

Rights, Goods, and Proportionate War

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ABSTRACT

One of the most difficult holdings of the Just War Tradition is the claim that a polity can have a fully sufficient just cause to wage war and yet be morally forbidden to do so. The Just War Tradition's *ad bellum* proportionality requirement is supposed to capture that fundamental, difficult truth. According to that proportionality requirement, a community may wage war in response to a violation that satisfies the just cause requirement only if the *relevant* goods achieved by so responding are proportionate to the *relevant* evils caused thereby. My main aim in this paper is to engage recent work by Thomas Hurka regarding what makes certain goods and evils relevant to a proportionality assessment. A secondary aim is to specify the place of *ad bellum* proportionality assessments in the Just War Tradition's overall justificatory architecture. As it turns out, an adequate understanding of the justificatory role of *ad bellum* proportionality assessments helps to delimit what makes certain goods and evils relevant to such assessments.

1. INTRODUCTION

At the moral core of the Just War Tradition (JWT) is the claim that a just war must have a just cause, where a just cause involves the commission of some grave moral wrong. As a matter of sociological and psychological fact, victims of wrongdoing are inclined to take umbrage at the injustices inflicted on them and to take the violations inflicted on them to permit some appropriately vigorous response. Other things equal, the more egregious the violation, the stronger the victim's inclination to respond. As a matter of brute sociological and psychological fact, then, the members of a community that has been victimized by wrongdoing that is grave enough to satisfy the just cause requirement will likely be inclined to respond in a most 'vigorous' manner. Correlatively, many will find alien—and perhaps even offensive—the demand that they restrain themselves from taking the means necessary to respond to the egregious violations to which they have been subjected. But the possibility that those who belong to a violated community must exercise just this kind of restraint is a clear implication of any adequate understanding of the JWT. For fundamental to the JWT is the claim that a community can have a fully sufficient just cause to

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respond to an enemy attack and yet be morally forbidden to do so.¹ This is, I think, one of the most difficult holdings of the JWT.

The JWT's *ad bellum* proportionality requirement (ABP) captures that fundamental, difficult truth. According to the ABP, a community may wage war in response to a violation that satisfies the just cause requirement only if the *relevant* goods achieved by so responding are proportionate to the *relevant* evils caused thereby. My main aim in this paper is to engage recent work by Thomas Hurka regarding what makes certain goods and evils relevant to a proportionality assessment. A secondary aim is to specify the place of the ABP in the JWT's overall justificatory architecture. Given these two rather limited aims, it should be clear that I do not pretend to provide a complete account.

2. AN INITIAL EXPLICATION OF THE PROPORTIONALITY REQUIREMENT

Let me begin by providing a brief explication of the ABP. Basic to the moral vision of the JWT is the claim that human beings naturally and properly belong to various communities each of which is presumptively prohibited from attacking any another. This presumption against war can be overcome only when one community violates another in some egregious respect(s). But the moral standing of a given war cannot be entirely a function of the normative relations between violators and violated. This is because the morally relevant consequences of war are seldom, if ever, limited only to those who commit the violation that provides for a just cause. Far from it: in the actual world, the deployment of military violence in response to an egregious wrong will typically have dire consequences for human beings who play no role at all in committing that violation. Such 'innocent' human beings must be given their normative due. The primary function of the ABP in the JWT's overall justificatory framework is to formalize that requirement: the JWT permits war only when some particular community commits a relevantly egregious violation, but assesses that *prima facie* permission in light of the consequences of war for all innocents, irrespective of communal membership. If the consequences of waging a given war are 'excessively bad,' then that war is 'disproportionate' and so morally impermissible.

Of course, we need to provide this rather unspecific understanding of the ABP with a bit more granularity. To that end, note, first, that although the ABP implies that every war ought to be assessed in light of relevant consequences, it does not mandate anything like a global consequentialist assessment. That is, it does not require us to agglomerate all of the goods and evils that result from C1's war with C2, compare that result with the agglomerated goods and evils of the various alternatives to C1's waging war with C2, and conclude that C1's war is permissible only if its net result is higher than all of the alternatives. Rather, the ABP mandates an assessment of only one course of action, viz., C1's waging war against C2. So long as the morally relevant consequences of that course of action are not excessively bad, then the ABP is satisfied—even should it turn out to be the case that some alternative course of action would generate better morally relevant consequences.² Again, as we will soon see in detail, not all of the goods and evils caused by a given war are relevant to a proportionality assessment of that war: some of the goods and evils C1's war with

C2 engenders can play no role at all in determining whether C1's war with C2 violates the ABP, even though such goods would be relevant to a global consequentialist assessment.

Second, a morally adequate proportionality assessment cannot be a function of only those goods and evils that actually result from waging war. How so? The use of military violence in war not only causes but also prevents evils. Those prevented evils can be no less relevant to the overall moral standing of a given war as can be the goods and evils actually engendered by war. We can easily see why prevented evils must have justificatory import by reflecting on a particular proportionality assessment. Consider Andrew Preston's brief analysis of the early colonial conflict known as King Philip's War:

[King Philip's War] had been the biggest conflict yet in colonial North America. Approximately 1,250 members of the allied Indian tribes died in the fighting, 625 died later from battle wounds, and another 3000 died of disease. All told, almost half of the prewar Indian population of 11,600 died during the war; the rest either became refugees or were sold into permanent slavery elsewhere in the English colonies. According to Nathaniel Saltonstall, a Puritan who lived through the war, [only] 800 English colonists, out of a total population of approximately 50,000—a mere 1.6 percent—died in the fighting. Whether or not the war was necessary and just, it was hardly proportionate.³

Preston's assessment of King Philip's War seems to take the disparity between Indian and colonist deaths as a sufficient reason to conclude that the war waged by the colonists against the Indians was disproportionate. We total up the number of Indian deaths, do the same for the colonists, and if the first sum is much higher than the second, then we should conclude that the war waged by the colonists against the Indians was disproportionate. But suppose that the military violence deployed against the Indians saved the lives of many innocent and uninvolved colonists: although few colonists actually died, many would have died absent the use of military violence against the Indians. Those 'lives saved' must count in any morally sensible assessment of King Philip's war: surely the fact that the colonists' use of military violence against the Indians actually prevented the unjust killing of some thousands of colonist noncombatants would, if true, be directly relevant to the overall moral standing of the colonists' war against the Indians.⁴ If that is correct, then we cannot conclude that the colonists' war against the Indians was disproportionate solely on the basis of the fact that actual Indian casualties were far higher than actual colonist casualties. More broadly, any sensible understanding of the ABP requires the comparative assessment not only of the goods and evils actually engendered by war, but also of the goods and evils actually prevented by war.⁵

Third, we should formulate the ABP in a way that comports with its overall justificatory role. How so? In the JWT, proportionality assessments come into play only if the just cause requirement has been satisfied, that is, only if one community receives some egregious violation that provides it with just cause to wage war against another. When that occurs, the violated community possesses a very weighty, but still only

prima facie, right to respond with military violence: for C1 to be subjected to an array of violations that satisfy the just cause requirement is for C1 to be wronged in most egregious respects and so for C1 to have responsive rights of commensurately great normative weight. Given those responsive rights, C1 may wage war even if no additional reason counts in favor of waging war against C2. Indeed, in order for C1 actually to be permitted to wage war against C2—in order for C1 to have an all-in permission to wage war against C2—it needs only be the case that C1's *prima facie* right to respond is undefeated by competing normative considerations. No further reason in favor of waging war is necessary. We should understand the ABP accordingly—as a prohibition of 'excessive evil' rather than a requirement of 'additional good'. We can do so by specifying that C1's *prima facie* permission right is overridden only when the relevant evils caused by waging war *exceed* the relevant goods achieved thereby. This formulation enables the ABP to fulfill the justificatory role of specifying when the *prima facie* right to wage war has been defeated better than alternatives such as the—gratuitously onerous—formulation that the relevant goods achieved by war must exceed the relevant evils caused thereby.⁶

This third point is closely related to a fourth, viz., the fact that a given war complies with the ABP is not a reason that *counts in favor* of waging that war. That is, the fact that waging war is proportionate provides a violated community with no reason to wage war over and above the fact that it has been wronged in some respect that is sufficiently egregious to provide a just cause. Suppose that C2 violates C1 in ways that satisfy the just cause requirement, that the evils caused by C1's waging war against C2 are not excessive, and so C1's war against C2 satisfies the ABP. Because C1's war satisfies the ABP, one reason that could in principle have defeated C1's permission to wage war against C2 does not in fact do so. But the lack of a defeater for C1's permission to wage war hardly provides a reason that counts in favor of C1's waging war.⁷ This is the case even should it turn out to be the case that the goods achieved by C1's war with C2 exceed the relevant evils: because C1 already has a just cause, and so a *prima facie* right, to wage war against C2, the 'excess good' is morally superfluous. Strictly speaking, then, proportionality assessments can play a decisive role in determining the all-in moral permissibility of a given war but they play no 'positive' role at all in making it the case that war is just, as some aver.⁸

According to the ABP, then, the successful prosecution of even the most scrupulously fought war will be accompanied by all manner of evils, as well as by various goods achieved—not least those goods constituted by the prevention of evils that would have occurred absent the use of military violence. As we shall see, some, though not all, of those goods and evils are 'relevant' to proportionality assessments. The ABP assumes that these relevant goods and evils can be compared in some very rough manner, and specifies that a given war passes moral muster only when the relevant evils caused by waging war are not excessive when compared to the relevant goods achieved by waging war. It goes without saying that the comparative assessment of relevant goods and evils required by the ABP will often be difficult to accomplish in an epistemically definitive manner.⁹ Nevertheless, it is plausible to suppose that, in some cases at least, we can be reasonably confident in our proportionality assessments. So, for example, two wars that would almost certainly have

violated the proportionality requirement had they occurred would have been the military defense by NATO of Hungary in 1956 or Czechoslovakia in 1968: any intervention on NATO's part would have risked a global, and perhaps nuclear, conflict with the Soviet Union and so engendered a range of evils so great as to dwarf the goods to be achieved by defending the Hungarians or Czechs.

3. HURKA ON THE GOODS AND EVILS RELEVANT TO PROPORTIONALITY ASSESSMENTS

There are any number of difficult questions to be asked about my initial formulation of the ABP and its role in the JWT. In the remainder of this paper, I will address one of the most important: if the ABP is the claim that the relevant evils caused by a given war must not be excessive when compared to the relevant goods achieved by that war, which goods and evils are relevant? When we attempt to determine whether or not waging war will engender excessive evil, which goods and evils must we, or may we, take into consideration? There has been considerable recent discussion of this topic. Different theorists have articulated widely varying positions. Some affirm an exceedingly capacious understanding of the relevant goods and evils. So, for example, according to James Turner Johnson, proportionality assessments weigh "the total evil a war would cause against whatever good it can be expected to achieve."¹⁰ Paul Coverdale formulates this capacious understanding with a bit more granularity:

[T]he just war tradition requires taking into account the costs and benefits to all belligerents (not merely to oneself) and even the costs and benefits to the international community. In addition, the calculation should take into account not merely material benefits (recovery of lost territories, control of resources, etc.) and costs (money, physical deaths, destruction of property), but also the moral benefits (protection of freedom, the way of life of a people, religious values, etc.) and moral costs (the curtailment of the rights of citizens, the inevitable crimes and injustices that every war entails, the disruption of family life, the forcing of ordinary citizens to take up arms against other human beings).¹¹

Others have defended a variety of narrower positions. My intention is not to address the whole range of views—that would take us too far afield. Rather, I'll say just enough about the literature to situate the understanding I favor. I will focus on the proportionality requirement as formulated by Thomas Hurka in his much-discussed "Proportionality in the Morality of War."

3.1 An Asymmetrical, Restrictive Conception

At the heart of Hurka's formulation of the ABP is a *restricted* and *asymmetrical* understanding of the goods and evils relevant to proportionality assessments.¹² His formulation is restricted in the respect that it accords to some of the genuine moral goods engendered by war no role at all in proportionality assessments. His formulation is asymmetrical in the respect that it accords a differential weighting to the goods and evils caused by war: although some genuine and important goods are irrelevant to

proportionality assessments, all of the evils caused by war are relevant to proportionality assessments. As a consequence of this differential treatment of the goods and evils caused by war, “there is . . . a thumb pressed down on one side of the proportionality scale, with more counting on the negative than on the positive side.”¹³

Let me begin by explicating the first, restrictive, component of Hurka’s formulation. According to Hurka, C1’s waging war against C2 might achieve an exceedingly diverse array of genuine normative goods only a small fraction of which are relevant to a proportionality assessment of that war.¹⁴ He specifies a number of goods that—very plausibly—do not count.

- Economic goods: “Imagine that our nation has a just cause for war but is also in an economic recession, and that fighting the war will lift both our and the world’s economies out of this recession, as World War II ended the depression of the 1930s. Although the economic benefits of war here are real, they surely cannot count toward its proportionality or make an otherwise disproportionate conflict proportionate.”¹⁵
- Technological and desiderative goods: “A war may boost scientific research and thereby speed the development of technologies such as nuclear power; it may also satisfy the desires of soldiers tired of training and eager for real combat. Neither of these goods seems relevant to proportionality . . . ; an otherwise disproportionate war cannot become permissible because it has these effects.”¹⁶
- Aesthetic goods: “[I]magine that a war will stimulate more profound art than would otherwise be created; that too seems irrelevant to its justification.”¹⁷

I take it that each of these cases is supposed to be intuitively plausible and so to constitute some initial reason to affirm a restrictive conception of the ABP: it’s just *obvious* that the stimulation of great art or the relief of boredom engendered by C1’s war against C2 can play no role whatsoever in rendering that war permissible and thus in assessments of proportionality.¹⁸

If economic, technological, desiderative and aesthetic goods are irrelevant to proportionality assessments, which goods are relevant? Briefly put, those associated with a war’s just causes. According to Hurka, the relevant goods include those achieved by responding to the violations that suffice by themselves to satisfy the just cause requirement as well as those that help to satisfy that requirement.¹⁹ So, for example, if C2 launches a genocidal campaign against C1, C1’s use of military violence in response achieves a great moral good—the protection of human rights from violation on a massive scale—and that good uncontroversially counts against the evils caused by war with C2. So also—more controversially—does the good of deterring C2’s future genocidal projects. Hurka doubts that there is any unitary explanation as to which goods count in favor of waging war: those that do are simply “items on a list”—though a list that must be tested by appeal to clear intuitions and critical reflection.²⁰

Hurka’s restrictive understanding of the goods that are relevant to proportionality assessments contrasts with his capacious understanding of the evils relevant to such

assessments. Here is what Hurka has to say by way of explaining this second, asymmetric, component of his understanding of the ABP.

When we turn to the evils relevant to proportionality, we seem to find no restriction on their content parallel to the one on relevant goods.²¹ That a war will boost the world's economy does not count in its favor, but that it will harm the economy surely counts against it. Whereas economic benefits are not relevant goods for proportionality, economic harms are relevant evils. It is also relevant that a war will hamper scientific research or cause pain to soldiers who fight; these effects too can make a war disproportionate. In assessing war for proportionality, it seems we count evils of all the kinds it will cause, with no limits on their content.²²

If Hurka is correct, then, the ABP accords justificatory weight to only some of the genuine goods engendered by war, but to all of the evils engendered by war, and thus mandates a systematic asymmetry in the manner in which goods and evils are treated in proportionality assessments.

3.2 Hurka's Dictum

What rationale does Hurka offer in support of his restricted, asymmetrical understanding of the ABP? He does not provide a systematic rationale—his treatment is surprisingly terse and largely depends, in my judgment, on the intuitive plausibility of the illustrative cases he offers. Nevertheless, he articulates the elements of a principled rationale, albeit one that vindicates mainly the restrictive component of his conception—the claim that some genuine goods achieved by a given war are not relevant to proportionality assessments thereof. I'll focus on that rationale.

As I read him, the core moral claim that drives Hurka's conception is encapsulated in his dictum that "killing cannot be justified by merely economic goods."²³ This moral intuition is the linchpin of the following argument, which I take to capture Hurka's main reason to restrict the goods relevant to proportionality assessments:

1. If the economic goods achieved by C1's war with C2 can help to satisfy the ABP, then economic goods can play a decisive role in making it the case that C1's war with C2 satisfies the ABP.
2. If economic goods can play a decisive role in making it the case that C1's war with C2 satisfies the ABP, then economic goods can play a decisive role in making it the case that C1 permissibly wages war against C2.
3. But it is not the case that economic goods can play a decisive role in making it the case that C1 permissibly wages war against C2.
4. Therefore, it is not the case that the economic goods achieved by C1's war with C2 can help to satisfy the ABP.
5. There is no good reason to accord economic, aesthetic, desiderative, and technological goods differential weight in proportionality assessments.
6. Therefore, it is not the case that the economic, aesthetic, desiderative, and technological goods achieved by C1's war with C2 can help to satisfy the ABP.

Let me briefly discuss each of these premises.

Ad (1): If economic goods can help to satisfy the ABP, then we must weigh those goods against the various evils caused by C1's war against C2. If we must weigh economic goods against the various evils caused by C1's war with C2, then it is in principle possible, at some point, that the accumulation of economic goods achieved by C1's war with C2 is sufficiently weighty to compensate for the evils that would otherwise have rendered C1's war with C2 disproportionate. In that case, the inclusion of economic goods is decisive—but for those economic goods, C1's war with C2 would be disproportionate.

Ad (2): According to the JWT, C1's war with C2 is morally permissible only if it satisfies the ABP. If that is the case, compliance with the ABP is morally decisive: but for the fact that C1's war with C2 complies with that requirement, C1's war would be impermissible. Consequently, if economic goods can play a decisive role in making it the case that C1's war against C2 complies with the ABP, then those economic goods can play a decisive role in rendering C1's war with C2 morally permissible—but for those economic goods, C1's war would be impermissible.

Ad (3): This is the crucial premise—the premise captured in Hurka's dictum that "killing cannot be justified by merely economic goods." What might we say in its favor?

We can see that 'killing cannot be justified by merely economic goods' by reflecting on the use of lethal violence between individual human beings. So, for example, suppose that Jack designates Perkin as his heir, such that when Jack dies Perkin will be well-positioned to use Jack's otherwise dormant wealth to subsidize a whole bevy of underfunded entrepreneurs, who will employ the resources provided by Jack to engage in productive economic activity, thereby increasing GDP by some not inconsiderable amount. Perkin wonders whether the economic goods he might help to achieve by killing Jack counts in favor of his doing so. And of course the answer to that question is clear: the economic goods that ensue as a result of Jack's death are simply irrelevant to the permissibility of Perkin's killing Jack. For Jack has a right to life, he doesn't forfeit that right by failing to put his wealth to productive use, rights are trumps, and so Jack's unforfeited right to life trumps the fact that killing him increases GDP. Pile the (merely) economic goods made possible by Jack's demise as high as you wish, they do not count even slightly in favor of the permissibility of Perkin's killing Jack. I take it that this is about as obvious a moral claim as there is regarding the moral status of lethal violence between individual human beings.

How does this obvious moral claim vindicate Hurka's restrictive conception of the ABP? Well, it can be exceedingly perilous to employ moral claims regarding violence between individual human beings to assess the moral standing of violence between groups of human beings. Hurka is well aware of the difficulties involved and grants that no argument that relies on parallels between individual and collective self-defense can be demonstrative. Nevertheless, he rightly relies on just such a parallel: there seems to be no compelling reason to refrain from extending *this* clear moral constraint on lethal violence between individual human beings to lethal violence between groups of human beings.²⁴ So, given that economic goods cannot play a decisive role in making permissible the killing of individual human beings, and given that

war involves the killing of human beings on a potentially massive scale, we have excellent reason to conclude that economic goods cannot play a decisive role in making permissible the killing of human beings in war. Killing, and so killing in war, and so war, cannot be made permissible by merely economic goods, no matter how large the accumulation.

Ad (4): This conclusion follows from (2) and (3).

Ad (5): As a general matter, it is plausible to suppose that economic goods contribute at least as much to common and individual human well-being as do technological, aesthetic, and desiderative goods. This suggests—though of course it hardly demonstrates—that technological, aesthetic, and desiderative goods play no greater role in the justification of war than economic goods. Since economic goods cannot play a decisive role in making war permissible, neither can technological, aesthetic, and desiderative goods.

Ad (6): This conclusion follows from (4) and (5).

4. AGAINST HURKA'S DICTUM

What should we make of this argument? As I indicated above, the central bone of contention is Hurka's dictum: although (1), (2), and (5) are correct, and (4) and (6) follow from prior premises, I believe that (3) is false. That is, in some cases, merely economic goods can play a decisive role in making war permissible. How so?

To begin, consider the following narrative case.²⁵ Suppose that we are constituents of C1 who are trying to determine whether or not we may wage war with C2. As adherents of the JWT, we are aware that we are strictly forbidden to wage war against C2 unless C2 has committed some relevant, grievous violation. Because C2 has launched an unprovoked conventional attack in order to occupy some of C1's economically lucrative territory, we conclude that C2 has committed such a violation. Nevertheless, we conclude that we ought not to wage war against C2: the negative economic consequences of waging war against C2 render war disproportionate. For simplicity's sake, assume a fictitious specificity: although other factors balance out, the net loss of, say, 10 million jobs renders C1's war against C2 disproportionate. But just before we turn our swords into plowshares, we are informed that the economic consequences of waging war against C2 will not be as dire as the available evidence initially indicated. That is, although waging war will indeed result in the loss of 10 million jobs in the services industry, our economic engineers have figured out how to parlay the turmoil engendered by war with C2 into 11 million additional jobs in the defense industry. When all is said and done, then, war with C2 will be a net job producer. We thereupon revise our initial assessment and conclude that C1's waging war with C2 does not violate the ABP. As it turns out, then, the kind of reason that initially seemed to render war with C2 disproportionate vindicates the contrary conclusion: whereas our initial assessment seemed to indicate that waging war against C2 would be economically debilitating, further inspection led us to conclude that waging war with C2 would not have that consequence, and so would not be disproportionate, and so would not be forbidden for that reason.

Four comments about this case. First, the 11 million new jobs that would be generated by war with C2 cannot even slightly help to provide C1 with just cause to

wage war against C2. As I understand it, the just cause requirement can be satisfied only by the commission of some relevant, egregious violation. But the fact that waging war against C2 results in a substantial improvement in employment can play not even the slightest role in satisfying that condition: the fact that C1's waging war against C2 results in net job growth provides no reason at all to conclude that C2 has done anything that permits C1 to direct lethal violence at its members. Of course, this is true for (merely) economic goods generally—increases in GDP, employment, standard of living, diversification. None of those merely economic goods can justify killing *in the sense that* they cannot satisfy, or help to satisfy, the just cause requirement. So understood, Hurka's dictum is correct.

Second, although the economic benefits of C1's waging war against C2 cannot even slightly help to satisfy the just cause requirement, it seems that they can help to satisfy the ABP. Indeed, the 11 million additional jobs caused by C1's war with C2 play no less decisive a role in rendering C1's war proportionate than the loss of the 10 million jobs that initially seemed to make C1's war disproportionate. After all, absent the unexpected economic goods, C1's war with C2 would be disproportionate and so impermissible. The justificatory role those economic goods play is to defeat what would otherwise be a decisive defeater to C1's *prima facie* right to wage war against C2: they offset the economic evils that would otherwise render C1's war with C2 disproportionate. But then it follows that killing *can* be justified by merely economic goods—they can justify killing in the sense that economic goods can play a decisive role in defeating what would otherwise be a defeater of the *prima facie* right to wage war that is provided by a just cause.

Third, these first points indicate an important general truth about the JWT. As I understand it, the JWT is partly constituted by a nested series of distinct but related requirements: just cause, right intention, legitimate authority, last resort, *ad bellum* proportionality, and so on. Given the complexity of its justificatory infrastructure, normative considerations that cannot satisfy one of the JWT's constitutive requirements might in principle be able to satisfy some other requirement. This is the case with respect to the justificatory role of economic goods: they cannot even help to satisfy the just cause requirement but they can play a decisive role in satisfying the ABP.

Fourth, Hurka's restricted, asymmetrical conception of the ABP is unstable. How so? As we've seen, Hurka claims that, although only a limited set of goods are relevant to proportionality assessments, evils of *any* sort can play a decisive role in rendering war disproportionate—technological, desiderative, aesthetic, aretaic, economic, whatever. But there is excellent reason to reject this asymmetry with respect to economic goods. At the very least, economic goods must be able to offset economic evils of a relevantly similar sort: employment gains in the defense industry must be able to offset the loss of jobs in the services industry. But surely a comparable parity claim applies to aesthetic goods: if aesthetic evils can play a role in making war disproportionate, then aesthetic goods must be able to offset those evils and so also count in proportionality assessments. Indeed, we seem to have excellent reason to affirm a general parity claim, viz., if evils of a given sort can play a decisive role in rendering C1's war with C2 disproportionate, then goods of the

very same sort must also be able to offset those evils and thereby make it the case that C1's war with C2 is proportionate.²⁶ Because Hurka is committed to the claim that there are *no* restrictions on the kinds of evils that count in proportionality assessments, it seems that, on Hurka's account, goods of *any* sort should be able to play a decisive role in determining the overall permissibility of, and so in 'justifying,' war. But then Hurka seems driven to an *unrestricted* and *symmetrical* understanding of the goods and evils relevant to proportionality assessments: all of the goods and evils caused by war can play a decisive role in determining whether a given war satisfies the ABP. As I noted at the outset, a number of the JWT's most well-known advocates have affirmed roughly this capacious conception of the ABP.

5. THE GOODS AND EVILS RELEVANT TO PROPORTIONALITY ASSESSMENTS

It seems to me, however, that this unrestricted, symmetrical account fares no better than Hurka's original restricted, asymmetrical understanding of the ABP. As with just cause, so also with proportionality, certain genuine moral considerations lack any justificatory force and so cannot play any role, however slight, in satisfying those requirements. On this basic point, I think that Hurka is correct. We should therefore understand the ABP in a *restricted* manner, such that only some of the morally relevant consequences of war are relevant to proportionality assessments. But there is excellent reason to believe that goods of the same kind must be able to offset evils of the same kinds in proportionality assessments—the general parity claim I articulated in the prior paragraph seems exactly correct. Consequently, we should understand the ABP in a *symmetrical* manner, such that goods and evils that are similar in morally relevant respects must have comparable justificatory force in proportionality assessments. That is, they have comparable justificatory force in the following respect: if evils of a given sort can render disproportionate an otherwise proportionate war, then goods of the same sort must be able to render proportionate an otherwise disproportionate war.²⁷

Crucial to this restricted, symmetrical understanding of the ABP is the claim that there is some principled demarcation between the goods and evils that have, and those that lack, justificatory weight in proportionality assessments. I suggest the following: all and only those goods and evils that are correlated with the rights of human beings are relevant to proportionality assessments. As Nicholas Wolterstorff has persuasively argued, there are an indefinitely large number of goods to which a given human being might in principle have some right, those goods are divided into an exceedingly diverse range of kinds, but any given human being will actually have a right to only a small fraction of those goods.²⁸ Again, there are an indefinitely large number of evils, divided into an exceedingly diverse range of kinds, to which a given human being might in principle have a right not to be subjected. But any actual human being will have a right not to be subjected to only some of those evils.²⁹ I suggest that only those goods to which human beings actually have rights and only those evils the infliction of which actually wrongs human beings are relevant to proportionality assessments.

Why accept this line of demarcation? Consider again the justificatory role of the ABP. As earlier specified, the ABP presupposes that one community has violated another in a relevant, egregious manner, such that the recipient of that wrong possesses a *prima facie* right to respond with military violence. The primary justificatory function of the ABP is to specify a general condition in which that *prima facie* right can be overridden. But rights are trumps in the respect that an unforfeited *prima facie* right can be overridden or defeated only by other rights considerations.³⁰ If I have an unforfeited right to life, and you can bring about all manner of aesthetic, aretaic, and economic goods by killing me, then you ought not kill me, full stop. My right to life cannot be overridden by an accumulation, however high, of goods to which no one has rights—whether aretaic, technological, desiderative, economic, whatever. Consequently, we should understand the ABP in such a way that only those goods and evils that are attached to the rights of human beings are relevant to proportionality assessments. In short, given that the ABP specifies a sufficient condition in which C1's *prima facie* right to wage war against C2 is overridden, and given that this right can be overridden only by competing rights considerations, it follows that the ABP accords justificatory weight only to goods and evils attached to rights.

5.1 Irrelevant Evils

I believe that this broad understanding of the justificatory function of the ABP helps to explain a variety of intuitive judgments regarding the relevance of particular goods and evils to proportionality assessments. Consider in this regard a rather narrow range of the evils engendered by war: the death and suffering inflicted on those who are fully responsible for committing a violation that provides for a just cause. If C2 wages a genocidal war against C1, then C1 clearly has just cause to wage war against C2 and may, as a consequence, direct military violence against those responsible for committing that violation—paradigmatically, soldiers who volunteer to commit genocide as well as the ideologically driven authorities who direct them to do so. The death and suffering of those human beings are undeniably evils. But those evils are irrelevant to an assessment of the proportionality of C1's war against C2. After all, if the evils inflicted on those who culpably perpetrate an egregious violation are relevant to a proportionality assessment of the measures that victims employ to respond to that violation, then it is logically possible that the evils inflicted by the victims on the perpetrators of genocide render disproportionate the victims' use of military violence to defend themselves against their violators.³¹ Should that possibility be actualized, the evils inflicted on culpable violators would play a decisive role in making it the case that the victims are morally forbidden effectively to defend themselves.

I take this to be morally perverse. Although the victims might be morally forbidden to defend themselves against the perpetrators, this prohibition cannot be a function of the evils the victims must inflict on the perpetrators if they are effectively to protect themselves from the perpetrators. *Those* evils are irrelevant to the required proportionality assessment. They are irrelevant, I think, because the perpetrators have forfeited any right not to have those evils inflicted on them. This is why, I take it, those who are targeted with a genocidal attack may direct lethal military violence

against any number of culpable perpetrators—even if the number of genocidal attackers far exceeds the number of their victims, and even if—in some very distant possible world—the death and suffering of those culpable perpetrators exceeds the very substantial goods achieved by preventing the perpetrators' unjust attack. This is also why, I take it, the ABP assesses the *prima facie* permission to use military violence that is provided by a just cause in light of the consequences of war for unfending human beings—those who are not responsible for whatever grievous wrong satisfies the just cause requirement.³²

Consider again the suffering of the mothers and fathers, brothers and sisters, friends and acquaintances who are bonded to the soldiers who are responsible for a genocidal attack. I take it that those who care for the soldiers who culpably engage in genocidal attacks suffer greatly at the prospect of their demise. I also take it that many of those mothers and fathers, brothers and sisters, friends and acquaintances are innocent in the relevant respects—they permissibly care for the soldiers who engage in genocidal attacks, but play no role whatsoever in perpetrating those attacks. Plausibly, their suffering is the suffering of the innocent and so their suffering cannot be anything other than a very grave, personally ruinous, evil. But I believe that their suffering is irrelevant to the required proportionality assessment: however great the suffering of those who are bonded with the culpable perpetrators of genocide, pile that suffering as high as you wish, the personal anguish they experience cannot defeat the *prima facie* right that the victims of genocide have to defend themselves. Again, to assume otherwise would be morally perverse: victims of an unjust attack might be morally forbidden to defend themselves, but not by virtue of the fact that their defense engenders suffering in those bonded by guiltless affection to their attackers.

In both of these cases, evils that would otherwise count in a proportionality assessment lack justificatory force by virtue of the fact that those who experience those evils lack any right against their infliction. The fact that they lack such any such right is a function of forfeiture—whether directly in the case of fully culpable soldiers or indirectly in the case of those bonded to fully culpable soldiers. But forfeiture does not account for each of the evils that lack justificatory force in proportionality assessments. So, for example, suppose that the successful prosecution of C1's war against C2 requires C1's government to redirect substantial subsidies in green technology to the C1's defense industry, that the redirection of government funds reduces demand for green technologies, and that the reduction in demand for green technologies diminishes the monetary value of 'green' mutual funds for some not insubstantial number of C1's citizens. I take it that the reduction in the value of those mutual funds is an evil in the lives of the citizens affected—they will certainly experience the decline in the value of their portfolio as such! But I assume that governments have broad discretion in choosing the economic policies they pursue—such that no citizen's rights are violated when government fails to invest in green technology. Moreover, I assume that citizens lack any right that their government refrain from implementing policies that reduce the value of their investments. Consequently, those citizens lack any right that the government subsidize green technologies—not because they have forfeited that right, but because they never had any such right. Consequently, the fact that C1's waging war against C2 diminishes the value of

investments in green technologies does not constitute an evil that is relevant to a proportionality assessment of C1's war against C2.

As I understand it, then, the fact that a human being lacks a right not to have some evil inflicted on her has the implication that that evil is irrelevant to the ABP. I believe that this claim is a particular implication of a more general truth, viz., that the only evils that count in proportionality assessments are those that human beings have a right not to have inflicted on them. And this more general truth is itself an implication of an even deeper truth about the normative force of rights—the right of human beings to defend themselves against egregious violation can be defeated only by other, sufficiently weighty, rights-considerations.

5.2 Irrelevant Goods

A comparable point applies to the goods that are relevant to proportionality assessments—only those goods to which some human being has a right can play a role in determining whether or not a given war satisfies the ABP. Let me briefly articulate this point by returning to Hurka's discussion. Hurka appeals to a number of goods in order to motivate his restrictive, asymmetric conception—these are goods that it is intuitively plausible to suppose cannot play any role in satisfying the ABP. What's striking about the goods to which Hurka appeals is that they clearly are goods to which no one has rights. Consider, for example, Hurka's treatment of aesthetic goods: the fact that C1's waging war against C2 will "stimulate profound art" does not even slightly enable that conflict to satisfy the ABP. This is a very plausible claim: it's hard to think of a moral consideration less relevant to the permissibility of war than the fact that waging war provides the opportunity for artists to create magnificent works of art. But the intuitive plausibility of this example is, I believe, a function of the fact that no one has a right that others engage in activity that enables them to produce great art: the fact that war stimulates great art cannot render proportionate an otherwise disproportionate war because no one has a right that others act in ways that stimulate them to produce great art. Similarly for the fact that waging war relieves the boredom of soldiers—they lack any 'right to be entertained' and so the excitement generated in them by the prospect of war cannot render proportionate what would otherwise be a disproportionate war. Similarly again for technological goods: although C1's waging war might enable all kinds of technological developments—research into radar as in World War II, for example—no one had even a *prima facie* right to the development of radar. Similarly for economic goods like improvements in GDP.

6. CONCLUSION

It seems to me, then, that we should understand the goods and evils relevant to proportionality assessments not in the restricted, asymmetrical manner explicitly defended by Hurka, nor in the unrestricted, symmetrical manner to which I believe Hurka's account naturally leads, but in a restricted, symmetrical manner—one in which all and only those goods and evils attached to rights have justificatory force in proportionality assessments. Of course, there is a great deal more to be said about this understanding. So for example, even if we grant that only rights-related goods

and evils have justificatory force in proportionality assessments, it might yet be the case that some rights-related goods and evils lack justificatory force, thus requiring a more fine-tuned line of demarcation. So, for example, it might be the case that certain rights-related goods and evils are not relevant to proportionality assessments by virtue of the fact that they are 'religious' goods or evils. This is a very common claim amongst those who advocate in favor of 'secular' conceptions of the JWT. Of course, we would need some compelling argument in favor of such a secular conception. Whether or not there is any such argument is a topic I intend to address on a subsequent occasion.³³

NOTES

1. This claim is very widely acknowledged and is expressed with clarity by Ralph Potter: "War cannot be justified without a just cause. But . . . not every just cause is to be prosecuted. There may be situations in which a just cause is undoubtedly present but conditions are such that resort to force would not serve the welfare of the national or international community. Hence, other criteria of the justifiable use of force are required in addition to the certitude of a just cause" (*The Moral Logic of War*, [Department of Church and Society, Board of Christian Education, 1969], 204). This point has one of its most important applications to wars of self-defense: even those wars that must be waged to defend the very existence of some community might, in principle, be morally forbidden. On this claim, see Paul Ramsey, "When 'Just' War Is Not Justified," in *The Just War* (Rowman and Littlefield, 2002), 206.
2. So, for example, it is more than possible for a war to satisfy the ABP even if some more irenic course of action would make the world far better off: C1's war with C2 might be proportionate even if the world would be better off were C1 to respond to the wrong inflicted by C2 by selling off its military hardware and distributing the proceeds to the poor and destitute.
3. *Sword of the Spirit, Shield of Faith: Religion in American War and Diplomacy* (Knopf Canada, 2012), 45.
4. Although the death and suffering of innocents is most directly relevant to proportionality assessments, the death and suffering of combatants, just and unjust, can also be relevant. That said, if we assume that the Indians *unjustly* attacked the colonists, then it seems that we should—at the very least—sharply discount the moral weight of the Indian casualties that Preston adduces in favor of his conclusion. Consider the parallel case for smaller-scale violence: if a gang of twenty unjustly attacks one victim, and a 'Good Samaritan' can prevent the unjust death of that one victim only by killing all twenty attackers, then we should hardly conclude that the Good Samaritan's use of lethal violence to defend the victim was disproportionate. Indeed, if the attackers are fully culpable for their violation, it's hard to espy any principled upper limit to the number of human beings who may be killed in the victim's defense. I return to this familiar point at the end of the chapter.
5. I take it that we can determine whether or not a given war actually prevented some evil by engaging in counter-factual reflection on what would have happened absent war. I recognize that just what makes for the appropriate counterfactual analysis will inevitably be a controverted affair. See generally, David Mellow, "Counterfactuals and the Proportionality Criterion," *Ethics & International Affairs* 20 (4), (2006), 439–54. I should also note that there is a much more complicated version of the *ad bellum* proportionality requirement—one that involves a far more complex counterfactual analysis. The simple version on which I focus in this chapter requires only some proper proportion between the goods and evils engendered and prevented by a given war. It requires a counter-factual analysis, but only of what would have happened in the absence of war. A more complex conception of the ABP mandates a far more complex counter-factual analysis—one that compares the consequences of waging war and other available responses to the violation that provides a just cause. On this complex version of the ABP, it must not only be the case that the evils caused by C1's waging war against C2 are not excessive when compared to the goods to be achieved and the evils prevented by C1's waging war against C2. It must also be the case that the 'net result' of C1's waging war against C2 must be higher than the net result of any other available course of action that also responds to the violations that provide C1 with just cause to wage war against C2. Perhaps this complex conception of the ABP incorporates the JWT's 'last resort' requirement. See Thomas Hurka, "Proportionality in the Morality of War," *Philosophy & Public Affairs* 33 (1), (2005), 34–66, at 37–38.

6. So, for example, I take Richard Arneson's formulation of the ABP to be unnecessarily robust: "A just war must also satisfy a proportionality norm: the reasonably expected moral gains of commencing and sustaining military intervention must exceed the reasonably expected moral costs." ("Just Warfare Theory and Noncombatant Immunity," *Cornell International Law Journal* 39, [2006], 101).
7. This is a familiar point from analytic epistemology. Suppose that I have enough evidence to be rationally justified in believing that God exists. But then I am confronted with a possible defeater for my belief that God exists—that the actual world contains far more evil than would be tolerated by a Maximally Excellent Person. Suppose that I show that we have no principled way to determine what would make it the case that there exists 'far more' evil than would be allowed by a Maximally Excellent Person. In that case, plausibly, I have a defeater for the initial defeater of my belief in God. Although the defeat of the initial defeater might very well play a decisive role in determining the overall epistemic status of my belief in God, the defeat of the defeater provides me with not the slightest reason to believe that God exists. To show that an argument against God's existence is unsound does nothing to show that God exists. Correlatively, to show that a permission to wage war has not been defeated is not thereby to provide reason to wage war.
8. See David L. Clough and Brian Stiltner, *Faith and Force: A Christian Debate about War* (Georgetown University Press, 2007), 232.
9. For this reason, I believe that the obligation to justify war should be understood as an obligation to show just cause: in most cases, we will be unable to justify the claim that the war we wage will not be disproportionate. See Paul Ramsey, *The Just War*, 195; Nigel Biggar, *In Defense of War* (Oxford University Press, 2013), 32–33.
10. James Turner Johnson, *Can Modern War Be Just?* (Yale University Press, 1986), 3. Nicholas Fotion endorses a similarly capacious understanding of the ABP in "Proportionality," in *Moral Constraints on War: Principles and Cases*, 2nd ed., Bruno Coppieters and Nick Fotion, eds. (Lanham, MD: Rowman and Littlefield, 2008), 129, as does Paul Ramsey, *The Just War*, 195.
11. Paul Coverdale, "An Introduction to the Just War Tradition," *Pace International Law Review* 16/2, 2004, 255.
12. I should note that Hurka's discussion of proportionality encompasses both *ad bellum* and *in bello* formulations. For the sake of simplicity, I discuss only *ad bellum* issues.
13. "Proportionality in the Morality of War," 46. Various theorists have endorsed something like Hurka's asymmetrical understanding of the ABP. See, for example, Richard J. Regan: "the decision to wage war will be justified only if the wrong to be prevented or rectified equals or surpasses the reasonably anticipated human and material costs of the war." *Just War: Principles and Cases* (Washington, DC: Catholic University of America Press, 1996), 63. Again, David Fisher: "It is a key feature of just war teaching that a cause, however just, does not license war unless one reasonably expects that the harm caused by the war will not outweigh the good to be achieved, as specified in the just cause. . . . In assessing the balance of good and harm, an important constraint is that the politician is not free to specify whatever goods he likes. Rather, what can be included is specified by the just cause." (*Morality and War* [Oxford University Press, 2011]) 73, 75). See also Steven P. Lee, *Ethics and War: An Introduction* (Cambridge University Press, 2012), 136f.
14. "Proportionality in the Morality of War," 40.
15. *Ibid.*
16. *Ibid.*
17. "Proportionality and Necessity," in *War: Essays in Political Philosophy*, ed. Larry May and Emily Crookston (Cambridge, 2008), 131.
18. We can easily think of many other genuine goods that are, arguably, no more relevant to the proportionality of war than are those specified by Hurka—the fact that waging war fosters allegiance to a just polity, that it engenders the martial virtues, that it advances a just domestic agenda, and on and on. The range of such goods is truly astonishing; see, generally, Ian Morris, *War! What Is It Good For?* (New York: Farrar, Straus, and Giroux, 2014).
19. According to Hurka, the considerations that can contribute to the satisfaction of the just cause requirement without thereby satisfying that requirement are "forcibly disarming an aggressor, deterring future aggression, and preventing [serious] humanitarian wrongs. . . ." ("Proportionality and Necessity," 131).
20. "Proportionality in the Morality of War," 43.

21. Hurka does affirm a causal restriction—evils that occur as a consequence of the wrongful agency of other actors can eliminate or drastically reduce the normative weight of those evils in proportionality assessments (Ibid. 47).
22. Ibid. 45–46.
23. Ibid. 46. Jeff McMahan also affirms a version of this claim in “Just Cause for War,” 5.
24. Ibid. 39.
25. For ease of explication, I’ve put this case in narrative form. But it would be easy to make the same point by reflecting on a case described more abstractly. So, for example, consider two wars, W1 and W2, that are identical in all morally relevant respects save one: they have the same just cause and the same negative consequences—save for the fact that W2 has economic benefits that W1 lacks. It is possible that W1 violates the ABP, but that W2 does not: economic goods distinctive to W2 offset the economic evils that would otherwise render W1 disproportionate and so impermissible. If that possibility is actualized, the only explanation of that difference must advert to the economic goods distinctive to W2. But in that case, merely ‘economic goods’ play a decisive role in making W2 permissible.
26. This is surely the case with respect to at least some wars that satisfy the ABP: if, say, the United States’ war against Japan didn’t violate the ABP despite the large number of economic evils it engendered, then this is at least in part a function of the fact that the United States’ war against Japan engendered a large number of compensating economic goods.
27. I also believe that goods and evils of different sorts can offset one another: if aesthetic goods can help to offset aesthetic evils in proportionality assessments, then so also can aesthetic goods help to offset economic evils. I will not, and do not need, to vindicate that claim here.
28. This claim is at the heart of Nicholas Wolterstorff’s conception of what makes for a right; see his *Justice* (Princeton University Press, 2010), 5, 285–87; and his *Justice in Love* (Eerdmans, 2011), 87.
29. Wolterstorff claims that rights are always rights to goods—a claim I accept. But how should we then understand the claim that human beings have a right not to be subjected to certain evils? I take it that ‘not being subjected to certain evils’ just is a good in the life of a human being: not being tortured is a good in my life, as is your protecting my right not to be tortured.
30. When unforfeited rights are at stake, (merely) eudaimonistic and consequentialist considerations are simply off the table—they lack any justificatory force however great their magnitude. That said, the fact that rights trump eudaimonistic and consequentialist considerations does not imply that they cannot be overridden. They can be, but only by other rights. That is, they can be overridden by other *unforfeited* rights. If I have an unforfeited right against you, then you may not violate that right unless doing so is necessary to avoid violating other unforfeited rights—whether other rights of yours, or mine, or of some third party. So, unless violating my right is necessary to avoid violating other unforfeited rights, “then you should do what I have a right to your doing, *period*.” Absent satisfaction of that *rights proviso*, rights violations are impermissible. For detailed argument, see Nicholas Wolterstorff, *Justice*, 291 and surrounding.
31. For obvious reasons, I do not believe that this logical possibility is actually possible.
32. This conception of the justificatory role of the ABP is simplistic in at least the following respect—many of those who carry out the egregious violation that provides for a just cause are only partly responsible, or culpable, for their role in carrying out that violation. I take it that the suffering and death of those human beings is relevant to proportionality assessments—though at a sharply discounted ‘rate.’ This is a complex matter that I don’t need to address at this point: my only aim is to provide plausible cases of evils that do not count in proportionality assessments.
33. This article appears in revised form in Christopher J. Eberle, *Justice and the Just War Tradition* (Routledge, 2016). Some of the claims articulated in this paper are defended in more detail therein.