

# Proportionality and Time\*

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Proportionality in the resort to war determines a limit to the amount of harm it can be permissible to cause for the sake of achieving a just cause. It seems to follow that if a war has caused harm up to that limit but has not achieved the just cause, it should be terminated. I argue, however, that this is a mistake. Judgments of proportionality are entirely prospective and harms suffered or inflicted in the past should in general be ignored. Yet past losses that could be partially redeemed by the achievement of the just cause may be an exception.

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## I. SOME DISTINCTIONS AND ASSUMPTIONS

In an opinion piece published in the *New York Times* just ten days before the United States invaded Iraq in 2003, former president Jimmy Carter argued that an invasion would be wrong because it would violate the just war principles of last resort, discrimination, proportionality, and legitimate authority. Yet somehow he managed to misunderstand all four principles. For example, his statement of the *ad bellum* principle of proportionality—the principle that governs the resort to war—was that a war’s “violence must be proportional to the injury we have suffered.”<sup>1</sup> In this he anticipated those critics of the Israeli invasion of Gaza in 2008 who argued that Israel’s killing of many hundreds of Palestinian civilians was vastly disproportionate in relation to the few civilian casualties that Israel had suffered from attacks by Hamas during the years immediately preceding the invasion.

These claims assume that proportionality in war is a relation between the harms that war causes and harms that have been suffered in the past.

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1. Jimmy Carter, “Just War—or a Just War?” *New York Times*, March 9, 2003.

Something like this might be true if just war were entirely a matter of *reprisal*—that is, of responding to attacks with retaliation intended to deter further attacks. But while a just war might include reprisals (though it ought not to include any intended to kill innocent civilians), just wars are normally a matter of *defense* rather than reprisal or retribution.<sup>2</sup> And the aim of defense is the prevention of future harm, which is entirely prospective. Proportionality in defense concerns the relation between the harms that defensive action would cause and those it would avert, not between the harms one would cause and those one has already suffered.

Even if a just war is wholly defensive in its aims, one might wonder whether there is a retrospective dimension to the assessment of proportionality. No one denies, of course, that what has happened in the past is relevant to predicting the future. Although the critics of Israel's invasion of Gaza who pointed to the disparity between the harms Israelis inflicted on Palestinians and those the Palestinians had inflicted on Israelis were mistaken to suppose that this gave a measure of the proportionality of the war, they were right that it was relevant to determining whether the resort to war was proportionate. It was relevant to the extent that Hamas's failure, despite all its efforts, to kill more than a few Israeli civilians was *evidence* that the number it would be able to kill in the future would continue to be small. Defenders of the invasion responded by claiming that Hamas would soon acquire longer-range and more accurate missiles capable of striking Tel Aviv and that their previous attacks demonstrated their determination to use them. Claims about past attacks and their casualties were thus relevant, but only to the extent that they were predictive of the future.

It may seem, however, that proportionality must take account of the past in a more robust and substantial way than this. Before addressing this issue, I will state some simplifying assumptions I make in the subsequent discussion. One is that I will in general limit the discussion to what I call *wide proportionality*—that is, proportionality in harms caused to people who are not liable to those harms. By this I mean that they have done nothing to forfeit their right not to be caused those harms. Wide proportionality is thus a constraint on a lesser-evil justification for harming people who would be wronged by being harmed. There is a lesser-evil justification for harming people who are not liable to be harmed when harming them is necessary for preventing a substantially greater harm to others who are also not liable to be harmed.

Wide proportionality contrasts with *narrow proportionality*, which is proportionality in harm inflicted on people who are potentially liable

2. On the role of punishment and retribution in war, see Jeff McMahan, "Aggression and Punishment," in *War: Essays in Political Philosophy*, ed. Larry May (Cambridge: Cambridge University Press, 2008), 67–84.

to be harmed. A person who poses a threat of wrongful harm may be potentially liable to be caused some degree of harm in defense of his victim. The degree of harm to which he is liable is limited, at least in most instances, by the nature of the wrong for which he would otherwise be responsible and the degree of his responsibility for that wrong. Any harm inflicted on him beyond that to which he is liable is disproportionate in the narrow sense. Narrow proportionality is thus a constraint on a liability-based justification for harming.

To most people, the restriction of the discussion to wide proportionality will not seem a significant limitation, since just war theory has traditionally assumed that proportionality is concerned only with harms to the innocent—that is, to those who are not liable to be harmed—and not with harms to those who are relevantly noninnocent, such as combatants on both sides. I have argued elsewhere that this is a mistake, but for clarity of exposition I will, in my main arguments, ignore harms to people who are potentially liable to be harmed.<sup>3</sup>

The harms that are most commonly recognized as relevant to wide proportionality are those inflicted as a side effect of military action on civilians who are not liable to any harm at all. Although harms inflicted intentionally on such civilians are condemned by the requirement of discrimination, when they are inflicted nonetheless, they count in the assessment of wide proportionality, where they have even greater weight than equivalent harms inflicted unintentionally, as a side effect only. The intentional infliction of harm on people who are not liable to suffer it may sometimes have a lesser-evil justification, though only if the harm to others that is averted by the harmful act is even greater than that which would be required to justify the infliction of the same amount of harm as an unintended side effect. In such cases, the requirement of discrimination is overridden.

Those who fight for a just cause in a just war (“just combatants”), and who fight by permissible means, do nothing to forfeit their right not to be harmed—that is, to make themselves liable to defensive harm.<sup>4</sup> Expected harms that they would suffer in a just war count, along with harms that civilians on the just side would suffer, in determining whether the resort to war by their leaders would be proportionate in the wide sense and therefore permissible. Yet if they were to fight of their own

3. See Jeff McMahan, “What Rights May Be Defended by Means of War?” in *The Morality of Defensive War*, ed. Cécile Fabre and Seth Lazar (Oxford: Oxford University Press, 2014), sec. 3.

4. Jeff McMahan, *Killing in War* (Oxford: Clarendon, 2009), chap. 1. For a more detailed discussion, see Jeff McMahan, “Self-Defense against Justified Threateners,” in *How We Fight: Issues in Jus in Bello*, ed. Helen Frowe and Gerald Lang (Oxford: Oxford University Press, 2014), 104–37.

volition rather than on orders from their leaders, expected deaths among them could not make their going to war impermissible. They are permitted, at least up to a point, to sacrifice their lives for others if they so wish. Hence, acts of self-sacrifice that are wholly voluntary cannot in general be disproportionate in the sense that is relevant to moral permissibility. Yet a certain number of anticipated deaths that would not be disproportionate if the risks were freely taken by the potential victims can make it disproportionate and therefore impermissible for their government to order them to fight. This is true even though their deaths would be caused not by their government but by their enemies. The expected responsive action of an enemy can thus make a state's resort to war disproportionate.<sup>5</sup>

A further limitation of the subsequent discussion is that I consider only the proportionality of action by just combatants. It is obvious that a war fought to achieve goals that are unjust could not in practice satisfy the *ad bellum* proportionality requirement, for it is practically impossible that it could have good effects of the relevant sorts sufficient to outweigh its bad effects. It follows, I believe, that acts of war by unjust combatants can very seldom satisfy the appropriate *in bello* proportionality requirement. This is of course denied by traditional just war theorists, but I have argued at length, again elsewhere, that they are mistaken about this.<sup>6</sup> In general, acts of war by unjust combatants can seldom satisfy any of the moral principles of *jus in bello*—discrimination, proportionality, and necessity—when they are plausibly interpreted. I therefore will not discuss proportionality in the resort to unjust war or proportionality in acts of war by unjust combatants.

There is a final preliminary point that, though rather technical, is worth making. Many civilians on the unjust side in a war may be responsible for making small contributions to their side's war. Assuming that their contribution is comparatively small and their responsibility for making it is also comparatively slight (that is, they are not highly culpable for paying taxes or supporting the war in other ways), the harm to which they might be liable, as either a means to or a side effect of the achievement of the other side's just cause for war, must also be quite small. Suppose that the average degree of harm a civilian supporter of an unjust war might be liable to suffer as a side effect of military action by just combatants is  $x$ . Suppose further that some particular civilian supporter of the unjust war, S, is liable to suffer  $x$ , but no more than  $x$ , as a side effect. That an act of war

5. McMahan, "What Rights May Be Defended by Means of War?" sec. 8.

6. Jeff McMahan, "War Crimes and Immoral Action in War," in *The Constitution of Criminal Law*, ed. Antony Duff, Lindsay Farmer, Sandra Marshall, and Victor Tadros (Oxford: Oxford University Press, 2013), 151–84.

by just combatants would cause S to suffer  $x$  as a side effect does not, therefore, count against the permissibility of that act; for in its effect on S, that act is proportionate in the narrow sense. But even if S were not liable to any harm at all, the fact that an act of war by just combatants would cause him to suffer  $x$  as a side effect would not count strongly against the act, for  $x$  is by hypothesis a comparatively minor harm. If war caused only minor harms to civilians, it would be much less morally problematic than it is. The main reason that even just war is morally problematic is that the harms that civilians suffer from military action by just combatants are likely to be grave harms, such as death and serious injury.

If S is liable to suffer a harm up to degree  $x$ , any harm inflicted on him beyond  $x$  is disproportionate in the narrow sense. But because harms beyond  $x$  are ones to which he is not liable, they come within the scope of wide proportionality. Suppose that S is killed as a side effect of military action by just combatants and that the degree of harm he suffers in being killed is  $z$ , which is also, we may suppose, the average harm that people suffer by being killed. Let  $y$  be the difference in harm between  $x$  and  $z$ . If the harm to S could have been anticipated when the leaders of the just side were deliberating about the resort to war, the harm of degree  $y$  that S would suffer in being killed would weigh negatively in the assessment of whether their war would be proportionate in the wide sense. But because  $x$  is a small harm,  $y$  must be very nearly as great a harm as  $z$ , the average harm involved in being killed. For practical purposes, therefore, in the assessment of both *ad bellum* wide proportionality and *in bello* wide proportionality, it is often an acceptable heuristic device to treat all foreseeable killings of civilians on the unjust side as killings of people who are not liable to any harm at all, even though many of them may be liable to suffer small harms and some small proportion of them may be liable to suffer more substantial harms by virtue of their responsibility for significant contributions to their side's unjust war.

The acceptability of this heuristic device depends on the plausibility of the assumption that the harm to which a person can be liable as a matter of defense is limited by the degree of harm he would otherwise cause and the degree of his responsibility for causing that harm. And it depends further on the assumption that most civilians who contribute to an unjust war make only small contributions for which they are not significantly culpable. The use of the heuristic device in practice seems compatible with the fact that there are some civilians who make significant contributions to unjust wars and are significantly culpable for doing so, such as hawkish civilian advisors to the government, scientists and engineers who devise more effective weapons for use against just combatants, and so on. In general, unless one has specific information about such civilians, one should act on the assumption that the foreseeable killing of a civilian as a side effect of military action weighs

negatively in the assessment of wide proportionality in roughly the way that killing a wholly nonliable person does.

## II. TWO VIEWS OF THE RELEVANCE OF PAST LOSSES

We can now reconsider the relevance of the past to the assessment of wide proportionality. This arises as an issue of *jus ad bellum* because the *ad bellum* wide proportionality requirement governs more than just the initial resort to war. This would not be so if the entire course of a war could be infallibly predicted at the outset. But conditions change in war in ways that cannot be predicted. Because of this, a war that seems proportionate must be continuously monitored to determine whether it remains likely that its just cause can be achieved at a proportionate cost in harms to those who are not liable to those harms. The *ad bellum* wide proportionality requirement must, in other words, be continuously re-applied.

Yet there is a question about which harms count in an assessment of *ad bellum* proportionality made while a war is in progress. Some writers have considered quite generally which good and bad effects of war count in the assessment of proportionality.<sup>7</sup> But there is a more specific question that, to the best of my knowledge, has only recently begun to be carefully considered, and that is whether and, if so, to what extent harms that have occurred earlier in a war are relevant to whether the continuation of the war would be proportionate.

According to the *Quota View*, what is determined in the initial *ad bellum* proportionality judgment is an overall limit to the amount of harm that it can be proportionate to inflict, over time, on people who are not liable to that harm as a side effect of achieving the just cause for war. Suppose that the correct judgment in a particular case is that the achievement of the just cause can justify the killing of 1,000 innocent people (by which I here mean “people not liable to be killed”) as a side effect of military action. At this point, before the initiation of the war, all the available evidence indicates that the just cause can be achieved without killing more than 1,000 innocent people. At this point, then, the war is proportionate in the evidence-relative sense. But suppose that later 1,000 innocent people have been killed but the just cause has not been achieved. The initial evidence was misleading, but the evidence now strongly suggests that the just cause can be achieved at the further cost of killing only 500 more innocent people as a side effect. Assuming that the achievement of the just cause is all-or-nothing (so that it has not been even

7. See, e.g., Thomas Hurka’s seminal article, “Proportionality in the Morality of War,” *Philosophy and Public Affairs* 33 (2005): 35–66; and Jeff McMahan and Robert McKim, “The Just War and the Gulf War,” *Canadian Journal of Philosophy* 23 (1993): 501–41.

partially achieved) and that there have been no changes that might have added new elements to the just cause, the Quota View implies that the war must stop.<sup>8</sup> The just side has reached the limit of wide proportionality. It has depleted its allowance of permissible killings. Indeed, it would be disproportionate to continue the war even if the just cause could be achieved in a way that would kill only one more innocent bystander as a side effect.

The view at the other end of the spectrum of possible views is that, in the reassessment of the proportionality of a war while the war is in progress, the deaths of just combatants and side-effect killings of innocent civilians that have already occurred no longer count in determining whether the continuation of the war would be proportionate. Those deaths and killings are sunk costs and are relevant, if at all, only indirectly. The assessment of wide proportionality is entirely prospective. We can call this the *Prospective View*. There are views intermediate between the Quota View and the Prospective View, such as that defended by David Rodin in his contribution to this symposium, but I will not discuss them here.

While the Prospective View can, as we will see, seem implausibly permissive, the Quota View can seem implausibly restrictive, as when it forbids the continuation of a war that will kill only one more bystander. Yet the Quota View can be rendered less restrictive if it takes into account a special type of alleged good effect: the redemption of past losses. The basic idea is familiar. It is found, for example, in Lincoln's Gettysburg Address: "It is for us the living . . . to be dedicated here to the unfinished work which they who fought here have thus far so nobly advanced. . . . —that from these honored dead we take increased devotion to that cause for which they gave the last full measure of devotion—that we here highly resolve that these dead shall not have died in vain." Such pronouncements in the mouths of politicians are often cynically and opportunistically motivated. When public opinion begins to turn against a war that the political leaders wish to continue, the latter often claim that to "cut and run" would "betray the fallen" by making it the case that their sacrifices will have been wasted. Yet politicians would not make such claims unless they expected them to operate effectively on their listeners, which they generally do because most of us acknowledge that there is some plausibility to the idea that sacrifices can be at least partially redeemed by the achievement of the goals for which they were made.

Suppose that deaths that have been suffered or caused in pursuit of a just cause can be partially redeemed by the subsequent achievement of the just cause. It seems that the partial redemption of these deaths can

8. See Darrel Moellendorf's contribution to this symposium issue, "Two Doctrines of *Jus ex Bello*."



then be a good effect that weighs against harms caused by the continuation of war. If so, taking account of this good effect could make the Quota View less restrictive in its assessment of whether the continuation of war would be proportionate. For the combined aims of achieving the original just cause and redeeming the sacrifices that have been made in the effort to achieve it could presumably justify causing greater harm than the achievement of the just cause alone could justify. We can call the idea that the redemption of sacrifices made in the past can be an additional good that weighs in the assessment of the proportionality of continuing a war the *Redemption Thesis*.

In the remainder of this article, I first defend the Prospective View and then develop a case for the Redemption Thesis. The conjunction of these two views may seem to have implications for the continuation of war that are far too permissive. But I will argue that, although the Redemption Thesis is plausible, it has only limited significance in practice. It seems, in particular, to be relevant to narrow proportionality more than to wide proportionality—though how this can be true is itself puzzling. I will conclude by suggesting that even if the Redemption Thesis makes it easier to justify the continuation of a war, it may also make the initial resort to war more difficult to justify.

### III. A DEFENSE OF THE PROSPECTIVE VIEW

I am intuitively attracted to the Quota View but have become convinced that it is mistaken.<sup>9</sup> Suppose that the achievement of a just cause for war could justify the sacrifice of 1,000 just combatants and the killing, as an unintended side effect, of 1,000 innocent civilians. At the outset, all the evidence indicates that the just cause could be achieved within these limits. But later, 1,000 just combatants have been killed and they and other just combatants have killed 1,000 innocent civilians as a side effect of their action, yet the just cause has not been achieved. The leaders of the just side now understand why the earlier proportionality assessment was mistaken. And the evidence now reliably indicates that the just cause can be achieved without sacrificing more than another 500 just combatants and without killing more than 500 more innocent civilians. Call this the *Test Case*, as it helps us to see what is at issue between the Quota View, which implies that the just side must end the war, and the Prospective View, which implies that the continuation of the war would be proportionate.

To assess the comparative plausibility of the two views, consider an analogous choice based on the familiar Trolley case. A runaway trolley is

9. Largely by arguments advanced by Victor Tadros in discussion. I am indebted to those arguments in the following few paragraphs.



careering down the main track and will kill five innocent people who are trapped on that track unless the trolley is diverted onto a branch track. There is one innocent person trapped on the branch track who will be killed if the trolley is diverted. A bystander has access to a switch that can divert the trolley. Suppose that, as most people believe, it is permissible—and therefore proportionate—for her to divert the trolley, thereby saving the five but killing the one. Assume for the sake of argument that it would be proportionate for her to kill two innocent bystanders as a side effect of saving the five, but disproportionate to kill more than that. Also assume, again for the sake of argument, that this is true whether the innocent bystanders would be killed by the redirection of an existing threat (the trolley) or by the creation of a new threat.

When the bystander pulls the switch, there is a malfunction that could not have reasonably have been anticipated. Her action fails to affect the trolley but unforeseeably kills two innocent bystanders who are standing near the main track. The bystander immediately sees what went wrong and quickly repairs the switch. She still has the opportunity to divert the trolley. Is it permissible for her to do so?

We are assuming that if there had been three people on the branch track it would have been disproportionate to divert the trolley, because killing three people as a side effect is disproportionate in relation to saving five. But now two have been killed so that if the bystander pulls the switch a second time, she will have killed three innocent people in her effort to save the five. If it is disproportionate to kill three by directing a threat away from five, defenders of the Quota View will conclude that the bystander's pulling the switch the second time would be disproportionate. Yet at present, looking forward, the bystander's choice is the same as it was before. The question seems to be simply whether it is proportionate for her now, looking forward, to kill one innocent bystander as a side effect of directing a threat away from five. The fact that two other innocent bystanders have already been killed because of a malfunction in the switch seems irrelevant.

Suppose the bystander had been negligent in failing to notice the defect in the switch before she pulled it the first time. Even that seems irrelevant to whether it is proportionate for her to pull it a second time now that she has repaired it, given that doing so will now save five by redirecting a threat away from them toward only one.

One might object that the trolley case is relevantly different from choices concerning the continuation of war. One difference is that in diverting the trolley the bystander is redirecting an existing threat, whereas those who continue to fight a war create new threats to the innocent civilians they kill as a side effect. This may be a morally significant difference in that it might make the ratio between the number it would be permissible to kill and the number that would thereby be saved higher in the

trolley case than it would be in war. But it seems irrelevant to the significance that sunk costs might have in the assessment of proportionality.

Another difference that is potentially more significant is that the two pullings of the switch can be regarded as two distinct instances of attempted saving, each of which can be evaluated separately, whereas a so-far failed effort to achieve a just cause by means of war and a continuation of that effort are merely two phases of the same war, which as a whole must be either proportionate or disproportionate.

But this too seems morally irrelevant. Recall that in the Test Case, the just cause has not been achieved but can be achieved with fewer than 500 further deaths of each sort. Imagine three different ways in which this story might continue. In one, the original forces simply continue to fight, achieving the just cause with fewer than 1,000 further deaths of just combatants and innocent civilians. In the second, the original forces retreat and hostilities cease. But soon a new government comes to power in the state with the just cause, and it sends entirely different forces to achieve the just cause, which they do at the same cost in lives as in the first scenario. Finally, in the third version of the story, the state that has been fighting for the just cause withdraws but a different state then decides to initiate a war to achieve the same just cause, which it does without sacrificing more than 500 just combatants or killing more than 500 innocent civilians. In this third scenario, and arguably in the second, a new war is initiated to achieve the just cause after the first war has failed and been abandoned.

It seems that in the second and third versions of the Test Case, the different agents who initiate a different war to achieve the just cause are unconstrained in their assessment of proportionality by what other agents have done in the past. To appreciate this, it may help to consider a variant of the trolley case in which the switch malfunctions. Suppose that the bystander who has pulled the malfunctioning switch rushes to see whether she can aid the two people who have in fact been killed. A second bystander who is nearby then quickly repairs the switch and diverts the trolley, thereby saving the five though killing the one on the side track as a side effect. It does not seem that her action is disproportionate because her predecessor at the switch has already killed two. Yet it also seems irrelevant to the permissibility of pulling the switch a second time whether the person who pulls it is the one who pulled it once before or a different person.

If it is acceptable in the trolley case to assess the proportionality of pulling the switch a second time without counting the two earlier killings, it should also be acceptable to assess the proportionality of the new war in the second and third versions of the Test Case without counting the deaths from the earlier war. And there seems to be no morally significant difference between continuing the war in the first version of the

case and starting a new war in the second and third versions. It seems implausible to suppose that it could be proportionate for soldiers from a different state to achieve the just cause at a certain cost but disproportionate for the original soldiers to do exactly the same, in the same way, and at the same cost.

Suppose that the Test Case progresses and concludes in the manner described in the first version. The victorious side's just war has in the end required the sacrifice of nearly 1,500 just combatants and the killing of nearly 1,500 innocent civilians as a side effect. But the initial judgment was correct: a war to achieve the just cause is disproportionate if it involves the sacrifice of more than 1,000 just combatants or the killing of more than 1,000 innocent civilians. In retrospect, therefore, the war as a whole was disproportionate.

It is tempting to conclude that it was the decision to fight the second campaign that made it so. But in fact the war had already become disproportionate before that campaign was begun. Only the full achievement of the just cause could have rendered the killing of 1,000 civilians and the sacrifice of 1,000 soldiers proportionate. So whether the just cause had been partially achieved or had not been achieved to any degree, the war became objectively disproportionate when the limits of proportionate harm were reached without the full achievement of the just cause. The harms that had been caused were at that point disproportionate in relation to whatever good had been achieved, if any. The choice was then not between a proportionate though unsuccessful war and a successful but disproportionate war, but between two ways in which the war would be unavoidably disproportionate. It might be disproportionate by being an unsuccessful attempt to achieve a just cause within the initial limits of proportionality. Or it might be disproportionate by continuing beyond the initial limits of proportionality but in such a way that the continued military action was itself proportionate in relation to the continuing value of the achievement of the just cause.

The first form of disproportionality is clearly impermissible in the fact-relative sense. Had the just side correctly predicted that it would not be able to achieve its just cause within the limits of proportionality, it would have been impermissible in all relevant senses for it to go to war. But because it was reasonable for it to believe that the war would be proportionate, the just side acted permissibly in the evidence-relative and belief-relative senses in going to war. In the third scenario for the continuation of the war, the original just side stops fighting and another state does only what is necessary and sufficient to achieve the just cause, at a cost of killing 500 more civilians and sacrificing 500 more just combatants. It seems that this second state's war is both proportionate and permissible in all relevant senses. Yet if the original side had continued the war in the same way, its doing so would have been disproportionate.

But as I suggested, there seems to be no morally significant difference between the original just side's continuing the war and the second state's doing what the original side would have done if it had continued to fight. This shows, I think, that action that causes harm beyond what is proportionate for a war as a whole but is nonetheless prospectively proportionate can be permissible even in the fact-relative sense. This is what is implied by the Prospective View. According to the Prospective View, it is not necessarily morally required to end a war when the original limit to proportionate harm has been reached.

#### IV. OBJECTIONS TO THE PROSPECTIVE VIEW

Perhaps the most significant objection to the Prospective View is that it can in principle permit the indefinite continuation of war and the infliction of an indefinite amount of harm beyond the initially recognized maximum that it could be proportionate to inflict for the sake of achieving the just cause. If the initial limit to the harm that can proportionately be inflicted is reached, the Prospective View implies that the proportionality calculation may at that point be started over with a clean slate. Indeed, it seems to imply that the proportionality calculation can legitimately be started over at any point at which it becomes known that the just cause cannot be achieved within the original limit. If, for example, the just side realizes after killing 800 innocent civilians as a side effect that it cannot achieve its just cause within the original limit of 1,000 killings but can achieve it by killing fewer than 1,000 more from that point on, it is permitted to continue the war with a new proportionality limit of 1,000. In principle this process could continue indefinitely, with the number that might be proportionately killed becoming potentially limitless.<sup>10</sup>

One obvious response to this objection is that the probability that there could be a lengthy series of reasonable recalculations of proportionality that would all be mistaken is vanishingly small. In practice, if a government was repeatedly mistaken in its assessments of proportionality, the explanation would almost certainly be that it was incompetent or biased in making its predictions rather than that it was the victim of a statistically improbable series of epistemically justified judgments that all unluckily turned out to be mistaken. In that case, each mistaken prediction would make it rational to discount the reliability of the next governmental prediction even more than the previous one. With such discounting, it would soon be disproportionate to continue the war even

10. Before Victor Tadros overcame my initial opposition to the Prospective View, I advanced this objection in defense of Darrel Moellendorf's view at the conference at which the articles in this symposium were first presented. I am indebted to an editor at *Ethics* for pressing me to address it here.

if the government's prediction was that the continuation would be proportionate.

It is not enough, though, to show merely that a problem is unlikely to arise in practice if that leaves the theoretical problem unsolved. I think, however, that there really is no theoretical problem here. The implications of the Prospective View in these cases are, I believe, correct. This may be obscured by our intuitive recoil from the magnitude of the harm caused in the cases we have considered each time an epistemically justified prediction proves to be mistaken. But the structural issue is the same in cases in which the magnitude of the difference between the harm one inflicts and that harm one is attempting to prevent is much greater. Suppose that because resources are limited, it would be disproportionate for a government to spend more than \$1 million of its taxpayers' money to save a single life. But imagine circumstances in which it is reasonable to believe that a government can save a person's life by spending only a penny of the taxpayers' money. Suppose, for example, that the objective probability of saving the life for a penny is 99.99 percent. Yet the first 10 billion attempts to save the person's life have all been failures. This is of course statistically highly improbable, but our concern is whether our theory has the right implications even in highly improbable cases. Even after 10 billion failed attempts, the objective probability that the next attempt will succeed in saving the person's life remains 99.99 percent. In these conditions, when \$100 million has already been spent, the Quota View implies that further attempts would be disproportionate and therefore impermissible. But the Prospective View implies, plausibly (assuming that the government still has a vast amount of money at its disposal), that it is not disproportionate even in these conditions to spend a penny to have a 99.99 percent probability of saving a person's life.

Here is a further objection to the Prospective View. Consider the perspective of those who are planning and preparing for a war that will be proportionate only if it kills no more than 1,000 innocent civilians as a side effect. They can know that it is possible that, contrary to their reasonable expectation, they will be unable to achieve their just cause within that limit but will be able to achieve it if they extend the war, killing another 500 civilians as a side effect. If the Prospective View is true, they can know now that it will be proportionate for them to extend the war in this way if their epistemically justified predictions prove mistaken. Anticipating this, they should, it seems, have contingency plans for the war's extension. But it may seem that this involves bad faith on their part. For they recognize that their war will be proportionate only if it kills fewer than 1,000 civilians as a side effect, yet they are already planning, conditionally, to do what will kill more than that.<sup>11</sup>

11. I owe this objection to David Wasserman.

I suspect that this objection cannot be altogether evaded, though its force is less than one might suppose. If, on the one hand, it is reasonable to believe that the probability is near 100 percent that the just cause can be achieved within the limits of proportionality, it would be inefficient or wasteful to invest significant resources in contingency plans for the continuation of the war beyond those limits. If, on the other hand, the probability of achieving the just cause within the proportionality limits is more than just marginally lower than 100 percent, it seems that the war would be disproportionate and ought not to be initiated. Yet the values at stake—those involved in the achievement of the just cause and the harms that war inevitably causes—are only imprecisely comparable, and assessments of probability are always fallible. Because of this, there may be cases in which one's confidence in one's ability to achieve a just cause within the limits of proportionality is sufficiently high to justify the resort to war but insufficiently high to rule out the need for contingency plans for the continuation of the war beyond those limits. In such cases, if in fact there are any, the Prospective View permits going to war with contingency plans for later exceeding the limits of proportionality.

The question is whether this is genuinely counterintuitive. Consider again the analogy with the trolley case. Suppose that many years ago an exactly similar set of circumstances had occurred. But after the malfunction of the switch had killed two innocent bystanders, the person who controlled the switch had been unable to repair it and the trolley had continued on its original course, killing the five people on the main track. Knowing that the probability that the switch would malfunction again in that same way was less than one in a million, the switch operator nevertheless insisted on learning how to repair the switch just in case the same improbable circumstances were to arise again. In doing so, she was preparing herself to be able to exceed the proportionality limitations on the saving of five innocent bystanders on the trolley track. Yet rather than revealing bad faith about proportionality, this seems sensible. When five people were again trapped on the main track, the probability that the switch would again malfunction was only one in a million. It was therefore proportionate and permissible, at least in the evidence-relative sense, for her to pull the switch to redirect the trolley. When the switch again malfunctioned, it was good that she was then able to repair the switch and pull it again, thereby killing one more person, for a total of three killings as a side effect of her efforts to save the five. Her killing the third person, though disproportionate in relation to saving five, was better than her killing two in an unsuccessful attempt and then allowing five to die rather than killing one more. We should, I believe, accept a parallel claim about the permissibility of contingency planning for later action that will exceed the limits of proportionality in war.

## V. THE REDEMPTION THESIS

Soldiers are often willing to risk and sometimes even to sacrifice their lives for the achievement of a just cause. It matters to them, however, that the just cause actually be achieved. They may be willing to give their lives to achieve a noble end, but few are willing to die for what they can know will be a failed attempt that will achieve nothing.<sup>12</sup> Thus, whether the just cause of a war is actually achieved can affect, albeit retroactively, the meaning and significance of the deaths of those who lost their lives in its pursuit. If the just war in which they fought ends in victory, they will have died while contributing to the achievement of a just and perhaps noble aim. But if it ends in defeat, their sacrifices will have had less significance. It is not that the failure to achieve the just cause would render their deaths entirely meaningless, but it would deprive them of a dimension of significance that they would have if the just cause were achieved.

This is a claim about the meaning of a death, not about the extent of a person's loss in dying. The orthodox and, to my mind, correct view about the misfortune of death (at least in the case of fully psychologically developed human beings) is that it is mainly a function of the extent to which continued life would have been good for the victim.<sup>13</sup> The extent to which death is bad depends, in other words, on whether and to what extent the potential life the person has lost would have been good, or worth living. How great a loss a person suffers in dying varies with the extent that his or her continued life would have been better, either in quality or length, or both.

Paradoxically, when death is evaluated in this way, it may turn out that the achievement of a war's just cause makes the deaths of those who were killed in its pursuit worse in one respect. Suppose, for example, that the just cause of a war is the defense of a state from conquest by a ruthless aggressor. If the defensive war fails, the lives of the state's citizens, including the soldiers who have survived the war, will be worse than they would have been if the aggression had been defeated. Consider the death of a soldier who is killed while fighting against the aggressors. How bad his death is for him depends on how good his life would have been if he had not died. And how good his life would have been depends on

12. Traditional Japanese culture is unusual in this respect. It regards heroic failure as more noble than heroic success. See Ivan Morris, *The Nobility of Failure: Tragic Heroes in the History of Japan* (London: Secker & Warburg, 1975).

13. I have argued that this "deprivation account" is implausible if it treats the misfortune of death as a function only of the amount of good life lost. It must also take account of the potential psychological relations between the individual at the time of death and that same individual as he would have been at the times when the relevant goods would have occurred within his later life. See Jeff McMahan, *The Ethics of Killing: Problems at the Margins of Life* (New York: Oxford University Press, 2002), chaps. 1 and 2, esp. chap. 1, sec. 5.2, and chap. 2, sec. 6.1.



whether the aggression is defeated. If it is defeated—that is, if the just cause of defense against unjust aggression is achieved—the life this soldier would have had if he had not been killed would have been better than the life he would have had if he had not been killed and his state had been conquered. The defeat of the aggression therefore means that his death has deprived him of a better life than he would have been deprived of if the aggression had succeeded. The success of the just cause has, in effect, increased the misfortune he suffered in being killed.

This is, however, irrelevant for practical purposes. No one has a reason to ensure that her death will be less bad by ensuring that the life she would otherwise have had would have been worse. Suppose that a person learns that she will die in a month from a certain disease. Then she suddenly develops another condition that is wholly independent of this disease and that would have caused her to begin suffering episodes of severe pain in about two months. To the extent that this other condition would have made her continued life worse, it makes the loss of that life through death less bad. But it does not seem to lessen her misfortune overall. It merely overdetermines her loss of a future life free from pain.<sup>14</sup>

There is another way in which a death's enhanced meaning may come only at the cost of its being a greater misfortune overall. It seems a greater instance of heroism for a twenty-year-old to sacrifice his life for a just cause than for a sixty-year-old to do so, if factors other than the degree of loss are equal. This suggests that it may in general be that the greater a soldier's loss in dying, the nobler and more meaningful his sacrifice is.

It is not, therefore, that a soldier's loss is diminished if the just cause for which he sacrificed his life is achieved. It is, rather, that his loss is partially redeemed. And this partial redemption of the sacrifice seems to diminish the tragic character of the premature death, even if it does not diminish, or even exacerbates, the loss he suffers. The dead soldier's parents, for example, seem entitled to a certain comfort if the just cause in pursuit of which he died is achieved, a comfort they would be denied if the war were lost. (There is a further question here of whether the consolation that a dead soldier's relatives may find in the sense that his death has not been in vain counts as a good effect in the assessment of wide proportionality. It certainly seems to me that the great harm that those specially related to a soldier suffer when that soldier is killed counts as a bad effect in the determination of wide proportionality. But I will not pursue this here.)

One might object that the idea that the meaning of a person's death can be affected by what happens after she dies presupposes that a person can be posthumously benefited or harmed. Yet it seems to many people

14. See *ibid.*, chap. 2, sec. 4.3.

that the dead are beyond being either benefited or harmed. There are, however, two responses to this concern. One is that there are powerful arguments for the view that there can be posthumous benefits and harms. One such argument appeals to harms of which the victim is never aware and that never affect her mental state. Suppose, for example, that a person's reputation is forever tarnished by false allegations. This might happen just before the person dies, so that she never learns about it. If that would be a misfortune for her, it seems that it would be equally a misfortune if it were instead to happen immediately after she dies. It would be absurd for such person, anticipating that she might be effectively slandered, to hope that it would happen a moment after she dies rather than a moment before.<sup>15</sup>

The second response is that the Redemption Thesis does not necessarily presuppose that there can be posthumous benefits and harms. It is really just a claim about the way in which events that occur after a person's death can affect the meaning and significance of the death. It should, if anything, be less controversial than the claim that events that occur after a person's death can retroactively affect the meaning and value of events in her life. Consider someone who for years endures great hardship to prepare herself for a certain vocation but unexpectedly dies just as she completes her preparations and is on the verge of putting to use all that she has learned. The death renders her previous struggles futile. The years of hardship would have been redeemed had they produced great achievements in her vocation, but the death condemns them to having been largely pointless. The meaning and value of the period of struggle are thus dependent on more than just the level of her well-being during the period; they are hostage to events that come afterward.<sup>16</sup>

The Redemption Thesis makes a parallel claim about the effect of the achievement of the just cause on the meaning and value of the death of a soldier who has died fighting to achieve that cause. The soldier has invested some significant part of his life in the outcome of the war. He trained to be a soldier, and his acts as a soldier were directed to the achievement of the war's aims. He has made numerous sacrifices, including the sacrifice of his life, for the sake of those aims. Whether those sacrifices were worth making seems to depend at least in part on whether the aims for which they were made are in fact achieved.<sup>17</sup>

15. For this and other arguments to show that there are posthumous benefits and harms, see Jeff McMahan, "Death and the Value of Life," *Ethics* 99 (1988): 32–61, esp. 32–40.

16. For further discussion, see McMahan, *Ethics of Killing*, 176–80.

17. Compare Ronald Dworkin's remarks about the frustration of investment in his discussion of the badness of death in *Life's Dominion* (New York: Knopf, 1993), chap. 3. He observes, e.g., that "we regret the waste of a creative investment not just for what we do not have, but because of the special badness of great effort frustrated" (79). Although his concern is primarily with the impersonal badness of the frustration of investment, many of

That redemption may depend in part on prior investment helps to explain why the achievement of a just cause for war has a lesser redemptive effect—if it has a redemptive effect at all—on the deaths of innocent civilians killed as a side effect of the fighting. Most civilians who are killed as a side effect of the action of just combatants are civilians on the unjust side. Very few such people have invested effort in or assumed risks for the sake of the just cause. There is therefore little or nothing in their past that the achievement of the other side's just cause can vindicate or retroactively imbue with meaning or significance. (It is important that investments or sacrifices have been intended to support the achievement of the just cause. The meaning of the death of a mercenary who has fought in a just war but only for the pay would also not be retroactively affected by the achievement of the just cause.)

It may also be relevant that just combatants are usually killed as a means of preventing the achievement of their just cause (though because most unjust combatants mistakenly believe themselves to be just combatants, they would reject the description of their action as a means of preventing the achievement of a just cause). This consideration may help to explain why the redemptive effect also seems weaker in the case of a just combatant who has been killed by accident by forces on his own side. Although a combatant killed by "friendly fire" may have made the same investments in the achievement of the just cause, his death may still seem largely pointless even if the just cause is achieved. Similarly, if a civilian on the just side (or, though this is less likely, on the unjust side) is killed while taking risks to aid the just side's war effort, the achievement of the just cause will have a greater redemptive effect than it would if she were killed as a side effect while sleeping in her home.

It is perhaps a corollary of these claims that neither victory nor defeat can even partially redeem the deaths of unjust combatants who have been killed while fighting for an unjust cause. In one important sense, these combatants nearly always die in vain, or even in ignominy, for it is worse than pointless to die in the service of injustice. Unjust combatants may have invested their lives in their side's unjust aims in the same way that just combatants have invested their lives in their side's just aims, but the effect of the achievement of an aim on the meaning of the death of someone who has died for that aim cannot be divorced from the moral character of the aim. This is not to say that the death of an unjust combatant cannot be partly redeemed by the circumstances of the death. If, for example, an unjust combatant is killed while acting in a way that is both permissible and admirable, such as attempting to protect a civilian or prisoner of war, the success of the effort can imbue the death with a signifi-

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his comments also make sense as claims about the badness of frustrated investment for those who have made the investments.

cance it might lack if the effort had failed. But in no case can victory in an unjust war have a redemptive effect on the deaths of those who have fought in it in the way that victory in a just war can.

If it is right that the achievement of the just cause can partially redeem the losses suffered by those killed in its pursuit, surviving just combatants may have a special reason—that they owe it to their comrades who have died—to continue fighting. The idea that warriors who have survived have special duties to those who have died is found at least as early as Homer. In *The Odyssey*, Odysseus summons various of the dead from Erebus and speaks to some of them, including his former comrade-in-arms Elpenor, who beseeches him, “Don’t sail off and desert me, left behind unwept, unburied, don’t . . . No, burn me in full armor . . . so even men to come will learn my story.”<sup>18</sup> Weeping, Odysseus assures Elpenor that he will do as asked. Even today, many soldiers believe, though perhaps mistakenly, that they have a duty to take personal risks to recover a dead comrade’s body from the battlefield.

## VI. DOUBTS ABOUT THE REDEMPTION THESIS

Some may object that, although the Redemption Thesis has a place in the code of honor of a warrior, the aim of partially redeeming the sacrifices made by soldiers who have died cannot plausibly be regarded as a just cause for the continuation of war. But this objection can be challenged on the basis of a plausible understanding of the notion of a just cause. If an unjust combatant kills a just combatant in an effort to prevent the achievement of the latter’s just cause, and if the achievement of the just cause would partially redeem the just combatant’s death, it seems that the unjust combatant must be liable to suffer some additional harm as a means of bringing about the good of partially redeeming the loss he has caused. This means that the good of redemption counts in determining the degree of harm to which the unjust combatant is liable. And this is another way of saying that it counts in the assessment of whether harming him would be proportionate in the narrow sense. But any good effect that counts in the assessment of narrow proportionality in war is an element of the just cause. For the just cause for a war consists of the prevention, mitigation, or rectification of wrongs for which those whom it is necessary to attack in war are responsible.<sup>19</sup>

The aim of redeeming past losses cannot, of course, be the whole of the just cause for the continuation of war, for the losses must be redeemed largely if not exclusively through the achievement of the original just

18. *The Odyssey*, trans. Robert Fagles (Harmondsworth: Penguin, 1996), bk. 11, lines 56–93.

19. For more on the concept of a just cause for war, see Jeff McMahan, “Proportionality and Just Cause: A Comment on Kamm,” *Journal of Moral Philosophy* 11 (2014): 428–53.

cause. If that cause cannot be achieved, the losses might possibly be redeemed to a much lesser degree by other means, but these other means would be unlikely to require the continuation of a futile war. The suggestion, therefore, is only that the redemption of past losses can become an element of the just cause along with the original aim that justified the resort to war.

One might object that many of the unjust combatants who might be killed if war is continued will not have been responsible for the deaths of any just combatants earlier in the war; hence, they cannot be liable to be harmed as a means of redeeming those combatants' losses. But responsibility for the deaths of just combatants is not the only basis of liability to harm for the sake of preventing those deaths from having occurred in vain. Any unjust combatant who seeks to thwart the achievement of the original just cause thereby becomes an obstacle to the redemption of the earlier losses. Since he acts wrongly in impeding the achievement of the just cause and therefore also in impeding the redemption of the earlier losses, he can be liable to be harmed as a means of preventing him from being an effective impediment to both those aims.

The aim of redeeming past sacrifices made for the sake of the original just cause obviously cannot be a just cause for the resort to war. It becomes an element of the just cause only after war is in progress. But this is not unusual. The same is often true of the aim of protecting the lives of just combatants, which is an aim that may clearly be pursued in war and for which there is usually a liability justification. It may be that the lives of those who will become just combatants once a war has begun are not threatened before the beginning of war. When that is true—that is, when they could preserve their lives simply by not fighting—the protection of their lives cannot be a just cause for the resort to war. For it is the resort to war that puts their lives at risk. Yet if there is a just cause for the resort to war, it can be permissible for them to go to war, thereby putting their lives at risk. Then the protection of their lives, both through self-defense and third-party defense by their comrades, becomes a part of the just cause. That is, it becomes an aim that it is permissible to pursue by means of war and for which there is a justification based on the liability to attack of those who threaten them. But if the protection of the lives of just combatants can become an element of the just cause for war once war is in progress, so in principle can the partial redemption of the losses wrongly inflicted on them by unjust combatants.

If it is true that the redemption of past sacrifices can become an element of the just cause for the continuation of a war, it follows that it counts as a good effect that weighs against relevant harms in both the narrow and wide proportionality assessments. For if unjust combatants are potentially liable to be harmed as a means or side effect of bringing about some good effect, that good effect counts in the assessment of

narrow proportionality. But goods that are constitutive of the achievement of the just cause also count in the assessment of wide proportionality—that is, they weigh against harms caused to people who are not liable to suffer those harms. For example, certain harms caused to innocent German civilians in World War II as a side effect of military action against Nazi forces could be proportionate when the action that caused them was sufficiently important to the achievement of the just cause of preventing Nazi domination in Europe.

One might object that if the good effects that are constitutive of the achievement of the just cause count both in the assessment of narrow proportionality and in the assessment of wide proportionality, they are being illegitimately counted twice in the justification for the resort to war. But there is in fact no double counting. When these good effects count in the assessment of narrow proportionality, they weigh against the infliction of harms for which there is a liability justification. When they count in the assessment of wide proportionality, they weigh against harms for which there may be a lesser-evil justification. The harms for which there is a liability justification and those for which there is a lesser-evil justification are mutually exclusive. Good effects that are constitutive of the achievement of the just cause therefore never weigh more than once against the same harm.

I have suggested that the redemption of past losses can constitute a retrospective dimension to proportionality in the continuation of war. But one might argue that this is really just another prospective dimension of proportionality, since the redemption of losses is an aim to be achieved in the future. The redemption of past losses is future directed in the same way that the prevention of harm is. While this is true, the important point is that how much good can be achieved in the future through the redemption of losses depends directly on how many losses there have been in the past and how serious they were. In this way the redemption of losses has an essentially backward-looking dimension that the prevention of harm through defense usually lacks.

It is conceivable that there could be a similar retrospective dimension to proportionality in the resort to war. Suppose that during a time of peace a powerful state uses various pressures to coerce a weaker neighboring state to erect statues in public spaces of the powerful state's dictator as an act of homage. The citizens of the weaker state, who loathe the dictator, find this both morally repugnant and humiliating but comply for fear of the consequences of refusal. Later the powerful state invades the weaker state, but the outcome of the war is uncertain. During the war, the weaker state wishes to destroy the statues but to do so must not only kill soldiers that the enemy has stationed to guard them but also run a significant risk of suffering casualties. The destruction of the statues and the killing of their guards would have no effect on the outcome of

the war, nor would it compensate the citizens for the humiliations they have suffered. But it would alter the meaning or significance of those humiliations and the earlier acts of capitulation. It is at least arguable that there could be a liability justification for attacking the guards as a means of facilitating the destruction of the statues and that destroying them could be a nondefensive element of the just cause for war.

Compare the situation of a woman who has just been raped and is about to be raped again by the same attacker. Suppose she can bite the rapist's finger, but knows that this will do nothing to prevent the second rape; indeed it is likely to make the rapist even more brutal. One might think that since biting the rapist's finger would be wholly ineffective as a means of defense, it must be disproportionate, except as a means of punishment, or retribution. But her act can be understood in a different way, as an assertion of her status as something more than a helpless victim. (She may intend her act to have any of a number of meanings: the vindication of her honor, the assertion of a demand for respect as a person, etc.) This is a good effect with a retrospective dimension, in that her self-assertion can affect the meaning of what has been done to her. It is its own just aim, independent of the forward-looking aim of defense, and the harm she inflicts is proportionate in relation to the importance of this aim.<sup>20</sup>

It is tempting, of course, to think that biting the rapist's finger is good only as a matter of retribution. But this is a mistake. If the rapist is later punished by the judicial system on retributive grounds, the suffering he has undergone as a result of the bite ought not to be deducted from his punishment on the ground that he has already received part of what he deserves. The justification for the biting is that it can alter the significance of the rapist's treatment of the victim.

## VII. CONCLUSION

Thus far I have defended the Prospective View and sought to show that a just cause for the continuation of war can have a retrospective element and thus that the assessments of both narrow and wide proportionality can have a retrospective dimension as well. But I have not yet addressed the question that is perhaps most important: namely, if it is right that the redemption of past losses can be an element of the just cause for war that weighs against harms in the assessment of both forms of proportionality, how important a good is it? How much weight does it have in assessments

20. For an earlier statement of a similar point, see Jeff McMahan, "Just War," in *A Companion to Contemporary Political Philosophy*, ed. Robert E. Goodin, Philip Pettit, and Thomas Pogge, 2nd ed. (Oxford: Blackwell, 2007), 669–77, 675. For an independent and far more thorough discussion and defense of similar and related points, see Daniel Statman, "On the Success Condition for Legitimate Self-Defense," *Ethics* 118 (2008): 659–86.



of proportionality? Many people will think it barbaric to suppose that it could be justifiable to kill people for the sake of something so intangible and elusive as the retroactive redemption of losses suffered by people who are now dead. They may well be right. It seems to me that while the redemption of past sacrifices may have some weight in a liability justification for the harming of unjust combatants, particularly those who have killed or gravely injured just combatants, it has little or no weight in justifying the harming of people who are innocent in the sense of not being responsible for the grievances that justify the resort to or continuation of war. In other words, while the partial redemption of past losses may have some weight in the assessment of narrow proportionality, it has little or no weight in the assessment of wide proportionality. Ensuring that just combatants have not died in vain may add to the importance of achieving the original just cause and justify some additional harms to those who wrongly killed them or who are continuing to impede the achievement of the original just cause. But it does not seem to justify the killing or serious harming of innocent people, even as a side effect rather than as a means. Similarly, while it may make sense for a warrior code to treat the partial redemption of losses suffered by one's comrades in arms as a good that it is appropriate for one to take personal risks or make personal sacrifices to bring about, it would be wrong for a government to compel its surviving soldiers to continue to expose themselves to a significant risk of death for the sake of such a goal.

These are, however, paradoxical conclusions. If an aim is sufficiently important to be an element in the just cause for the continuation of a war, it should be sufficiently important to justify the harming or killing of at least some innocent civilians as a side effect. Even though the standard of wide proportionality is significantly more demanding than the standard for narrow proportionality, it seems that whatever aims can justify the intentional killing of soldiers can in principle justify the unintended but foreseen killing of innocent civilians. That, at any rate, has been the common assumption. But perhaps the Redemption Thesis provides a counterexample and thus shows that the common assumption is mistaken. Perhaps people can make themselves liable to be harmed as a means of bringing about certain good effects even though bringing about those effects cannot count in a lesser-evil justification for significantly harming those who are not liable to be harmed at all.

I noted in Section I that the combination of the Prospective View and the Redemption Thesis may have implications for proportionality in the continuation of war that are intuitively too permissive. This is because the Prospective View excludes past deaths and killings as bad effects that weigh in the determination of whether the continuation of war would be proportionate in either sense, while the Redemption Thesis implies that the redemption of at least some of those deaths can constitute an

additional good that contributes positively to making the continuation of war proportionate, at least in the narrow sense.

Yet the Redemption Thesis may also weigh against the proportionality of the resort to war. This is because it can exacerbate the costs of a mistaken initial assessment that the resort to war is proportionate. It is obvious that our best efforts to predict the consequences of going to war are highly fallible. And partly because decisions about the resort to war are typically made by those whose only risks in the war would be political in character, these people are often disposed to underestimate the likely costs of the war for others. A mistake about proportionality in the resort to war is therefore more likely to be a judgment that a war would be proportionate when in fact it would be disproportionate than a judgment that a war would be disproportionate when in fact it would be proportionate. This is bad enough even when the Redemption Thesis is not taken into account. But if the Redemption Thesis is true, the problem is not just that the prospect of “cost overruns” has to be taken into account at the outset but also that these overruns are likely to be compounded by the way that each loss provides a new reason for continuing the war and thus for either incurring or inflicting further losses. The Redemption Thesis seems, in other words, to ensure that, at least in one respect, the stakes must rise as any war continues over time.

All things considered, therefore, it seems that, while the redemption of past losses can in principle become an element of the just cause for the continuation of war, and can thus introduce a retrospective dimension to the assessment of *ad bellum* proportionality, the main way in which this fact has practical significance is to make it more difficult to satisfy the proportionality constraints on the resort to war.