Ending War

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In "The Ethics of America's Afghan War," Richard W. Miller argues that reflecting on whether and how to end the war in Afghanistan exposes serious deficiencies in just war theory.[1] I agree, though for different reasons than those canvassed by Professor Miller. Miller argues that by focusing on the traditional categories of just cause, proportionality, and necessity (or last resort), just war theory obscures the importance of broader geostrategic considerations that he believes are the most plausible—though ultimately for Miller insufficient—rationale for continuing with the strategy of large-scale counterinsurgency in Afghanistan. I doubt that geostrategic considerations can play the role in moral assessment that Miller believes they do. But the phenomena he is pointing to do illuminate important defects in traditional just war theory.

As is well known, just war theory has been dominated by discussion of *jus ad bellum* (considerations for determining the justice of a war) and *jus in bello* (considerations for determining just conduct within a war). More recently, such authors as Gary Bass and Brian Orend have drawn our attention to a comparatively neglected aspect of just war thinking, the *jus post bellum* (considerations for determining just conduct after war has ended).[2] But these three existing areas fail to provide a complete ethics of war in as much as they omit an account of normative principles to govern the termination of war. This omission has been noted independently by Darrell Mollendorf (also a respondent to this symposium) and myself and explored in papers published around the same time in 2008.[3] I refer to this fourth component of the ethics of war as *jus terminatio* and Mollendorf refers to it as *jus ex bello*.

Jus terminatio can be thought of as bearing the same relationship to *jus post bellum* that the *ad bellum* bears to the *in bello*. Thus, *jus ad bellum* governs the transition from a state of peace into a state of war, and *jus in bello* governs conduct

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in the subsequent state of war. *Jus terminatio* governs the transition from a state of war back into a state of peace, and *jus post bellum* governs conduct in the subsequent postwar state. The central question of *jus ad bellum* is when it is permissible to enter a state of war. The central questions of *jus terminatio* are when it is obligatory to terminate a state of war and how this can be done in the morally best way. The questions raised in Miller's essay of whether the United States ought to continue with a strategy of large-scale counterinsurgency or seek a political settlement with the Taliban are questions of *jus terminatio*, on my understanding.

Since both *jus terminatio* and *jus ad bellum* concern the transition between a state of war and a state of peace, it is tempting to think that the former can be reduced to the latter. One might suppose that a full and proper account of when it is obligatory to terminate war can be given by simply applying principles of *jus ad bellum* continuously throughout the course of a conflict. This is more or less how Miller treats the issue of whether the United States should quit its war in Afghanistan (although he has a more expansive conception of the appropriate principles of *jus ad bellum* than most in the tradition). This view gains support from the (in my view correct) thesis that there is a strong moral presumption against war that can only be overcome when all the *jus ad bellum* conditions are fulfilled. It may seem to follow as a corollary that if, in the course of a war, any one of the *ad bellum* conditions ceases to be fulfilled, then the war is unjust and the combatant ought immediately to stand down from the war.

But this view cannot be right. Although it is true that many of the *ad bellum* considerations have an important role in the assessment of when and how to end a war, the way in which these considerations apply to *jus terminatio* questions is often substantially different from the role they play in *jus ad bellum*. In addition, *jus terminatio* will require independent moral principles that stand outside those of *jus ad bellum*. A few examples may help to make this clear. Suppose a particular war would be *ad bellum* proportionate if the (just) war objectives can be achieved with no more than 1,000 fatalities. Suppose that the war is undertaken on this basis, but the campaign begins badly: 500 lives are lost with little or no progress toward the objectives. At this point, a reassessment suggests that the objectives can be achieved at the cost of an additional 700 lives. Is it permissible to continue to prosecute the war?

Here, morality seems to be pushing in two incompatible directions. On the one hand the 500 lost lives are a sunk cost—nothing can bring them back. Yet the objectives are as morally important as ever. If it was permissible to take the

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decision to initiate military action likely to achieve the objectives at an estimated cost of 1,000 lives, it would seem very odd to prohibit the decision to continue with military actions that would achieve the same result with an estimated cost of 700 lives from this point going forward.[4]

On the other hand, as was noted at the outset, a war that succeeded in achieving the objectives at the cost of 1,200 lives would be disproportionate and, hence, unjust. No matter how subjectively justified it may have been to initiate the war, those prosecuting it now know that even in the best case of a successful conclusion the war as a whole will be disproportionate. How can it now be justifiable to continue to prosecute a war that one knows will be objectively unjust even if it achieves its objectives?

How to navigate these countervailing moral considerations is a substantive issue of *jus terminatio* that is addressed nowhere in traditional accounts of *jus ad bellum*. This is, of course, far from a mere hypothetical puzzle. It is the familiar and near ubiquitous problem of changing cost assessments during the course of a war. As von Moltke famously said: "No military plan survives contact with the enemy." It is the fundamental problem exposed by arguments over the American "surge" policies in Iraq and Afghanistan.

It seems clear that a *jus terminatio* that adopted an unmodified version of the "sunk costs" interpretation suggested above would be unacceptably permissive, as it would give an almost limitless license to continue and escalate violence in the context of a failing war. This would seriously undermine the role of *ad bellum* proportionality in restraining war. It is the great strength but also the great weakness of professional soldiers that they have a deeply ingrained can-do attitude that often leads them to believe that "one more push" can turn around a situation, no matter how dire it might be. At the same time, there clearly are cases in which significant moral goods can be achieved through an escalation of costs beyond what would have been proportionate *ad bellum*.

There are two ways that I can see in which *jus terminatio* could deal with this problem of escalation through revised cost assessments. The first is that principles of *jus terminatio* could insist on raising the evidentiary burden for decisions made to continue a war on the basis of revised cost assessments during the course of war. In our example, the initial assessments suggested the war objectives could be achieved with 1,000 fatalities, but after 500 deaths the assessment was raised to 700 additional fatalities. It may be appropriate to subject the later assessment to a much higher degree of scrutiny and to substantially raise the bar concerning

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what counts as evidentiary support. After all, if the initial assessments of costs have turned out to be incorrect, it is appropriate to probe in a very searching way what reason we have to trust the revised assessments.

A second approach would be to explicitly separate the permissibility of continuing a war from assessment of the overall justice of a war. That is to say, one may accept the seemingly paradoxical proposition that it can sometimes be morally right to continue an undertaking that one knows to be objectively unjust. How can this be? The idea can be discerned more easily in another case with obvious connections to the ethics of terminating war. Let us suppose a squatter has unlawfully taken possession of another person's house. While occupying the house, he knocks over a candle and starts a fire in one of the rooms. The squatter is clearly violating the owner's rights and for this reason he has a prima facie obligation to quit the property. But at the time the fire is threatening the house, he has an all-things-considered obligation to stay in the house and put out the fire. Indeed, his responsibility for the fire and the fact that he had no right to be there in the first place may generate a stronger obligation to stay and assist than the obligation of someone who was lawfully present in the property but not responsible for the conflagration.

I believe that the United States and its allies were in a roughly comparable position in the immediate aftermath of their invasions of Iraq and Afghanistan. Although I cannot argue for the conclusion here, I believe that both wars were wrong to initiate. However, having invaded those two countries and overthrown their respective governments, the United States and its allies were obligated to remain as occupying powers—at least for a period—first, in order to prevent a catastrophic descent into anarchy and, second, to restore (at the minimum) basic services and functional government. In short, they had to put out the fire.

The moral status of the combatants at this point is highly ambiguous. Fulfilling the obligation owed to the Iraqi and Afghan people to reconstruct and provide security does not justify the invasion and subsequent occupation (just as putting out the fire does not justify the squatter's illegal occupation of the house). Yet had the invaders simply abandoned these countries to their fate, they would have committed an even greater wrong. In short, the invaders face a moral dilemma: however they act, they do wrong. But it is a dilemma of a very particular kind. The agents caught in this dilemma are not merely permitted, but obligated, to continue with an undertaking that they know to be all things considered and in totality morally wrong.

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To return now to our original example. Arguably, a similar analysis is also appropriate here. The combatant faces a choice between continuing the war to a successful conclusion (assuming the accuracy of the revised cost assessments) or abandoning it. The first course of action achieves morally good objectives but makes the war, taken in its totality, disproportionate by 200 lives. The second course of action makes it the case that the war has cost 500 lives but made no contribution to the morally good war objectives at all. The first course is clearly objectively wrong, but the second is arguably worse. Once again the combatant who must decide whether to stay and escalate (thus turning the war into a disproportionate success) or to leave (thus turning the war into a costly failure) faces a moral dilemma. Whatever the decision-maker does, it will be the case that he has engaged in a war that is objectively wrong, but it remains the case that some forms of wrongful action are morally preferable (less bad) than others.

In act three of *Macbeth*, the murderous king reflects: "I am in blood/Stepped in so far that should I wade no more/Returning were as tedious as go o'er." Shakespeare is writing of the psychology of criminal action, but the insight can sometimes be true also of morality. When an agent has started on a wrongful course of action, there are occasions in which "going o'er" may be morally preferable to returning—though still not free of moral taint.[5]

Geopolitics and Ethics

We have examined two cases in which the morality of continuing or terminating a war—*jus terminatio*—differs substantially from the morality of initiating war. Revised assessments of the costliness of war and situations in which ending an unjust war would cause more harm than good both involve significant potential for escalation. Both may speak in favor of continuing a war that is unjust. Let me now indicate a third feature of *jus terminatio* that has a comparable effect and connects directly with Miller's argument.

As soon as a party embarks on war, more is at stake than the achievement or the failure to achieve the initial war aims. Losing a war produces significant harm in itself: loss of prestige, credibility, military capacity, and sometimes an increased vulnerability to occupation (or worse) at the hands of the enemy. Once war is commenced, avoiding the harms of defeat becomes a supplementary war aim, sometimes eclipsing the original causes of war. The harms of fighting and losing a just war are often greater than the harms of not fighting at all. Thus, a great deal

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of Miller's essay concerns worries about "the consequences of Taliban success for U.S. global power."[6]

How should the supplementary harms associated with losing a war figure into the proportionality judgments of *jus ad bellum* and *jus terminatio*? If these harms are fully counted in proportionality considerations, then we once again seem to license an unacceptable form of moral escalation. Once the war is commenced we would be committed to supporting the prosecution of the war far beyond a level of cost that would have been deemed proportionate *ante bellum*.

I believe that the right way to deal with this problem is to require an additional "contingency" to be added to *ad bellum* judgments of proportionality. For the initiation of a war to be justified it is not enough for the just war aims to exceed in moral importance the likely costs of the conflict; they must exceed the combined expected costs of the conflict *and* the costs of potential defeat. This is because once the war is commenced the avoidance of defeat will count as a war aim and contribute to the case for sustaining the war. The war should only be initiated if we believe the cause is worth this foreseeable escalation in commitment. Although I have argued that *jus ad bellum* and *jus terminatio* are conceptually separate considerations, this is one of several ways in which they overlap and interact.

Moreover, it should also be obvious that avoiding the harms of defeat can only provide moral support to the continuation of a war if that war is itself just.[7] Let us return to our example of the squatter. Suppose he had redirected all of his mail to the illegally occupied house and was expecting an important letter. The fact that quitting the house would cause him the harm of missing this critical communication can provide no additional justification for his continued occupation. He should not be there, and he is responsible for putting himself in a situation such that leaving will cause him to suffer these harms; therefore, he is obligated to bear the costs. I think much the same is true of the strategic harms that the United States and its NATO allies would suffer if they were to leave Afghanistan in defeat. If one believes, as I do, that their war is unjust, then the fact that defeat will lead to their strategic diminution cannot justify continuing the war.

But of course the situation is different if a loss of America's power harms not just the United States but the world at large. Perhaps the United States is justified in continuing to make war in Afghanistan to maintain its power—not because this is good for the United States, but because it is good for the world. This is the

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burden of Miller's geostrategic argument. Though he ultimately rejects it, I believe his rejection is too timorous and that he is too ready to countenance a place for arguments of this form in the moral dialectic.

Consider how Miller describes the moral argument for sustaining the U.S. geostrategic position as a "balance of power argument."[8] In fact, it is the opposite: it is an *imbalance* of power argument.[9] For classical theorists of the balance of power, such as Francis Bacon and Edmond Burke, the great danger for the international system was precisely the preeminence of one state over all others—such as is currently enjoyed by the United States. These theorists believed that it is permissible, and perhaps sometimes even obligatory, to use war to prevent the emergence of such a dominant power. If one really believed in the moral benefits of balance of power, then presumably one should counsel supporting the Taliban as a means to weaken America and restore a global strategic "balance."

In contrast, Miller suggests that there is at least a prima facie moral case for maintaining America's role as the dominant power. But in fact this argument is ambiguous. One interpretation of the argument focuses on what are supposed to be general features of the international system. On this view the international system will be more stable, peaceful, and prosperous if one state fulfills the role of global hegemon, organizing economic and political relations around it. But there are two problems with this view. First (like the genuine balance of power argument before it), it turns out that maintaining the preferred state of the international system (balance or imbalance, as the case may be) requires fighting large numbers of wars, thus rather undermining the claims made for its stabilizing effects. Second, if the benefits are supposed to flow from the structural feature of there being *a* hegemon, then why accept moral costs in order to maintain *America*'s preeminence? Surely, the morally rational strategy would be one of not merely accepting America's graceful decline but one of actively hastening the transition to the most likely successor hegemon.

The second form of the imbalance argument is particular rather than general: there is some distinctive benign quality of the United States, compared with all other states, that morally justifies its preeminent global power. This is the thesis that Miller ultimately rejects, but he clearly believes it has considerable merit. It is, he says, "the most plausible moral justification . . . for extensive U.S. combat in Afghanistan," and he proposes making far-reaching amendments to just war theory in order to open a greater role for considerations of this kind.[10] I find it hard to justify taking this form of the imbalance argument so seriously. The

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claim would be far more plausible were we to see it being sincerely voiced by outsiders—for example, those in the nonaligned community. There is reason to think that when a state—any state—believes that it is morally mandated to dominate the world, it is touching delusional hubris.

Miller is also much too ready to accept the causal presuppositions of the geostrategic argument—for example, that a willingness to undertake "violent foreign initiatives" is in fact conducive to maintaining strategic preeminence. Where is the evidence? Miller is mightily impressed by the seemingly unstoppable rise of China, yet in the decades of its rise China has fought no war outside its borders. The United States' period of relative decline, on the other hand, has coincided with three major foreign wars, the last two of which (the Second Gulf War and Afghanistan) have demonstrably weakened it both financially and strategically. Clearly, the relationship between fighting wars and maintaining power is more complex than the geostrategic argument intimates.

At one point Miller worries that if the Taliban were allowed to win in Afghanistan this would strengthen and invigorate "discontents throughout the Middle East, South Asia, and the Horn of Africa, potentially destabilizing such U.S. strategic linchpins as Saudi Arabia."[11] That might have seemed a reasonable assessment in 2010, but at the time of this writing those same Middle Eastern "discontents" are agitating for greater democratic participation in what is potentially the most significant moral advance in the region for many generations. Arguments that seek to establish moral conclusions on the basis of avowedly "realist" or "pragmatic" assessments of global politics seem hardheaded. In fact, they often depend on highly speculative generalizations about causality in the international system that are all but impossible to establish empirically. I believe that a better approach is to think as seriously and clearheadedly as we can about the basic moral principles, rights, duties, and responsibilities applicable in this area. In the case of *jus terminatio* our work has just begun.

NOTES

[1] Richard W. Miller, "The Ethics of America's Afghan War," *Ethics & International Affairs* 25, no. 2 (Summer 2011). This essay is part of a symposium on Miller's article, published in the same issue, with responses from George R. Lucas, Jr., Jeff McMahan, Darrel Moellendorf, and Fernando R. Tesón.

[2] Gary J. Bass, "Jus Post Bellum," *Philosophy and Public Affairs* 32, no. 4 (2004), pp. 384–412; and Brian Orend, *The Morality of War* (Peterborough, Ontario: Broadview Press, 2006), chaps. 6–7.

[3] David Rodin, "Two Emerging Issues of Jus Post Bellum: War Termination and the Liability of Soldiers for Crimes of Aggression," in Carsten Stahn and Jann Kleffner, eds., *Jus Post Bellum: Towards a Law of Transition from Conflict to Peace* (The Hague: T. M. C. Asser Press, 2008); and Darrell Mollendorf, "Jus ex Bello," *Journal of Political Philosophy* 16, no. 2 (June 2008), pp. 123–36.

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[4] This way of treating past moral costs parallels the way that sunk costs are treated in enterprise accounting. Thus, if a project would generate a positive return with an investment of $1,000, then it will always be rational to continue with that project so long as the future anticipated costs are less than $1,000. Sunk cost overruns that emerge during the course of a project may lead you to assess that you should never have commenced the project in the first place, but they are irrelevant to the rationality of *continuing* the project.

[5] Tony Coady provides a sensitive discussion of these issues under the heading of extrication morality. See C. A. J. Coady, "Escaping from the Bomb: Immoral Deterrence and the Problem of Extrication," in Henry Shue, ed., *Nuclear Deterrence and Moral Restraint* (Cambridge: Cambridge University Press, 1989) p. 193ff; C. A. J. Coady, "Messy Morality and the Art of the Possible," *Proceeding of the Aristotelian Society, Supplementary Volumes*, Vol. 64 (1990), 259–79.

[6] Miller, "The Ethics of America's Afghan War," p. 117.

[7] This is not to deny that an unjust combatant can properly resist unjust action perpetrated by an enemy in the course of a just war (for example, war crimes committed by the just party).

[8] Miller, "The Ethics of America's Afghan War," p. 121.

[9] A comparable point is made en passant in an excellent paper by David Luban on preventive war: David Luban, "Preventive War," *Philosophy and Public Affairs* 32, no. 3 (2004), p. 219.

[10] Miller, "The Ethics of America's Afghan War," p. 103. See also p. 121.

[11] Ibid., p. 118.

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