The Ethics Of Unwinnable War

Dominic Tierney
Swarthmore College, dtierne1@swarthmore.edu

8

The Ethics of Unwinnable War

Dominic Tierney

INTRODUCTION

By 2004, the Iraq War had become unwinnable. Iraq had descended into sustained civil conflict, involving rival sectarian militias. Al Qaeda in Iraq targeted US and Iraqi security forces, Shiites, and the United Nations. In April 2004, the Abu Ghraib scandal revealed systematic American mistreatment of prisoners, eroding the legitimacy of the campaign. Given the worsening security conditions, there was no plausible path for Washington to create a stable Iraq at a sufficiently low cost to count as victory. The United States began a tortuous journey to extricate itself from a quagmire, involving the initial 'leave-to-win' policy that only worsened Iraq's strife, the surge of US troops in 2007 that helped to create fragile stability, the exit of US soldiers in 2011, and the invasion of Iraq by ISIS in 2014, which triggered the reinsertion of thousands of American ground personnel.

For the United States, the Iraq War was a traumatic experience, but unfortunately, not an unusual one. The campaign is part of a string of unwinnable wars since World War II, including Korea, Vietnam, and Afghanistan. When a military campaign deteriorates, officials face both profound strategic dilemmas and stark moral challenges. How can Washington resolve a failed war in an ethical manner? For example, the fall of South Vietnam to communism in 1975 produced a wave of repression and a mass evacuation of 'boat people' from the country. But to continue the war in Vietnam in an effort to save civilians would have risked further death and injury in a futile venture. Today, should the rights of Afghan women be sacrificed in a bid to reach a deal with the Taliban and end the fighting?

One of the most useful frameworks for answering these questions is just war theory, which establishes constraints and regulations on the initiation, prosecution, and termination of war. Scholars in the just war tradition, however, usually consider scenarios where victory is still a plausible outcome and

neglect the issue of unwinnable war.[1] This chapter considers how just war theory can be adapted when a campaign turns into a quagmire. Building on arguments in my book *The Right Way to Lose a War* (Tierney 2015), we focus on the US experience of conflict since 1945. We find that the justness of war is not static but can evolve over time. An unjust war for regime change may gain a new—and just—cause to protect civilians against a terrorist enemy. To maximize justice when a campaign is in retreat, leaders should typically pursue a middle path between 'cut and run' and 'stay the course', by limiting the war aims, resisting pressure to resort to barbarism, embracing negotiations with the adversary, and seeking the best possible peace from the range of plausible alternatives.

JUST WAR THEORY

War refers to an armed contest between political communities to decide who gets to govern and how. Just war theory (JWT) is a tradition of military ethics designed to mitigate the brutality of war, which stretches back to the Sanskrit epic *The Mahabharata*. JWT is central to Catholic teaching on the morality of war, is widely taught in US and other military schools, has profoundly shaped international law (including the UN Charter, the Hague Conventions, and the Geneva Conventions), and is often invoked to defend wars. For example, the Southern Baptist Convention (2003) claimed that 'Operation Iraqi Freedom was a warranted action based upon historic principles of just war' (see also Orend 2013; Farrell 2013; Crawford 2003: 6).

JWT is usually divided into an ethical triptych.[2] *Jus ad bellum* establishes principles for when to fight wars.[3] First, there must be a just cause to protect people's rights: for example, defending against aggression or safeguarding innocent life, as opposed to using force for narrow self-aggrandizement. Second, a competent authority should initiate the war, defined as a political system that allows for just behaviour, which would exclude a brutal dictatorship. Third, there should be a high probability of success to avoid expending lives in a futile endeavour (for further discussion, see 'The Probability of Success in Just War Theory' in Chapter 9). Fourth, war should be a last resort when other avenues such as diplomacy have been exhausted. Fifth, the overall benefits of the war must be proportionate to the evil imposed, which is known

---

[1] For a very different take on the continuing relevance of the notion of victory in contemporary armed conflict, see Chapter 7 in this volume.

[2] It should be noted, however, that Daniel Brunstetter (Chapter 13 in this volume) argues for an additional category of analysis, *jus ad vim*.

[3] For a further discussion of how victory relates to *jus ad bellum*, see Patterson's 'War Aims, *jus ad bellum*, and Victory' in Chapter 7.

as macro-proportionality (Walzer 2015: ch. 4; Farrell 2013: 15–18; Murphy 2014; Statman 2008).

Jus in bello establishes principles for rightful conduct in war once hostilities have begun. First, non-combatants are immune and prisoners of war must be treated humanely. Second, when selecting targets, the anticipated collateral damage in civilian lives should be proportionate to the military benefit, and due care must be taken to limit the risks of non-combatant suffering. Third, cruel and unusual weapons of war such as mass rape are inherently unjust (Farrell 2013: 18–19).

Jus post bellum refers to creating a just post-war world, including the settlement of post-conflict issues, the ethical treatment of the defeated side, and the minimization of suffering for civilians. First, the victorious side should promptly end the war when the threatened rights have been vindicated, or the aggressor is prepared to negotiate terms of surrender with appropriate compensation. Second, punishment must be employed in a discriminate fashion against guilty leaders rather than the mass population. Third, peace terms should be proportionate to the rights violated rather than being Carthaginian in scope. In other words, the aggressor state should be demilitarized and potentially rehabilitated, rather than destroyed. The fundamental goal is not to restore the pre-war status quo: a state of affairs which, after all, triggered the original conflict. Instead, the aim is a better peace than before (see 'Victory and Just Peace in the Just War Tradition' in Chapter 12), which enhances the security of rights, empowers local people, spreads democracy, and reduces the odds of future violence (Farrell 2013: 19; Orend 2013; Walzer 2004a: 166; Rigby 2005; Patterson 2012).

JWT does not offer a precise checklist. After all, how would we know if war was truly a last resort and every alternative option had been tried? And what probability of success is required: some possibility (say, 10 per cent) or better than even odds (say, 60 per cent)? Rather, JWT can be considered as a set of overarching principles that forces actors to make the case for an ethical campaign.

UNWINNABLE WAR

As noted in the previous section, one of the key principle of *jus ad bellum* is that victory is possible. However, for the United States, clear-cut success has become a rarity in contemporary conflict, whereas quagmires have become all too frequent. How does JWT apply to an unwinnable war, or a military campaign where decisive victory is no longer a plausible outcome? Victory means achieving the state's goals with a favourable cost/benefit analysis. If the enemy's resistance proves stronger than anticipated, allies jump ship, or

domestic divisions occur, it may no longer be possible to attain the core objectives at a sufficiently low cost to count as a clear success.

Discussions of war sometimes fall into the trap of depicting the outcome of conflict in binary terms as a victory or defeat, like a sports match.[4] But the outcome of war lies on a spectrum, and there is a wide range of possible results, including decisive success, partial success, a draw, partial failure, or decisive failure. As a result, there are many different kinds of unwinnable wars. In an extreme scenario, the only possible outcome is total defeat, for example, with the German war effort in 1945. But in other unwinnable wars there may be a wider range of potential results.

Here we focus on one particular kind of unwinnable war, a campaign of limited interests that turns into a quagmire, which I term a *fiasco*. Fiascos are not wars of national survival like World War II. Instead, they are expeditionary missions involving restricted national interests. If unexpected battlefield loss occurs, achieving the main goals of the campaign may cost too much blood and treasure and reap too small a benefit. Since the war only involves limited stakes, leaders cannot keep fighting indefinitely. Although victory is not achievable, many different outcomes may still be possible, from a partial success through to a debacle. In other words, there is potentially a great deal still to play for, both strategically and morally. The difference between a draw and a debacle may equate to the lives of thousands of soldiers and civilians (for more on the fiasco concept, see Tierney 2015).

Since 1945, Washington has fought five major wars (defined as campaigns where the United States deployed over 50,000 troops and there were at least 1000 battle deaths on all sides): Korea, Vietnam, the Gulf War, Iraq, and Afghanistan. Four of those wars—Korea, Vietnam, Iraq, and Afghanistan—became fiascos. Only in the Gulf War did victory remain on the table. After World War II, the nature of war evolved from inter-state war to civil war and the US military struggled to adapt to the new environment of counter-insurgency (Tierney 2015: ch. 1).

In June 1950, communist North Korea invaded non-communist South Korea, and the United States organized an international coalition to aid Seoul under the command of General Douglas MacArthur. US-led forces pushed the North Koreans out of the South, crossed the 38th parallel into North Korea, and advanced towards the Chinese border. In October 1950, China intervened, triggering a major US battlefield defeat and forcing American and allied troops south of the 38th parallel. By the end of 1950, the war was unwinnable. Decisive success, or the overthrow of the North Korean regime at a reasonable cost, was an implausible outcome. As MacArthur put it, 'we face an entirely new war' (Stueck 2002: 93).

---

[4] The biblical presentation of victory is indicative of this approach; see 'New Directions' in Chapter 2, this volume.

A decade later, the United States suffered another fiasco in Vietnam. By 1966, decisive victory, or the creation of a secure and independent South Vietnam, could not be achieved at a reasonable cost. The United States was unable to suppress the South Vietnamese insurgents (known as the Viet Cong or the National Liberation Front), or force North Vietnamese troops to leave the South. The Communists displayed extraordinary commitment, whereas America's ally, South Vietnam, lacked legitimacy or a popular base of support (Boot 2013: 420; Berman 1989: 13–22).

More recently, the US War on Terror triggered two fiascos. In 2001, the United States overthrew the Taliban regime in Afghanistan at remarkably low cost. But Washington demonstrated only a modest commitment to build a new Afghan state, and the Taliban recovered in southern Afghanistan as well as in sanctuaries in Pakistan. By 2006, the war in Afghanistan was unwinnable. There was no credible path to defeat the insurgents at a reasonable cost. By this point, the Taliban controlled significant territory in the south, and from 2005 to 2006, Taliban armed attacks tripled from 1500 to 4500 (Jones 2010; Tomsen 2011; Malkasian 2013). Meanwhile, the United States endured a further fiasco in Iraq. By 2004, the Iraq War was unwinnable as the prospect of stabilizing the country receded into the distance. The insurgency had metastasized with multiple Sunni and Shiite rebel groups. In 2003, there were 486 US military fatalities. In 2004, this figure almost doubled to 849.[5]

How can leaders fight an unwinnable war in a just manner? JWT has tended to neglect this question. Scholars often assume that decisive victory remains a viable option on the table. In other words, leaders are told to select a war they can win, achieve victory without resorting to barbarism, and then impose a just settlement on the defeated party. As Walzer (2015: 110) says, 'A just war is one that is morally urgent to win.' The inattention to unwinnable war is surprising given America's recent history of quagmires, as well as the crucial role of the Vietnam War in triggering renewed interest in JWT (Walzer 2015: 335). This neglect may result from JWT's lack of focus on *jus post bellum* (which is particularly relevant in unwinnable wars) compared to *jus ad bellum* and *jus in bello*, as well as the wider absence of scholarship in international relations on issues of unwinnable war and conflict termination (Walzer 2015; Orend 2001; Patterson 2012; Tierney 2015).

The inattention to unwinnable war is problematic because theorists have focused on a scenario of winnable war that—for the United States at least—has recently been the exception rather than the rule. Furthermore, unwinnable wars raise significant ethical issues. Fighting a just war is problematic even when a military campaign is proceeding smoothly. But now the nation is reeling from battlefield loss and the war effort is unravelling. By definition, an

---

[5] See <http://icasualties.org>; <http://www.brookings.edu/about/centers/saban/iraq-index>.

unwinnable campaign has already violated a key tenet of just war theory: a reasonable chance of success. Furthermore, although the original goals may once have represented a just cause, these aims cannot be fully achieved at an acceptable cost. The United States may be at fault for the deteriorating campaign, for example, due to overconfidence and poor planning, and therefore could accrue a particular moral responsibility to limit the damage to civilians. At the same time, the worsening campaign means that the United States has a reduced capacity to shape outcomes. In other words, Washington has more responsibility and less influence.

How can officials end a failing war in a just manner? Which values must be sacrificed in a bid to end the war? Does Washington have an obligation to fix what it destroyed and save its friends? Or should officials be willing to abandon their allies in a bid to end a deteriorating venture?

THE JUST WAY TO LOSE

If victory is an unrealistic goal, leaders must choose a viable exit strategy to cut the nation's losses, safeguard its interests, and protect the rights of soldiers and civilians. A fiasco is not an excuse to abandon the pursuit of justice. The danger is not the kind of existential threat that might necessitate survival at any price. And a range of outcomes may still be attainable, with significant variation in the degree of justice. At the same time, the exit strategy will almost certainly involve some compromise or outright sacrifice of moral principle. Rory Stewart and Gerald Knaus (2011) draw a useful analogy between ethical goals in war and mountain rescue operations. There is a moral purpose to save a stranded climber. But this obligation must be balanced by responsibilities to the rescue party. What if the rescue mission risks further loss? An unwinnable war is like a mountain rescue mission in the midst of a mighty tempest. The rescuers need a cool-headed analysis of what can reasonably be achieved.

After a war becomes unwinnable, several JWT principles may be moot. For example, by this point in time, the question of whether or not the initiation of hostilities was a first resort or a last resort is settled. But most JWT principles remain in play, including *jus ad bellum* notions of fighting for a just cause, choosing achievable goals, and ensuring that the overall benefits of the war outweigh the costs; *jus in bellum* notions of protecting the immunity of civilians and prisoners; and *jus post bellum* notions of creating an ethical settlement. The solution is to follow a multistep process: redefining war aims, negotiating an acceptable peace, and avoiding the embrace of barbarism.

REDEFINE WAR AIMS

The key to extricating a country from an unwinnable conflict in a just manner is to redefine the goals of the war. Here, goals refer to political aims, or who rules a given territory and in what ways. According to Carl von Clausewitz (1989: 87), war is not about destruction as an end in itself, but is instead, a 'political instrument, a continuation of political intercourse, carried on with other means' (see Chapter 3 for a discussion of Clausewitz). A fiasco implies that the original objectives are unattainable at an acceptable price in blood and treasure and must be rethought. There will be no triumphant peace. There will be no surrender ceremony. There will be no war termination based on occupying and rehabilitating a prostrate adversary.

The JWT principle that victory must be achievable might imply that an unwinnable war is inherently unjust and should be concluded immediately. But in a fiasco, cutting and running is rarely an ethical choice. There is a difference between a potential conflict and a war that has already begun. In peacetime, there is a moral presumption against initiating war, and the belligerent has the burden of demonstrating that just war conditions have been satisfied. But there is no moral presumption to quit an ongoing campaign. Precipitously ending a military operation may produce severe strategic and ethical costs, including the collapse of the war effort and a humanitarian crisis. Having caused (at least in part) negative consequences for other people, leaders incur a responsibility to mitigate the damage. Indeed, even if the war has thus far caused harm to civilians beyond what would have been considered proportionate at the start, it should not necessarily be terminated. Excessive past civilian deaths are to a large extent a sunk cost: the key is to assess probable future harm (McMahan 2015).

Most recent US fiascos involve nation building and counter-insurgency in the midst of a civil war. Walzer (2015: ch. 6) is sceptical about the justice of intervention in a foreign internal conflict except to help a political community achieve liberation, balance intervention by another state, or prevent gross violations of human rights. Although it may often be unjust to wade into a civil war, it does not follow that once a country is engaged in a nation-building mission, and the operation begins to unravel, it should be abandoned. Even if the project of reshaping political and social institutions was originally unjust, aborting it in mid-stream could produce the worst of all worlds: societal collapse. Instead, there is a responsibility to pursue what Walzer (2004a: 166) calls a 'just occupation' involving self-sacrifice rather than profiteering, and an effort to protect individual rights. According to the so-called 'Pottery Barn' rule, 'you break it, you own it' (Walzer 2002: 940; see Chapter 10 in this volume for a discussion of victory in hybrid warfare).

Although leaders should not abandon the campaign, they ought to select a narrower set of goals. A fiasco implies that the country lacks the military capability to achieve its original aims. Reducing the ambition of the objectives is strategically necessary to align the ends and means of war. Dialling down the war aims is also consistent with JWT. Since the futile pursuit of a cause is unjust, the war aims must be consistent with strategic possibility. In addition, the principle of macro-proportionality states that the overall benefits of the war must outweigh the evil imposed. Battlefield reversals suggest that this cost/benefit analysis has altered. Only by selecting a revised set of goals can the costs and benefits be appropriately balanced.[6]

Walzer (2015) argued that just war involves limited goals since international order rests on norms of accommodation and restraint. Maximal goals of conquest and the political reconstruction of the adversary can be justified only in extreme scenarios like World War II. The case for limited goals is strengthened when a state endures battlefield loss and victory becomes implausible. If just wars are conservative, unwinnable just wars are very conservative.

How should the war aims be re-evaluated? Leaders must carefully assess the strategic stakes, including the probable costs and benefits of pursuing each objective, the potential for allied support and public backing, possible negative contingencies, and the likely sustainability of gains over the longer term. What about the ethical dimension? When victory is still attainable, the goal of a just war is *a better peace* than the status quo *ante bellum*, or a greater protection of rights than before, and the removal of factors that originally caused the war. In an unwinnable war, however, a better peace than before may not be realistic. Instead, the aim is the *best peace possible* from the range of plausible alternatives.

The ambition of the war aims will depend in part on the underlying justice of the mission. If the campaign began in accordance with just war principles—as a last resort, in self-defence, for a compelling moral purpose—then relatively more expansive goals can be justified even if a decisive victory is implausible. As the fundamentals of the war deviate from just war principles, appropriate war aims will tend to be more modest.

It is notable that the justice of the war aims may evolve during a military operation. For example, a state may initiate a regime change mission without satisfying the just war conditions for *jus ad bellum*. If the enemy regime is toppled and the target country then destabilizes, however, the task of providing security and representative government to the population may be considered just. The overall war is not retrospectively rehabilitated. But the original murky ethics of the invasion do not invalidate the new moral purpose; indeed, they may imply additional responsibility for cleaning up the mess

---

[6] This argument, which overlaps with that of Brunstetter (Chapter 13), runs contrary to that made by Patterson ('The Scandal of Winning' in Chapter 7), both in this volume.

(Walzer 2004b). Furthermore, there must also be a kind of moral triage. Given battlefield reversals, leaders will need to prioritize certain ethical goals over others: for example, the prevention of mass killing or genocide. Leaders must also ensure that moral gains are sustainable: saving lives in the immediate term should not risk chaos in the longer term.

Here, we can briefly consider the justice of US war aims in Korea, Vietnam, and Iraq. These cases reveal that an exit strategy can be unjust for a variety of reasons, including because the belligerent tries to leave too slowly or too quickly. When the Korean War became unwinnable in late 1950, following Chinese intervention, Truman chose to reduce the war aims, which was both strategically and morally justifiable. MacArthur urged Washington to widen the objectives and take the war to China, which could have risked the outbreak of World War III. Instead, the United States and its key allies abandoned the goal of regime change in North Korea, and embraced the more modest objective of negotiating a return to essentially the pre-war status quo. This aim safeguarded the core moral basis for the war effort: defending South Korea from aggression. The reassessment of war aims was critical in ending the campaign without costly escalation or disastrous retreat (Stueck 1995: 136–7).

By contrast, Washington failed to adjust its objectives in Vietnam, further eroding the justice of the war effort. Even as the costs of war grew dramatically after 1965, Johnson maintained the maximal goal of an independent and non-communist South Vietnam (Vandiver 1997). This expansive aim was an exercise in futility, failed the test of macro-proportionality by incurring devastating costs with uncertain benefits, and, arguably, did not align with the wishes of the Vietnamese people.

Were Richard Nixon's war aims just? From 1969–73, Nixon steadily withdrew US troops and pursued negotiations with Hanoi to attain 'peace with honor' (Tierney 2015: ch. 2). In January 1973, the White House announced a deal to end US involvement in the war, which allowed the South Vietnamese regime of Nguyen Van Thieu to remain in office. But Nixon's policy also failed the test of macro-proportionality. To pressure Hanoi, Nixon expanded the war by invading Laos and Cambodia, dramatically stepped up the bombing of North Vietnam, and mined the North Vietnamese port of Haiphong. In the end, an additional 20,000 Americans were killed during the Nixon presidency, together with around 500,000 North Vietnamese and Viet Cong troops, and hundreds of thousands of civilians. 'Peace with honor' was an illusion because Hanoi's military victory was almost inevitable. If Saigon could not repress the insurgency or defeat North Vietnamese forces with the aid of 500,000 American troops, how could it expect to do so after US soldiers left? National Security Advisor Henry Kissinger sought a 'decent interval' between US troops leaving and the final collapse in the South (Hughes 2010: 501; Rose 2010: 191–3; Kimball 2001). A decent interval to mask defeat is an insufficient moral basis to continue a highly destructive war. Indeed, the terms that Washington

gained in 1973 could have been achieved in 1968 or even 1965 (Kaiser 2000: 427; Logevall 2001: 2).

In Iraq, the US war aims were also unjust, but for a different reason: too little commitment. Walzer wrote (2004a: 164): 'having fought the war, we are now responsible for the well-being of the Iraqi people.' But after Iraq became a fiasco in 2004, Washington pursued a policy of 'leave-to-win' based on withdrawing as soon as possible. The Bush administration was fiercely opposed to the idea of prolonged nation building in Iraq. Instead, the White House sought to hand over sovereignty to Iraqi exiles and other supporters, hastily train Iraqi security forces, let Baghdad take the lead in providing security, and reduce US troop levels from 130,000 to 100,000 by the end of 2006 (Dodge 2012: 246–50; Ricks 2009: 52). The predictable result was further chaos. For example, Baghdad could not provide security because government forces often doubled as death squads. In 2005–6, Iraqi civilian deaths increased from 20,000 to 35,000.[7]

In summary, Truman's revised goals in Korea were just, whereas the objectives in Vietnam and Iraq were unjust. In part, this reflected the fact that Korea was the only war among these three campaigns that was originally fought for a just cause—the defence of South Korea from external aggression—which provided a moral anchor for the mission. Vietnam did not have a just cause because of the implausibility of success and the questionable correlation of US goals with the popular will of the local people. Meanwhile, the invasion of Iraq was also unjust because the campaign was far from a last resort, represented a preventive war against a distant threat, and faced uncertain odds of success.

What distinguished Vietnam and Iraq? First of all, the cause in Vietnam was never just because of widespread popular support for the insurgents. In Iraq, however, there was greater local backing for a representative regime, and therefore, the goal of providing stability to the country can be considered just. The second difference is the battlefield reality. The strength of North Vietnam and the Viet Cong, and the weakness of Saigon, meant that the United States should have moved more quickly to negotiate a deal based on a unified and neutralized Vietnam. In Iraq, however, the insurgency lacked the capabilities or the legitimacy of the Viet Cong. Even if decisive victory was not attainable in Iraq, the goal of improving security through a greater commitment of capabilities was realistic. The invasion of Iraq may have been unjust but the solution of 'leave-to-win' simply compounded the moral error.

Having established revised goals, the United States will typically need to surge its forces, or send temporary reinforcements as part of an ultimate exit strategy. Given the deteriorating strategic conditions, a surge may be necessary

---

[7] See <http://www.brookings.edu/about/centers/saban/iraq-index>.

to avoid a sudden collapse of the war effort. Furthermore, battlefield failure implies a mismatch between the objectives of the campaign and US capabilities in the field. Dialling down the aims and strengthening capabilities can bring the ends and means into alignment. In 2007, for example, the United States ordered a surge of forces in Iraq, which contributed to a stark fall in violence (Ucko 2009: ch. 6). And there is also an ethical case for a surge. Murphy (2014: 152) wrote that there is a moral obligation 'to take advantage of everything that would make victory more likely. It would not be morally acceptable to content oneself with a 75 percent chance of winning if one knew that certain strategies would raise that to a 95 percent chance and those strategies were to hand.'

THE PROBLEM OF NEGOTIATING

An unwinnable war will likely require a shift to a negotiated compromise peace. Indeed, every US fiasco since 1945—Korea, Vietnam, Iraq, and Afghanistan—involved extensive bargaining with the enemy. American culture is often sceptical about negotiating with evil adversaries, in part due to the moralism of US society. George W. Bush (2005) claimed that America's enemies 'will not be stopped by negotiation, or concessions, or appeals to reason. In this war, there is only one option—and that is victory.' Wartime negotiations are inherently ethically challenging. There may be profound differences in moral values, for example, between US ideals of individual freedom and North Vietnamese communism or the Taliban's vision of an Islamic Emirate of Afghanistan. The enemy may have committed serious human rights violations or abrogated the most basic diplomatic norms. In 2011, for example, the Taliban sent an envoy to meet the chair of the Afghan High Peace Council. The envoy embraced the chair, and thereupon detonated a bomb hidden in his turban, killing them both (Bew et al. 2013). In certain cases, where the adversary is truly extreme and intransigent, such as ISIS, there may be little potential for peace talks.

But once a war becomes unwinnable, justice typically requires a negotiated end to the fighting. How else will the United States achieve long-term peace and the protection of national interests and human rights? There is a danger of snubbing negotiations on ethical grounds and then ultimately incurring even greater moral injury. In 2003, Paul Wolfowitz, the Deputy Secretary of Defense, received a memo proposing that the United States reach out to Sunni insurgents. Wolfowitz rejected the idea and scribbled three words in the margin: 'They are Nazis!' (Perry 2010: 10). As a result, Iraq spiralled downward into disorder and sectarian warfare.

Diplomacy has proved effective in unwinnable wars. In 2006–7, the US negotiated an alliance with Sunni tribal leaders in Iraq, and signed up tens of thousands of Sunnis for the Awakening Councils and the 'Sons of Iraq' programme, which helped pull Iraq back from the brink (Biddle et al. 2012). The American diplomat Richard Holbrooke did not regret bargaining with immoral people. 'If you can prevent the deaths of people still alive, you're not doing a disservice to those already killed by trying to do so' (Lee 2010).

What about war crimes trials? Many just war theorists see trials or tribunals as morally indispensable. For example, Walzer wrote (2015: 287; see also Orend, 2013: 193–5) that people can 'rightly demand an accounting' from leaders, who may be 'criminally responsible' for aggression. But in an unwinnable war, there is less scope for war crimes trials. Battlefield loss means the adversary cannot be forced to appear before a tribunal. In Afghanistan today, for example, insisting on war crimes trials could make a peace deal with the Taliban impossible (Snyder and Vinjamuri 2003/4). However, there remains scope for targeting abuses on one's own side: for example, Washington punished the American guards at Abu Ghraib with prison terms and hard labour.

THE PROBLEM OF BARBARISM

The principles of *jus in bello* are designed to restrain the barbarism of war, notably by drawing a distinction between combatants and innocent civilians. A central debate in JWT concerns the tension between the standards of *jus in bello* and the military requirements to achieve victory (Walzer 2015: 48). In the case of unwinnable war, there is a tension between the standards of *jus in bello* and the military requirements to achieve a lesser loss versus a greater loss.

When exiting from a quagmire, can leaders embrace barbarism? If enemy resistance proves greater than expected, there is often pressure to remove restraints. For example, when a war is unwinnable, states may also seek to signal credibility and strength through destructive acts. In December 1972, Nixon launched the 'Christmas bombing' of Hanoi and Haiphong, causing widespread destruction of North Vietnamese infrastructure and, according to Hanoi, the deaths of 1600 civilians. The practical benefit of the bombing was minimal. In January 1973, the two sides signed an agreement that had been on the table since October. Instead, the bombing was mainly about optics: creating the impression of bombing the North into submission and demonstrating US credibility even as it withdrew. The Christmas bombing is indefensible by just war standards because it extracted a grave price in civilian deaths for a dubious symbolic benefit.

Walzer (2015: 267) argued that restraints on war can be overridden in a 'supreme emergency' where there is an imminent risk of great evil such as

enslavement, and no obvious military alternatives—for example, with the British bombing of German cities in 1940. 'Utilitarian calculation can force us to violate the rules of war only when we are face-to-face not merely with defeat but with a defeat likely to bring disaster to a political community.' But fiascos rarely if ever represent a supreme emergency. When a US campaign in a country like Vietnam or Afghanistan unravels, the heavens are not about to fall on the American political community. Therefore, the core principle of proportionality should be protected.

Most recent American fiascos have been counter-insurgency operations, which provide particular challenges in terms of *jus in bello*. For example, the insurgent enemy may hide among the people, complicating the distinction between combatant and non-combatant. Adversaries may deliberately seek to kill civilians in terrorist attacks. But even in asymmetric war, troops are expected to avoid targeting civilians. Indeed, there are powerful strategic reasons to reject barbarism in counter-insurgency campaigns. One of the basic principles of counter-insurgency or COIN is to outgovern the guer-rillas and win 'hearts and minds' through the use of minimal force and the protection of the rule of law (US Army and Marine Corps 2007; Walzer 2015: xiv).

One danger in an unwinnable war is that the attachment to a single moral principle can dominate a wider and more complex ethical calculus, blinding officials to the practical consequences of their actions. For example, a key notion of *jus in bello* is that prisoners of war acquire rights and should be considered immune from harm. Orend (2013: 192) wrote: 'Obviously, a just peace settlement further requires that any and all prisoners-of-war . . . be returned safely to their home countries.' In the Korean War, however, the protection of prisoner's rights had perverse consequences.

By early 1952, after six months of truce negotiations, the peace terms had mostly been resolved, including the borders between North and South Korea. The only major issue left was the status of the POWs. China and North Korea demanded the traditional 'all for all' swap of POWs, which was consistent with the Geneva Conventions. But President Truman decided that captured communist prisoners should be allowed to defect. The motivations for this decision were complex. US officials were aware of the propaganda benefit if thousands of enemy prisoners chose to stay in the 'free world'. But the main intention was humanitarian. Some of the prisoners were South Koreans who had been forcibly impressed into the communist military, and wanted to return to their homes in the South. There was also lingering guilt in Washington about the compulsory return of liberated Soviet POWs to Stalin in 1945, many of whom died in the gulags. In his diary, Truman suggested a strategy for US negotiators. 'Read Confucius on morals to them. Read Buddha's code to them. Read the Declaration of Independence to them. Read the French declaration, Liberty & Fraternity. Read the Bill of Rights to

them. Read the 5th, 6th, & 7th Chapters of St. Matthew to them' (Rose 2010: 143; Stanley 2009; Foot 1990).

Was the insistence on voluntary repatriation a just policy? Walzer (2015: 123) claimed that US negotiators were 'probably right' to uphold this principle in Korea—an example of appropriate 'moral reasons for prolonging a war'. And in Walzer's defence, 22,600 communist prisoners were able to defect. But Truman's commitment to POW rights produced extraordinary costs. One problem lay in determining how many communist POWs actually wanted to defect. In the prison camps, anti-communist prisoners often ran the repatriation screenings and violently coerced POWs into defecting (Rose 2010: 147–8). As the number of supposed defectors swelled into the tens of thousands, the communist countries saw the issue in terms of national prestige and refused to back down. In turn, Truman framed the policy as one of high moral principle. 'To agree to forced repatriation would be unthinkable', he told the American people; 'We will not buy an armistice by turning over human beings for slaughter or slavery' (Stanley 2009: 158).

The issue of POW rights prolonged the war for fifteen months, during which time 100,000 allied troops were killed (including 9000 Americans), 3600 American prisoners endured continued captivity, every major North Korean city was carpet-bombed, and hundreds of thousands of civilians died (Stueck 2002: ch. 6). Finally, in the spring of 1953, after Stalin's death, the communists conceded the principle of voluntary repatriation, and a neutral commission was created to process the prisoners.

The communists (and Stalin in particular) bore the greater share of moral responsibility both for the initiation of the war and its prolongation. Nevertheless, without thinking through the consequences, Truman fixated on a single principle of POW rights, with ultimate grave injury to soldiers and civilians. Less moralistic rhetoric and more prudent analysis of likely consequences might have delivered a compromise that saved hundreds of thousands of lives.

The pursuit of justice does not end with a negotiated peace. Washington has a continued responsibility to diminish suffering. This means providing aid to refugees escaping from the warzone, and assistance for allies on the ground, like translators, who may risk death for helping the Americans. Adequate physical and mental health resources must be offered to veterans, who may have potentially served in a protracted counter-insurgency war with extended deployments and now lack the solace of victory. At the broader level, justice also requires a reckoning of the lessons of the military campaign. How can future debacles be averted? Americans must confront the tough lessons of war and take responsibility for failures, including war crimes. Fiascos are also an opportunity to adapt and reform. People and countries learn by failing, and the experience of loss can help cut through barriers to change. Over time, reconciliation with the adversary may also promote justice. Charles Kupchan

(2010) described how reconciliation often begins with a peace offering, followed by growing political, economic, and cultural contacts, and the creation of new and more positive narratives of the relationship. Indeed, many US allies were once adversaries, including Britain, Mexico, Spain, Italy, Germany, Japan, and possibly, in due course, Vietnam.

CONCLUSION

Extricating a country from a quagmire in a just manner may be the greatest challenge in politics. The stakes are high: a lesser loss versus a greater loss can represent life or death for thousands or millions. First of all, leaders should recognize that the outcome of war is not a binary, or victory versus defeat. Instead, officials facing an unwinnable conflict must traverse a grey zone between triumph and disaster, seeking a lesser loss versus a greater loss, or the best peace possible. This will often be ugly stability, or an imperfect order that protects core interests and values. Leaders should also note that the justice of a military campaign may be more fluid than is often thought. Wars that start with an unjust cause of regime change may later acquire a just cause to protect civilian rights from extremist groups. In response, leaders should typically reduce the ambition of the goals (without cutting and running), surge capabilities, negotiate with the adversary, limit the role of war crimes trials, maintain restraints on barbarism, and avoid fixating on a single ethical principle.

Does the argument only apply to the United States? The extent of American interventionism during and after the Cold War means that the United States is particularly likely to end up in a fiasco, or an expeditionary campaign that becomes unwinnable. Certain challenges to a just exit strategy are also especially acute in Washington. For example, negotiating with immoral enemies in wartime tends to be more controversial in the United States than in other countries. But the basic framework also applies to other states. The French in Algeria and the Soviet Union in Afghanistan faced many of the same moral and strategic dilemmas as they sought to wind down failing wars.

Quagmires may also present an opportunity to rethink and develop JWT. It is notable that tough wars like Vietnam often trigger renewed scholarship in JWT (Orend 2013: 24). Difficult campaigns in Iraq and Afghanistan may therefore produce fresh analysis of the ethics of fighting in an age of counterinsurgency, terrorism, and drone strikes. The former CIA director John Brennan said that Barack Obama and himself shared similar views of just war theory. 'The president requires near-certainty of no collateral damage. But if he believes it is necessary to act, he doesn't hesitate' (Goldberg 2016). By considering the justice of an unwinnable war, scholars can focus on a scenario, that, for the United States at least, appears to be the new normal.

REFERENCES

Berman, Larry. 1989. *Lyndon Johnson's War: The Road to Stalemate in Vietnam.* New York: W. W. Norton & Co.

Bew, John, Ryan Evans, Martyn Frampton, Peter Neumann, and Marisa Porges. 2013. 'Talking to the Taliban: Hope over History?', *International Centre for the Study of Radicalisation and Political Violence.* Available online at <http://icsr. info/2013/06/icsr-insight-talking-to-the-taliban-hope-over-history/>, accessed 25 November 2016.

Biddle, Stephen, Jeffrey A. Friedman, and Jacob N. Shapiro. 2012. 'Testing the Surge: Why Did Violence Decline in Iraq in 2007?', *International Security* 37: 7–40.

Boot, Max. 2013. *Invisible Armies: An Epic History of Guerrilla Warfare from Ancient Times to the Present.* New York: Liveright.

Bush, George W. 2005. 'Commencement Address at the United States Naval Academy in Annapolis, Maryland', 27 May. Available online at <http://www.presidency.ucsb. edu/ws/index.php?pid=63919>, accessed 25 November 2016.

Clausewitz, Carl von. 1989. *On War,* ed. and trans. Michael Howard and Peter Paret. Princeton, NJ: Princeton University Press.

Crawford, Neta C. 2003. 'Just War Theory and the U.S. Counterterror War', *Perspectives on Politics* 1: 5–25.

Dodge, Toby. 2012. 'Iraq', in Richard Caplan (ed.), *Exit Strategies and State Building.* New York: Oxford University Press.

Farrell, Michael. 2013. *Modern Just War Theory: A Guide to Research.* Lanham, MD: Scarecrow Press.

Foot, Rosemary. 1990. *A Substitute for Victory: The Politics of Peacemaking at the Korean Armistice Talks.* Ithaca, NY: Cornell University Press.

Goldberg, Jeffrey. 2016. 'The Obama Doctrine', *The Atlantic,* April. Available online at <http://www.theatlantic.com/magazine/archive/2016/04/the-obama-doctrine/ 471525/>, accessed 25 November 2016.

Hughes, Ken. 2010. 'Fatal Politics: Nixon's Political Timetable for Withdrawing from Vietnam', *Diplomatic History* 34: 497–506.

Jones, Seth G. 2010. *In the Graveyard of Empires: America's War in Afghanistan.* New York: W. W. Norton & Co.

Kaiser, David. 2000. *American Tragedy: Kennedy, Johnson, and the Origins of the Vietnam War.* Cambridge, MA: Harvard University Press.

Kimball, Jeffrey. 2001. 'The Case of the "Decent Interval": Do We Now Have a Smoking Gun?', *SHAFR Newsletter* 32: 35–9.

Kupchan, Charles A. 2010. *How Enemies Become Friends: The Sources of Stable Peace.* Princeton, NJ: Princeton University Press.

Lee, Matthew. 2010. 'Veteran Diplomat Holbrooke Dies at Age 69', *The Washington Times,* 13 December. Available online at <http://www.washingtontimes.com/news/ 2010/dec/13/us-diplomat-richard-holbrooke-dies/>, accessed 25 November 2016.

Logevall, Fredrik. 2001. *The Origins of the Vietnam War.* New York: Longman.

Malkasian, Carter. 2013. *War Comes to Garmser: Thirty Years of Conflict on the Afghan Frontier.* New York: Oxford University Press.

McMahan, Jeff. 2015. 'Proportionality and Time', *Ethics* 125: 1–24.

Murphy, James G. 2014. *War's Ends: Human Rights, International Order, and the Ethics of Peace.* Washington, DC: Georgetown University Press.

Orend, Brian. 2001. *Michael Walzer on War and Justice*. Montreal: McGill-Queen's University Press.

Orend, Brian. 2013. *The Morality of War*. Buffalo, NY: Broadview Press.

Patterson, Eric D. 2012. *Ending Wars Well: Order, Justice, and Conciliation in Contemporary Post-Conflict*. New Haven: Yale University Press.

Perry, Mark. 2010. *Talking to Terrorists: Why America Must Engage with its Enemies*. New York: Basic Books.

Ricks, Thomas E. 2009. *The Gamble: General David Petraeus and the American Military Adventure in Iraq, 2006-2008*. New York: Penguin Press.

Rigby, Andrew. 2005. 'Forgiveness and Reconciliation in *jus post bellum*', in Mark Evans (ed.), *Just War Theory: A Reappraisal*. Edinburgh: Edinburgh University Press, 177-202.

Rose, Gideon. 2010. *How Wars End: Why We Always Fight the Last Battle. A History of American Intervention from World War I to Afghanistan*. New York: Simon and Schuster.

Snyder, Jack and Leslie Vinjamuri. 2003/4. 'Trials and Errors: Principle and Pragmatism in Strategies of International Justice', *International Security* 28: 5-44.

Southern Baptist Convention. 2003. 'On the Liberation of Iraq'. Available online at <http://www.sbc.net/resolutions/1126/on-the-liberation-of-iraq>, accessed 25 November 2016.

Stanley, Elizabeth A. 2009. *Paths to Peace: Domestic Coalition Shifts, War Termination and the Korean War*. Stanford, CA: Stanford University Press.

Statman, Daniel. 2008. 'On the Success Condition for Legitimate Self-Defense', *Ethics* 118: 659-86.

Stewart, Rory and Gerald Knaus. 2011. *Can Intervention Work?* New York: W. W. Norton & Co.

Stueck, William. 1995. *The Korean War: An International History*. Princeton, NJ: Princeton University Press.

Stueck, William. 2002. *Rethinking the Korean War: A New Diplomatic and Strategic History*. Princeton, NJ: Princeton University Press.

Tierney, Dominic. 2015. *The Right Way to Lose a War: America in an Age of Unwinnable Conflicts*. New York: Little, Brown and Co.

Tomsen, Peter. 2011. *The Wars of Afghanistan: Messianic Terrorism, Tribal Conflicts, and the Failure of Great Powers*. New York: PublicAffairs.

US Army and Marine Corps. 2007. *The U.S. Army/Marine Corps Counterinsurgency Field Manual*. Chicago: University of Chicago Press.

Ucko, David H. 2009. *The New Counterinsurgency Era: Transforming the U.S. Military for Modern Wars*. Washington, DC: Georgetown University Press.

Vandiver, Frank E. 1997. *Shadows of Vietnam: Lyndon Johnson's Wars*. College Station, TX: Texas A&M University Press.

Walzer, Michael. 2002. 'The Triumph of Just War Theory (and the Dangers of Success)', *Social Research* 69: 925-44.

Walzer, Michael. 2004a. *Arguing About War*. New Haven: Yale University Press.

Walzer, Michael. 2004b. 'Just and Unjust Occupations', *Dissent* 51: 61-3.

Walzer, Michael. 2015. *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, 5th edition. New York: Basic Books.