that these rivals pose. Since the international players acknowledge these psychological and social facts and also the

pressure that is often put on governments "to do something" in the face of even trivial threats, they agree to rule out the option of war altogether in such circumstances.

Nonetheless, it is often not that clear how trivial the threat posed by one's enemy is, and what the results of non-responding to it militarily might be. If it is evidently trivial and if no repercussions are expected in case the attacked country refrains from war, then it should indeed avoid it.[19] If that's not the case, the matter should be left to the discretion of the attacked country – just like in cases of individual self-defense. If one faces a truly trivial threat like the loss of $10 and only lethal force can prevent it then, surely, one should give up the money instead of killing the attacker. But when the threat is not so clearly trivial, it is (morally) up to the victim to decide whether or not to take the necessary measures to block the unjust threat against her.

Conclusion

Although *ad bellum* proportionality does not constitute a legal constraint on waging war, there seems to be wide agreement among philosophers that it constitutes a moral one, implying that a state ought to refrain from waging an otherwise justified war (= a war that satisfies the just cause as well as the success and the necessity conditions). Against this view, I argued that the same considerations that tell against regarding ABP as a legal rule tell also against regarding it as a moral one; (a) as a matter of fact, such a rule would be ignored and (b) if it is *not* ignored, it would significantly undermine deterrence. Potential aggressors would be given an incentive to carry out their attacks under the assumption that their victims might not respond militarily, or, at least, not respond immediately and with full force. Moreover, aggressors with low concern for their own population will be encouraged to locate their military facilities in proximity to residential areas, thus making the potential war against them disproportionate, and morally forcing the victim-country to surrender. Furthermore, I noted significant epistemic challenges in prospectively determining a war's overall proportionality with reliability.[20]

Revisionists might concede the above arguments, but insist that, in terms of *deep* morality, ABP is nonetheless a valid demand. I find this response unsatisfying. In my view, minimizing wars through deterrence is a moral consideration that is no less "deep" than the concern about harm to civilians. Since, in the real world, abiding by ABP would probably lead to more wars, this is a *moral* reason against it.

To answer this challenge, I suggested that we rely on a contractarian view of the ethics of war. On this view, disregard for *ad bellum* proportionality does not signify a moral failure as revisionists contend. Rather, it aligns with the war convention that exempts parties from the requirement to ensure the *ad bellum* proportionality of their defensive conflicts. Nations would undertake such a rule due to its *ex ante* mutual benefit, stemming from two principal considerations: (a) imposing ABP in the face of serious threats would critically undermine deterrence; and (b) the expectation that countries can prospectively acquire the reliable information necessary for an overall judgment about the war is unrealistic. Nonetheless, the parties also acknowledge the dangers of going to war for trivial causes and, again in order to minimize wars, they agree on a rule according to which wars against such threats ought not to be fought.

The *ad bellum* rules aim to guide state behavior in an imperfect world, one in which the prohibition on the first use of force is often disregarded. Their primary purpose is to

reduce the incidence of war, mainly by deterring states from resorting to armed conflict to achieve their perceived just goals. Rules that undermine this fundamental purpose lack moral authority. *Ad bellum* proportionality (ABP) is one such rule, particularly when it seeks to constrain decisions to go to war in the face of serious (and unjust) threats to territorial integrity or sovereignty.[21]

Notes

1. In McMahan's estimate (2017), the common view is that only civilians count in *ad bellum* proportionality. He himself believes that this view is mistaken.
2. In his influential paper on the topic, Tom Hurka argues that in assessing a war for proportionality, "we count evils of all the kinds it will cause, with no limit on their content" (Hurka 2005, 46). McMahan 2017 offers a much narrower understanding.
3. 2017, 139. As an authority of the legal state of affairs here, McMahan relies on Gardam 2004. Another way of putting the point would be to say that "the law has tended simply to assume that war is always a proportionate response to unlawful use of force which threatens the sovereignty of the victim state" (Rodin 2002; 115). See also Newton 2020, 86.
4. Note that ABP comes into play (if it does) only once the just cause condition is satisfied. Whether satisfying this condition is also a condition for *in bello* proportionality [IBP] to come into play is in dispute between traditionalists and revisionists. The former assume that it is not, the latter that it is.
5. See Norman 1995, 156; Gardam 2004, 22; McMahan 2017, 142.
6. As emphasized by Norman (1995, 210–217), not going to war does not mean complete surrender because there is still the option of non-violent resistance.
7. The vagueness of ABP has been noted by many writers. See for example Akande and Liefländer 2013, 566 ("There is a profound lack of clarity and consensus as to the test to be applied with regard to the proportionality requirement in the *jus ad bellum*"); Kretzmer 2013 ("in jus ad bellum the very meaning of the principle is shrouded in uncertainty," "Proportionality is invariably an elusive concept. It becomes even more so when used in a context which is as highly loaded as the right of a state to use force in self-defence," 237, 282). For the problem of incommensurability, see also Rodin 2002, 115, who argues that insofar as the proportionality condition requires to balance between the harms inflicted in the course of war and the protection of a state's right of sovereignty, "it seems very difficult to know how to go about making this comparison. For, the task seems to require the comparison of incommensurables."
8. See Yoder 1996, 77; cited by Biggar 2013, 32.
9. For a critical discussion of the tactic utilized by both Norman and Rodin to justify not taking the pacifist route, see Statman 2006.
10. I know of no empirical study that tested this, but other studies do give an indication about the potential support for excessive harm to enemy civilians if deemed critical to prevent much lesser harm to the defender country. Sagan and Valentino 2017 have shown that 67% of Americans prefer an air strike that will kill an estimated 100,000 Iranian civilians to a ground invasion that would involve the estimated death of 20,000 U.S. soldiers. I submit that if the dilemma had been between killing 100,000 civilians and the very existence of the U.S. as a sovereign country, the support for such an attack on civilians would have been even higher.
11. For the sake of the present discussion, we can ignore the huge literature on the overdemandingness objection to moral theories. Let me just note that the two arguments mentioned in the text correspond to the two main versions of this objection, namely (a) that they fail to guide behavior and (b) that they pose unreasonable demands.
12. This has to do with a wider objection to revisionism based on its impracticability, see Surber 2024.

13. For a wider criticism of the revisionist distinction between the law of war and the deep morality of war, see Benbaji & Statman, ch. 8.
14. This would be an instance of what Smilansky 2013 called "Teflon Immorality," which occurs when wrongdoing is not stopped "and its perpetrators, beyond the reach of punishment or other sanction, often persist in their immoral ways" (229). In his view, such cases are paradoxical and pervert, which is the sense one gets in the present context as well; the more ruthless a political leader is, including towards his (more often *his* than *her*) own population, the more he (and his country) become morally immune to defensive measures aimed at blocking their aggression.
15. See the famous decision of the German supreme court from 1920 in which it upheld the acquittal of the owner of an apple orchard who shot some youths trying to steal apples, severely wounding one of them (Eser 1976; 523).
16. Norman 1995; 130–131. Rudolphy 2024, 4, notes the alleged absurdity of a permission to "kill someone if they threaten to cut my hair, poke my finger with a needle, steal my favorite hat, slap me, or even punch me in the face."
17. Cited by Kessler-Ferzan 2005, 745; n. 80.
18. See Kadish 1976, 886 ([Insofar as the right of self-defense is based on the "principle of autonomy," then] "there should be no limit on the right to resist threats"); Alexander 1999, 1502 ("the innocent need not cede any interest to the culpable, no matter how numerous. Thus, the innocent should never be forced to retreat rather than use force, including deadly force, to resist culpable aggressors. Nor should they be restricted to proportionate force"); and Uniacke 1991, 78 ("Grotius holds that when I am threatened with bodily harm, self-sacrifice is mostly (what I call) supererogatory: that which 'benevolence often counsels'").
19. My position on ABP is more moderate than Ripstein's, who holds that states never have a duty to make *ad bellum* proportionality calculations when their sovereignty and territorial integrity is threatened. In his view, "the nature of the wrong – interference with political independence and territorial integrity – is the same *independently of its magnitude*. Although it might be foolish to go to war to defend a small amount of uninhabited land, doing so need not be disproportionate … a foolish war is not an unjust one, even if most wars have been both foolish and unjust" (Ripstein 2021, 95, italics added). For criticism of this position for being too permissive, see Rudolphy 2024. Gabriella Blum's position is close to Ripstein's, though for different reasons. In her view, the impossibility of showing that any specific war can satisfy the amorphous condition of self-defense entails that it is impossible to compare war to other ways of resolving conflict in order to establish that it was necessary, and impossible to compare the goods achieved by war to the harms inflicted (Blum 2017, 641).
20. For some implications of this view regarding Israel's war in Gaza, 2023–2025, see Statman 2025.
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