

## *PRÉCIS: THE MORALITY AND LAW OF WAR*

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The following commentaries are responses to the rough drafts of six lectures — the Hourani Lectures—that I delivered at the University of Buffalo in November of 2006. This draft manuscript is being extensively revised and expanded for publication by Oxford University Press as a book called *The Morality and Law of War*. Even though in January 2007 the book was still both unpolished and incomplete, David Enoch at that time generously organized a workshop at the Law School of the Hebrew University of Jerusalem to discuss its ideas and arguments. George Fletcher chaired the meeting and Re'em Segev, Yuval Shany, and Noam Zohar all presented superb commentaries. The following papers have all grown out of that memorable occasion.

In order to set the stage for the commentaries, I will here offer a brief summary of the main lines of my argument. The book opens by noting our complacency about resorting to war, and about fighting in war. Participation in war involves attacking and killing people of whom one has no personal knowledge, and often involves killing people who would pose no threat to oneself were it not that one has gone to attack them where they live (as, for example, American soldiers have done in Vietnam and Iraq). Yet most of us assume that mere participation in a war is not wrong, even if the war in which one participates turns out to be unjust. The version of the theory of the just war that is currently dominant supports this view. It maintains that one does no wrong by fighting in an unjust war provided that one obeys the moral principles that govern the conduct of war. Similarly, the international law of war stipulates that one does not act illegally by fighting in an illegal war provided that one obeys the rules of *jus in bello*—that is, that one does not commit war crimes.

The view for which I have argued in various places, though not at any length in this book, is that “just combatants,” who fight within appropriate constraints in a war that is just, act permissibly, but that “unjust combatants,” who fight in a war that lacks a just cause, do not. Unlike the received view, this view is asymmetrical: it holds that the moral status of those on one side in a war may be very different from that of those

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on the other side. There is, however, another symmetrical view at the other end of the spectrum from the common view. This is pacifism, the view that *all* participation in war is wrong, on both sides, at least in the world as it is now. The most plausible argument for this view appeals to the idea that there is a strong moral constraint against knowingly killing an innocent person. The argument then notes that in the world as it is, in which most of the areas where military forces engage each other are densely populated and the weapons they use are highly destructive, it is inevitable that innocent people will be killed in large numbers whenever wars are fought. One might also claim that because combatants must often act under duress and without adequate information, many of those who fight even on behalf of an unjust cause are nevertheless morally innocent. When that is so, participation in war involves killing the innocent even when those who fight for a just cause can act without causing unintended harm to innocent bystanders. If it is thus true that even wars fought for a just cause inevitably involve extensive killing of the innocent, and if the constraint against killing the innocent is very strong, then participation in war is unjustified.

This argument derives much of its intuitive force from our sense that what is morally repellent about terrorism is that it involves the killing of the innocent in pursuit of political ends. What this argument forces us to confront is that war does exactly the same—even wars that are fought for a just cause. Theorists of the just war have traditionally responded to this objection by claiming that the morally significant difference between just war and terrorism is that terrorism involves killing the innocent *intentionally*, as a means, whereas just war kills the innocent *unintentionally*, though perhaps foreseeably, as a side effect of action directed against military targets. The pacifist, however, can respond that it seems to be the dominant view among moral philosophers now that the intention with which an act is done, or with which an effect is produced, does not affect the permissibility of the act. The permissibility of an act is determined by the reasons for and against doing it, and these are unaffected by what may be occurring in the agent's mind. If the current orthodoxy is correct and intention is irrelevant to permissibility, and if we concede that it can be permissible to kill the innocent as an unintended effect of military action in war, then we have to concede that intentionally killing the innocent for terrorist purposes can in principle be permissible as well, at least in cases in which terrorist killing would satisfy the same proportionality constraint that governs the infliction of "collateral damage" in war. If, by contrast, we are unwilling to embrace terrorism in this way, it seems that we are driven toward pacifism.

The first chapter of the book seeks to rebut this pacifist argument. It is interesting that the disagreement here between pacifism and just war theory, a disagreement of great practical importance, is traceable to a difference of view about the significance of a couple of distinctions in moral theory—namely, the distinction between intention and foresight and the distinction between killing and letting die. The pacifist argument places great weight on the second of these distinctions but entirely rejects the significance of the first. It has to presuppose that killing is far worse than knowingly allowing people to die, for otherwise the killing that is done in war could be justified by the claim that the killing of some innocent people in war is necessary to prevent the killing by others of a greater number of innocent people. And it has to reject the significance of intention, for otherwise we could accept that the aims of a just war could be sufficiently important to justify the foreseeable but unintended killing of some innocent people without being committed to accepting even the occasional permissibility of terrorism. Yet I argue that the acceptance of a very strong form of the one distinction combined with the utter rejection of the other is a theoretically unstable position, in part because many of the objections to the one apply with equal force to the other as well. I also argue, though mainly in the sixth chapter rather than the first, that the most influential arguments against the relevance of intention to permissibility are flawed. Finally, I argue that the strong asymmetry between killing and letting die presupposed by pacifism is untenable, in part because in many areas of action, and in war in particular, the difficult choices we face are seldom between killing and letting die but are usually between *risking* killing, or imposing on people a risk of being killed, and *risking* allowing people to die. And while it may be plausible to think that there is a very strong constraint against knowingly killing the innocent, it is not plausible to suppose that there is a correspondingly strong constraint against exposing an innocent person to a very tiny risk of being killed — even, it is important to note, when the number of people on whom the risk is imposed may be quite large.

The arguments I have briefly sketched here for and against pacifism presuppose an individualist framework of justification. They presuppose that what requires justification in war is the killing of individuals by other individuals. Many theorists, however, follow Rousseau in thinking that “war...is not something that occurs between man and man, but between States. The individuals who become involved in it are enemies only by accident... A State can have as its enemies only other States, not men at all.”<sup>11</sup> There are different variants of this collectivist understanding of

<sup>11</sup> Jean-Jacques Rousseau, *The Social Contract*, in *SOCIAL CONTRACT: ESSAYS BY LOCKE, HUME, AND ROUSSEAU* 249-50 (translated by Gerard Hopkins, 1947).

war and international relations. According to one view, states confront one another in something resembling a state of nature in which virtually the only constraints on their pursuit of their interests are international laws designed to serve the interests of all, in particular by mitigating the destructiveness of war. There is, however, a more moralized collectivist view that holds that relations among states are governed by analogues of the moral principles that govern relations among individual persons outside the context of war. According to this “domestic analogy,” war is properly understood in terms of familiar moral and legal notions of crime, responsibility, guilt, liability, defense, law enforcement, punishment, and so on—but only as these notions are applied to states rather than to individual persons.

I argue against both these collectivist conceptions of war and international relations. The fundamental problem with the domestic analogy is that it implies that in relations among states, individual persons are like the cells in a person’s body, in that what is done to them has no moral significance except insofar as it affects the state itself. The domestic analogy is therefore incompatible with the requirement of discrimination, according to which some people are not legitimate targets of attack in war. For in the individual or “domestic” case, when one is justified in attacking another person, there is no distinction between those parts of him that are legitimate targets and those that are not. The domestic analogy also arbitrarily excludes the legitimacy of humanitarian intervention because conceiving of states as if they were persons precludes an adequate moral understanding of states that systematically persecute some group of their own citizens. The domestic analogy forces us to try to understand these cases as analogous to a person’s harming himself, which leads immediately to the conclusion that humanitarian intervention is analogous to paternalism.

There are, however, less formalized collectivist approaches to war that insist simply that relations among individuals in war are mediated by the fact that the individuals act as agents of their respective states. One attraction of this view is that it is thought to support the idea that individuals who act with proper authorization by the state are not responsible for their action in war, except for any war crimes they might commit. (This exception—that combatants are personally accountable for war crimes even if those crimes are committed under orders by the properly constituted state authority—is difficult to reconcile with the general collectivist understanding of war.) This idea dates back at least to Augustine, who wrote that “he to whom authority is delegated, and who is but the sword in the hands of him who uses it, is not himself responsible

for the death he deals.”<sup>2</sup> According to this view, combatants are professionals who serve as instruments of the state. They are not to be morally judged as individuals for what they do in war (with the exception noted above). If their action serves unjust or illegal ends, the finger of blame points only at those to whom their state has assigned the authority to make decisions about war.

This collectivist view, if correct, would rebut the pacifist challenge and help to vindicate our general complacency about participation in war. Yet unless states are fundamentally different morally from other types of collective, or unless war is governed by different moral principles from those that govern all other forms of activity, it is hard to see how this collectivist view could be correct. For whatever it is about the relation between the individual combatant and the collective that makes the latter, or its leadership, responsible for the former’s action in war surely has to be present as well in other cases in which individuals act in delegated roles as agents of a collective that has structures of authority, chains of command, decision-making procedures that are binding on members, and so on. Yet no one supposes that individuals in, for example, an organized criminal syndicate who are assigned the job of killing certain members of a rival organization are exempt from personal responsibility provided that their assignment is declared binding and unchallengeable by the principles on which their collective was founded and by which it operates—the principles that, in effect, make up its constitution. So what is the difference between these people and combatants who fight in an unjust war? What is it about the latter that, as one of Shakespeare’s soldiers says, “wipes the crime of it out of” them?<sup>3</sup> Obviously, states generally have a form of legitimacy that criminal organizations cannot have. But it cannot be that acting as an authorized agent of a state is what absolves unjust combatants of responsibility for their action in war. If that were the explanation of why responsibility for their action supposedly lies entirely with the state and its authorities, it would follow that assassins who were properly authorized and commanded by the state to kill business leaders of a rival economic power would also be absolved of personal responsibility for the killings. But no collectivist of my acquaintance believes that that is true. The exemption does not apply to all agents of the state but only to combatants.

<sup>2</sup> Augustine, *The City of God*, 1.21.

<sup>3</sup> The soldier remarks that “we are the King’s subjects: if his cause be wrong, our obedience to the King wipes the crime of it out of us.” Henry V, IV. i. 128-35.

But it is also implausible to claim, as many have done, that moral principles that govern other areas of life are suspended, or lose their applicability, in conditions of war, and are supplanted by altogether different principles that relieve all combatants, though only combatants, of responsibility for acts that would constitute murder if they were done outside the context of war. This is in part because killing in war is on a continuum with individual assault and individual defense. If we begin with a case of justified self-defense against a culpable assault and continue to add more aggressors, more victims, and increasing levels of cooperation and coordination among the aggressors and among the defenders, we will eventually reach a scale of conflict that counts as war. The claim here is not that we cannot find a point along this continuum at which conflict becomes war. It is, rather, that the morally significant differences, if any, between war and conflicts that are not war are matters of degree, not kind.

Reflection on this continuum of possible cases helps us to see that there is no alchemical moral transformation with the shift from conflicts that do not rise to the level of war to those that constitute war. Whatever the criteria are that distinguish cases along the continuum that count as war from those that do not, these criteria will not distinguish permissible killing, or killing for which the agent is not morally responsible, from murder. Suppose, for example, that your people are involved in a large-scale conflict with another people, that you are aware that your people are in the wrong, and that you have been ordered to kill individuals on the opposing side. It is absurd to suppose that if you want to know whether killing these individuals would be permissible or would be murder, what you must do is to determine whether the conflict does or does not come within the scope of the concept of war. It is absurd, in other words, to suppose that you must determine whether a certain scale of violence has been reached, whether one or both sides have declared war, or whether, if the conflict is occurring within the boundaries of a single state, the faction opposing the government controls a significant amount of territory. These considerations may be relevant to determining whether the conflict is a war, but they are irrelevant to determining whether your acts of killing would be murder.

If, as I have argued, the collectivist exemption of individuals from responsibility cannot be restricted to combatants in war, either on the ground that they are agents of the state or on the ground that war is governed by different moral principles from those that apply to other areas of human life, then we face a dilemma. We can extend the exemption from responsibility that combatants are supposed to enjoy to all people who act, as combatants do, as authorized agents of groups with collective

decision-making procedures, hierarchies of command, sanctions for disobedience, and so on. Yet this would mean that a great many individuals could act with impunity outside the context of war in ways that would otherwise be criminal, provided that they could satisfy the criteria of exemption. Mafia hit men, for example, might be exempt from criminal liability for killings they committed, and only the Don who gave them their orders would be liable. This is not an appealing conclusion, whether it is understood as a claim about moral responsibility or as a claim about legal liability. The alternative is to hold individual action in war to the same standards to which we currently hold individual action on behalf of organized collectives in domestic contexts. This would make unjust combatants guilty at least of complicity in criminal wars, unless their actions were subject to excusing conditions that were fully exculpating.

I believe that this alternative view is correct, though only as a claim about morality rather than law. Particularly where war is concerned, I draw a sharper distinction between morality and law than most other writers. I did not, however, labor this point in the manuscript that the commentators read, though I will in the completed book. This omission in the manuscript has understandably led a couple of the commentators to think that my view is different from what it actually is. This is entirely my fault but has in fact prompted some very insightful comments with which I am in agreement. I will return to this matter in my replies. For now I will offer a general description of my approach to war, emphasizing that my remarks here refer only to morality and not to law, unless I explicitly indicate otherwise.

I defend a radically individualist understanding of the morality of war. I believe that the morality of action in war is continuous with the morality of individual action outside the context of war, and in particular that killing in war has to be justified by reference to the same moral principles that govern individual acts of killing outside the context of war, especially the principles governing killing in self- or other-defense. A state of war, in my view, does not call forth a different set of principles, but merely complicates the application of moral principles that are of universal application. Contrary to what both pacifists and political realists have supposed, individual combatants in conditions of war have the same basic moral rights and are subject to the same moral constraints as other people, in or out of war. The principal difference that conditions of war make is that they immeasurably exacerbate the epistemic limitations under which we ordinarily act. The phenomenon known as the “fog of war” is only a little puff of vapor in a vast nebula of uncertainty and ignorance in

which combatants are typically engulfed. Indeed, that they know so little of all that is relevant to determining the morality of action in war is itself one of the most important truths of which they are unaware.

To understand whether killing in war can be justified, and if so how, it is helpful to explore the ways in which the killing of one individual by another might be justified outside the context of war. I identify three basic forms of justification that appeal, respectively, to consent, lesser evil, and liability.

In some cases—for example, voluntary euthanasia, and in the past many people thought this was true of dueling as well—a person's consenting to be killed can contribute to a moral justification for killing him. Many people believe that consent has an essential role in the justification of killing in war. They believe that when people join the military, they consent to accept a set of rules and conventions that include a permission granted to combatants to attack and kill enemy combatants. I argue that this is false and that even if it were true it could justify the killing of just combatants by unjust combatants only if it could also justify the killing of a wronged man by the villain who had wronged him in a duel to which the victim had consented. And clearly consent can have no role in justifying the foreseeable killing of innocent noncombatants as a side effect of their military action.

A second justification for killing is that killing is sometimes necessary to avert a much greater harm, such as a significantly greater number of killings that would otherwise be committed by others. While most of us accept that this form of justification has some purchase in conditions of extremity, it cannot possibly justify more than a proportion of the killing that is done in war, for the simple reason that if the killings by one side are justified by virtue of being the lesser evil, impartially considered, it follows as a matter of logic that killings by the other side cannot be.

The third form of justification for killing appeals to the idea that people can act in ways that make them morally liable to be killed. The notion of liability is familiar from criminal and civil law, but I invoke it here as a moral notion. Liability is a certain kind of moral vulnerability to harm. To say that someone is liable to suffer a certain harm is to say that he has acted in such a way that it is not now unjust or unfair, or does not wrong him or violate his rights, to harm him in that way. If a person is harmed in a way to which he has made himself liable, he has no justified complaint against those who have harmed him.



These same claims are true when a person is harmed in a way that he *deserves*. But desert and liability are not the same. If a person deserves to be harmed, there is a reason for harming him that is independent of the further consequences of harming him. Giving him what he deserves is an end in itself. But a person is liable to be harmed only if harming him will serve some further purpose—for example, if it will prevent him from unjustly harming someone, or will compensate a victim of his prior wrongdoing. For a person to be liable, a condition of instrumental efficacy must be satisfied; but no such condition applies to desert.

Just as consent is closely related to the notion of waiving a right, so liability is closely related to the notion of forfeiting a right. The appeal to liability is, moreover, the least controversial form of justification for harming or killing. It forms the core of our beliefs about justified individual self-defense. If a person wrongfully and culpably tries to kill me and the only way I can save myself is to kill him, the reason I am justified in killing him is not that I am entitled to act on a degree of self-preference or even that he poses a threat to my life; it is, rather, that because he is morally responsible for an unjust threat to my life, he has made himself liable to be killed.

This, then, is the justification for killing in war: that the people one seeks to kill are sufficiently responsible for a wrong that is sufficiently grave that they have thereby made themselves liable to be killed if killing them is necessary, or even just the best way, either to avert or to correct the wrong. The regnant theory of the just war also holds that the justification for killing in war appeals to liability, but it insists on a different criterion of liability, or a different account of the grounds of liability to attack in war. According to this view, which is the counterpart in the area of morality of the account of legal liability given by the international law of war, one becomes liable to attack in war simply by posing a threat to others—that is, by being a combatant. I argue, both in the book and elsewhere, that this account of moral liability is mistaken. If it were correct, an individual who engaged in justified self-defense against a culpable attacker would forfeit his right not to be attacked, making it permissible for the initial wrongful aggressor to attack him, which is absurd.

There is, on this view, no linkage between liability and fighting for an unjust cause; rather, *all* combatants are liable, even if they fight in a permissible manner in support of a just cause. I argue, by contrast, that it is in general a necessary condition of justified killing in war that one fight for a just cause. In other words, while the received theory holds that whether one's cause is just has no bearing on what it is permissible to do in war, I argue that what it is permissible to do in war is highly

dependent on whether one's action supports a just cause. Indeed, according to the view I defend, the entailments go in both directions: not only is a just cause necessary for justified killing, but liability on the part of those warred against is necessary for there to be a just cause.

In the third chapter of the book I elucidate this understanding of the notion of a just cause for war. I argue that the requirement of just cause is a restriction on the type of aim that can permissibly be pursued by means of war. Although it is not a necessary truth that war involves killing, I will simply stipulate that the kind of war that I am concerned with does involve and indeed requires the killing and maiming of other people. Whether it requires *intentional* killing is a question on which casuists differ; however it cannot be seriously disputed that it inevitably *involves* intentional killing, and on a large scale. My claim is that there is a just cause for war only when those against whom the war is directed—that is, those who are intentionally attacked and killed by military means—have made themselves liable to be attacked or killed. A person can be liable to be killed, in my view, only by bearing a significant degree of responsibility for a serious wrong that can be prevented or corrected at an acceptable cost only by killing some or all of those who are responsible for it. If the wrong is insufficiently serious to justify killing, or if those it would be necessary to kill in order to prevent or correct it bear an insufficient degree of responsibility for it, then there is no just cause for war. But if those who are the targets of attack in war are liable to be killed by virtue of being responsible to a sufficient degree for a sufficiently serious wrong, then there is a just cause for war.

Because the notion of a just cause presupposes liability on the part of those against whom a war is directed, it is possible that there could be a morally justified war that lacks a just cause. This might be true if the justification for the resort to war took the form of an appeal to the lesser evil. For example, it is possible, though not likely, that there could be circumstances in which the only way to prevent a great wrong from being done to a very great number of innocent people would be to go to war against a much smaller number of people who would not be in any way liable to be attacked or killed. In such a case, going to war against the smaller number might be morally justified as the lesser evil, even though it would wrong, or infringe the rights of, the people who would be intentionally attacked. Such a war might be morally justified, but it would not, by my analysis, have a just cause and hence would not be a just war. It might be morally *necessary* but would not be *just*. According to the analysis of just cause that I defend, to pursue a just cause by means of war is to make war against

people who by virtue of being responsible for a great wrong have made themselves liable to be warred against. To attack them, within permissible limits, is not to wrong them.

In the fourth chapter of the book I bring this analysis to bear on the problem of preventive war. There are many objections to preventive war but I focus on one that has received almost no attention—namely, that since preventive war is by definition initiated when no attack has occurred and there is not even an imminent threat of attack, it is likely that the unmobilized soldiers who are preventively attacked will as yet have done nothing to make themselves liable to attack and may, indeed, be entirely unaware that their country would, or might, otherwise pose an unjust threat in the future. This problem of liability is particularly stark for the received account of the just war, which holds that the ground of liability to attack in war is combatant status—that is, being actively engaged in prosecuting a war. On this view, it is a conceptual impossibility that those one attacks in a preventive war could be liable to attack. The received theory, in short, implies that preventive war is necessarily indiscriminate.

This is not, however, a problem only for the received account of liability to attack in war. Assuming that it is true that there could in principle be a just preventive war, there is a serious challenge here to any plausible account of liability to attack in war. If people, in particular unmobilized soldiers, have taken no action to initiate an attack, and have not committed any wrong, how can they have made themselves liable to an attack that is intended to prevent them from being able to attack or to commit a wrong at some point in the future?

I offer a controversial response to this challenge. I argue that unmobilized soldiers who at present pose no threat to anyone may nevertheless be liable to preventive attack if they satisfy two conditions: (1) their entry into the military was voluntary, in the sense that they could have avoided it without unreasonable cost (an admittedly vague formula), and (2) it is true that unless they are prevented now, they *will* pose an unjust threat to others in the future. According to this view, voluntarily joining the military is a basis of strict liability to attack. A person may join the military for morally admirable reasons but later find himself, through no fault of his own, being used as an instrument of injustice. In joining he takes a moral risk of being used in this way. If he has bad moral luck—for example, the leaders he serves and to whom he is committed are planning and actively preparing for unjust aggression, though he has no way of knowing this—he may become liable to attack, and even to preventive attack.

It may seem odd that liability could arise without wrongdoing and even without any kind of objective fault—that it could arise entirely from permissible and even morally desirable risk-taking, in combination with bad moral luck. But this is a familiar phenomenon in the law of torts. There are certain necessary and desirable activities, such as blasting, that unavoidably impose significant risks on others. When people choose to engage in such activities, we hold them strictly liable for the consequences. Even if a person satisfies the standard of due care in blasting, he is liable to compensate any victim he may inadvertently harm, unless the victim is guilty of contributory negligence. A similar claim holds *ex ante*, though this is of course no part of the law of torts. If a potential victim of blasting who has neither been negligent nor voluntarily assumed the risk can save himself, but only by preemptively killing the blaster in self-defense, it is permissible for him to do so. This is tantamount to a rule of strict liability to preventive or defensive action for people who engage in certain permissible but risk-imposing activities. I claim that joining the military is an act that is risk-imposing in the relevant way—though it is different from blasting in that the risk one runs is not just of inadvertently harming innocent people but also of *intentionally* harming and killing innocent people whom one may mistakenly believe are not innocent.

In the fifth chapter I seek to elucidate the nature of the proportionality requirement in war, particularly in its application to the resort to war and in its relation to the requirement of just cause. My central claim is that there are in fact two distinct *jus ad bellum* proportionality requirements. One is implicit in the requirement of just cause and is concerned with harms, or bad effects, that are intentionally inflicted on those who are liable, as a means of achieving the just cause. This “narrow” proportionality requirement parallels the familiar proportionality constraint on individual self-defense. If a person were wrongfully trying to give you a vicious pinch, killing him would be a disproportionate defensive response, for it would exceed the degree of harm to which his action had made him liable. If killing him were the only way to avert the pinch, you would be morally required to suffer the pinch. Similarly, it is possible that resorting to war against wrongdoers is a disproportionate response to the wrong for which they are responsible.

The second proportionality requirement corresponds more closely to what people generally have in mind when they discuss the idea that the resort to war is subject to a proportionality constraint. This “wide” proportionality requirement is concerned primarily with *unintended* harms, or bad effects, that would be inflicted on innocent

people—that is, on people who are not liable to be attacked or harmed. There is a parallel proportionality restriction on acts of individual self-defense, but it is less familiar because individual self-defense rarely causes significant “collateral damage” to innocent bystanders.

After distinguishing these two proportionality requirements, I argue further that the only good effects that count in the narrow proportionality calculation are those involved in the achievement of the just cause. Those who are liable to be attacked in war are liable only to those harms that are necessary for the achievement of the just cause. The second, wide proportionality calculation is not subject to this restriction. Any good effects that war might have can weigh against and cancel out comparable unintended bad effects that war might also have.

In the sixth and final chapter of the manuscript, I return to the question raised in the first chapter about the relevance of the intention with which an act is done to the permissibility of the act. This issue in normative theory takes on enormous practical significance in our thinking about war, since the main difference between acts of terrorism and what most people regard as legitimate acts of war that foreseeably kill innocent people as a side effect is that terrorist acts are *intended* to kill innocent people as a means of terrorizing and intimidating others. So if there is no morally significant difference between an act that kills innocent people as an intended means and an act with comparable good effects that kills the same number of innocent people as a side effect, we seem to face a serious problem. We must either (1) accept that terrorism can be permissible in a wide range of circumstances, (2) accept that war can seldom if ever be justified, or (3) distinguish morally between war and terrorism on some basis other than that terrorism necessarily involves intentionally killing the innocent while war does not.

I reject the first two of these three options and argue that the various alternative ways of distinguishing between war and terrorism that have been offered are inadequate. I then argue further that the main arguments that have been advanced to show that intention is irrelevant to permissibility are not decisive and that it is therefore premature to reject the significance of intention, particularly when the intuitive costs of doing so are high.

As I noted earlier, there will also be material in the book on the relation between the morality of war and the law of war. My view is that because in war we act under grave epistemic limitations and because we lack a carefully wrought law of *jus ad*

*bellum* as well as effective institutions for interpreting and enforcing it, the law of war must at present diverge very significantly from the basic, nonconventional morality of war. I will return to this point in my response to the four commentaries on the book. These commentaries of course discuss details of the book that I have not had space to mention here; but I hope that this brief summary of the arguments of the book has provided enough background to enable to reader to follow the criticisms advanced in the commentaries with full comprehension.