The Troublesome Ethics of *Jus ad Vim*[1]

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> … over the past two decades the problem has become not just how to apply the ethics to war, but how we are to recognize the very boundaries of war itself.
>
> (Clark, 2015, pp. 17-18)

> The fact (if indeed it is a fact) that you are both right and strong does not give you the right of the stronger, and so does not license you to enter a condition in which force decides.
>
> (Ripstein, 2021, p. 39)

The prospect of a limited use of force short of war has been presented in recent years as a reasonable and practical alternative to the changing nature of contemporary threats to international peace and security initiated by the so-called "war on terror" launched in the wake of the terrorist attacks of September 11, 2001. While the *jus contra bellum* of the post World War II Charter regime had already been shaken by the revival and then triumph of just war thinking after the publications of Paul Ramsey's *The Just War: Force and Political Responsibility* in 1968 and Michael Walzer's *Just and Unjust Wars: A Moral Argument with Historical Illustrations* in 1977, actions undertaken since 2001 have markedly altered the ethical, legal and political landscape used to evaluate the use of force in violation of the *jus contra bellum*[2]. Anchored in the historical categories and criteria of *jus ad bellum*, *jus in bello* and *jus post bellum* in order to warrant the just recourse to war, to induce a just conduct in war, and to evaluate the justice of the peace to follow, just war thinking was about war,

1. A short version of this paper has been presented in a seminar held at the Centre Thucydide - Analyse et recherche en relations internationales of the Université Panthéon-Assas (Paris 2) on Novembre 13, 2023.
2. In violation of the *jus contra bellum* since Article 2(4) of the Charter of the United Nations outlaws "the threat or use of force" and restrict the legal possibilities of using force to those (i) made by the Security Council "to maintain or restore international peace and security" (Article 42) or (ii) to "exercise his right of self-defence" for a State in case of an armed attack (Article 51). We should nevertheless keep in mind that these violations are nothing new (Franck, 1970).

destructive and deadly wars, and that tradition of thought did not have much to say about the use of limited force not considered to be part of a "war" *per se*.

The sheer scale of destruction caused by the al-Qaeda terrorist attacks of September 2001 was staggering and has certainly been exacerbated by the live broadcast of those horrifying events while they were happening and then aired again and again around the world for weeks. For witnesses from around the world, these attacks marked a turning point in the evolution of terrorism and the immediate reaction was one of outrage. Rare where those contesting in the following days the characterization of the attacks by President George W. Bush as an "act of war" (Bush, 2001b, p. 1302) committed against civilians of more than 90 nations on United States ground. That "new kind of war" (Bush, 2001c, p. 1305) was, the President warned Americans, unlikely to end anytime soon with a "swift conclusion" as has been the case in the war against Iraq in 1990-1991 or without suffering casualty as has been the case in the air campaign of Kosovo in 1999 (Bush, 2001d, p. 1349). Also rare, were those who thought that the "war on terror" Bush then initiated was something else than a rhetorical expression utilized to prove the resolve of the United States, to rally the nation and the world against a deceitful and evil enemy, and to unite the people behind the preferred solution: war. After all, while talking the day before the attacks at the Justina Road Elementary School in Florida, Bush noted that there were "too many of our kids in America who can't read today … it's time to wage war on illiteracy" (Bush, 2001a, p. 1299).

But, once the word "war" has been used and repeated *ad nauseam*, and once the source of the attacks was identified as "terrorists" and condemned as "evil" (Bush, 2001d, p. 1348), the narrative of the "war on terror" grounded events in a common story that provided unambiguous significance to those circumstances and experiences Americans were facing and, in addition, help produce its reality-making effect. Beyond any quarrel about political metaphor or legal semantic, the rhetoric of the war on terror ceases to be merely rhetorical and resonated within the media organizations reporting continuously on terrorism-related matters and trading on a general sentiment of fear and anxiety which would have a critical impact on the public's perception. Thus framed, that narrative operated to legitimize and normalize the "inevitable and irresistible pressure to use military force as soon, and as decisively, as possible" (Howard, 2002, p. 10).

Yet, as Ian Clark reminds us, what is or is not considered as a war is crucial: "when we wage war, we engage not only in physical relations of violence, but also necessarily in conceptual conflicts about what is properly to be considered as war at all" (Clark, 2015, p. 1). The foremost reason being that it is this very distinction that often makes possible, and legitimize, the differentiation between use of force that is justifiable or not, between the justified killing of enemy soldiers or even (in some circumstances) civilians, and the unjustified killing of an innocent person that would in any other circumstances be considered a wrongdoing[3]. Differing from peacetime where killing is forbidden except in very specific situations of law enforcement – situations almost never justified unless in rare cases of self-defence or if there is a pending and obvious risk of death or serious harm to innocent –, killing a legitimate target on a defined battlefield is an essential aspect of war time reality, and a real prospect for those combatants directly involved or even for non-combatants, i.e. civilians, who often get caught in it. This is the reason why rules governing the use of force during wartime have traditionally been much more permissive than those regulating peacetime policing within a well-ordered society. In a way, policing in peace time and coercive military operations in a context of war present two extremes along a continuum of unjustified and justified use of lethal force. Nonetheless, if this distinction between war and peace may have been thought easy to make in the past, this has radically changed in the last decades. It as become more difficult to see the line separating peace from the fog of war and to cut the Gordian knot in determining what could counts (or not) as war and, therefore, which rules or guidelines should then apply depending on the situation.

The boundary between peace and war, between zones of peace where non coercive rules normally apply and zones of war where fighting is generally organised and intense and where more permissive use of coercive and lethal force is possible, is blurring and somehow

3. We will not discuss in this chapter the contestation of this distinction, dear to traditionalists, between what counts or not as war by a significant group of revisionist just war theorists that refuse to concede any "moral" relevance to it and reject the possibility that there should be a "exceptional" morality in war distinct from the one governing ordinary life since what matters, both in war and in peace, are the same logic that only the individual (combatant) liability should determine who could harmed or not in the context of *in bello*, and that determination is directly linked to its participation in a just or an unjust war (*ad bellum*), only the latter being liable thus losing its right as unjust combatant (see Frowe, 2014; McMahan, 2009; Rodin, 2002).

merging at the same time[4]. How are we, for instance in the context of the war on terror, to appreciate "signature" or "personality" drone strikes remotely launched by a state outside of an area of active hostilities to retaliate against suspected members of a terrorist group? What about limited air strikes, precision bombing of terrorist targets, extraterritorial deployment of special forces or even no-fly zones to name just a few uses of force short of war with potentially lethal consequences. These have been at the forefront of counterterrorist strategies initiated by the United States in the war on terror and undoubtedly the focal point of the contemporary blurring of the line between peace and war[5]. The consequence of which being that the prominent just war perspectives since Cicero that granted a stern distinction between peace and war seems to be badly adaptable to the realities of violence and warfare in the twenty-first century.

Our aim in this chapter is to explore the effects of that blurring on the just war tradition and to assess the renewed ethical reflections on the use of force short of war framework (otherwise branded as *jus ad vim*) that has been developed in recent years to fill in the space thus created. This chapter is in two parts. Focusing on the innovative and philosophically sophisticated work of Daniel Brunstetter who has been at the forefront of this development in recent years, the first part will provide an overview of its main argument. Mostly focusing on its greater permissiveness and specifically on those risks associated with lowering the threshold of the use of potentially lethal force, the second part will assess some of the controversies *jus ad vim* has raised and explore issues of concern resulting from this ethical innovation. For instance, is this greater permissiveness in the face of contemporary threats really justified by the inadequacy of the traditional categories of just war? Could this greater permissiveness rather enhance the probability of comforting states – especially powerful

4. Even though we will concentrate on the international side of that condition in this chapter, we should not underestimate or disregard the domestic side of that blurring and the enormous transformations that the law enforcement paradigm has itself been experiencing almost everywhere in the last decades while police force became more militarized and uses counterinsurgency strategies that merge the line between peace and war, but on national territory (See Harcourt, 2018; Miller, 2016; Schrader, 2019).
5. That line – the use of coercive military force for other reasons than fighting a conventional war – has been blurred well before the war on terror, for instance in the last decades in context of military interventions understood as a kind of international law enforcement by liberal states launched for humanitarian reasons or civilian protection that, in some instance, would require using coercive measures and possibly lethal force. Historically, international law's doctrine would speak of "*acts* of war taking place during a *state* of peace". These acts were then conceived as "measures of law enforcement" (Neff, 2005, p. 216). Neff added that those acts – for instance intervention to promote the general international community interest, self-help acts of reprisal involving coercive measures, action of self-defence, rescue missions or punitive expeditions – "were…, in essence, the nineteenth century version of just war" (Neff, 2005, p. 216).

states, but smaller states can also get the idea – in their intimidating actions while reducing the burden of proof required by such short of war alternatives? Wondering if, regardless of its intent, the ethics of *jus ad vim* might not be leading down a slippery slope, I will reflect on the possibility that providing a just use of limited force could vindicate the enduring of violence in international affairs.

The Urge for Limited Force

In the 2006 Preface to the fourth edition of *Just and Unjust War*, Michael Walzer advanced the need to "supplement" the restrictive perspective associated to just war thinking with one more open and better tailored to the just use of "force short of war". For Walzer, the traditional or classical just war perspective was no longer entirely appropriate to assess those complex situations and discrete military operations connected to the war on terror and the in-between space thus created which exist "in darkness" between war and peace and "outside the moral and legal conventions of ordinary warfare" (Walzer, 2007, pp. 482, 484). In those situations where there may be no real need for a large-scale and sustained military operation, the selective use of force short of war has become, Walzer argued, a somber option to avoid an open-ended war while sidestepping in doing so the prospect of "unpredictable and often catastrophic consequences" that often come with war (Walzer, 2006, p. xiv).

Hence, Walzer defended the perspective of a limited use of force as an alternative solution initiated before war, and thus when and if there could still exist some hope that a war could be avoided. While some of the measures considered were according to international law "acts of war", for instance bombing radars or striking anti-aircraft systems, Walzer nevertheless reasoned that it was "common sense to recognize that they are very different from actual warfare" (Walzer, 2006, p. xiv) and should be seen as "preferable to war itself whenever they hold out the hope of similar or nearly similar effectiveness" (Walzer, 2006, p. 85). What perspective those measures short of war require, Walzer suggests, is an extended argument beyond *jus ad bellum* – what he then terms *jus ad vim* – which should not be "overly tolerant or permissive" but could "certainly be more permissive than the theory of just and unjust war" (Walzer, 2006, p. xv).

In recent years, various thinkers have embraced the task of understanding (and gauging) the ethical challenge posed by the contemporary use of limited force short of war. Following in the footsteps of Walzer while remaining true to just war historical practice of interpreting and re-interpreting ideas, insights, and judgments, while emphasizing new experiences and circumstances, Daniel Brunstetter has been at the forefront of these efforts to develop a substantive ethical argument, a specific lexicon as well as guiding maxims "to talk about limited force and the ethical concerns surrounding its use" (Brunstetter, 2021, p. 14)[6]. For Brunstetter, the war on terror generated political ambiguities and ethical hesitations that somehow put contemporary just war theorizing off guard.

The expansion of zones of turmoil where official authorities don't have the full control of the territory nor the monopoly on the use of force has restricted the capacity, and coercive tools at their disposal to enforce local law and pursue regular policing tasks. What seems to be working in those disordered situations where peace is non-existent and domestic order is brutally contested, is the use of militarized and often lethal yet limited force – for instance highly trained special forces, often of foreign provenance – to get what the domestic law enforcement tools and rules of engagement (including the procedure of criminal law as well as the obligations and duties of human rights law) cannot offer, that is the neutralisation of the source of threats and the re-establishment of a modicum of order able to ensure the containment of further threats while circumventing the risk of getting caught up in the quicksand of war. If these types of military operations where force is used on a limited but nevertheless regular basis without full-scale war being considered are clearly not of law enforcement and policing character, does that mean that just war principles should therefore apply? Probably not would argue advocates of the use of limited force since what is sought after is not really peace or justice, both remaining elusive in the context of the war on terror, but some limited forms of circumscribed peace and semblance of justice, that merely look like re-establishing order, containing threats, or preventing further violence from wrongdoers.

Take for instance Afghanistan, before and after 9/11. Two weeks after the August 7, 1998, al-Qaeda suicide bombings of American embassies in Nairobi in Kenya and Dar es Salam in Tanzania where 224 persons (including 12 Americans) were killed, the United

6. Originally, Brunstetter was working with Megan Braun (Brunstetter and Braun, 2011; 2013).

States considered various options but soon eliminated the idea of launching a war on Afghan territory. The chosen approach – Operation Infinite Reach – was to use limited force and strike with cruise missiles a pharmaceutical factory in Khartoum (Sudan) as well as an al-Qaeda training camp in Khost Province in Taliban's Afghanistan. Hoping to effectively show their resolve and deter further attacks, the United States also positioned Navy ships and submarines along the North Arabian Sea able to launch additional strikes if precise information about al-Qaeda were obtained or opportunities presented themselves.

That was before 9/11 attacks. After these events, another story emerged. In a public 4 200 words letter entitled "What We Are Fighting For: A Letter form America" that was circulated on February 13, 2002, more than 60 signatories' scholars, several of them being just war luminaries, recognized that if:

> … all war is terrible, representative finally of human political failure … reason and careful moral reflection also teach us that there are times when the first and most important reply to evil is to stop it. There are times when waging war is not only morally permitted, but morally necessary, as a response to calamitous acts of violence, hatred, and injustice. This is one of those times… with one voice we say solemnly that it is crucial for our nation and its allies to win this war (Blankenhorn et al., 2002).

And thus, just war thinking triumphed. Writing during that period, Michael Walzer, who was one of the signatories, concluded on this note that with Afghanistan, "[m]oral theory has been incorporated into war-making as a real constraint on when and how wars are fought" (Walzer, 2002, p. 933).

The triumph was of short duration though. In 2009, a somewhat more disillusioned Walzer wrote that "the decision to go to war [in Afghanistan in 2001] was right, but after that the Bush administration did everything wrong" (Walzer, 2009). Triggering the war in Iraq is the obvious case of having made a wrong decision here. After years of measures short of war following the Persian Gulf War in 1991 – first a protective no-fly zone (Operation Provide Comfort), next coercive no-fly zones (Operations Southern Watch and Northern Watch) and finally several limited strikes that lead to the December 1998 days of bombing (Operation Desert Strike) – the US administration chose instead to push further and, with the intention to undertake regime change and oust Saddam Hussein, escalated to a full-scale war in March 2003. It is in this context that the possibility of limited force might

offer itself as a real alternative to war. Days before the Iraq invasion, Walzer expressed his skepticism about how things were going and wrote in a *New York Times*'s opinion piece "the way to avoid a big war is to intensify the little war that the United State is already fighting" (Walzer 2003). These little wars – Walzer referred to the enforcement regime in Iraq between 1991 and 2003 – correspond to what he would later describe as *jus ad vim* measures without however developing further the idea.

If the logic was to resist the temptation to significantly broaden *jus ad bellum* to whatever preventive aims overconfident agents decide to pursue or to lesser the condition under which war could be justified, and therefore to avoid vindicating a pointless "big war", the same logic should also imply the necessity to limit for good or ill the objective to what would indeed be achievable by a "little war". In the geopolitical context of the war on terror, using lethal force while trying to avoid war, surely means that sustaining or pursuing a genuine justice and creating or restoring a palpable peace, which are predominantly presented as the primary and correlated worth of the just war tradition (Johnson, 2006, p. 194), would not be easily within reach. Political ambitions must be scaled down, the ostensible need to use lethal force outside zones of active hostilities must be better thought through, and consequently suitable ethical standards need to be devised and recalibrated for these use of limited force situations that have arguably been under-theorized in contemporary just war thinking, even though state leaders have resorted to limited force and speak in the language of limited force.

This is the reason why, instead of reasoning linearly first on the just use of limited force (*ad vim*), then on the just conduct of limited force (*in vi*), and finally on the ends aimed at using limited force (*post vim*), Brunstetter's reverses the typical mode of just war thinking and instead of debating first the just use of limited force rather begins by pondering what is it that a state or a committed international collective is looking for and seeks to accomplish while using limited force and in somehow willingly resisting the pull toward a full-scale war? That question of *post vim* comes first and needs to be answered before being able to judge of the justification for its use (*vim*) and of its conduct (*vi*) since the answer may very well impact the way we will then determine and decide "when and how limited force should be wielded" (Brunstetter, 2021, p. 96). For instance, victory – usually understood as the possibility and the capacity for the winner of a war to impose his will on the loser – is linked in just war tradition to the winner's responsibility to provide a lasting peace and an

enduring justice after the war. Ultimately, as in the case of Germany and Japan after their defeats in 1945, the winner's responsibility could even go as far as regime change and the bottom-up reconstruction of the state that has been defeated. To the contrary, resisting the temptation to solve everything while using limited force implies that responsibility will be limited to what was initially sought after.

Therefore, Brunstetter argues that what limited force may accomplish would at best be some sort of truncated victory. A victory that would not pretend being conclusive in bringing peace and justice, but that may possibly provide positive outcomes and therefore be contemplated as ethically valuable. Hence, what is rather intended in using limited force – be it armed drones or commando – is re-establishing a minimalist view of order as well as containing imminent or ongoing evils. Used with the incentive to re-establish a minimalist view of order, the aim of limited force should then be to "help states regain control over their territory and restore political rule" (Brunstetter, 2021, p. 102). Used with the incentive to contain, dissuade, and sometimes punish malevolent regimes or war-like groups that acted aggressively or murderously, the purpose of limited force should this time be to establish a "stable status quo" and "prevent renewed outbreaks of violence" (Brunstetter, 2021, pp. 112-113).

In both cases, the expectation is that once the threat has been removed, the steadier situation created could, in conjunction with further support from the international community, pave the way for diplomatic mediation of conflict and, at some point in the future, conciliation and dialogue about solidifying and securing a more stable order and reinforcing the prospects of a future peace. This is the ethical trade-off of a truncated victory that should be assumed if those using limited force do not want to be trapped downstream in a complex situation while trying to impose, by means of a full-scale "ethical war", their own "liberal" views about the value, meaning and implication of pursuing peace, human rights, security, and justice.

What the justified use of limited force is thus premised upon are two seminal maxims: on the one hand, a "presumption against escalation" toward war and the far-reaching human costs and consequences that usually come with it; on the other, a "predisposition toward maximal restraint" in the use of force to what is necessary to achieve the limited objectives envisioned before pausing action "at the first feasible moment" (Brunstetter, 2021, p. 112). Hence, while the *ad vim* is more permissive than the *ad bellum* principles and

offers more possibilities to act on lesser threats – examples may include self-defence[7] or retributive responses to terrorist attack or kidnapping of citizens, preventive initiatives aimed at reducing the security threats posed by antagonist groups or states, or to protect vulnerable populations subjects to imminent or enduring mass violence[8] – the "presumption against escalation" is an essential part of the calculation of *ad vim* proportionality[9]. In addition, the "predisposition towards maximal restraint" is more restrictive than the *in bello*'s proportionality and discrimination counterparts and limits even more the "latitude to kill (both enemy soldiers by intent and civilians without intent) or to destroy enemy infrastructure" (Brunstetter, 2021, p. 202). To be liable to, and therefore to be susceptible of becoming a legitimate target in a situation of limited force, someone – i.e., a combatant, not a civilian, even though it would sometime be difficult to tell the difference – must be guilty of some harm or wrong or represent an active threat or a looming one.

Considering that the truncated victory expected from the use of limited force "can be a viable course to follow" (Brunstetter, 2021, p. 139) and given that the guiding principles of limited force remain the re-establishment of order and the containment or prevention of further violence instead of "winning" a war, limited use of force should not be understood, as the just war tradition usually argued, as some *ad bellum*'s last resort option that might possibly escalate toward war in case of failure. In fact, there is no *ad bellum*'s last resort logic in these *ad vim* scripts. On the contrary, limited force should be interpreted as a truly distinct and independent approach motivated by *ad vim* considerations. What is being expected is really nothing more than an improved situation although the condition on the ground may not be entirely resolved and even if the same actors whose wrongful acts prompted the forceful measures could still be in place. Therefore, Brunstetter argues that the use of limited force should be considered categorically distinct from war and maintaining the

7. Brunstetter makes the argument that since self-defence use of limited force by a state is not usually oriented toward finding a solution, it tends to be unilateral and risk becoming recurrent (Brunstetter, 2021, p. 161).
8. Other examples are worth mentioning. For instance, preemptive strikes to deter states from acquiring weapons of mass destruction, or retaliation and reprisal as a response to a prior use of force short of war. In both cases, though, the risk of escalation could be too great to justify the use of limited force, especially since the probability of success may also be quite low, and the result disproportionate.
9. This obviously assumes that the threat of escalation wouldn't itself be use as a coercive tactic. Otherwise, presumption against escalation couldn't represent a "distinct" ethical principle (Lupton and Morkevičius, 2019, p. 52; see also Reichberg and Syse, 2018).

independence of *ad vim* process in relation to the last resort options of *ad bellum* remains crucial and ethically significant.

The point here is less to make a judgment about the relevance of using force *per se*, but to determine what kind and level of force – or quantum of violence – would be required to achieve the limited objectives envisioned if they do not justify crossing the Rubicon and going to war "with all the costs and unpredictability it entails" but nevertheless warrant some limited and proportional intentional killing, injuries, and destruction (Brunstetter, 2021, p. 140). If the prospect of using limited force command a broad international support from states, and the probability of success is large while including a minimal risk of increasing the probability that violent conflict can burst from its use and lead to an all-out war, then assuming those limited objectives are worth pursuing and other non-violent measures of law enforcement have also been previously considered, limited force might become a reasonable and ethically justified option for a state or a committed collective which is not at war.

According to Brunstetter, the lexicon of limited force corresponds to an emergent ethical language used to discuss various aspects and purposes of the contemporary turn toward using measures short of war with more discernment and nuanced arguments. However, while not being employed during time of war strictly speaking – neither during a rightly ordered state of peace when measures of law enforcement would be effective – the use of limited force nevertheless implies acts of violence with destructive and deadly effects along the way. Although the intention is to minimalize these effects, some innocent individuals in the vicinity as well as communities will be endangered and for sure would still suffer the incidental so-called "collateral" harms and wrongs of these limited acts of violence, whether they are physical or psychological, direct or indirect, immediate or much later in time.

Lasting Smaller-Scale Violence

The *ad vim* framework for the use of limited force is often presented as a pragmatic compromise motivated by the need to realistically address peace and security concerns in international relations and the perceived ethical voids of contemporary just war frameworks

trapped in an either "we are in peace" or "we are at war" dilemmas. For Brunstetter, in the current state of international relations, there exist more cases for a just use of limited force than there are for full-scale war. Even though there may be very good reasons to be cautious in opening the door to the justified use of limited force, what could also be problematic in a world where its use is rampant argued Brunstetter, would be "the lack of moral engagement with limited force" (Brunstetter, 2021, p. 19).

Just war tradition has long recognized the justified use of force as a way for the good to combat and triumph over a culpable wrongdoer. Of course, war is inherently and almost always morally scandalous. Yet, in some circumstances, the possibility exists that using coercive and deadly force could indeed contribute to achieve and secure some positive goods that would counterbalance for the harms and wrongs being done. Hence, using force in response to a grave state of injustice could be justified if the harms and wrongs it would then avert is larger than the foreseeable damage inflicted by such use of force, and if there is likely no better (or for that matter possible) way to achieve the good.

In the context of limited force, that judgment would be slightly different since the positive goods that are sought are themselves much more limited and, consequently, the forceful measures deployed against a significant source of threat will also be circumscribed to its neutralization and/or containment. However, since the constraints on military operations are greater, the harms and wrongs caused by such use of limited force should in some way be less important than those a war might produce, and the restricted necessity would in theory work to reinforce a prudential and precautionary approach. Therefore, the facts remains that the causes (and the supporting evidence) that could justify the use of limited force in *ad vim* are more permissive than they are in *ad bellum* and, considering that epistemic uncertainties concerning threat credibility could be significant, might also be much trickier to adjudicate for the state decisionmakers or, adding the lack of transparency, for members of a committed collective.

Critics of the *ad vim* framework argue that this greater permissiveness for using what remains lethal force and, in doing so, lowering the threshold of last resort further from what conventional just war thinking contemplate may not be warranted. Part of the problem has to do with the fact that the *ad vim* framework falls short of being able to pinpoint the "*essential* difference" between the use of limited force short of war and "war on a small scale or of short duration" (Enemark, 2022, p. 310). Defined in "negative and relative" terms as

the "absence of war", and remaining "too vague in general" since it "equate the amount of violence with its essence", and therefore "susceptible to conceptual contestation" where one side talk of limited force while the other is indeed experiencing war-like violence, the *ad vim* framework appears to be useless as a middle ground foundation between the constraints of law enforcement and the greater license of just war criteria, and upon which an ethical judgment and a political decision to use force would be made (Enemark, 2022, p. 310). That is especially the case since the impossibility of enforcing the law in relations to a security threat – for instance if the jurisdiction is disorderly or if, for one reason or another, the local authorities are not collaborating – should "not automatically" make that security threat a "legitimate targets for lethal force" (Kaplan, 2019, p. 233).

Speaking from the perspective of "reductive individualism" – which assume that there exist only one set of ethical principles governing violent actions both in war and in peace, and reject the idea that there exist some special ethical circumstances for situations of war (for instance, special rights and privileges to the combatants on both side) – but without however openly relying on that stance to make her argument, Helen Frowe questions whether the analytical confusion surrounding the outlook of *ad vim* is not directly linked to the "unwarranted weight" that Brunstetter (Brunstetter and Braun, 2013) puts "on whether something counts as war" (Frowe, 2016, p. 122). For instance, Frowe believes that the presumption against escalation to avert a larger war is not really a new criterion of *ad vim*, but already a crucial aspect of the assessment of proportionality in *ad bellum* framework (2016, p. 122; see also Kaplan, 2029, p. 231). For Frowe, the point is not to declare that using limited force in a way that is likely to escalade to war would not be justifiable under *ad vim*, but to clarify what circumstances and what stakes could warrant and justify the risk of "escalading beyond a certain amount of harm". Someone "may do more to prevent genocide than … the damming of an important river … but this does not mean that there is one proportionality condition that applies to genocide, and another that applies … to the damming of river" (Frowe, 2016, p. 125). So, Frowe maintains, the practical judgment someone must make should not be altered "by whether the force to which we might escalate counts as war" (Frowe, 2016, p. 124). She then concludes that the concept of *ad vim* is consequently redundant since "[d]enying that violence becomes more easily justifiable during war … solves the problem of deciding whether a use of force should be judged by *ad vim* or *ad bellum* principles" (Frowe, 2016, p. 123).

Whether this conclusion solves the problem or on the contrary somehow simply dissolves it by throwing the baby out with the bathwater, that is "defining what exactly war is (and, consequently, which rules apply)" (Brunstetter, 2016, p. 132), the fact and the problem remains that contemporary violence and the use of limited force raises "ethical quandaries" that should not escape just war thinking, its judgment and the principles on which they are built (Brunstetter, 2021, p. 71). This is also arguably the conclusion of Christian Nikolaus Braun which, applying a Thomistic perspective on limited force, conclude first that as an independent middle way framework Brunstetter's concept of *ad vim* is "redundant" and do not really add any ethical "meaning" to the *ad bellum* framework as it already exists (Braun, 2023, p. 6). Yet, added Braun, the practical ethical problem posed by the regulation of contemporary use of force short of war by one state within the territory of another still needs some answers that the just war traditions – whether it is in its traditional (Walzerian/Brunstetterian) or revisionist (Frowe) variants – do not provide in a satisfactory manner.

Considering that the use of force always involves causing, purposely or inadvertently, harms and wrongs, C.A.J. Coady does not think that this greater permissiveness and lowering of the threshold of last resort is warranted. Even when the use of force is of a limited character and could ethically appear "less troubling than war" (Coady, 2008, p. 7), it still falls under the category of political violence and should not relieve us from the necessity to make "serious efforts" to find some non-violent and less damaging solutions to the situation (Coady, 2008, p. 91). Therefore, argues Coady, it would be a critical mistake to think that the decision to use limited force could be "easier to justify than war" (Coady, 2008, p. 7). It should on the contrary even more require something like a "genuinely reluctant resort" (Coady, 2008, p. 91), especially since these acts of limited force are conducted outside any official battlefield and the target may not be able "to fight back" (Coady, 2008, p. 6). For Coady, opting for limited force under the pretext that it should normally have a lower level of destruction while involving less harms and wrongs, might encourage more indiscriminate violence, antagonizing those who will suffer the consequences of limited force since it is unlikely that they will find that "limited" force justified, and creating a dangerous and tempting precedent for the recourse to force, thus making it easier for other states or non-state actors who might follow suit. Ultimately, the

principal concern here is that, despite the presumption against escalation, the use of limited force could "prepare the ground" for a wider war (Coady, 2008, p. 7).

Violence is instrumental by nature. Its very substance, wrote Hannah Arendt in *On Violence*, "is ruled by the means-end category". But, precisely because of this, its end is always "in danger of being overwhelmed by the means which it justifies and which are needed to reach it". Therefore, adds Arendt, "the means used to achieve political goals are more often than not of greater relevance to the future world than the intended goals" (Arendt, 1970, p. 4). In the current murky state of international relations where war and peace are not always as distinguishable as some would like and where the threats to international peace and security are frequently more diffuse and varied than they were in the previous century, framework developed with the intent of making the use of force more permissible "run the very real risk – even when its advocates are unambiguously of good intent – of creating a situation where the cure is worse than the disease" (Rengger, 2013, p. 295).

This is even more true since the use of limited force is often not an isolated one-off act. Certainly since 9/11 and the war on terror, the use of these measures short of war has in many ways become an established and almost institutionalized practice. In those circumstances, independently assessing the ethical *pro and con* of justifying the use of limited force in a distinct situation cannot be strictly done on a case-by-case specific basis since it obscures the fact that limited force is already used quite regularly and that cases are neither random nor usually disconnected from one another. Therefore, it can be difficult to distinguish when one is merely participating in acts of limited force or when one has slowly slipped toward some wider war-like conditions, especially when most war are nowadays not declared, while peace is at its best ambiguous, and the actual likelihood of being exposed and vulnerable to violence, harmed, and wronged by it, is almost always one sided rather than reciprocal. Henceforth, since the war of terror has given states considerable leeway in the way they decide to use limited force, against whom and for what purposes, the evaluation of the risk of escalation as well as the probability of success for a particular case should probably be done with a view of the larger context of engagement. As one researcher recently argued this larger context of the contemporary use of limited force clearly points toward "a broader pattern that already has escalated … to a prolonged and apparently unending cycle of smaller-scales military violence" (Kaplan, 2019, p. 232).

It is difficult therefore not to conclude that the use of limited force in the circumstances of the war on terror led to a lasting period of recurring violence with no clear end in sight. A period that additionally open-up a contact zone that is not so much between peace and war but somehow "transcend" that difference (Enemark, 2014, p. 379). As if what was happening were the vanishing of the battlefield as a geographically "recognizable and thus legally regulated space" of active hostilities (Mégret, 2011). What could thus be missing in *ad vim* narrow framework is the importance of a similar maxim to the one aimed at the risk of escalation to a fully-fledged war, but this time leveled toward the looming peril of protracted use of limited force and, as a result, directed at the prospect of enduring acts of violence, though each act may appear disconnected from others and falling "short of any reasonable definition of war" (Lupton and Morkevičius, 2019, p. 49).

In the context of the use of drones, Enemark has drawn attention to the possibility of being led into a regime of perpetual force – *vis perpetua* – that does not as such describe "a matter of fact" but rather point toward "an actor's intent to sustain (perpetuate) the use of [limited] force in a way that is temporally unlimited" (2014, p. 374). Hence, a situation of deliberate and constant acts of violence short of war, even if each one of them may be separately justified on *ad vim*'s punitive, preventive or self-defence ground, could undoubtedly undermine, contra Brunstetter, the *post vim* expectations that framed the impetus for limited force in the first place while neglecting considerations for a long-term solution and the establishment of concrete conditions for sustainable peace and justice to progress.

From an ethical standpoint, the significance of such a scheme of perpetual force dwell in the way the possible use of force short of war and largely beyond the realm of law offers states an management tool – incidentally reminiscent of past experiments of colonial schemes for the militaristic pacification of imperial spaces (Enemark, 2022) – to unilaterally address and reduce the upending danger or risk as and when they present themselves or are assumed to emerge by those using limited force while maintaining that they are not at war. All this while reducing the burden of proof required to justify using violent means and somehow implicitly rejecting on the allegedly "culpable" – be it the individual, the community, or the territorial or political entity where force is used – the responsibility of the overall continuous disruptive effects that violence produces even when the force being used seems limited. Endless, this scheme of perpetual violence also reproduces the constant

endangerment of those societies affected and consequently contributes to sustaining their fragmented character while possibly generating further threats and, maybe involuntarily, smoothing the way for more limited force to be exerted upon them. With these consequences of living underneath the permanent shadow of war looming over their heads, limited force might therefore also appear disproportionate. Without a clear distinction between peace and war, it is difficult to see how a truly reciprocal peace, not a curtailed peace based on the stronger capacity to unilaterally resort to force as he alone saw fit, can be cultivated.

Conclusion

The ethical norms surrounding the use of limited force witnesses the ideas, representations, and values that define the current phase of international affairs. With the war on terror, the circumstances have indeed changed, and the world has moved, both domestically and internationally, from a judicial model to a martial model simultaneously dragging behind it tensions and challenges between principle and practice that take a significant part in pressuring the just war tradition while alongside undermining "the balance between (often competing) ethical, legal and political priorities" (Clark, 2017, p. 328). Brunstetter's *Jus ad vim* has been in the middle of that development. Not only as a "metaphorical front" of just war contemporary controversies opposing various schools of thought (Braun, 2023, p. 9), but also because it represents a genuine and thoroughly effort to carefully engage the non-metaphorical imbalance between ethical, legal, and political considerations stirred by the use of limited force in the last decades.

Concerns nevertheless remains that the *ad vim* framework could have perhaps open the door too extensively for its own good. Is the use of limited force a true symptom of the purportedly changing character of war (or of violence) commanding the need to think outside of existing categories to really make sense of it? And, if so, does this necessarily require a whole new in-intermediate framework entirely distinct and independent from both the just war and the law enforcement frameworks? The argument for *jus ad vim* rests almost entirely on a distinction between peace, war and not war that lies in turn almost entirely on the lesser degree of force being used which, in the end, would justify using limited means

when a full-blown war seems unjustified. Yet, after more than two decades of the war on terror during which limited force have regularly been at the foreground, it is hard not to contemplate the possibility that the greater permissiveness this argument allow would have also contributed to this scheme of perpetual violence that imposed itself.

Bibliography

Arendt, H. (1970). *On Violence*, New York: Harcourt Brace Jovanovich, Pub.

Blankenhorn, D. et al. (2002). "What We Are Fighting For: A Letter form America". (2002). Ney York: Institute for American Value, February 13. https://avalon.law.yale.edu/sept11/letter_002.asp#:~:text=Your%20human%20dignity%2C%20no%20less,we%20must%20not%20be%20enemies (page accessed on June 28, 2023).

Braun, C.N. (2023). *Limited Force and the Fight for the Just War Tradition*, Washington, D.C.: Georgetown University Press.

Brunstetter, D. (2016). "*Jus ad Vim*: A Rejoinder to Helen Frowe", *Ethics & International Affairs*, Vol. 30, No. 1, pp. 131-136.

Brunstetter, D. (2021). *Just and Unjust Uses of Limited Force. A Moral Argument with Contemporary Illustrations*, Oxford: Oxford University Press.

Brunstetter, D., and Braun, M. (2011). "The Implications of Drones on the Just War Tradition", *Ethics & International Affairs,* Vol. *25*, No. 3, pp. 337-358

Brunstetter, D., and Braun, M. (2013). "From Jus ad Bellum to Jus ad Vim: Recalibrating Our Understanding of the Moral Use of Force", *Ethics & International Affairs*, Vol. 27, No. 1, pp. 87-106.

Bush, G.W. (2001a). "Remarks in a Leadership Forum in Jacksonville, Florida", *Weekly Compilation of Presidential Documents*, Vol. 37, No. 37, (September 10), pp. 1297-1300 (page accessed on August 10, 2023).

Bush, G.W. (2001b). "Remarks Following a Meeting with the National Security Team", *Weekly Compilation of Presidential Documents*, Vol. 37, No. 37, (September 12), p. 1302 (page accessed on August 10, 2023).

Bush, G.W. (2001c). "Remarks in a Telephone Conversation With New York City Mayor Rudolph Giuliani and New York Governor George Pataki and an Exchange with Reporters", *Weekly Compilation of Presidential Documents*, Vol. 37, No. 37, (September 13), pp. 1304-1308 (page accessed on August 10, 2023).

Bush, G.W. (2001d). "Address Before a Joint Session of the Congress on the United States Response to the Terrorist Attacks of September 11", *Weekly Compilation of Presidential Documents*, Vol. 37, No. 38, (September 20), pp. 1347-1351 (page accessed on August 10, 2023).

Clark, I. (2015). *Waging War: A New Philosophical Introduction*, 2nd edn., Oxford: Oxford University Press.

Clark, I. (2017). "Taking 'Justness' Seriously in Just War: Who Are the 'Miserable Comforters' Now?", *International Affairs*, Vol. 93, No. 2, pp. 327-341.

Coady, C.A.J. (2008). *Morality and Political Violence*, Cambridge: Cambridge University Press.

Enemark, C. (2014). "Drones, Risk, and Perpetual Force", *Ethics & International Affairs*, Vol. 28, No. 2, pp. 365-381.

Enemark, C. (2022). "The Enduring Problem of 'Gray' Zone Violence", *European Journal of International Security*, Vol. 7, No. 3, pp. 304-321.
Franck, T.M. (1970). "Who Killed Article 2(4)? or: Changing Norms Governing the Use of Force by States", *American Journal of International Law*, Vol. 64, No. 5, pp. 809-837.
Frowe, H. (2014). *Defensive Killing*, Oxford: Oxford University Press.
Frowe, H. (2016). "On the Redundancy of *Jus ad Vim*: A Response to Daniel Brunstetter and Megan Braun". *Ethics & International Affairs*, Vol. 30, No. 1, pp. 117-129.
Harcourt, B.E. (2018). *The Counterrevolution. How Our Government Went to War Against Its Own Citizens*, New York: Basic Books.
Howard, M. (2002). "What's in a Name? How to Fight Terrorism", *Foreign Affairs*, Vol. 81, no. 1, pp. 8-13.
Johnson, J.T. (2006). "The Just War Idea: The State of the Question". *Social Philosophy and Policy*, Vol. 23, No. 1, pp. 167-195.
Kaplan, S. (2019). "Are Novel Jus ad vim Principles Needed to Judge Military Measures Short of War?". In J. Galliot (Ed.), *Force Short of War in Modern Conflict: Jus ad Vim*, Edinburgh: Edinburgh University Press, pp. 213-237.
Lupton, D., and V. Morkevičius (2019). "The Fog of War: Violence, Coercion and Jus ad vim". In J. Galliot (Ed.), *Force Short of War in Modern Conflict: Jus ad Vim*, Edinburgh: Edinburgh University Press, pp. 36-56.
McMahan, J. (2009). *Killing in War*, Oxford: Oxford University Press.
Mégret, F. (2011). "War and the Vanishing Battlefield", *Loyola University Chicago International Law Review*, Vol. 9, No. 1, pp. 131-155.
Miller, S. (2016). *Shooting to Kill: The Ethics of Police and Military Use of Lethal Force*, Oxford: Oxford University Press.
Neff, S.C. (2005). *War and the Law of Nations. A General History*, Cambridge: Cambridge University Press.
Ramsey, P. (1968). *The Just War: Force and Political Responsibility*, New York, Charles Scribner's Sons.
Reichberg, G.M. and Syse, H. (2018). "Threats and Coercive Diplomacy: An Ethical Analysis", *Ethics & International Affairs*, Vol. 32, No. 2, pp. 179-202.
Rengger, N. (2013). "The Wager Lost by Winning? On the 'Triumph' of the Just War Tradition". In J. Williams, C. O'Driscoll, and A.F. Lang (Eds.), *Just War: Authority, Tradition, and Practice*, Washington, D.C.: Georgetown University Press, pp. 283-298.
Ripstein, A. (2021). *Rules for Wrongdoers. Law, Morality, War*, Oxford: Oxford University Press.
Rodin, D. (2002). *War and Self-Defense*, Oxford: Oxford University Press.
Schrader, S. (2019). *Badges without Borders: How Global Counterinsurgency Transformed American Policing*, Berkeley: University of California Press
Walzer, M. (2002). "The Triumph of Just War Theory (and the Dangers of Success)", *Social Justice*, Vol. 69, No. 4, pp. 925-944.
Walzer, M. (2003). "What a Little War in Iraq Could Do", *The New York Times*, March 7. https://www.nytimes.com/2003/03/07/opinion/what-a-little-war-in-iraq-could-do.html (page accessed on June 29, 2023).
Walzer, M. (2006). *Just and Unjust Wars: A Moral Argument with Historical Illustrations* [1977], 4th ed., New York: Basic Books.
Walzer, M. (2007). "On Fighting Terrorism Justly", *International Relations*, Vol. 21, No. 4, pp. 480-484.

Walzer, M. (2009). "Is Obama's War in Afghanistan Just?", Dissent, December 3. https://www.dissentmagazine.org/online_articles/is-obamas-war-in-afghanistan-just (page accessed on June 28, 2023).