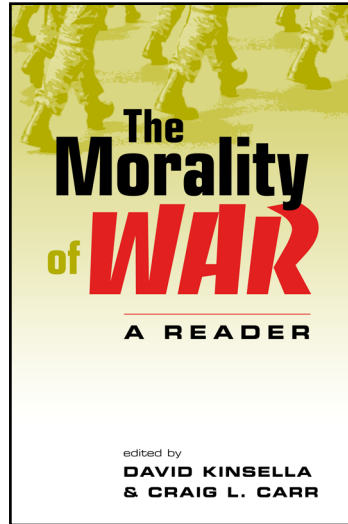


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# The Morality of War: A Reader

edited by  
David Kinsella  
and Craig L. Carr

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# 1 Introduction

Warfare is one of the most paradoxical of all human activities. Even though warfare is almost universally condemned as one of the most horrible of human events, it is also a tragically commonplace feature of human life. It may not be a great exaggeration to say that the story of humankind could plausibly be told in terms of the history of warfare. If so, it would not be much of a story, for very little that is good comes out of warfare. Few, if any, other human activities can begin to parallel warfare for brutality, cruelty, and the horrible destruction of life and property. Yet, ironically, warfare also elicits much that is noble and honorable in human beings. For it is also true that few, if any, other human activities can parallel warfare for displays of courage, character, and heroism from those brave warriors whose lot it is to fight. Despite the apparent paradox, there is good reason for the citizens of many if not most states to honor and praise their warriors, past and present, even while they condemn warfare itself.

This paradoxical view of warfare has not always existed, and does not necessarily exist in all places in today's world. In the ancient world, war was simply a fact of life and hardly objectionable from a moral point of view. The philosopher Aristotle, for example, describes warfare—the art of war—as an aspect in the art of acquisition; it was a part of the way that human beings cared for themselves by acquiring the things they needed to live. Its legitimacy was thus linked to its necessity for the survival of the community. Seen in this fashion, warfare becomes a noble and heroic enterprise precisely because the fate of the community is tied to the art of war. If warfare is considered necessary for the survival of the community, it will likely also be regarded as a natural aspect of life, for it is natural to do what is necessary to survive. Viewing warfare in this way is prelude to valuing warfare and cultivating a heroic morality in which the art of war—the ability to fight wars well—is pursued and the warrior is praised for his courage, valor, and skill. The result is a vicious circle of sorts: The more warfare is seen as a necessary and natural feature of human life, the more the art of war is cultivated; and the more the art of war is cultivated, the more it is viewed as a necessary and natural feature of human life. Thus warfare became a rather commonplace feature of the ancient world and conquest

remained the primary way for communities to expand their wealth and secure their environment.

This somewhat glorified view of warfare might have continued to typify thinking about war in the western world but for the occurrence of two important events. First, as states grew in size and state sovereignty began to solidify in the wake of the chaos that followed the collapse of Rome, regions became more self-sufficient and the need for acquisition through warfare began to diminish. Second, Christianity emerged as the dominant religious belief and brought with it a valuation of human life that made killing in war morally suspect. Of these two events, the second is arguably the most important for thinking about the emergence of what can plausibly be called the morality of warfare. For it is difficult if not impossible to hold that killing one's fellow human beings is terribly wrong from a theological and moral point of view and still regard war as something that is natural to human beings.

Yet the emergence of a Christian ethic that condemns taking human life in principle did not obviate the apparent need to do so at certain times and under certain circumstances. Killing and warfare continued throughout Europe, as well as other parts of the world touched by the Christian faith, despite the Christian insistence that people should love one another and not do violence to each other. Nor was this simply an indication of bad moral faith or a blatant disregard for Christian teaching, for the Christian belief in the sanctity of life proved hard to live by in practice. As the states of Europe slowly emerged and the state system that we know today began to take shape, states still found it necessary to rely upon warfare as their last line of self-defense and the final method for sustaining their interests in an often hostile environment.

Consequently, a paradoxical attitude about war began to emerge. While war seemed to remain a necessary feature of the human condition, even if it was no longer accepted as an altogether natural one, it became increasingly difficult to reconcile recourse to war with the simple demands of morality. If war involves killing, and if killing is wrong on its face, then warfare should be rejected as wrong. But if it turns out to be necessary at times to resort to war, perhaps in the name of national self-defense, how could warfare be considered immoral on its face? This problem is simply an aspect of a larger moral problem introduced by the principled moral prohibition against killing. Sometimes it seems people must resort to deadly force in order to deal with threats to their lives. If killing is wrong, what are we to do about those individuals who elect to disregard their moral obligations and kill anyway? Does morality require the potential victims of the use of deadly force to abandon any effort to protect and defend themselves from an unwarranted attack? This view has never gained much, if any, moral support, and a right of self-defense that permits the use of deadly force to repel

an attacker emerged as a necessary, even natural, response to the problems raised by the threat of impending violence. But if individuals are morally permitted to defend themselves in this manner, it would seem that communities and states should be permitted to do so as well. This conclusion is merely a logical extension of the right of self-defense.

If a right of communal or national self-defense legitimates warfare from a moral point of view, however, it does not necessarily justify all warfare; nor does it entitle defenders to do anything to their attackers in the name of collective self-defense. Instead, it raises troubling ethical questions about when and why states are justified in going to war as well as how wars ought to be fought in ways consistent with the right of national self-defense. The efforts of theologians, philosophers, statesmen, and lawyers to put answers to these questions have produced a variety of rules and principles that inform and control thinking about the morally justifiable nature and limits of warfare. Taken together, these rules and principles form what can be called the morality of warfare.

The most important initial step in the emergence of this morality was taken by St. Augustine, who identified several reasons why a state could justifiably go to war. He argued first that war could only be waged by the appropriate legal authority and claimed further that a legitimate war required a just cause and should also be fought with just or rightful intentions. Wars that had as their end the securing of peace or punishing the wrongful actions of others were held to be justified by Augustine provided the war was fought to achieve these legitimate ends. But wars fought for reasons of aggrandizement or for seizing that which was not one's own were considered illegitimate and hence unjust.

The Augustinian view received further articulation and support in the writings of St. Thomas Aquinas, whose work helped shape the just war doctrine adopted by the Roman Catholic Church. However, a more comprehensive development of the morality of warfare had to wait until the seventeenth and eighteenth centuries when just war theory was systematically explored by philosophers working within the natural law tradition. Two events during this period served to underscore the development of just war thinking. First, the state system as we know it today began to take shape following the Peace of Westphalia (1648). The discrete states that emerged in the wake of the Thirty Years' War began to recognize one another as independent sovereign units with significant interstate relations. Warfare soon came to be regarded as a means of last resort for protecting and defending a state's interests in an environment where states had reason to be wary of the actions and intentions of other states.

This international situation was infused with a distinctive set of moral concerns that began to formalize as philosophical inquiry into moral matters separated from theological dogma. Philosophical inquiry retained from its

theological basis the view that the relations of all persons were governed by a set of natural laws. Reason contained the key to identifying and understanding these laws, and by means of rational inquiry it was possible for human beings to discern which actions were right or just and which were not. It was but a small step to move from the view that natural law defined the proper moral relations of persons to the concurrent view that it also defined the proper moral relations of states. In this regard, the works of Francisco de Vitoria, Hugo Grotius, and Samuel Pufendorf were of special importance. The title of Pufendorf's first major work in political theory, *The Elements of Universal Jurisprudence*, published initially in 1660, is illustrative of the thinking of the times. As the title implies, Pufendorf held (typically for his age) that all human relations are governed by certain basic natural (and hence universal) laws, including the relations of individuals acting under the authority of secular sovereignty. But it was Grotius (especially in his *The Law of War and Peace*) who was most prominent in developing natural law doctrine and applying it to the relations of states, an effort that gained him—justifiably—the reputation of being the father of modern international law.

Philosophical efforts to develop a morality of warfare in the form of just war doctrine turned out to be of considerable political value. In a Europe convinced that natural law controlled the proper relations of human beings, philosophical insight into the morality of warfare did much to permit states to justify their actions in the international environment and claim that right was on their side. Thus the development of international relations during this period was inspired as much by theoretical argument as it was by national interest. States gained in the pursuit of their national interests if they could demonstrate that these interests were supported by the principles of natural law. Consequently, the development of a morality of warfare was driven both by the intellectual commitment to fathom the proper relations of human beings and by the desire of states to enlist the law of nature in defense of their own political interests.

The emergence through time of a morality of warfare makes the fact of war an even more paradoxical feature of the international environment. With the evolution of international law, statesmen and international lawyers have been inclined to formalize and systematize these rules into an international law of warfare. Yet there is hardly anything approaching moral consensus on the nature, legitimacy, or exact meaning of many, if not most, of these rules. They are and will likely remain a subject of dispute and disagreement that will continue to engage theologians, philosophers, statesmen, and international lawyers. Moreover, while the dispute matters from a moral point of view, it is hard to be confident that any fruits it might bear will qualify as anything but academic in the worst possible sense. The old saw that says, "All is fair (i.e., anything goes) in love and war," gets to the

point. Leaving aside the issue of love, the morality of war indicates that not all *is* fair in war. But when states actually find themselves at war, it seems unlikely that they will adhere to something like an internationalized Marquis of Queensbury set of rules if doing so risks losing the war or winning by means of a strategically unnecessary sacrifice. The principle of necessity that legitimates warfare in the first place will also likely undermine, when push comes to shove, a state's commitment to fighting according to legally stipulated standards, and unfortunately in warfare push is altogether likely to come to shove.

It might also be argued that the emergence of a morality of warfare is deeply objectionable because it legitimizes and institutionalizes an international activity so morally obnoxious that it should be condemned in principle and eliminated altogether from the face of the planet. This argument could be pressed in a different direction by contending that the morality of warfare is in fact little more than a code of conduct invented and supported by powerful states and imposed upon the less powerful. The morality of warfare may not fit well with the conditions and/or cultures of all the states of the world, and will not fit well if some of these states adhere to moral viewpoints quite dissimilar from the ones that inspired the formation of the morality of war. If this morality is formalized in international law, the more powerful states with an interest in enforcing the standards of the international law of war will succeed only in making international criminals out of the leaders of those states who happen to reject some or all of the elements of the morality of war.

The blade associated with this latter argument also cuts in the other direction. If powerful states take it upon themselves not only to control the enforcement of an international law of war but also to manage the development of its content, questions naturally arise about the product that emerges. How can all states of the world be confident that the morality of war does little more than serve the political interests of the powerful states responsible for its development? Additionally, when powerful states go to war, presumably under color of justifiable action, how might the international community be confident that their leaders will be held legally accountable for their own war efforts? The United States, for example, was quick to try numerous Axis leaders for various crimes associated with their activities in World War II, but no one was inclined to question the potential criminality of US activities during the war, even though the dropping of the atomic bomb on Nagasaki, to take what is perhaps the most morally questionable US action during the war, may have warranted prosecution of a war crime under the morality of war. (This gives US military decisionmakers the benefit of the doubt by assuming that use of the first atomic bomb against Hiroshima had a legitimate moral justification, perhaps a large assumption.) It is difficult to see, in short, how the morality of war can be established in

international law in a way that makes it anything but conquerors justice. There is, then, reason for states and the citizens of all states to be somewhat cynical about the morality of war and about its formulation into an international law of war.

These are difficult issues to be sure, but they matter greatly to the development of a viable morality of war that can support a serviceable law of war. And it probably does little to mollify the concerns they raise to note that these difficulties also trouble the development and enforcement of domestic legal systems. The ideal of the rule of law presumes that it is possible to articulate a system of rules that all those who are subject to it can recognize as fair and impartial. The great difficulty here is that what is taken to be fair and impartial to some, given perhaps their moral point of view, may be considered oppressive to others given their distinctive moral viewpoint. If law is to work as a viable system of justice, all those subject to its authority must acknowledge its authoritative nature, and this is not easily accomplished in a world where disparate normative viewpoints exist and where individuals, as well as states, may be inclined to read their own particular interests into their moral visions.

But the rule of law remains a noble ideal both on the domestic and international stage. It is arguably the best chance humankind has for learning to live together amicably and abandoning the resort to force and violence to resolve disputes. It has, in any event, had salutary consequences on the domestic side in those states that have managed to approximate the ideal of fairness and impartiality, and this is reason to think that it might be of a similar service in the international environment as well. Perhaps ironically, it may be that the best way to press in the direction of a viable international law of warfare is to engage the debate over the morality of war and involve all states of the world in the process. Doing so may have the positive effect of generating a degree of consensus over the requirements of this morality and exposing those issues over which consensus might prove to be too much to ask. This, in any event, is reason to take the dispute seriously in spite of the difficulties that surround it. If we are to take the morality of war seriously, however, and explore its possibilities for introducing a more just order in the relations of states, it is necessary to understand and appreciate its present standing and the moral problems that drive the disputes that surround it. At the very least, this involves understanding how and why the rules constitutive of the morality of war emerged, the nature of the form they presently take, and the problems and controversies that continue to surround the various components of this morality.

This reader surveys the basic elements and fundamental themes of the just war tradition. Its purpose is to acquaint students and interested readers with historical and contemporary thinking about when and why war is justified (*jus ad bellum*) and about how wars ought, morally speaking, to be

fought (*jus in bello*). Following the events of 9/11, government officials in the United States were quick to declare a “war on terrorism,” a war presumably to be fought against those individuals identified by the US government as terrorists. While this “war” is exceptional in the sense that Congress has not issued a declaration of war, the commitment of US forces in Afghanistan and Iraq naturally raises significant questions about the justification of US military action, both with regard to the use of force itself and with regard to the way the US military and government officials prosecute the war. As we have suggested, these questions are hardly exceptional; they arise in the western intellectual tradition whenever states commit, or contemplate committing, to warfare. This reader is intended to inform and guide efforts to address these questions by introducing readers to the notion of a just war as this notion has evolved in the arguments of those philosophers, jurists, and warriors whose work has shaped the just war tradition. While the events of 9/11 signal the contemporary pertinence of such a reader, the selections we have chosen are intended to inform thinking on the justice of warfare itself.

The volume is divided into four parts. Part 1 introduces readers to the just war tradition by comparing it with alternative views on the legitimacy of warfare and by presenting excerpts from the primary historical thinkers whose work has generated and configured the tradition. Chapter 2 considers the so-called realist school of thought, which tends to dismiss moral concerns about the justification of state policies, including warfare, and focus instead on the promotion of a state’s interests. Like the just war tradition, realism has a long history, and just war theory may be viewed as a moral response to realist views. Chapter 3 explores the pacifist tradition, which finds little or no moral justification for warfare. While pacifism has not enjoyed the theoretical popularity of either realism or the just war tradition, the arguments associated with this position are not inconsequential, and the selections in this chapter help to expand moral thinking about the justification of warfare and raise issues that need to be considered and addressed by just war theorists. Chapter 4 presents the historical development of the just war tradition; here the views on warfare of such seminal thinkers as Augustine, Aquinas, Vitoria, Grotius, and Pufendorf are presented. These readings present the historical pedigree of the just war tradition and detail themes that comprise the tradition.

The remainder of the volume explores topics from three different dimensions, each of which entails a unique form of moral judgment: the resort to war, the conduct of war, and the criminality of war. Statesmen usually feel compelled to justify their resort to armed conflict and the readings in Part 2 are addressed to those sorts of rationales—*jus ad bellum*, in the parlance of just war theory. There is a consensus among just war theorists that states may resort to wars for reasons of self-defense; the principle is

also codified in international law. Thus, the first set of readings in this part take up the question of aggression (Chapter 5), how it has been defined by the international community, and what responses are allowed.

Self-defense in the face of overt armed aggression is perhaps the most straightforward case to make from a moral and legal point of view, but states have often engaged in the first-use of military force while justifying their acts as something other than aggression. Preemption is one such exception (Chapter 6), and the Bush administration's forthright defense of its policy of not waiting for dangers to gather has sparked a renewed debate about the legitimacy of preemptive and preventive war. This debate is connected to US (and other) efforts to fashion an appropriate military response to the scourge of transnational terrorism (Chapter 7), a phenomenon not easily analyzed from within the just war tradition—though the current war on terrorism has occasioned many efforts to apply just war concepts. Readings in Part 2 also examine the moral arguments for and against armed intervention in the domestic affairs of other states (Chapter 8), especially in response to humanitarian crises.

In regard to the conduct of war, the just war tradition has had a profound impact on the international law of war. The readings in Part 3 examine what constitutes proper methods of warfare and the restraints to be observed in their use—*jus in bello*. During wartime, soldiers are, literally, licensed to kill. A large portion of the law of war is devoted to the rights to be afforded to lawful combatants (Chapter 9): when and how they may be killed by opposing forces; how they should be treated if captured; and when they must be released. The abuse of prisoners in Afghanistan and Iraq by US military and intelligence personnel, as well as the debates surrounding the rights of enemy combatants and the definition of inhumane treatment, amply demonstrate the continued relevance of these established moral limits and the temptation to transgress them for reasons of “military necessity.”

Probably the best-known principle, but one that has often been violated, is the immunity of civilians from targeted attacks (Chapter 10). The somber experience of World War II prompted a renewed effort to clarify and reinforce the rights of noncombatants, culminating in the 1949 Geneva Conventions. The imposition of economic sanctions is often defended as less destructive than overt warfare as a means of redressing grievances; indeed, the UN Charter calls on the Security Council to employ such methods before resorting to military force. Yet the morality of blockades and sanctions (Chapter 11) raises difficult questions, given the hardships inflicted on civilian populations, hardships that are often avoided by the political and military leaders whose policies brought them on. The very technologies of war (Chapter 12) both challenge and reinforce moral limits established by *jus in bello*. Weapons of mass destruction, of course, obliterate the distinction between combatants and noncombatants, while “smart weapons”

allow ever more precise targeting, presumably with benefits for civilian populations who might otherwise be caught in the crossfire of modern war.

The just war tradition identifies what is just and unjust in the resort to war and the conduct of war; international law identifies what is legal and illegal. Part 4 of this collection turns to the subject of criminality and the judgment of guilt in the aftermath of war—*jus post bellum*. At the end of World War II, the victors of that war sought to clarify precisely who bears responsibility for crimes of war and therefore who should be punished (Chapter 13). The exercise has been repeated with subsequent wars, but with the international community, as represented by the United Nations, playing an increasingly prominent role, first in helping to establish ad hoc war crimes tribunals and then in creating a permanent International Criminal Court (ICC).

Although states go to war, war crimes are committed by individuals, and the question of justiciability is a difficult one in an international legal system in which rights and obligations generally attach to states, not individual human beings. States have their own legal systems for prosecuting criminals, including war criminals, which raises the question of jurisdiction as well. The Rome Statute creating the ICC did not resolve the potential for politically motivated prosecutions to the satisfaction of the United States, prompting the Bush administration to effectively “unsign” the treaty. The prosecution of war crimes and crimes against humanity has long been hampered by the absence of an authoritative enforcement mechanism in the international legal system (Chapter 14). The arrival of the ICC does not change that, but some war-ravaged states have opted for more conciliatory approaches for dealing with widespread criminality in an effort to ease the transition to stability and peace.

We introduce each chapter of readings with a brief commentary intended to highlight some of the main issues and debates surrounding the topic. We point out how contemporary developments illustrate the continuing significance of moral argument about war, and argue that scholars, policymakers, and concerned citizens can and do draw on the moral insights of just war theory. However, we also emphasize the many ways modern war, including the war on terrorism, puts pressure on these same moral principles, and ask whether some of them have indeed been pushed to the breaking point.

## ■ About the Editing

The readings collected for this volume have been edited so that readers can focus on the material we find most pertinent. If readers find ellipses (. . .) where they would have preferred further discussion, they may consult the

original source. In fact, it is our hope that the excerpted material appearing in this volume will generate sufficient interest that readers will want to spend more time with at least some of these great works.

### ■ A Note on the Text

Authors' footnotes have been retained only when they provide the source for direct quotations (although notes referencing quotes from religious texts, like the Christian Bible, are dropped). All the footnotes that remain have been reformatted using a consistent citation style. The paragraph numbering, which is used in several of the classic texts excerpted below, has not been retained. However, paragraph numbering in the material excerpted from international treaties and conventions has been reproduced.