Taking War Seriously

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Abstract
Just war theory – as advanced by Michael Walzer, among others – fails to take war seriously enough. This is because it proposes that we regulate war with systematic rules that are comparable to those of a game. Three types of claims are advanced. The first is phenomenological: that the theory's abstract nature interferes with our judgment of what is, and should be, going on. The second is meta-ethical: that the theory's rules are not, in fact, systematic after all, there being inherent contradictions between them. And the third is practical: that by getting people to view war as like a game, the theory promotes its 'aestheticization' (play being a central mode of the aesthetic) such that those who fight are encouraged to act in dangerous ways. And war, it goes without saying, is already dangerous enough.

The sand of the desert is sodden red, –
Red with the wreck of a square that broke; –
The Gatling's jammed, and the Colonel dead,
And the regiment blind with dust and smoke.
The river of death has brimmed his banks,
And England's far, and Honour a name,
But the voice of a schoolboy rallies the ranks:
'Play up! Play up! and play the game!'

– Sir Henry Newbolt,
'Vitaï Lampada (The Torch of Life)'[1]

1.

To play a game is, we say, not serious because it involves doing things for no other reason than for the sake of the game. Why should I kick the ball in that goal or shoot the puck in this net? Because that is how the game is played, nothing more. And why can't I pick up the ball with my hands or kick the puck in with my skate? Because these acts would violate the rules – rules, again, which exist simply because we could not play without them.

[1] In Susan Thompson Spaulding and Francis Trow Spaulding (eds), *Open Gates: A Book of Poems for Boys and Girls of Junior High School Age* (Boston: Houghton Mifflin, 1924), 17.

doi:10.1017/S0031819118000359 © The Royal Institute of Philosophy, 2018
First published online 28 August 2018

https://doi.org/10.1017/S0031819118000359 Published online by Cambridge University Press

It is for this reason that such rules are sometimes called 'constitutive'.[2] The idea is that the rules of a game *make* the game by defining it. One can always shoot a puck in a net but, if this is to be done as part of a game of hockey, then there must exist a set of rules for playing. Constitutive rules, moreover, form a system, allowing them to be categorical rather than hypothetical, which is to say of a kind to be followed without exception. In chess, for example, there is a rule that the bishop moves diagonally; if you were to decide, for whatever reason, that you will move it vertically or horizontally, then you cannot be said to be playing chess. Hypothetical rules, by contrast, those we follow 'if' we wish to achieve some end, must allow exceptions since they often come into conflict with each other. Indeed, that is why we tend to take them so seriously, because such conflicts mean that one or more of the rules may have to be broken. Of course there are people who treat games very seriously, but this is not, or at least not necessarily, because they are open to breaking the rules. Rather, it arises from their connecting the games to values that lie outside of them. Think of the salary of the professional athlete or the glory of the victor. These things are external because they are not essential for playing; after all, one can always do so for free or without a care for the recognition of others.

Now war, too, is serious. Clausewitz famously thought so because he viewed it as an alternative means for attaining political ends.[3] So, though at one point he compares war to a game of cards (there being a great deal of risk involved in both), he also takes care to point out that 'war is no pastime; it is no mere joy in daring and winning, no place for irresponsible enthusiasts. It is a serious means to a serious end.'[4] Clausewitz is also well-known for his claim that wars have a tendency to escalate until they are fought without moral limits, because there's always an advantage to be gained through greater ruthlessness. Since having fewer restrictions means you can attain your objectives more efficiently, you will be impelled to become more and more ruthless than your enemy.[5]

[2] See, for example, John R. Searle, *Speech Acts: An Essay in the Philosophy of Language* (Cambridge: Cambridge University Press, 1969), 33–42.

[3] See Carl von Clausewitz, *On War*, eds and trans. Michael Howard and Peter Parat (Princeton: Princeton University Press, 1976), bk. 1, ch. 1, § 24.

[4] See Clausewitz, op. cit. note 3, bk. 1, ch. 1, § 21, 23.

[5] See Clausewitz, op. cit. note 3, bk. 1, ch. 1, § 3.

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I think Clausewitz is wrong to claim that greater ruthlessness is inevitable in war; that war is, ultimately, a moral void. Still, he does identify a very worrying phenomenon, one that has led many to wonder about how we might stop the slide down this slippery slope. What, they ask, is the best way to conceive of, and indeed shore up, the moral limits on war?

For some time now, the most popular answer to this question has been theoretical. The idea is that we can avoid the slippery slope by conforming to a theory of justice. Such a theory will consist of a set of systematic principles: *jus ad bellum*, regarding the decision to fight; *jus in bello*, regarding how one fights; and *jus post bellum*, regarding our obligations when the fighting is over. In the words of Michael Walzer, the leading contemporary theoretician of just war, these principles are to 'shape and control the judgments we make' and thereby regulate our behaviour.[6]

Walzer does not, however, expect us to follow the theory in every circumstance. He accepts there may be situations of 'supreme emergency' in which 'our deepest values and our collective survival are in imminent danger'.[7] At such times, he believes, it is permissible to violate the rules of war. But make no mistake: when we do so we cannot be said to be fighting justly. On the contrary, what we have done is chosen to fulfil ends that are external to justice. The rules, in other words, are categorical: they 'have an independent foundation in moral principle'[8] and so are to be upheld for their own sake. We cannot modify or bend them, much less suspend them, in order to meet the needs arising from some extreme circumstance. What we can do, however, is 'override' the rules in favour of urgent ends that are external to them.[9]

Internal categorical rules that are to be followed for their own sake – fighting a just war, it seems, is very much like playing a game. If this sounds farfetched, consider that many theorists of justice actually welcome the analogy with the game. Here, for example, is John Rawls: 'In much the same way that players have the shared end to execute a good and fair play of the game, so the members of a well-ordered society have the common aim of cooperating together to realize their own and another's nature in ways

[6] Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic Books, 1977), 287.

[7] Walzer, 'Emergency Ethics', in *Arguing About War* (New Haven, CN: Yale University Press, 2004), 33; see also Walzer, op. cit. note 6, ch. 16.

[8] Walzer, op. cit. note 6, 131.

[9] See Walzer, op. cit. note 6, 34.

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allowed by the principles of justice.'[10] So we should not be surprised when we find Walzer quoting Ruskin in reference to those wars in which all of the participants have consented to fight as 'beautiful… play'.[11] Of course Walzer is aware that most wars have been fought by people who probably did not volunteer to do so. Presumably, however, this means only that they didn't experience the fighting as beautiful; we may still speak of 'this game of war, rightly played.'[12]

Yet we can do so, again, only if the war is fought justly, in compliance with the theory. Which leads me to ask: isn't there something odd about comparing justice in politics to the playing of a game?[13] And isn't this even more odd when it comes war? Those who, like myself, conceive of justice as a matter of the accommodation or, in the best case, reconciliation of conflict rather than of conformity to a set of systematic principles certainly think so. And since such things usually require dialogue – which, by definition, is absent between opponents at war – this leads us to conclude that there is no place for the idea of a just war. All wars, in other words, are more or less unjust. 'More or less' because it cannot be the case that there is never a good reason for fighting one; sometimes, pacifism is simply suicide. Still, we should never go further than asking about a given war's degree of injustice: how far does waging it take us from the possibilities of reconciliation and accommodation?

Rules can, I believe, help to keep us from going too far. But not by avoiding the slippery slope; rather, the best they can do is to provide guidance so that we don't slide down it. The referee of a game can govern in a neutral fashion because its rules, being constitutive, are systematic and categorical and, we may now add, relatively precise; the kinds of rules that I'm invoking here, however, are not only fuzzy but also tend to come into conflict with each other. So such rules cannot be said to control our judgment, nor to regulate anyone's behaviour. Rather, they can only have an influence if we engage in a non-neutral form of judgment, one that requires flexibility in order to be sensitive to the demands of the context. In fact, we will often have to engage in dialogue among ourselves in order to determine what to do.

[10] Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1999, rev. ed.), 462; see also *Political Liberalism* (New York: Columbia University Press, 1996), 204.

[11] Walzer, op. cit. note 6, 25.

[12] Walzer, op. cit. note 6, 27; see also 35.

[13] See my 'Taking Politics Seriously – But Not Too Seriously' (*forthcoming*).

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Where do rules of this sort come from? I conceive of them as interpretations of conventions that have arisen within all of the world's civilizations; you could even say they serve as an important part of a 'minimal global ethic'.[14] And unlike the abstract principles of just war theory (whether these are arrived at deductively, casuistically, or by some other means), such rules 'express' the ethic as it exists in the context of each and every culture, which is to say that they remain intimately connected to *all* of the other ends the culture affirms.[15] So they cannot constitute an independent domain like that of a game, and any distinctions they support, any lines they would have us draw, must always be flexible as well as porous or blurry rather than rigid or sharp. Such lines, we might even say, represent the places where our thinking must start rather than stop, since they can do no more than help us decide how to make the dirty compromises that, in war, cannot be avoided.[16]

I want to lend support to this approach by offering a critique of just war theory. I shall argue, first, that its sharp lines interfere with our judgment of what is, and should be, going on; second, that its rules are not, in fact, systematic after all, and so that it makes no sense to assert them categorically; lastly, that by getting people to view war as being like a game, just war theory encourages them to act in dangerous ways. And war, it goes without saying, is already dangerous enough.

2.

For the most part, I shall advance these claims by criticizing an article by Walzer and Avishai Margalit, 'Israel: Civilians and Combatants'.[17] Their text is itself a critique of an argument advanced by Asa Kasher and Amos Yadlin in a paper that may have significantly influenced the rules of engagement followed by the Israel Defense Forces (IDF). The argument, in essence, is that when fighting on territory

[14] See my 'On the Minimal Global Ethic', in *Patriotic Elaborations: Essays in Practical Philosophy* (Montreal and Kingston: McGill-Queen's University Press, 2009).

[15] I first distinguished between 'expressive' rules and those that I call 'regulative' in my *Shall We Dance? A Patriotic Politics for Canada* (Montreal and Kingston: McGill-Queen's University Press, 2003), chs 1–2.

[16] See my 'Dirty Hands: The One and the Many', *The Monist* **101**(2) (Apr. 2018): 1–20.

[17] Margalit and Walzer, 'Israel: Civilians and Combatants', *New York Review of Books*, 14 May 2009, 21–22.

https://doi.org/10.1017/S0031819118000359 Published online by Cambridge University Press

that is not under one's effective control, and against terrorists who hide themselves amidst civilians who have ignored warnings to evacuate, the safety of one's soldiers should take precedence over that of the civilians. Because the responsibility for the latter rests solely with those who have chosen to prosecute their unjust warfare in the civilians' vicinity.[18]

To Walzer and Margalit, this is both wrong and dangerous, since it erodes the crucial distinction between combatants and non-combatants that lies at the heart of just war theory. It is a central tenet of *jus in bello* that those who are not directly participating in the fighting and so are not a threat should not themselves be (directly) threatened.[19] Since they are not players in this deadly game but spectators, a 'sharp line' needs to be drawn.[20] It is a line, however, that Kasher and Yadlin would have us erase – but then they do no more than replace it with a sharp one of their own, since their aim is to establish an alternative yet equally categorical priority. Their argument, in other words, is advanced within just war theory, not against it. Now although I wish to endorse the idea that non-combatants should be protected over combatants – since that is how I interpret the minimal global ethic – I do not believe that we can assert this priority in a clear-cut way.

To see why, consider the thought experiment that Margalit and Walzer introduce in order to illustrate their approach. Assume, they suggest, that Hezbollah forces in Lebanon intend to capture kibbutz Manara, a collective community situated in northern Israel close to the Lebanese border. Then imagine the following four possible scenarios: (i) Hezbollah successfully captures Manara and takes all of the Israeli citizens living there hostage, using them as human shields; (ii) Hezbollah captures only the outskirts of Manara and seizes the pro-Israeli foreign volunteers who happen to live there and uses them as human shields; (iii) a situation much like the previous one except that now the hostages are anti-Israeli foreign protestors; and (iv) Manara is captured but, given that it had been previously evacuated, Hezbollah brings in civilian villagers from South Lebanon to use as human shields. The question that Walzer and Margalit then confront us with is the following: assuming that

[18] See Kasher and Yadlin, 'Assassination and Preventive Killing', *SAIS Review* **25**(1) (Winter-Spring 2005): 41–57, 50–51; as well as Kasher, 'The Ethics of Protective Edge', *Jewish Review of Books*, Fall 2014.
[19] See Walzer, op. cit. note 6, ch. 9.
[20] Margalit and Walzer, op. cit. note 17, 21.

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Israel intends to launch an operation to recapture the kibbutz, how should the IDF behave?

Their answer is that, at least as regards the risks to the lives of the civilians, the IDF should act in all four scenarios just as it would in the first. For

> whatever Israel deems acceptable as 'collateral damage' when its own captured citizens are at risk – that should be the moral limit in the other cases too. If, as an Israeli, you think that a military operation will cause excessive harm to Israeli civilians, you should have equal concern for the excessive harm done to other civilians, whether they are welcome guests, unwelcome guests, or enemy non-combatants. The rules of engagement for Israeli soldiers are the same in all the cases, no matter how they feel toward the different groups. And if they observe those rules, and take the morally necessary risks, responsibility for the deaths of Hezbollah's human shields – in all the cases – falls only on Hezbollah.[21]

Note the abstract thrust of this answer. When Margalit and Walzer first introduced their thought experiment, they described it as 'concrete' in order to emphasize how the four scenarios are different because of their contextual features. But this is also precisely what they want us to ignore. So where, normally, we think that we can respond to different situations appropriately only by taking their differences into account, Margalit and Walzer's rules are designed to get us to disengage from context and so to deny differences.

One result, I believe, is that they cause us to distort the phenomenology of war and so to miss significant features of it. Consider the following. On the 'flip side' of their claim on behalf of the immunity of civilians is one which asserts that, when fighting a just war, soldiers are entitled to kill other soldiers; it is their right. As Walzer once put it:

> They can try to kill me, and I can try to kill them. But it is wrong to cut the throats of their wounded or to shoot them down when they are trying to surrender. These judgments are clear enough, I think, and they suggest that war is still, somehow, a rule-governed activity, a world of permissions and prohibitions – a moral world, therefore, in the midst of hell.[22]

[21] Margalit and Walzer, op. cit. note 17, 22.

[22] Walzer, op. cit. note 6, 36. Walzer is even more explicit in a later article where he writes that in a just war it is, from a strictly moral perspective, only 'the civilian deaths that should bother us'. Walzer, 'Responsibility

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But is there really *nothing* wrong with killing enemy combatants while prosecuting a supposedly just war? I ask this question particularly after having read a scene from William Manchester's memoir of his experiences fighting in the Pacific during World War II:

> Not only was he the first Japanese soldier I had ever shot at; he was the only one I had seen at close quarters. He was a robin-fat, moon-faced, roly-poly little man with his thick, stubby, trunk-like legs sheathed in faded khaki puttees and the rest of him squeezed into a uniform that was much too tight. Unlike me, he was wearing a tin hat, dressed to kill. But I was quite safe from him. His Arisaka rifle was strapped on in a sniper's harness, and though he had heard me, and was trying to turn toward me, the harness sling had him trapped. He couldn't disentangle himself from it. His eyes were rolling in panic. Realizing that he couldn't extricate his arms and defend himself, he was backing toward a corner with a curious, crablike motion.
>
> My first shot had missed him, embedding itself in the straw wall, but the second caught him dead-on in the femoral artery. His left thigh blossomed, swiftly turning to mush. A wave of blood gushed from the wound; then another boiled out, sheeting across his legs, pooling on the earthen floor. Mutely he looked down at it. He dipped a hand in it and listlessly smeared his cheek red. His shoulders gave a little spasmodic jerk, as though someone had whacked him on the back; then he emitted a tremendous, raspy fart, slumped down, and died. I kept firing, wasting government property.
>
> Already I thought I detected the dark brown effluvium of the freshly slain, a sour, pervasive emanation which is different from anything you have known. Yet seeing death at this range, like smelling it, requires no previous experience. You instantly recognize the spastic convulsion and the rattle, which in his case was not loud, but deprecating and conciliatory, like the manners of the civilian Japanese. He continued to sink until he reached the earthen floor. His eyes glazed over. Almost immediately a fly landed on his left eyeball. It was joined by another. I don't know how long I stood there staring. I knew from previous combat what lay ahead for the corpse. It would swell, then bloat, bursting out of the uniform. Then the face would turn from

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and Proportionality in State and Nonstate Wars', *Parameters* **39**(1) (Spring 2009): 40–52, 51.

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> yellow to red, to purple, to green, to black. My father's account of the Argonne had omitted certain vital facts. A feeling of disgust and self-hatred clotted darkly in my throat, gagging me.
>
> Jerking my head to shake off the stupor, I slipped a new, fully loaded magazine into the butt of my .45. Then I began to tremble, and next to shake, all over. I sobbed, in a voice still grainy with fear: 'I'm sorry'. Then I threw up all over myself.[23]

Presumably, Walzer would object that Manchester, given that he was fighting justly, had no reason to apologize.

But this is a mistake. We can see why by focusing on the details provided about the incident, details that, as I have noted, the just war theorist would have us abstract away from. To begin, there is the fact that the Japanese soldier did not represent an immediate threat ('But I was quite safe from him'). This makes killing him at least somewhat different from those 'noble' kills that are carried out purely in self-defence – a difference which, any soldier will tell you, is a morally significant one. Here is Dave Grossman: 'Such a kill is by no means considered an atrocity, but it is also distinctly different from a noble kill and potentially harder for the killer to rationalize and deal with.'[24] Grossman goes on to quote another soldier's account of ambushing the enemy: 'They didn't know I existed…but I sure as hell saw them…This is one fucked-up way to die, I thought as I squeezed softly on the trigger.'[25]

There is, it seems to me, a very good reason for these soldiers' disquiet, since killing another human being is *always* to some degree wrong, even if there may exist situations in which it is the right thing to do overall. Only theory would have us assert a wholly distinct class of killable people, one that 'radically distinguishes'[26] them from others; common sense tells us that the reality is much more complex. Think of Manchester's description of his victim (his 'roly-poly' body, his undersized uniform, etc.) – doesn't it suggest that there was something unfitting about his being a soldier, that it was almost certainly not his wish? Walzer, however, would have us assume the moral equality of all soldiers[27] and so deny the important differences between professionals and conscripts, differences which

[23] Manchester, *Goodbye Darkness: A Memoir of the Pacific War* (London: Little, Brown, 2002), 6–7.

[24] Grossman, *On Killing: The Psychological Cost of Learning to Kill in War and Society* (New York: Little, Brown, 1996), 196.

[25] Grossman, op. cit. note 24.

[26] Walzer, op. cit. note 6, 144.

[27] See Walzer, op. cit. note 6, 34–41.

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suggest that the latter are more like civilians than the former. There is a reason why, as one U.S. Marine put it, 'You don't like to hit ordinary troops, because they're usually scared draftees or worse…The guys to shoot are the big brass.'[28] Indeed, even when the soldiers killed are professionals, is it really right to think of them as having been *nothing more* than soldiers? Because when they die, do not citizens die as well, not to mention co-workers, friends, sons or daughters, parents, and so on? Notice how one former army officer, interviewed by Grossman, describes what happened when he was charged by a Japanese soldier in the South Pacific:

> 'I had my forty-five [calibre pistol] in my hand', he said, 'and the point of his bayonet was no further than you are from me when I shot him. After everything had settled down I helped search his body, you know, for intelligence purposes, and I found a photograph.' Then there was a long pause, and he continued. 'It was a picture of his wife, and these two beautiful children. Ever since' – and here tears began to roll down his cheeks, although his voice remained firm and steady – 'I've been haunted by the thought of these two beautiful children growing up without their father, because I murdered their daddy. I'm not a young man anymore, and soon I'll have to answer to my Maker for what I have done.'[29]

This was no murder, of course, for he acted in self-defence. But as he himself recognizes, it would be going too far to claim that he did absolutely nothing wrong. All of which is to say that while it is indeed important to distinguish between 'murder' and mere 'killing,' the latter still represents a wrong. There exists no moral world within which we can kill with impunity.[30]

According to Walzer, however, not killing the enemy would 'fly in the face of military duty',[31] something which he assumes reconciles perfectly with all of the other obligations associated with just warfare. This is so even when it comes to killing a 'naked soldier', as in his well-known discussion of the sniper who was reluctant to shoot an enemy combatant that was taking a bath. The discussion includes four other similar cases, all drawn in detail from different

[28] Quoted in Grossman, op. cit. note 24, 174; see also 109.
[29] Grossman, op. cit. note 24, 156–57.
[30] For some comments from soldiers expressing their feelings of guilt about killing, see Grossman, op. cit. note 24, 88–89.
[31] Walzer, op. cit. note 6, 143.

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war memoirs.[32] Yet it is still too abstract. The reluctance to kill on such occasions does not arise, as Walzer believes, from the (misguided) sense that the naked soldier is in an altogether different category, separate from that of the fighting soldier whom one can kill without dirtying one's hands even a little. Rather, most people (rightly) draw dotted rather than solid lines and so think in terms of a continuum: they are more reluctant to kill a naked soldier because it is more wrong, and it is more wrong because a naked soldier is more like a civilian than a fighting soldier.

By allowing for greater nuance and exceptions, this approach also makes it possible to account for why, to take a case somewhat of the opposite extreme, there is a greater reluctance to kill a decorated soldier than one who is not decorated. Think of Elizabeth Bishop's poem 'The Fish'.[33] She has caught this fish and, examining him while he is still alive, she notices five large old hooks in his lower lip, 'like medals with their ribbons'. Before (and even though 'He didn't fight/He hadn't fought at all') she intended to kill and eat him. But now she decides to let him go, and we are relieved. Could this be why the British preferred to capture rather than kill the widely admired Field Marshal Erwin Rommel, why the Special Air Service orders stated that 'If it should prove possible to kidnap Rommel and bring him to this country the propaganda value would be immense'?[34]

Moreover, since the beginning of the 'war on terror' we have had to contend, perhaps more than ever before, with the category of 'unlawful combatants', fighters whose activities lie somewhere between those of enemy soldiers, on the one hand, and ordinary criminals, on the other. This, too, cannot be done properly if we remain within the bounds of theory-induced polarized thought. Walzer has complained that those who would conceive of just warfare strictly in terms of the responsibilities of individuals fail to appreciate that war necessarily collectivizes. On the battlefield, we simply do not have the luxury to make fine-grained, contextually-sensitive judgments.[35] But we should be wary of thinking that there is such a reified thing as 'the battlefield'. War is, after all, a practice, and

[32] See Walzer, op. cit. note 6, 138–43.

[33] In Bishop, *Poems* (ed.) Saskia Hamilton (New York: Farrar Straus and Giroux, 2011), 43–44.

[34] See Thomas Harding, 'Forgotten SAS diary reveals mission to capture Rommel', *The Telegraph*, 23 September 2011.

[35] See Walzer, 'Response to McMahan's Paper', *Philosophia* **34** (2006): 43–45.

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practices not only differ over time and place, they also change. Perhaps war does, today, collectivize individuals; perhaps tomorrow, new technologies will allow us to break down such collectivities. Only the strict terms of theoretical thought force us to consistently assert one extreme or the other.

So far, I have been emphasizing the need to discriminate between different kinds of soldiers. But why assume that all civilians are alike? Because what if those in, say, the fourth of the Manara scenarios above had volunteered to be martyrs? Wouldn't that make them different from those who hadn't? All of which suggests that while it is fine, when playing a game, to treat some as if they were strictly players and others as if they were strictly spectators – which is, after all, essential to playing fairly – war is, once again, no game. One problem with just war theory, then, is that its abstractions are meant to apply to 'people like any other'[36] when there are no such people.

I want to turn, now, to my claim that the rules of just war theory cannot be categorical because they do not fit together systematically. Once again, the problem arises from the theory's abstractness: in this case, from the sharp line that it would have us draw in tracing the boundaries, both spatial and temporal, of a given war as a whole. Consider that World War II, which many consider the paradigm of the just war, was unlimited geographically (minus the territories of the 'neutral' states) and also had shifting temporal limits (according to U.S. law, for example, it had different endings spanning a period of seven years[37]). So while it is certainly true that we often must 'draw lines', they should not be of the sort which assume an all-or-nothing dichotomy between the inside and the outside of regulated zones of moral combat.[38]

It is just such sharp lines, however, that the just war theorist considers essential for the protection of civilians, since they are necessary for demarcating two of the subsets of the theory's principles: those concerned with the decision to go to war, and those concerned with how to conduct it. As Margalit and Walzer put it, '[h]eads of

[36] Margalit and Walzer, op. cit. note 17, 21.

[37] See Mary L. Dudziak, 'Law, War, and the History of Time', *California Law Review* **98**(5) (Oct. 2010): 1669–1709.

[38] Frédéric Mégret would disagree: 'War and the Vanishing Battlefield', *Loyola University of Chicago International Law Review* **9**(1) (Fall/Winter 2011): 131–55. Unsurprisingly, at 133, Mégret welcomes the idea that 'there is more than a passing analogy between the battlefield and the fields on which sports are played'.

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state should be mainly accountable for the first, soldiers and their officers for the second. Blurring this line of separation undermines the categorical distinction between combatants and non-combatants.'[39] It does so in the following way: if one believes that the soldiers of one side are immoral because, even though they are fighting justly, the decision of their army to go to war in the first place was wrong, then one will be tempted to hold them fully responsible for the lives of their civilians and so one's own soldiers cannot be expected to take risks in order to protect those civilians.

But surely we can conceive of situations in which protecting non-combatants might require crossing a battlefield's spatial or temporal boundary-lines. Suppose, in the Manara scenarios, that instead of trying to recapture the kibbutz, the Israeli generals contemplate using the country's air force to drop bombs that would utterly destroy it, killing everyone within – both the Hezbollah fighters and their civilian hostages. What possible reason could they have for doing such a thing? Only deterrence – and deterrence cannot be circumscribed to a current conflict since influencing the conduct of future wars by discouraging enemies from ever launching an attack is often its very *raison d'être*. So refusing to consider deterrence does not provide us with an escape from the logic of dirty hands; on the contrary, it could very well result in a future war and, along with it, the loss of many more civilian lives – on both sides. This implies that decisions regarding how to conduct a war, those for which just war theory tells us only generals and other officers are supposed to be accountable, cannot avoid considerations about the necessity of going to war, a question that is supposed to be up to the heads of state. The division between these two parts of just war theory, then, cannot be maintained, making this is one way in which its principles can be said to contradict.

Here is another. It has to do with reparations, when compensation is exacted from the defeated party. In order to account for their relevance to the protection of civilians, we once again need to blur the artificially sharp boundary-line that theorists tend to draw around a war. To see why, consider Walzer's claim that 'with reference to the actual fighting…civilians on both sides are innocent, equally innocent, and never legitimate military targets', alongside the one he makes in the very next sentence, where he tells us that it is acceptable for civilians to be 'political and economic targets once the war is over; that is…the victims of military occupation, political reconstruction, and the exaction of reparative

[39] Margalit and Walzer, op. cit. note 17, 22.

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payments.'[40] How can this be? Only if there is a degree to which the civilians are being held accountable *post bellum* for the decisions of their leaders, and this includes both the generals and officers of their armed forces as well as their heads of state. Yet this means not only that 'spectators' are being held responsible for the actions of 'players', but also that the distinct sets of just war principles, each ostensibly the responsibility of a different kind of leader, have been combined. And notice what could easily happen if they were not: should those waging a war believe that exacting reparations would be impossible once it was over, then they might very well try to exact them beforehand, and it is hard to see them doing this without great harm being done to civilians. Thus does the concern for protecting civilians require, once again, a rejection of the division between the subsets of just war principles, revealing another contradiction in the theory.[41]

I now want to turn to the issue of the theory's dangers, of which I believe there to be at least two kinds. The first results from its distancing effect. Think of how modern high-tech warfare has resulted in disturbing forms of psychological distancing. Thermal-imagery night-vision devices, for example, present the enemy as a green blob and so as like a target in a video game, making him or her (emotionally) easier to kill.[42] And one hardly need mention the distancing produced by the use of self-guiding and governing 'fire and forget' missiles, as well as by drones which are sometimes controlled from thousands of miles away. Of course, we will tend to judge these things as either good or bad depending on whose side we're on. My claim about just war theory, however, is that it creates distances in consistently bad ways.

For one thing, its sharp lines and categorical assertions can encourage an exaggerated clarity of belief that one's side is right and the

[40] Walzer, op. cit. note 6, 296–97.

[41] Jeff McMahan has presented a different argument against the possibility of keeping *jus in bello* separate from *jus ad bellum* in his 'The Ethics of Killing in War', in Asa Kasher (ed.) *Ethics of War and Conflict*, vol. 2: *Just War Doctrine* (New York: Routledge, 2014). Essentially, McMahan's claim is that combatants who fight justly in the sense of targeting only other soldiers nevertheless cannot be described as fighting defensively, and so justly, if they do so as part of an unjust surprise attack on another country.

[42] See Grossman, op. cit. note 24, 169. He quotes an Israeli tank gunner: 'You see it all as if it were happening on a TV screen… It occurred to me at the time; I see someone running and I shoot at him, and he falls, and it all looks like something on TV. I don't see people, that's one good thing about it.' Grossman, op. cit. note 24, 170.

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other is wrong, instituting what Grossman has called a 'moral distance'.[43] This too makes it easier to kill, but now for a systematically bad reason. For another, given that just war theory's rules represent an abstract conception of justice, one that has been set apart from the ends that we usually strive for in our practical lives, the rules will be relatively weak in terms of their ability to motivate us to uphold them. Not so the thoroughly contextual, expressive rules that I advocate, since they remain directly connected to all of the practical values that we hold dear. Isaiah Berlin has written of the importance of being able 'to realize the relative validity of one's convictions…and yet stand for them unflinchingly',[44] and this seems to me to describe precisely what atheoretical rules can help us do. So whereas Walzer notes with satisfaction that even generals today are increasingly making use of the language of just war,[45] I suspect that there is a connection between this and the growing tendency to instrumentalize the rules of war. We see this with the rise of 'lawfare', for example – the purely strategic use of law, away from the battlefield, as a weapon against one's adversaries.[46] Just war theory has itself been used in precisely this way, Walzer having complained of how some have reinterpreted it 'to a point where it is pretty much impossible to find a war or conflict that can be justified.'[47] All of which is to say that the more abstract a rule, the less compelling it will be and the more it becomes prey to manipulation.

The second kind of danger is that, to put it bluntly, just war theory encourages immorality. Even if, in reality, it fails to assert rules that are systematic like those of a game, to the degree that one believes otherwise one's moral judgment will be impaired. For merely entertaining the idea of a just war – one that can be fought without getting one's hands dirty – has the effect of making the option of going to war appear that much less unattractive, and this will make it more difficult to uphold the fundamental moral maxim that war should always be the last resort.

[43] See Grossman, op. cit. note 24, 164–67.

[44] Berlin, 'Two Concepts of Liberty', in *Liberty: Incorporating* Four Essays on Liberty (ed.) Henry Hardy (Oxford: Oxford University Press, 2002), 217; Berlin is quoting Joseph Schumpeter.

[45] See Walzer, 'The Triumph of Just War Theory (and the Dangers of Success)', in *Arguing about War*, op. cit. note 7, 12.

[46] See David Kennedy, *Of War and Law* (Princeton: Princeton University Press, 2006), ch. 3.

[47] Walzer, op. cit. note 22, 42.

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A similar problem arises from those occasions of supreme emergency when the normal rules of a war in progress must be violated. As noted, Walzer is well aware that, at such times, dirtying our hands will be unavoidable as we will have to override the rules, and when 'rules are overridden, we do not talk or act as if they had been set aside, canceled, or annulled. They still stand and have this much effect at least: that we know we have done something wrong even if what we have done was also the best thing to do on the whole in the circumstances.'[48] This is something that Rawls, a more thoroughgoing theorist than Walzer, misses. He assumes that a supreme emergency provides for an 'exemption' from the theory of just war, through which its principles may be 'set aside'; the implication is therefore that we do not need to fear committing the 'great evils' that normally come from violating those principles. Even the dropping of a nuclear bomb on civilians becomes, it appears, a potentially clean act.[49] It's as if Rawls believes that there are situations so dire that the usual game of war can no longer be played and we need to play a different game, one in which it may actually be okay to use nuclear weapons. To make matters worse, social psychologists have identified a tendency to blame the victims in such circumstances, since the belief that the world is just (which to Rawlsians means capable of being theoretically well-ordered) has been known to cause people to persuade themselves that real cases of injustice did not in fact occur.[50]

Another route to immorality arises from the fact that it is often something endemic, even required, when people play games. Though the players are certainly expected to conform to the rules, many other ethical considerations tend to get set aside. Think of deception in poker or football,[51] or fighting in professional ice

[48] Walzer, 'Political Action: The Problem of Dirty Hands', in *Thinking Politically: Essays in Political Theory* (ed.) David Miller (New Haven: Yale University Press, 2007), 286.

[49] Rawls, *The Law of Peoples: with 'The Idea of Public Reason Revisited'* (Cambridge, MA: Harvard University Press 1999), 98; Rawls, 'Fifty Years after Hiroshima', in *Collected Papers* (ed.) Samuel Freeman (Cambridge, MA: Harvard University Press, 1999), 57, where the full sentence reads: 'Without the crisis exemption, those bombings are great evils.' With it, presumably, one can keep one's hands clean.

[50] See Melvin J. Lerner, *The Belief in a Just World: A Fundamental Delusion* (New York: Plenum Press, 1980).

[51] The latter has been described thus: 'Football is about making your opponent think you are going to pass rather than run, run here rather than there, throw to this receiver rather than that one. Receivers develop moves

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hockey (always accompanied by loud cheers as the players assault each other in ways that would normally get them arrested).[52] We can best account for the acceptability of these things by recognizing how the domain governed by a game's rulebook is indeed separate from our practical lives, and in a way that requires us to conceive of it as 'aesthetic' rather than ethical. After all, playing for its own sake has been central to aesthetics since at least Kant and Schiller.

Just war theory, in other words, aestheticizes war. So we should add its theorists to the mythmakers of war compiled by the war correspondent Chris Hedges:

> War forms its own culture. The rush of battle is a potent and often lethal addiction, for war is a drug, one that I ingested for many years. It is peddled by mythmakers – historians, war correspondents, filmmakers, novelists, and the state – all of whom endow it with qualities it often does possess: excitement, exoticism, power, chances to rise above our small station in life, and a bizarre and fantastic universe that has a grotesque and dark beauty.[53]

Making war beautiful is another form of aestheticization, distinct from but closely related to making it into a game.[54]

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to fake out defenders.' William Ian Miller, 'Deceit in War and Trade', in Clancy Martin (ed.) *The Philosophy of Deception* (New York: Oxford University Press, 2009), 50.

[52] Bruce Dowbiggen has even suggested that there's something hypocritical about Canadians celebrating our country's invention of peacekeeping (peacekeepers are often portrayed on Canadian currency) and yet continuing to support violence in hockey. See Dowbiggen, *The Meaning of Puck: How Hockey Explains Modern Canada* (Toronto: Key Porter Books, 2008), 22, 102.

[53] Chris Hedges, *War Is a Force that Gives Us Meaning* (New York: Public Affairs, 2002), 3. Evidently, Hedges finds war meaningful in an aesthetic, because sublime, sense. Kant would agree: 'Even war, if it is conducted with order and reverence for the rights of civilians, has something sublime about it.' *Critique of the Power of Judgment* (ed.) Paul Guyer, trans. Guyer and Eric Matthews (Cambridge: Cambridge University Press, 2000), 5:263.

[54] David Shields even identifies 'playground' as one of the themes adhered to by *New York Times* war photographers. See his *War Is Beautiful: The* New York Times *Pictorial Guide to the Glamour of Armed Conflict* (New York: powerHouse Books, 2015).

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And what happens when the players of this beautiful game (to recall Walzer's Ruskin citation) can no longer withstand the strain of complying with its rigid and contradictory rules? Could this be why soldiers sometimes snap and run amok, as if they suddenly found themselves to be players without a game? Here is Hedges again:

> I have watched fighters in El Salvador, Nicaragua, Guatemala, the Sudan, the Punjab, Iraq, Bosnia, and Kosovo enter villages, tense, exhausted, wary of ambushes, with the fear and tension that comes from combat, and begin to shoot at random. Flames soon lick up from houses. Discipline, if there was any, disintegrates. Items are looted, civilians are battered with rifle butts, units fall apart, and the violence directed toward unarmed men, women, and children grows as it feeds on itself. The eyes of the soldiers who carry this orgy of death are crazed. They speak only in guttural shouts. They are high on the power to spare lives or take them, the driving power to destroy…. In wartime it often seems to matter little where one came from or how well-schooled and moral one was before the war began. The frenzy of the crowd is overpowering.[55]

Of course behaviour of this sort is nothing new to the aesthetic, and it can manifest itself in very different contexts. Just ask the parent of any toddler (kids being our first and foremost aesthetes) and they will confirm that there has always been something enjoyable about smashing things up. Not just things but also people, as Kierkegaard recognized when he remarked on how much that aesthetic entity, 'the public', enjoys watching the downfall of its celebrities.[56]

So we can see why aestheticized war can be said to entertain spectators as well as participants, as Adam Smith noted long ago: 'In great empires the people who live in the capital, and in the provinces remote from the scene of action, feel, many of them, scarce any inconveniency from the war; but enjoy, at their ease, the amusement of

[55] Hedges, op. cit. note 53, 171–72.

[56] See Kierkegaard, 'The Present Age', in *Two Ages: The Age of Revolution and the Present Age, A Literary Review* (eds and trans.) Howard V. and Edna H. Hong (Princeton: Princeton University Press, 1978), 94–96. For a more contemporary take on this *schadenfreude*, see Joseph Epstein, 'The Culture of Celebrity', in *In A Cardboard Belt! Essays Personal, Literary, and Savage* (Boston: Houghton Mifflin Harcourt, 2007).

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reading in the newspapers the exploits of their own fleets and armies.'[57] Think, once again, of those roaring crowds at hockey fights, or of the well-known preference for seats at car races near the slipperiest part of the track, or of the popularity of action movies with their many explosions.[58] All these suggest that the more we regard wars as regulated within an independent domain rather than as directly connected to the values of our serious, practical lives (hence as 'taking place' within them), then the more virtual and so potentially entertaining they will become.[59]

3.

Once, when I was a graduate student, I became embroiled in a controversy within my department's student association. The department was searching for a new faculty member, a specialist in international relations, and the association had two seats, and so two votes, on the hiring committee. The problem was that one of the candidates had become very divisive. Those on the political right supported him while those on the left were vehemently opposed (or was it the other way around? No matter). I had not been paying very much attention to events but I was aware that many of my fellow students had become quite upset with our two representatives on the hiring committee. Apparently, even though the majority of the association had voted, in a general meeting, to oppose the candidate, the representatives made it clear that they still planned to vote for him. This position caused a great deal of rancour, and a few association meetings had already broken up prematurely because of it. With the next meeting approaching, I was asked to serve as chair, since I had experience with the rules of order (thanks to undergraduate work in my student union) and because my ignorance of what was going on was taken as a sign of my neutrality.

[57] Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (ed.) W.B. Todd (Oxford: Oxford University Press, 1976), bk. 5, ch. 3.

[58] Not that there is anything new about the attractions of spectacular violence. See, for example, Garrett G. Fagan, *The Lure of the Arena: Social Psychology and the Crowd at the Roman Games* (Cambridge: Cambridge University Press, 2011). More generally, see Jeffrey Goldstein (ed.) *Why We Watch: The Attractions of Violent Entertainment* (Oxford: Oxford University Press, 1998).

[59] Whence Jean Baudrillard's complaint that *The Gulf War Did Not Take Place*, trans. Paul Patton (Bloomington: Indiana University Press, 1995).

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When the time came I called the meeting to order, noting that the first and only item of business was the one concerning the two representatives. Someone asked them if they still refused to vote as the association wished and they said that they did. The unofficial leader of the majority then rose and, following a short speech in which he denounced the trustee model of representation in favour of the delegate model (these were political science students, after all), he declared that he wished to propose a 'binding motion' that would force the two wayward representatives to vote as the majority had decided. I immediately ruled the motion out of order.

All hell broke loose. Some of those in the room shouted that I was a plant, secretly working for the minority side, who had somehow managed to finagle his way into the position of chair. I protested that I was nothing of the sort and explained that I had no choice but to rule against the motion since it simply did not make sense. If an organization's representatives are refusing to follow policy then there was no point in passing *yet another policy*, one which declared something along the lines of 'we really mean it', in order to get them to comply. Instead, assuming that nothing could be done to change their minds, the only sensible course was to impeach them. Few seemed convinced by this, however, and so I pointed out that it was the right of all present to overturn my ruling and thereby bring the original motion back into order. But such a move, I explained, requires a special majority of two-thirds, unlike the fifty-percent-plus-one that normally suffices. This reasoning only angered many of those present even more.

Still, they went ahead with the vote to overturn my ruling and it passed. So it was back to the original motion, which was itself quickly brought to a vote and, unsurprisingly, it too passed. A look of satisfaction then came over the majority's faces. It soon began to fade, however, as they began to realise that nothing had really been accomplished.

'What happens now?' someone wondered.
'I don't know', I shrugged.
Everyone then turned to the two representatives, who were asked if they were still going to vote as before. They said they were.
'Then I move to impeach!' declared the majority leader.

I hope that the point of this story is clear. When people refuse to respect the rules, there is no sense in simply insisting that they do so. Yet that is often precisely what theorists of justice do, at least implicitly. They expend their energies on debating and tinkering with their proposed theories, whether ideal or non-ideal, even though it

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is should be evident that a far more important problem lies elsewhere, especially in the non-ideal cases. It is that most people, when faced with abstract principles, do no more than pay them lip service at best; at worst, as noted above, they wield them as weapons of lawfare.

This leads me to suggest that, when states in conflict do agree to impose international obligations on themselves, these obligations should be understood as based not upon some theory of justice but upon treaties that they have negotiated. In other words, those treaties cannot be said to represent, even approximately, some set of abstract principles, since they are only signed to meet particular, practical interests. To believe otherwise is to assume that people would actually be willing to sacrifice those interests if the rules of some contest required it. Of course this idea is far from new. Think of Goliath's challenge to the Israelites: were they to find a champion who could defeat him in man-to-man combat, then the Philistines would become their servants; otherwise, it is the Israelites who would have to surrender and serve (I Samuel 16:9–10). But when David defeated Goliath, the Philistines chose to violate the rules and flee. Anything else, it seems, would have been too unrealistic, even for a book with miracles in it.

So what, then, are we armchair intellectuals who are nevertheless wedded to practical, as distinct from aesthetic, reality to do? It would seem that the answer has to be 'not much', at least if negotiation or force are the only possible responses to conflict. But there is another: conversation, dialogue at its best. It is only in a conversation that parties aim to reach a shared understanding rather than an accommodation, which is the goal of negotiation. So only conversation can be said to have the potential to genuinely reconcile a conflict dialogically, and that is why conversation is the mode of dialogue that has the best prospects for justice.

But conversation is an extremely difficult affair. It requires those involved to be willing to transform their conceptions of the values at stake, since it is only by doing so that they can integrate them rather than merely balance them against each other (which is what's done when negotiating an accommodation). Conversation, then, often relies on deep, radical questions being posed, questions which will sometimes take people very far, beyond the immediately conflicting values to others that may be only indirectly relevant. What tends to be necessary, in other words, is a discussion about 'the common good', the whole of which all of our values are a part.

Nevertheless, it is conversation that offers the armchair intellectual the chance to make a real contribution to the resolution of conflicts. By posing intelligent questions, and by proposing intelligent

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answers, we can help those who are more directly involved to think about what a reconciliatory solution might look like. And even if, as will likely be the case, the conversation fails or never gets off the ground, it may still be worthwhile to persuade the parties of certain truths – whether about each other, their history, or other related matters – that could help them alter their positions such that negotiations, at least, can become viable.[60]

Still, conversation should always come first. For far too long, however, philosophers have failed to advance conceptions of politics that recognize this. The result is that an important step in conflict resolution gets missed, one which, if taken, could have made peace a real possibility. What we are told instead is that the sole, or at least chief, responsibility of intellectuals is to 'speak truth to power', by which is meant combat propaganda with facts.[61] This is a worthy task, to be sure, but our priority should still always go to taking on the more difficult challenge of reconciliation. Meeting it also requires a fundamental concern for truth, but this is truth as value, not merely as fact. It is the truth of the common good, whether of a local political community or of the world. And that is what citizens and soldiers share, never players.[62]

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[60] As I have tried to do regarding the conflict between Israel and its neighbours in my 'Going Rabin One Further', in *Patriotic Elaborations*, op. cit. note 14.

[61] See, for example, Noam Chomsky, 'The Responsibility of Intellectuals', *New York Review of Books*, 23 February 1967.

[62] My thanks to Asa Kasher, Françis Douville Vigeant, and Michael Walzer for comments on previous versions of this paper.

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