

Asking the Fox to Guard the Chicken Coop: In Defense of Minimalism in the Ethics of War and Peace

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Introduction

Prevailing normative theories of armed conflict orient themselves around the ultimate goal of peace. This is not to say that pacifism has received universal assent here. On the contrary, pacifists are few in number among professional philosophers, who are more likely to identify with the long and heterogenous just war tradition. The same goes for national leaders, whose policies tend to be motivated by some version of realism and constrained by an increasingly dense body of international law and norms based loosely on just war principles. Nonetheless, major figures in both the just war and realist traditions hold that peace is the proper object of war.

A cursory glance at the current global order will lead any onlooker to conclude, however, that these noble aspirations have not been realized. Although inter-state wars may have decreased, "new wars" involving sub-state groups have replaced them as the dominant form of armed conflict (Kaldor, 2012). And international actors appear to be giving up on any lofty

ambitions to bring about an end to violence in the international arena, settling instead for its management using "perpetual force", with no clear end in sight (Enemark, 2014). Despite frameworks with peace as their orientating goal being developed and deployed, a peaceful world may look just as elusive as it ever did.

So what has gone wrong? Some argue that there will always be individuals and groups who are willing to set aside firmly-established international principles of morality and prudence in favor of pursuing political and ideological goals through violence, and so ongoing warfare between these actors and the defenders of international order is inevitable. Without disputing this analysis, in this paper we suggest another, perhaps equally important, reason why peace has been so difficult to obtain. The flaw is identified, not only in human nature, but also in the structure of leading normative frameworks for regulating war. These frameworks, although designed to bring about peace, facilitate unjust wars.

Normative theories of warfare, as we will discuss below, set out what conditions need to be met for wars (whether defensive wars by states, humanitarian interventions, or internal revolutions) to be permissible. Yet, we argue, because their framers paid insufficient attention to how the principles that compose them are interpreted and applied, they are vulnerable to subversion. In particular, because these frameworks employ a number of "essentially contested concepts" (to use W.B. Gallie's (1955-1956) term), they are open to manipulation by powerful international actors, who use them as cover to justify wars for their own particularistic goals. After discussing the role that essentially contested concepts play in theories of armed conflict in the following section, we move on to examine how this structure allows them to be co-opted through a case study of the Korean War (1950-1953). This hugely destructive conflict, we suggest, was sustained even though both sides justified their actions through nominally pacific

principles, because those principles were vague enough to open the door to manipulation. In the final section, we suggest reforms to the frameworks that will avoid the problems identified. More minimalist principles, although allowing fewer wars for seemingly just causes, may be necessary if our normative frameworks for warfare are to be fit for purpose and ensure peace.

Essentially Contested Concepts in the Ethics of War

Part of the task of a normative theory of warfare is to specify when the resort to war is justified. This is what, for example, the rules of *jus ad bellum* do in just war theory. One might expect these rules to resemble our ordinary moral frameworks relating to permissible self-defense by individuals. Just as we think that individuals threatened with physical violence against their person are usually permitted to respond with proportionate violence to defend themselves against the attack, one might be tempted to think that states are permitted to use armed conflict against threats to the physical integrity of their citizens. And just as we think that onlookers are permitted to step in to prevent physical assault against others, one might also think that states may come to the aid of foreign citizens who are threatened with violence (whether from within their own state or across borders). On such a view, permissible war would be self- (and other-) defense writ large.

In fact, though, mainstream theories of armed conflict make several key adjustments to this simple self-defense model. They permit wars to be fought for reasons other than repelling direct violence against persons, and their normative frameworks seek to promote values other than the basic integrity that is associated with physical safety. This can be seen through a study

of the definition and role of three key concepts within these theories: aggression, legitimacy, and peace.

In what follows, we will look at how these concepts have been deployed in traditional normative theories of armed conflict, which tend to most closely align with international law and practice. While a number of theories that provide alternative principles to the traditional doctrines have become influential among philosophers in recent years (and are perhaps having an increasing impact on international practice), we postpone discussion of how these revisionist frameworks measure up until later. We particularly focus here on the just war theory of Michael Walzer, whose work might be viewed in part as a critical interpretation of the existing laws of war.¹ By doing so, we can most clearly see the effects of adopting a normative theory on the behavior of actors involved in international conflicts (for example, during the Korean War, which will be the central case study of this paper). But we will also discuss other principles found in work on the ethics of armed conflict which have been influential in the formulation of law.

Aggression

Both traditional normative theories of warfare and theories of individual self-defense grant agents (understood as political collectives and individuals, respectively) the right to repel aggression with force. But while the latter define aggression in common-sensical terms as the use of physical violence, the former bear the marks of a long period of debate over the meaning of this concept. The term and its definition have had a checkered history in international law, with the current disputes traceable back to the period just after the First World War (Sellars, 2013, 1-4). Shocked by the disaster of this destructive conflict, politicians, philosophers and jurists

sought to create mechanisms that were designed to prevent the reoccurrence of such a catastrophe, and they did so by forming legal frameworks whose aim was to regulate and “*delegitimise* wars” as such, not just actions within wars, as had been done before (Sellars, 2013: 15). This was a departure from 19th-century conceptualisations, which saw war as an unavoidable extension of nation-state competition (Neff, 2005: 4). But even after the First World War, key international players were reluctant to take a pacifist stance and outlaw all wars, since doing so might have served as a barrier to the pursuit of their national interests. Instead, in what Stephen C. Neff has described as a “reversion to the medieval just-war outlook” (Neff, 2005: 4), they outlawed only wars that they declared to be unjust – and they identified the epitome of the unjust war as the “aggressive war”. By contrast, defensive wars were deemed just and therefore still permissible (Sellars, 2013: 14-16) – an idea that is traceable back to the work of Grotius and the founding of the Westphalian state system (Johnson, 2014: 83-84). Responding to unjust, aggressive, wars was to be done through the new framework of collective security, via the League of Nations (“The Covenant of the League of Nations”, 1924: Article 10; Sellars, 2013: 2).

But this seemingly simple framework is in fact built on a number of ambiguities and complications. First and foremost, “aggression” was left without a binding definition, and it thus became an elastic term, capable of being moulded to suit its users’ self-interested goals (Sellars, 2013: 22; 37). Governments increasingly sold their wars as ones of self-defense (Neff, 2005: 5). Because the term “aggression” admitted of no straightforward specification (at least not one that all states were willing to accept), restrictions on aggressive war were of limited practical effect.

It was not the case that no definitions of “aggression” were available. If anything, the opposite was the problem: a huge variety of definitions were put forward over the decades after

the First World War, with the result that none of them was definitive (Sellars, 2013: 17-18; 20-21; 34; 98). And definitions have been deployed at crucial points in 20th-century history for very different purposes, for example during the Tokyo (Shklar, 1964: 179-187) and Nuremberg (Bush, 2002: 2325; Kestenbaum, 2016: 53; Shklar, 1964: 171-179) trials, to its encoding in the Charter of the United Nations (United Nations, 1945: VII.39).

Walzer, too, notes the breadth of the concept of "aggression":

"There is a strange poverty in the language of international law. The equivalents of domestic assault, armed robbery, assault with intent to kill, murder in all its degrees, have but one name. Every violation of the territorial integrity or political sovereignty of an independent state is called aggression." (Walzer, 1977: 51-52)

In pointing out this poverty, though, Walzer does not mean to criticize it. On the contrary, he argues that there is a rationale for treating all crimes in the international sphere on a par:

"Aggression is a singular and undifferentiated crime because, in all its forms, it challenges rights that are worth dying for" (Walzer, 1977: 53). The idea here is that, since the only effective response to crime in the international sphere is armed conflict, it makes sense to group all these crimes together into one category.

This picture is further complicated by a second, related, departure from the simple self-defense model sketched above. The question of what precisely constitutes self-defense has long been debated in the just war tradition (Colonomos, 2013: 49). Whether a state can properly and permissibly engage in forceful self-defense in advance of an anticipated attack, or whether it must wait until an attack has already taken place is a common theme (Recchia and Welsh, 2013).

A notable framework that seeks to theorize a certain form of pre-emptive strike as self-defense is the Caroline Test, which holds that a future attack must be “instant, overwhelming, and leaving no choice of means, and no moment for deliberation” for pre-emptive strikes to be justified and to count as self-defense (Rodin, 2003: 111). Such a view treats the principles for governing the resort to war look very much like the principles governing individual self-defense: in both cases, pre-emptive strikes are permitted, but only if it is in response to a temporally proximate future attack.

Walzer, however, does not believe that this “addresses itself usefully to our experience of imminent war” (Walzer, 1977: 75). He consequently argues that the laxer standard that is in practice used in the international case – which permits pre-emptive war when there is “sufficient threat” rather than “imminent attack” (Walzer, 1977: 81) – is better suited. And his main reason for this move appears to come from the expansive notion of aggression he thinks appropriate in the international context, according to which certain ways of preparing for an attack might itself constitute aggression. For Walzer, a threatening foreign state may “have already harmed us, by their threats, even if they have not yet inflicted any physical injury” (Walzer, 1977: 81). “Self-defense”, like “aggression”, looks very different in the international arena than it does in cases of inter-personal violence.

Given the complexities noted above, it may be thought that states might sometimes, while acting in good faith, misdiagnose an act of aggression, and thus launch a war when it was not objectively justified. The classical just war theorist Francisco de Vitoria, for instance, thought that if a party fighting an objectively unjust war was non-culpably ignorant of that fact, they may be justified in fighting (Vitoria, 1991: 312-313). Such provisions may be unavoidable with

respect to the sort of complex test for just cause that traditional just war theorists advocate. As we will suggest later, though, they also open the door to abuse.

Legitimacy

What most of the accounts of aggression that have been put forward have in common is the element of an unauthorized border crossing by an army (whether actual, threatened, or claimed). But why should this class of action be the focal point of the rules of war? After all, as Walzer writes, "the boundaries that exist at any moment in time are likely to be arbitrary, poorly drawn, the products of ancient wars. The mapmakers are likely to have been ignorant, drunken, or corrupt" (Walzer, 1977: 57). Despite the questionable genealogy of most, if not all, state borders, though, their existence is taken to be significant for normative international frameworks, and their integrity is thought to be worth the costs of going to war. Historically speaking, this is down to the emergence of the Westphalian nation-state system in the 17th and 18th centuries (Neff 2005, 85), and the idea of national sovereignty and the ideal of non-interference that came with it (Johnson, 2014: 81-100). Normatively, this might be justified because states as they currently are can at least sometimes serve the interests of their members, and this means that they can rightly be taken to be the legitimate rulers of the territory. Among other things, being legitimate in this sense is thought to grant at least a *prima facie* right to defend the territory against external aggressors (Orend, 2001: 175-216).

In answering the question of why states as we find them should (sometimes) be taken as legitimate, Walzer draws a parallel between states' rights and individuals' rights that goes beyond the simple self-defense model. An individual should be granted rights to their home even if their bare survival is not threatened by intrusions, says Walzer, because of the importance of

having a physical space one can be sure of. Likewise, societies should be granted the right to defend their territories because doing so will provide their members with a space in which to conduct shared enterprises: "the right of a nation or people not to be invaded derives from the common life its members have made on a piece of land – it had to be made somewhere – and not from the legal title they hold or don't hold" (Walzer, 1977: 55). John Rawls similarly argues that, so long as there is some form of consultation between the government and citizenry on political matters, a society should be subject to non-intervention. In such societies, he argues, we can meaningfully speak of the actions of government being the collective action of the people as a whole, and by attacking the political institutions upheld by that government we would thereby attack the common life that the people have made (Rawls, 1999: 61-62). More demanding theories may set the bar to legitimacy higher, but still view intervention against legitimate states as impermissible (Lomasky & Tesón, 2015: 218-236).

This non-intervention principle is meant to apply even in cases where political communities are internally divided, as in instances of civil war. John Stuart Mill, writing in the nineteenth century, cautioned against intervening to remove an oppressive government, since "[t]he only test...of a people's having become fit for popular institutions, is that they, or a sufficient portion of them to prevail in the contest, are able to brave labor and danger for their liberation" (Mill, 1984: 122). The fact that the people as a whole were not willing to make the sacrifices in an armed struggle that would be sufficient to overthrow the authoritarian regime without outside help was, for Mill, proof enough that such a people did not possess the "spirit of liberty" to a sufficient extent to maintain free institutions. Outside interventions aimed at developing these institutions was thought to be self-defeating, since "it is during an arduous struggle to become free by their own efforts that these feelings and virtues [necessary to maintain

a liberal political regime] have the best chance of springing up" (Mill, 1984: 123). More recent theorists have followed Mill's framework insofar as they view the standards that a government must meet to be immune from (internal) revolution as less stringent than those that it must meet to be immune from (external) intervention (Buchanan, 1999; Smith, 2008: 406; van der Vossen, 2012).

The framework also gives us the resources with which to determine when legitimacy lapses, and invasion of states no longer violates their right to non-interference: that is, when intervention as well as revolution is justified. This will be the case when the target state no longer effectively protects the common life of its members. In this vein, Walzer defends humanitarian interventions in cases "when the violation of human rights within a set of boundaries is so terrible that it makes talk of community or self-determination...seem cynical and irrelevant" (Walzer, 1977: 90). While Walzer acknowledges the more pragmatic issues mentioned by Mill in this regard – namely that liberal institutions will be difficult to maintain in a newly free society when the people themselves did not have a hand in gaining that freedom – he nonetheless thinks that such an intervention is not accompanied by the evil of disrupting a common life: since the government does not represent the people's interests in any meaningful way, the state as a whole is not valuable for those people. The legitimacy or its lack of governments, in other words, is considered to be a crucial cornerstone in deciding if a war against a state is just or unjust.

Peace

As we mentioned above, dominant theories of armed conflict all claim that their goal is to bring about peace. Canonical just war theorists, for example, have said that the "aim", "end", or

"object" of war should be the attainment of peace (Augustine, 1972: 866; Suarez, 1944: 291).

And peace has also been the self-described goal of military practitioners: C.A.J. Coady reminds us of the US Strategic Air Force's motto "peace is our profession" (Coady, 2008: 263).

Meanwhile, in its Charter, the United Nations lists, as its first purpose, "[t]o maintain international peace and security" (United Nations, 1945: I.1.1). Some models of individual self- and other-defense might also view peace as a justifying value: it may be through repelling and disincentivizing violence that peace in domestic society is best promoted. Yet one way in which theories of warfare differ from simple self-defense models is in their characterization of peace.

Those who seek peace in their principles of individual self-defense are likely to have in mind an absence of direct physical violence – primarily violence against the victims. Yet many theorists of armed conflict often mean something broader than this simple "negative peace": to be a true state of peace, they say, the absence of physical violence must be matched by an absence of "structural violence". This "positive peace", as it is often called, requires a situation in which principles of social justice are met in addition to being one in which people are secure physically (Galtung, 1969).

The idea that war should not merely end physical violence, but also some forms of injustice, appears to be common in military practice. In his influential work *Strategy*, B.H. Liddell Hart claims that "[t]he object in war is a better state of peace – even if only from your own point of view" (Hart, 1967: 338). Endorsing this sentiment as a morally defensible approach to armed conflict, Walzer elaborates that "*better*, within the confines of the argument for justice, means more secure than the *status quo ante bellum*, less vulnerable to territorial expansion, safer for ordinary men and women and for their domestic self-determinations" (Walzer, 1977: 121-122). Coady, in his reconstruction of Augustine's view, outlines an understanding of peace as

involving a situation “in which at least some of the interests of the parties involved have been honored”, and goes on to suggest that this must be done to an extent that the resulting peace would “have something in it that at least quiets the dispositions to violence, hostility, and aggression that are typical of war, even if it does not eliminate them entirely” (Coady, 2008: 268-269). And A.J. Coates, in summarizing the just war tradition, writes that “[t]he peace to which a just war is directed...is one that upholds the rights of all combatants, of the vanquished as well as the victors, and that is concluded in a generous spirit with the ultimate reconciliation of adversaries in mind” (Coates, 1997: 105).

The emerging ideal of peace may be thought to involve two distinct elements. On the one hand, Walzer's talk of greater security and safety, along with Coady's emphasis of the quieting of war-mongering dispositions suggests merely that peace should involve a low probability of physical violence, while Coady and Coates' requirement that the interests and rights of everyone be upheld suggests something more demanding: namely, at least an improvement in terms of justice. These two elements, however, may be thought to come together in mainstream liberal theories, where stability and justice are treated as an interconnected whole,² and Coady's mention of both suggests that he understands the relationship in this way as well.

Many influential normative theories of war, then, employ a morally-laden notion of peace. The sort of peace which their theories are orientated toward obtaining is not merely the negative peace of the absence of violence. It is a positive peace: the absence of violence *because of* international relations meeting certain liberal ideals of justice. Normative standards, in other words, have been incorporated into the operative idea of peace. The practical upshot of this should be clear: it will lead these theorists to endorse more wars than they otherwise might. For while an actor in pursuit of negative peace might often conclude that they should not go to war,

since the circumstances in which resort to war will result in less direct violence overall might be few in number, pursuing positive peace may mean disrupting unjust situations of negative peace quite often.

Essentially Contested Concepts

We have shown how dominant normative frameworks of armed conflict differ from simple self-defense models in their employment of three key concepts: aggression, legitimacy, and peace.

All three of these concepts can be understood as what W.B. Gallie (1955-1956) called "essentially contested concepts". According to Gallie, these form a class of concepts whose definition and application will inevitably be the subject of disagreement. Moreover, the disagreement will not easily be solved through an empirical investigation, as the disagreement over whether a painting has been done in oil could, for example (Gallie, 1955-1956: 167). The contestation of a concept becomes essential when "there is no one clearly definable general use...which can be set up as the general or standard use" (Gallie, 1955-1956: 168). Among examples of these concepts, Gallie lists art, democracy, and justice (Gallie, 1955-1956: 180).

How do we know when a disputed concept is essentially, rather than merely contingently, contested? Gallie mentions a number of features of concepts which accompany essential contestability, but for our purposes it will suffice to mention three. First, the concepts are "appraisive": they signify something that is taken to be valuable or, alternatively, undesirable (Gallie, 1955-1956: 171). Saying that something is a work of art, for instance, is in part to declare its value over, say, graffiti or childish scribbling. Second, this value results from an "internally complex character", in which various distinct components contribute to its value in concert (Gallie, 1955-1956: 171-172). Third, and relatedly, there are a number of rival ways of

conceiving how these distinct parts contribute to the overall value – different weights given to the different components, different ways of conceiving how they interact, and so on (Gallie, 1955-1956: 172). Some art critics may value the realism of a painting above all else, while others may instead prioritize its message, even if they agree that works of art should have both components.

We can see that the three concepts discussed above meet these three conditions, and thus qualify as candidates for essentially contested concepts. All of them are taken to signify something either valuable or undesirable: aggression is something to be resisted; legitimacy entitles states to a degree of respect that would not be owed to illegitimate ones; and peace is taken to be an attractive state of affairs. They are likewise internally complex, and this complexity gives rise to different explanations of the overall value. Aggression is thought to include more or fewer actions depending on the theorists' normative commitments. The necessary conditions for state legitimacy are the subject of ongoing debates in political theory. And while positive notions of peace include considerations of justice, simpler negative theorists give such matters no place. Theories of armed conflict which include these concepts are therefore liable to be interpreted in different ways, with no one interpretation capable of gaining a privileged place.

One might hope to avoid this indeterminacy by specifying a definition that will be taken as authoritative. Attempts at this, however, are often resisted by international actors. The attempts to specify the concept of "aggression" in the 20th century is a case in point. When the United Nations was founded, some voices that demand that "aggression" be defined (Ferencz, 1975: 705). But these proposals were thwarted by the UK and the US, holding that the UN Security Council should decide on a case-by-case basis if aggression had occurred or not.

Benjamin B. Ferencz describes this “like asking the fox to guard the chicken coop” (Ferencz, 1975: 706), since the states in the Security Council were also in a position to wage wars (Ferencz, 1975: 707-709). Later, in 1950, the Soviet Union demanded a definition, and various committees were charged with researching it. This went on for almost 25 years, until in 1974 a definition is formulated and adopted by the UN General Assembly (Ferencz, 1975: 707-709). However, in spite of the long years of preparation, this definition was so vague that it was barely usable (Ferencz, 1975: 709-714). This problem did not stop haunting subsequent attempts by the international community to define “aggression”, which were resumed especially in the 1990s (Kestenbaum, 2016: 60). In 2010, the first Review Conference on the Rome Statute of the International Criminal Court, held in Kampala, adopted a definition (Kestenbaum, 2016: 61), which, according to some legal scholars, again suffers from vagueness. In the run-up to the conference, Michael J. Glennon called it “a crime in blank prose” (Glennon, 2010: 72). Essential contestability has not been done away with.

The Korean War

Ordinarily we may not worry that we are employing essentially contested concepts in our political frameworks. Even if justice is an essentially contested concept, for example, this does by itself not nullify a particular theory of justice, nor does it necessarily suggest that we should not attempt to implement justice through public policy.³ What we will argue here, however, is that the use of the sorts of essentially contested concepts discussed above in normative frameworks surrounding warfare can have problematic, and even self-defeating, consequences. We show how this happened in practice during the Korean War – in which both sides drew upon,

and manipulated, these concepts to legitimize their own actions – and draw some broader lessons from this. This ideologically-loaded and highly destructive conflict, which resulted in no borders being shifted and no regimes being changed after over three years of fighting, was justified through the co-opting of the dominant normative frameworks to justify warfare.

The Korean War was the first hot war of the Cold War. Korea had been occupied by Japan during WWII and was subsequently divided into a northern part, which was in the Soviet Union's sphere of influence and under Kim Il-sung, and into a southern part under Syngman Rhee, in the sphere of influence of the United States. The dividing line was (and still is) famously at the 38th parallel (Xu, 2013: 65). From 1949 onwards, both Kim and Rhee intended to reunite the country under their respective leadership (Shen & Li, 2011: 25). It is impossible to cut through the propaganda of both war-waging sides to arrive at what actually happened. But a narrative frequently supported in scholarship (and adopted by the United Nations at the time (United Nations Security Council, 1950a)) claims that Kim Il-sung attacked South Korea first, on 25 June 1950 (Chen 1994: 125; Shen & Li, 2011: 28). Pyongyang at the time claimed the opposite and asserted that the attack was merely a retaliation against South Korea's own attacks on the North, which had preceded immediately – an account of events that South Korea denied (United Nations, 1951: 221).

The wider world involved itself into this conflict when, two days later, the Security Council of the United Nations authorized the sending of troops to South Korea (United Nations Security Council, 1950a). A commitment to collective security – the practice developed after World War One of groups of countries forming alliances under which an attack on one was considered an attack on all – justified such a move. This UN resolution was pushed by the United States, which had relatively free rein in the Security Council at this point in time, as the Soviet

Union was then boycotting the Security Council over another Cold War-related issue (Chesterman, 2014: 489).⁴

The Korean War became an even more global matter when the newly founded, socialist People's Republic of China under Mao Zedong, for reasons that are contested in scholarship (Forster, 2020: 258), started sending troops on the side of North Korea a few months later, in October 1950. The Chinese entry into the war pushed back the UN-South Korean forces, which up to this point had been quite successful (Shen & Li, 2011: 35-38). In 1953, after a prolonged conflict and protracted ceasefire negotiations, the warring parties concluded an armistice that put the border back to where it had been before the war, namely at the 38th parallel.

Major players on both sides justified their actions by apparently appealing to the same normative frameworks that had gained traction in international practice. As we saw above, these frameworks seek to regulate war in order to bring about peace. But in the hands of these belligerents, they served to justify a ramping up of the war on both sides. How could this happen?

Legitimacy and Civil War

Part of the answer is that the two sides disagreed on the question of whether the South Korean government was legitimate. The essential contestability of the concept of legitimacy made this possible. While the Western Bloc answered in the affirmative (United Nations Security Council, 1950b), the Eastern Bloc viewed the North Korean government as the only legitimate one on the Korean peninsula, and consequently characterized the conflict as a civil war. Doing so enabled them to criticize the US involvement on the basis of widely-accepted principles of self-

determination stretching back to Mill's seminal essay. These principles, as we have seen, rule out interference in civil wars except in extraordinary circumstances.

The legal framework of collective security also does not allow for intervention in a civil war, only in an aggressive war. As a number of Eastern Bloc countries were eager to point out, "to use the concept of aggression with reference to a civil war was an unprecedented violation of the basic principles of international law" (United Nations, 1951: 257). In this light, China's involvement could consequently be painted merely as an act of correcting the internal balance of forces offset by the external interference of the US, an act accepted within this framework (Walzer, 1977: 97).

Self-Defense and Aggression

But it was not only the concept of legitimacy that was co-opted in this manner. "Aggression" was also used in a similar way to justify the war from both sides, as each claimed they were fighting a just war against aggression. One aspect of the dispute here related to the chronology (who had attacked first): North Korean media claimed that the actions of 25 June 1950 were retaliation against an attack of the South (United Nations, 1951: 221). This view was repeated by the Soviet Union in July, when its Deputy Foreign Minister claimed "that the events in Korea were the result of a provocative attack by the troops of the South Korean authorities on the frontier areas of the Korean People's Democratic Republic [i.e. North Korea], and that the attack had been the outcome of a premeditated plan" (United Nations, 1951: 229). This chronology did not appear to withstand scrutiny, though, and the Eastern Bloc therefore modified their defense to characterize the invasion as a pre-emptive strike: In early October 1950, "the SU forwarded a telegram from North Korea to the General Assembly and the Security Council", which claimed

that "the secret documents captured in Seoul provided irrefutable evidence that the plans for the attack upon North Korea were conceived by the Republic of Korea and agreed to by the United States" (United Nations, 1951: 259). Given the essential contestability of how much planning needs to go into a future attack in order for it to pass the threshold of aggression, this line of argument was better suited to be made within the established principles of international law and morality.

The Western Bloc denied the self-defense argument, essentially by claiming from the beginning that the North's actions were an aggressive war and that anything the South was doing was therefore defensive. Just after North Korea's attack on 25 June 1950, "the United States (S/1495) informed the Secretary-General that North Korean forces had invaded the territory of the Republic of Korea [i.e. South Korea]". They already labelled this as 'a "breach of the peace and an act of aggression" and "requested an immediate meeting of the Security Council" (United Nations, 1951; 221). The Security Council then adopted, with revisions, a resolution submitted by the United States (United Nations, 1951: 222). It stated that North Korea's action was an "armed attack upon the Republic of Korea" and that "this action constitutes a breach of the peace", meaning that it constituted an aggressive war (United Nations Security Council, 1950a: 1). Two days later, therefore, on 27 June the UN's military observers in Korea claimed 'that the authorities in North Korea were carrying out a well-planned, concerted and full-scale invasion of South Korea; and that South Korean forces had been deployed on a wholly defensive basis on all sectors of the 38th parallel' (United Nations, 1951: 222-223). This then resulted in the aforementioned resolution of 27 June (with the Soviet Union absent during the vote), which authorized collective-security action on behalf of South Korea (United Nations, 1950: 222-223).

This labelling by the Security Council made it into propaganda and communications to the public of the respective countries, and here it is even more striking how most claims about who was the aggressor and who was the anti-aggressor were made without any visible arguments being put forward on either side. The *Daily Boston Globe* talked, without much explanation, about "[t]he Communist invasion of South Korea" ("Will the Communist Invasion of South Korea Start World War III?", 1950) and called North Korea's actions "a premeditated, carefully prepared act of aggression" ("Crisis in Korea", 1950). North Korea's ally China, simultaneously, ran propaganda campaigns in which it routinely called the West – which it mostly reduced to the United States – the "aggressors" (Committee of the Chinese People to Protect World Peace and Oppose American Aggression, 1952; "Brief Report on the Situation of the Propaganda Campaign to Oppose the Treaty between America and Chiang", 1954: 16). The elasticity of the term "aggression", as it is used in international law, gave credence to both views.

Positive Peace

In addition to claiming that theirs was a defensive war, both sides presented themselves as fighting for peace. While the political rhetoric of the day did not use the expressions "positive" and "negative" peace, these ideas were often implicit in the way international actors talked about peace. The United Nations resolution that had authorized the collective-security action had stated that this was in order "to restore international peace and security in the area" (United Nations Security Council, 1950a: 1). While the UN did not disclose the nature of this peace, the future Prime Minister of the United Kingdom, Anthony Eden, made it clear that peace had a political component. In a piece he published in the *Daily Boston Globe*, he asserted that "[t]he fighting in Korea is not, of course, a civil war in a distant land. It is a trial of strength between Communism

and the free world and a new [sic]. The North Koreans did not just decide to invade the South just because they felt like it. Communist governments of little countries do not act that way" (Eden, 1950: 1)

The same was the case in the Eastern Bloc. In its propaganda campaigns, for example, China claimed in very broad terms that anti-aggressive war was necessary for world peace: "The war of the Chinese people to extinguish Chiang Kaishek [on Taiwan] and the war of the Korean people to extinguish Syngman Rhee and the American aggressors, are all [wars to] restrain the war provokers. They are very important methods to protect world peace." ("Main propaganda points of the campaign week for propagating and signing for the protection of world peace", 1950). The Chinese Communist Party's main propaganda newspaper, the *People's Daily*, in addition, published articles in which it explained the difference between just and unjust wars, and also warned against the dangers of "fake peace", under whose "cover, they [the Americans] can conduct a bloodless aggressive war; implement political, economic and cultural aggression. They want that the people of the whole world tamely, like sheep, are their slaves." ("Main propaganda points of the campaign week for propagating and signing for the protection of world peace", 1950).

This is not to say, however, that the people always bought into their governments' propaganda. One local Chinese Communist Party committee, for example, worried about "a sort of unprincipled anti-war feeling" on the part of the population ("Brief Report on the Situation of the Propaganda Campaign to Oppose the Treaty between America and Chiang", 1954: 16). Nonetheless, governments continued to deploy their preferred interpretations of the concepts found in normative theories of armed conflict in public forums. And, as we will argue in the next section, because the concepts allowed a degree of latitude in their specification, owing to their

essentially contested nature, a significant method of constraining action – namely, the appeal to international norms – was rendered unavailable to their opponents.

Revisionism and Minimalism

As our study of the Korean War shows, when essentially contested concepts like “aggression”, “legitimacy”, and “peace” are used in theories of armed conflict, they are left open to manipulation on the part of belligerent actors in the aid of their own particularistic ends. In the Korean War, players from both the Eastern Bloc and the Western Bloc justified their actions by appeal to these principles. This is clearly an undesirable state of affairs, but is there any alternative? In this section, we examine whether two possible broad directions for reform would be an improvement on the status quo.

First, we might consider accepting the recommendations of “revisionists” – a group of war ethicists who have, in recent decades, argued for a different way of understanding the ethics of armed conflict. There are a number of different versions of revisionism,⁵ but what they all share is an opposition to the “traditionalist” view that warfare is an area that is governed by special moral principles that only apply in that context. Revisionists contend that there is only one moral framework governing violence – both interpersonal and international – and consequently claim that certain principles that cover individual self-defense should also govern armed conflict. While revisionists often do not think that the principles they endorse should be simply applied to armed conflict,⁶ it may nonetheless be suggested that a move towards something like revisionist principles in international law would avoid the problems of traditional

theories that we have identified. Since the essentially contested concepts we discussed all entered the normative vocabulary of warfare on account of the dominant theories of armed conflict departing from a simple self-defense model, it may be thought that the revisionist move would eliminate these concepts from the relevant normative theories, and consequently prevent the subversion of the relevant frameworks.

However, while revisionists seek to remove some essentially contested concepts from theories of armed conflict, they do so at the cost of introducing others. Consider, for example, revisionist criticisms of the definition and role of aggression in traditional frameworks. A number of revisionist authors have argued that responding to aggression, as it is understood in international law, does not exhaust the just causes for war and, conversely, also includes some cases that are not just causes (Fabre, 2012: 103-112; Luban, 1980; McMahan, 2017; Rodin, 2003). In their view, wars are permissible in virtue of facts other than whether they are fought in defense against aggression (however defined). Jeff McMahan, for example, argues that "a just cause for war is the prevention or rectification of a wrong or set of wrongs, which can be achieved by intentionally attacking only those who, by virtue of their responsibility for the commission or continuation of the wrongs [or "unjust threats" in other formulations (McMahan, 2009: 205-206)], have made themselves morally liable to be attacked" (McMahan, 2017: 1389-1390; see also Frowe, 2014 : 92). He consequently suggests that, in the long term at least, international law should prohibit unjust wars, while noting that "it would be inappropriate (at least for linguistic reasons and perhaps for other reasons as well) to condemn them as aggression" (McMahan, 2017: 1396-1397).

While such a move would remove the concept of aggression from international law, and thus deny one tool of manipulation from powerful actors, it would certainly introduce others. If

just wars are aimed at those who hold responsibility for unjust threats or other forms of wrongdoing, we will clearly need to define the concepts of injustice, wrongdoing, and responsibility. But these concepts are no less essentially contested than aggression is. They are clearly appraisive: immorality and injustice are undesirable; responsibility for states of affairs is a positive or negative depending on what the state of affairs in question is. And, owing to their complex internal character, they give rise to a number of incompatible definitions: people routinely disagree over principles of justice and morality, while it is an open question what conditions need to be in place for an agent to hold responsibility for outcomes. It is highly likely, then, that if this proposal was put into practice, international actors would seek to use them to justify their own particularistic goals just as much as they do with concepts like aggression.

The problem with revisionist proposals such as these, then, is that, just like traditionalism, they invoke essentially contested concepts. Replacing traditional frameworks with these principles in international law may well have advantages in bringing law more in line with morality (if the revisionist view of morality is correct), but it does little to reign in the use of self-interested violence conducted under the cover of that law. Rooting this out will require more radical changes to the international order.

This brings us to the second possible remedy, which will be shown to be more promising than the revisionist solution. We call this "minimalism".⁷ This approach involves adopting principles for governing the international use of force that are more minimal in their conceptual apparatus. To see how this would address the problem under discussion, suppose that the laws governing the resort to force in international law resembled an even simpler self-defense model than even the revisionists had in mind. Suppose, that is, that they largely outlawed the use of force except in cases of direct physical violence against individuals. Such restrictions would

justify far fewer wars than the status quo does. Wars fought solely for territorial integrity would be ruled out. And, importantly, any wars justified in relation to essentially contested concepts – for example, wars justified in response to “aggression” as it is understood in existing international law – would also be ruled out. This would form a powerful barrier to dubious justifications that play on the vagueness of these concepts to be used in international discourse.

Just because the minimalist proposal that we are putting forward limits a just cause for war to instances of direct violence to individuals, this does not mean that it cannot recognize the legitimacy of some pre-emptive strikes. Our rationale for limiting the just causes for war is to ensure that we avoid vagueness in rules, which in turn can be taken advantage of by international actors. So long as the standards set for the legitimacy of a pre-emptive strike are clear, these standards will not run into the problems that existing normative rules do. Indeed, the very reason why pre-emptive strikes in the face of *imminent* threats is taken to be a legitimate act of war in the just war tradition is often because of the certainty that violence will follow (Grotius 2005: 1102). Allowing pre-emption even when a threat is not imminent (as Walzer proposed), though, would allow the possibility of unilateral interpretation. It is this possibility that the minimalist approach seeks to minimize.

Our proposal thus echoes Murad Idris’ suggestion to replace a more glorious, but less reliable notion of “peace” with a more barefoot but “honest” idea of the “truce” (Idris, 2019: 319). But where Idris locates the root of the problem of peace being often turned into war in a conceptual issue inherent in peace itself (peace as a “troubling idea” (Idris, 2019: 322)), we see it instead as a practical problem derived from people’s tendency to manipulate vocabulary.

Therefore, we propose to reduce the vagueness of existing vocabulary, instead of replacing it.

Would there be any place for a positive conception of peace in this proposal? The problems we pointed out about the way that positive notions of peace have been used to justify military action, as noted, are of a practical nature: we do not dispute that there is a coherent (and, indeed, attractive) way in which one can incorporate rich normative elements like justice into a definition of peace. Nor do we dispute that this would be an appropriate goal to set ourselves in various aspects of foreign policy. Nonetheless, the considerations canvassed above suggest that, using positive ideas of peace as a justificatory goal of war may be particularly problematic. While it is more difficult to see how a positive ideal of peace could be manipulated when it is used in non-violent peacekeeping exercises, for example, there are countless ways in which it has been co-opted to justify questionable acts of violence – the Korean War is just one.⁸

Some may object to this proposal. Even if expanding the number of just causes for war opens the door to manipulation on the part of some, they might say, it is still the case that a number of worthy goals (aside from resisting direct violence) can be pursued through warfare. Reducing the instances in which warfare can be used as a policy tool would restrict morally-motivated actors from pursuing justice through wars. Our proposal, for instance, would call into question the legitimacy of various wars of national liberation and revolution, as well as numerous cross-border conflicts aimed at seemingly valuable goals.

In response, it is important to note that we are not suggesting these sorts of causes are of such limited importance to never justify a forceful response. We are not, that is, advocating either absolute pacifism, which rules out warfare as impermissible in all circumstances (Fox, 2014), or even contingent pacifism, which, although allowing the logical possibility of the just use of violence, are skeptical of its ability to be pursued in practice (Mantena, 2012; May, 2015). The case we are outlining for renouncing the use of war in various circumstances is a pragmatic

one, based on the wider effects of doing so. While various just causes could be pursued through violence, justifying them via an institutionalized framework opens up the possibility that unjust causes will also be able to claim support from these frameworks. Making sure that the rules of armed conflict promote peace requires limiting the legitimate reasons for war even more than international actors did at the end of the First World War.

Another objection is that the proposed reforms to normative frameworks will not achieve their aims. Would international norms, if well-formulated, really have a constraining effect on the use of violence? Or would states continue to pursue their own particularistic goals in violation of such principles?

The debate on whether international norms play a constraining role in international relations, of course, is a long one, and we cannot hope to contribute to it in any significant way here. Needless to say, our proposal depends on the possibility of international norms limiting armed conflict. However, it is worth noting that within constructivist international relations theory – which does recognize the importance of international norms – it has been argued that norms are most stable when they are well-formulated, and leave little room for different interpretations (Dietelhoff & Zimmerman 2019: 10). If norms do matter, then, the minimalist norms that we propose may in fact be *more* able to constrain international action than many existing norms. They might do this through closing off the possibility of successful challenges.⁹

Conclusion

The use of essentially contested concepts in our normative frameworks need not pose a problem so long as there is an ultimate arbitrator to settle disputes. In the international area, though,

where powerful actors can often be their own judges, allowing leeway in the specification of key concepts will open up the door to manipulation of the operative rules. Absent any prospect of effectively ruling out such opportunistic interpretations, we have suggested that these sorts of concepts should be eschewed from international frameworks regarding war and peace. Only by adopting more minimal, and better specified, rules can we prevent the situation that Ferencz described as the fox guarding the chicken coop.

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¹ For more details on this methodology more generally, see Walzer (1993).

² See, for example, the distinction in Rawls's international theory between a *modus vivendi* and "stability for the right reasons". The latter, because of its involving principles of justice being upheld, as well as stability, is favoured by Rawls (1999: 45).

³ Although it might suggest that there are limits to how we can permissibly pursue this goal. Cf. Rawls (1993: 54-58).

⁴ This was the question if the People's Republic of China on mainland China or the Republic of China on Taiwan should hold the seat of "China" in the United Nations. At the time, it was occupied by Taiwan, but the Soviet Union favored the People's Republic.

⁵ For a useful summary, see Lazer (2017).

⁶ One revisionist views his task as uncovering the "deep morality" of warfare, rather than the optimal set of laws governing armed conflict (McMahan, 2004: 730).

⁷ This should not be confused with the view that the responsibilities of victorious belligerents after a war ends can be derived solely from *jus ad bellum* and *jus in bello* considerations. This has been labelled the minimalist approach to *just post bellum* (Bellamy 2008).

⁸ Our proposal is thus consistent with recent contributions in Catholic thought (Love 2018; Prusak 2018), in which peacebuilding with a morally-rich goal of peace in mind have been presented as a alternative to warfare on many occasions.

⁹ On the way in which international norms can be undermined through challenges, see McKeown (2009). In the case of the Korean War, it could be argued that North Korea (somewhat) effectively challenged various norms around armed conflict by reinterpreting them. If what we have said is correct, this was facilitated by the vagueness of the concepts contained within these norms.