Chapter 6

Succeeding

> No other national endeavor requires as much unshakable resolve as war. If the nation and the government lack that resolve, it is criminal to expect men in the field to carry it alone.
>
> Sen. John McCain, 2002

Prudence and Pragmatism

Classic just war thought listed competent authority, just cause, and right intention as the three required criteria for being justified in going to war. Other criteria were added in modern times; these include reasonable prospect or probability of success, last resort, and proportionality.[1] In this chapter I address reasonable prospect of success.

Here we come to what in many ways is the most practically oriented of the *jus ad bellum* criteria. With just cause and the right kind of intentions, a state has what might be called minimally necessary or basic justification for going to war. At that point other prudential conditions become relevant. In this chapter, I focus on the moral implications of the rather obvious fact that success matters. Naturally, the more specific and precise the competent authority's intentions are, the more able it will be to know whether it is likely to be successful since success is to be defined with respect to the goal intended. Neither the competent authority nor its generals will be able to determine whether the reasonable prospect of success criterion can be met until the intention has been specified.[2] Thus, fulfilling the success criterion will necessarily enforce clarity regarding intention, if that clarity has been lacking. In addition, as I note later, if there is no reasonable prospect of success, war will not be a practical option and hence not a morally acceptable option.

The identification of this criterion in the literature is vague. The US bishops and Orend refer to it as "probability of success." Johnson labels it rather

more subjectively as "reasonable hope of success" (Holmes 1989, 164; Orend 2008; Johnson 2005a). The bishops' document elaborates as follows: "Its purpose is to prevent irrational resort to force or hopeless resistance when the outcome of either will clearly be disproportionate or futile" (Holmes 1989, 164). That rules out going to war in circumstances where the probability of success is vanishingly small so that war-making is pointless and hence irrational. That much is uncontroversial and can be accepted.

However, avoiding "hopeless" options is only a minimal requirement. It may not be enough to qualify a decision to go to war as fulfilling the criterion. It is overly permissive to hold it fulfilled where going to war isn't absolutely hopeless or heading for certain defeat. A 10 percent probability of success is considerably better odds since it is not "hopeless," yet a 1 in 10 chance of success can hardly be described as a "reasonable probability" of success. It would be difficult to specify a precise mathematical figure as the required probability, but it seems plausible that the criterion should be read as involving a substantial likelihood of success rather than some minimal or slight chance of success. Governments and their military chiefs would usually want much better odds.

Sometimes the context may affect the judgment of the relevant authority with regard to what would count as a reasonable prospect. If the country is invaded or about to be invaded and the alternative to fighting is surrender, governments and generals might think a 10 percent chance of success is good enough to warrant fighting. Where there is no threat of invasion or attack, a government contemplating going to war for some other purpose would probably want far higher probability of success, perhaps in the order of 60 percent or higher. I incline to the view that politicians and generals are more realistic or objective in that latter judgment than they are in the case of the former. Since I think this particularly important as a practical criterion, I can see no good grounds for softening the requirement that there be a reasonable, which means at least substantial, probability of success in going to war.

Winning What?

First, the success in question is not precisely the achievement of the political intention or intentions that were part of the relevant context grounding the competent authority's decision to go to war. The success at issue is rather the achievement of the political intention embodied in the war's strategic goals. The latter may be slightly narrower than the former. The distinction is admittedly a fine one, and often the two will be indistinguishable for all practical purposes. But this is not always or necessarily the case. For instance, in World War II the United States and Britain might have had the political goal of wanting to replace the Nazi regime with a democracy governed by the rule of law.

If the Federal Republic of Germany founded in the late 1940s had, instead of flourishing as it did, collapsed into a quasi-dictatorial or strife-torn country, it would probably be a kind of political defeat for the United States, Britain, and France, but it would not mean that they had failed to achieve the war's strategic goal of defeating Nazi Germany's armies.

It is morally highly desirable to win the peace after winning the war. For political and, hence, moral reasons, the choice of military goals and methods of war-fighting ought to be such that they undermine that remote goal as little as possible. Nevertheless, winning the war is not to be conflated with winning the peace. Success in war must be what the military strategist, informed of the political goal of the war, would identify as success. The general or military strategist must never lose sight of the political context within which, and the political goals in relation to which, strategic plans for action are developed and implemented. At the same time, military strategy and politics are different, and the general staff cannot reasonably be expected to identify the political means required for stabilizing the country in the years after the war is over.[3]

Accordingly, the reasonable probability of success that *jus ad bellum* seeks is a matter for military strategy. The political is not excluded from it since it is that which gives the conduct of the war its overall strategic direction. The political leader seeks the advice of the general or strategist as to the probability of success—that is, as to the ability of the country's armed forces to achieve the strategic military goals connected to the overall political goal. Political success beyond that is a matter for the political leaders, not the generals.

Second, success in war does not necessarily mean winning the war. A number of examples may illustrate the point. In the Seven Years' War (1756–63) Austria mobilized a vast coalition including Russia, France, Sweden, and Saxony against Prussia in order to regain Silesia, which Prussia had seized in 1740. Britain gave financial support to Prussia until 1761, but Prussia had a dreadful time of it, enduring repeated defeats yet holding on grimly until the death of the Tsarina Elizabeth led Russia to withdraw from the war in 1762. The Peace of Hubertusburg left Prussia in possession of Silesia, and there were no other boundary changes.

Prussia could not be said to have "won" the war, nor its opponents said to have been "defeated," in the conventional sense in which we tend to use those terms. Nevertheless, Prussia was successful in holding on to Silesia. Indeed, given the fact that it faced a coalition of countries with twenty times its own population, Prussia's survival counts as a success.

While Belgium was on the winning side in World War I, it did not win its little war to keep the German army out of its territory in 1914. It had received earlier warnings that Germany would require transit rights for its army in the event of war with France, and had been urged to facilitate this

peacefully on the grounds that it could not successfully resist. Nevertheless, although Belgium could not be said to have had even a 10 percent probability of succeeding in stopping the German army, it was successful in another way by drawing Britain into the war. By holding up the German armies, Belgium presented the picture of a small country fighting gallantly against the odds (and hence worthy of support), unquestionably the victim of unjust aggression by a much larger power (and hence owed the debt of justice), a victim that had been promised protection by Britain and that could yet be saved by military intervention (and hence worth acting for). That had a significant influence on British opinion, both at political and public levels, and contributed to Britain's decision to enter the war. Had Belgium not resisted, Germany would have overrun it swiftly and relatively painlessly, thereby not incurring bad publicity and being able to present the United Kingdom and the rest of the world with a fait accompli. (Whether the Belgian government's decision to resist was determined by this is secondary. Belgium's neutrality had been guaranteed by the great powers by treaty in 1831, and—more important—the Belgian government knew that France and Britain had direct and immediate interest in coming to Belgium's aid.) British hostility to the German invasion of Belgium is undoubted. But had Belgium acquiesced in German use of its territory to defeat France, the British ultimatum would have been less likely.

The first Battle of the Marne in September 1914 is a good candidate for the title of most significant battle of the two world wars. The French, with the aid of the small British expeditionary force, managed to halt the German offensive. Although it was a kind of German defeat, it was not seen at the time as a decisive victory for the Entente powers. But Germany never regained the strategic initiative on the western front that it briefly held at the outbreak of the war.

Sometime after US withdrawal from Vietnam in the 1970s, a US colonel is supposed to have remarked to a North Vietnamese colonel: "You never defeated us in the field." To which his Vietnamese counterpart replied: "That may be true. It is also irrelevant." In its Vietnam venture, the United States was never defeated in the field as were the French at Dien Bien Phu in 1954. The Tet Offensive of 1968, North Vietnam's largest offensive against American and South Vietnamese forces, was a tactical disaster for North Vietnam. Nevertheless, North Vietnam was strategically successful in the war and the United States was not.

The foregoing examples suggest that success is relative to strategic goals and the political intention they express. In World War II, the Allies specified their political goals as the overthrow of Nazi Germany and imperial Japan in such a way that neither could be resurrected. The related strategic goal was unconditional surrender. In other cases, success might be understood to amount to no more than not being defeated, to keeping one's territory and army intact.

All else being equal, the more limited the strategic goal, the higher the probability of success.

Clausewitz defines war as "an act of force to compel our enemy to do our will" and goes on to identify that with rendering the enemy powerless (1976, 75). While that definition holds up well for the most part, it may not provide apt description for all cases. It does not appear to consider cases where war is fought for limited purposes, and where one side might eventually concede the relatively modest demand of the other without being reduced to powerlessness in the strict sense. Nor does it cover the case of Belgium in 1914, where Belgium's success lay in frustrating the German desire for a speedy move through Belgian territory to outflank the French armies before Britain could react. Clausewitz's terms may need to be interpreted broadly.

Success is partly defined by the goals set at the first, political level of Clausewitz's trinity. Winning might be defined as (a) conquering the other country in order to annex some of its territory or to impose a specific political system (e.g., multiparty democracy, socialism) or merely to change the regime; (b) defeating the enemy, thereby attaining a position where peace terms can be dictated; (c) fighting the enemy to a standstill—that is, to a situation where the other side decides that continuing the war is prohibitively costly and decides to treat so that peace terms can be decided through a negotiation between "equals"; or (d) holding the enemy at bay long enough to generate political or military support from other quarters that may change the balance of forces.

Connection to other Conditions

As can be seen from the previous paragraph, probability of success is closely related to having an intention that is right not just morally but also practically. Intention must aim at realistic political goals and, in the case of war, political goals that can be realized at the strategic military level. Thus, dealing with right intention at the strategic level points toward pragmatic consideration of how likely success is.

The other two criteria are last resort and proportionality. Both the US bishops and Orend put last resort ahead of probability of success, and Johnson places both last resort and proportionality ahead of probability of success. However, it is not clear that these authors see the ordering as having any significance. I have argued that there is a logical order to the criteria. That order is specified by the following rule: if fulfilling criterion *A* is logically necessary for fulfilling criterion *B*, *A* has logical priority over *B*.

Consideration of the probability of success criterion does not require that the last resort condition be met, so it is not logically dependent upon it. A particular state could have a better than 80 percent chance of success in a proposed

war yet not have tried other ways to obtain its goals. In such a case, the last resort criterion has not been met although the probability of success criterion has been met. Thus, the probability of success condition does not depend logically upon the last resort condition. By contrast, if there is no realistic probability of success, then going to war is simply not an available option, so it can't be a resort of any kind, last or otherwise. One cannot rationally judge that war is now the only resort remaining if it is clear that one has no hope of winning any such war. The last resort criterion is logically dependent upon the probability of success criterion.

Proportionality requires that both the probability of success and the last resort criteria have been met. It seems intuitively obvious that it is disproportionate, to say the least, to fight a war that one has no realistic prospect of winning, or to fight a war that one didn't need to fight at all, since other methods would have achieved the relevant political goal. A choice to go to war is disproportionate under *jus ad bellum* if going to war is insufficient to achieve the goal (no chance of success) or unnecessary to achieve the goal (not the last resort). Lacking one of those, going to war is automatically disqualified as disproportionate.

The US bishops' treatment of probability of success, cited earlier, introduced the element of disproportion in order to explain probability of success. However, this confuses rather than clarifies since it would imply that probability of success depends upon the proportionality criterion. The dependency runs in the other direction. In other words, if going to war is without any prospect of success (on any definition of success) then doing so is necessarily disproportionate. On the other hand, there could be a high probability of success and yet going to war might be disproportionate for other reasons.

Ethical Aspects

Both Johnson and Orend take the view that competent authority, just cause, and right intention as ethical conditions are deontological in nature and have to do with justice. Orend takes probability of success, last resort, and proportionality to be consequentialist in nature. By that I take him simply to mean consequence-oriented. Johnson views them as essentially prudential and auxiliary to the primary conditions of authority, just cause and right intention.[4]

This line of thought is plausible. That they are secondary to competent authority, just cause, and right intention is clear. Whether the respective moral character of the two sets of criteria is as sharply different as Johnson and Orend imply is less obvious. First, deontological considerations are not utterly disconnected from concern about consequences. This applies particularly to the right intention criterion.

Second, deontological elements can be found in the prudential criteria of probability of success and last resort. It is imprudent to fight a war where one has no chance of success. It seems immoral, a kind of injustice, knowingly and deliberately to sacrifice the lives of one's soldiers and possibly of many civilians to no purpose. The primary injustice in such a case is no doubt attributable to the aggressor whose attack kills them. But one's own exercise of competent authority involves the duty of care, so far as is practicable. Good governance might well begin at the same place that medical practice begins: first, do no harm.

Governmental failure to evaluate the probability of success properly is a failure in prudence. Certain kinds of failure or carelessness shade into negligence, and negligence can be morally culpable.

Probability-Raising

What is to count as a reasonable probability of success must be, after all steps that can raise it have been taken, one that gives a good chance of success. "Good" here must not be purely comparative; the best chance of a bad lot is not good enough. "Reasonable" probability is often taken in a way that is too lax, as in a 10 percent chance, which is still better than a no-hope chance. If the probability of success isn't good enough, the proportionality criterion, which is logically dependent upon it as discussed at the beginning of this chapter, can't be met. Nor can just cause or right intention make up for a lack of adequate or good enough probability of success.

Consider a particular government that has ample cause for war and whose intentions are morally right and reasonably well focused. When it comes to considering the prospects of success, it may well find that the chances are not great, as would be the case where the professional military advice estimated a 40 percent to 50 percent probability of success. In such a situation, a prudent government would try to change the odds to make success more likely. That suggests that considering the probability of success condition is not simply a matter of passive review of the existing situation but also a matter of seeking (where possible) to improve it.

There are various success-making factors. First, increasing or improving its military resources in personnel or materiel could raise the odds of success. Of course, the military resources in question must be of the right kind for the proposed war. Doing this may require delay in going to war. Second, perhaps the political objective involved in right intention could be revised in a more modest direction yet without abandoning the politically necessary goal. In similar vein, a government could also improve its chance of success by facilitating the other side's coming to terms, perhaps by allowing it to save

face, if this can be done with safety. The United Nations has often been used as a face-saving device, where one country can get out of a fight that is going badly by making a high-sounding statement to the effect that, in deference to the United Nations, it is announcing a cease-fire.

Sometimes such mitigating options are not possible or would violate right intention. The government may then have to face the fact that winning will be costly in lives, resources, and time. This brings us to the point that a state highly averse to taking casualties may not be willing to pay the price for victory and, hence, does not have the requisite probability of success. In the words attributed to an Irish freedom fighter in the 1920s, "it is not those who can inflict the most but those who can endure the most who will prevail." That is not a universal truth, but it is often true, and it has sometimes seemed to be the Achilles heel of US military engagement. In 1983, the United States sent the marines to Beirut as part of a peace-keeping mission in the teeth of opposition from Syria and other local groups. It took one suicide bomber driving a truck loaded with explosives into their compound and killing 241 marines to make the United States decide to pull out. It is possible that the United States had erred in sending troops there in the first place, but when it showed itself so ready to cut and run, it dismayed its friends and made its enemies think it morally soft.[5] This may have given Saddam Hussein, then ruling Iraq, the impression that the United States, while matchless in armament and technology, lacked the determination to prevail in war, as the Vietnam War had apparently shown.

A government's resolutely facing the fact that victories are rarely cheap may raise the probability of winning. In addition to political clarity about the objective and the objective's being realistically achievable, there must also be the will to achieve it and the nerve to withstand political opposition and military reverses.[6]

Motivating the People

As well as moderating one's war aims and expanding one's armed forces, a third way of increasing the probability of success is to create public support for the war. Clausewitz was acutely aware of the military impact of France's successful mobilization of its population in the revolutionary and Napoleonic wars and was more uncomfortably aware of the military impact of the rise of German nationalism in and through the final struggles with Napoleon from 1812. His remarks about war being a kind of trinity involving the political leadership, the army, and the people are apposite here.[7] War-making is in part a mobilization of popular will to go to war. British success in galvanizing popular support for continuing to oppose Germany

in 1940 was strategically important, as was the US failure to recognize the effect on American public opinion of television portrayals of the Vietnam War. By contrast, Édouard Daladier, returning from Munich to Paris in 1938, expected to be execrated by the public for betraying Czechoslovakia and was dismayed to find people cheering him (see Larkin 1988, 71; Kagan 1995, 405).

The degree of public support for the war has an important bearing on the probability of success.[8] Strong public opposition, even in nondemocratic countries, acts as a drag upon the war effort, and an unpopular war may undermine the government or even the state itself.[9] In democracies, overwhelming opposition to going to war may convince the government that it would be politically unable to sustain the cost in lives, materiel, and money. This applies particularly to long and protracted wars.[10] It can also be extremely difficult in democracies for the government to convince its people and their elected representatives that vital national interests are in danger and that their support for war may be needed.[11] Before December 1941, President Roosevelt was politically unable to go to war with Japan or Germany despite his awareness of the threat they presented to US interests.

Political leaders are thus obliged to consider such moral factors as the potential willingness of their own population to endure sacrifices. People seem prepared to make larger sacrifices when it is a question of driving invaders out of their own country than in other cases: the huge losses suffered by the Red Army and the enormous sacrifices sustained by the USSR's population in World War II did not undermine public support for fighting the war.

The inference to draw is that the government needs to persuade the people that war is necessary. It cannot do so without giving reasons and providing justification for its position. In the eyes of some, this will look like propaganda. Something needs to be said on this point.[12]

In most cases it is necessary for the government, if it is to have a realistic hope of success, to shape public opinion: in other words, it must use propaganda. This will doubtless outrage some readers, but unless we agree that the term "propaganda" is to be confined to meaning false, seriously misleading, or mendacious communication, the outrage is misplaced. If the reader strongly objects to the term because it carries such connotations, another term could no doubt be found. However, a government convinced of the need for war but facing the fact that the public through ignorance are most unwilling to accept will have to do more than simply explain to the people; it will have to promote its cause vigorously, to persuade and cajole, and that will look like propaganda. In consequence of having just cause and right intention, a competent authority will have some moral responsibility to persuade its people of what needs to be done.

Nor should it be thought that governmental persuasive efforts in such matters necessarily run only in a war-making direction. Sometimes the government's job may be to damp down public desire for military confrontation. Regarding the 1871–1914 period of European history, Kagan notes the relative ease with which public opinion in any of the five great powers (Russia, Germany, Austria-Hungary, France, Britain) could become inflamed against a neighboring country (Kagan 1995, 114–18, 131–32, 142). In the 1871–90 period, Otto von Bismarck was often a lone voice in the German government promoting the importance of avoiding war and behavior that could be interpreted as threatening by other countries. The popularity of going to war in August 1914 is amazing (even appalling) to read of today. At the time of the heaviest US bombing of North Vietnam in winter 1972, the USSR was attempting to reach an agreement with the United States in the SALT I (Strategic Arms Limitations Talks). Had the extent of the bombing of its Vietnamese ally been known to the Soviet people, public opinion would have been hostile to any such agreement with the United States.

The alternative to propaganda is for a government to let itself be led by public opinion. Such an abdication of leadership is morally unacceptable given the serious moral implications of war-related decisions. The moral responsibility is the government's and it may neither yield it nor lose the battle for public opinion by default. The most obvious application of that consideration is related to ethnic/nationalist/tribal conflict in different parts of the globe, where often there is no real dividing line between combatants and civilians, and where nationalist or tribal emotions can run high in ways that lead to serious outbreaks of violence.

The morally objectionable element in what is conventionally called propaganda is knowingly disseminating falsehoods. That the government should seek to inform and persuade is not just morally permissible but morally desirable as well. Right intention is inherently reasonable and inherently morally plausible or it's not right. It may not be the sole reasonable or morally plausible course, but to require that it should be would require too much. The reasonableness and moral plausibility should be communicable to the public in a way that would change the minds of a sufficient number of voters.

This is not a matter of presenting the issue to the electorate and asking them to decide. The decision must be made by the government. It can, of course, listen and consult as widely as it pleases. But the responsibility to decide lies with the government. It is up to the government to do what it can to bring the people along, and to weigh the implications for going to war against its degree of success in doing so.

Sometimes, a government may not be able to persuade the electorate that it would be just and prudent, even necessary, to go to war. In such cases, if the

government judges that it cannot educate the public in the matter, there may be no reasonable prospect of success.

The Time Factor

Since, as noted earlier, the probability of success may increase or diminish with time, the condition of probability of success is time-sensitive. Britain and France's prospects of success in war against Nazi Germany diminished after their failure to go to war over Czechoslovakia in 1938. While delay gave them more time to rearm, it gave the same advantage to Germany, and at that time Germany's economy was more geared to rearmament. More significant was the fact that Germany acquired a considerable amount of war materiel from Czechoslovakia after its fall in early 1939. Czechoslovakia had a more modern army than did Poland. Finally, the USSR and Poland had been prepared to help Britain and France in 1938. However, when it came to Germany's aggression against Poland in 1939, the USSR abandoned Britain and France by signing the German-Soviet nonaggression pact in August 1939, technically becoming Germany's ally and subsequently joining Germany in invading Poland.

The point is important. Once the just cause and right intention criteria are fulfilled (or as much fulfilled as these things ever are), the primary moral considerations are satisfied. That is enough to warrant an "in-principle" decision to go to war. Consideration then moves to when and how to go to war, with the most immediate concern being that of winning or being successful. It may be that circumstances are then so unfavorable that going to war may have to be postponed indefinitely. In such circumstances, anything that changes the balance of forces and factors in favor of winning must be pursued, as discussed earlier. The most important of these conditions is the time factor as it bears on the probability of victory. Writing on strategy, Colin Gray remarks: "Performance in all but one of strategy's dimensions—politics, ethics, military preparation, technology, and so forth—can be improved. The sole exception is the dimension of time. Time lost is literally irretrievable" (1999, 16; see also 42–43). As with the dimensions of strategy, so with the conditions affecting the probability of success: time is a dimension that we cannot control.

Accordingly, it is the probability of success criterion that determines the right time for going to war. Against this, it may be argued that last resort has not yet been discussed, and surely it is the condition determining the time for going to war. But contrary to what might be expected, the last resort condition is not time-sensitive in the same way. If "last" is taken to be a temporal notion, there will always be some sense that if we wind up in the situation where war appears to be the last resort, then we have not tried hard enough at making the

other options work. That line of thought leads to a situation wherein practical judgment falls victim to a kind of unrealistic idealism.

The only way the doubt can be settled and a time limit set to consideration of the last resort is by connecting doubt to the practical issue of probability of success. The time factor should not be understood as governed by whether all nonbelligerent options have been tried. It is rather to be understood along the following lines. Given the probability of having to fight, the time for going to war is determined by the balance of forces as that time when one has not just a good prospect but comparatively the best prospect of success. That is the moment at which one reviews all options other than war, and if none will work at that time, the last resort has arrived. The time to go to war is when one has the best chance of success. It is then, and only then, during that time frame or window of opportunity, that consideration of whether the last resort has been reached should be carried out. In this area, the government depends heavily on military advice. It has an obligation to listen to the general staff's recommendations and adopt them unless it has strong reasons for not doing so.

Finally, it might be noted in passing that the probability of success condition has interesting implications for the use of nuclear weapons. While concern to prevail in war led both sides in the later stages of the Cold War to seek breakthroughs in the area of conventional weaponry, there always remained the awareness that while a war might start off without resort to nuclear weapons, it was probable that the side losing the conventional fight would turn to nuclear weapons. Thus, nuclear weapons, when available to both sides, seemed to put the probability of success beyond fulfillment, at least when success involved prevailing over another nuclear power. On the other hand, if success were a matter of deterrence of attack, possession of such weapons could be very successful indeed.[13]

Humanitarian Intervention

The issue of humanitarian military intervention was discussed earlier in chapter 4. As has been noted, when the question arises of whether the United Nations or other countries should be entitled to intervene by force if necessary to protect people from genocide or other gross violations of human rights visited upon them by their own government, lawyers, politicians, and the general public nowadays are less inclined to assume that sovereignty should trump or outweigh human rights. The focus of attention has shifted significantly away from issues of sovereignty and just cause to concerns about practicality and probability of success. We are less worried about violating sovereignty and more focused on whether intervention will work.[14] Accordingly, it is the

probability of success criterion that is most relevant to humanitarian military intervention.

Assuming that there is a moral and legal responsibility to protect people from government-sponsored genocide and comparable oppression, practical realism will tell us that in many cases it will be a duty impossible to discharge. This is because intervention may fail to improve matters and may even make them worse. However, there are different kinds of intervention, and operational clarity on what is to be done and on the limits of the mission may show certain kinds of intervention to be more likely to be successful. Seybolt's grading of kinds of intervention into (a) delivering aid, (b) protecting aid delivery, (c) protecting victims, and (d) defeating the perpetrators ranges from involvement that might involve hardly any combat and be relatively easy of achievement (a), to outright defeat and possibly removal of oppressive regimes (d). In general, operations aimed at (a) or (b) are more likely to succeed than those involved in (c) or (d).

Hearts and Minds

Rupert Smith has developed a sustained argument for the claim that the era of industrial war (e.g., the two world wars) is largely over, and that most contemporary instances where troops are put in harm's way concern what he calls "war among the people" (2006). It sees winning hearts and minds as a major strategic concern.

It is relevant to humanitarian military intervention where the intervening force may have to win the trust of the very people for whose welfare the intervention has been undertaken. Winning hearts and minds may also involve showing respect for local custom since the interveners' intent is to leave as soon as possible and hope that normality returns. It may also involve getting along with local officialdom for the same reason.

It is also relevant to operations related to the so-called war on terror of 2000–2011. In Afghanistan and on the margins of Pakistan, NATO countries fought a war in which they needed not merely to win hearts and minds but also create enough stability and local security so that a security vacuum would not arise when NATO troops left. In addition to guerrilla forces such as the Taliban, there are also ideas and visions that have to be fought in the struggle for minds and hearts if the war on terror is to be won. It is no longer acceptable to "pacify" peoples the Roman way, so the minds-and-hearts battle is not optional.

Smith's line of thought leads to a wariness in regard to hubris about great military power. Today, the United States is the world's only military superpower, spending more on its military than most other countries put together.

It would presumably win a traditional conventional war with any other country. It does not follow that it is capable of winning any kind of war, for example, a guerrilla war such as in Vietnam. Nor does great military power necessarily facilitate the winning of minds and hearts. As was found in Vietnam, and as Clausewitz emphasized, moral factors also matter, and it is these that are most closely connected to the task of winning hearts and minds.

At present, Israel has reason to be on its guard against Hezbollah in Lebanon and Hamas in Gaza. While many Palestinians are less than convinced that Hamas or Hezbollah have their welfare at heart, Israeli military tactics in its 2008–9 offensive against Hamas would appear to have driven Palestinians further into the embrace of Israel's enemies. Listening to speeches from Israel's leaders, it sounds sometimes as though they thought that the kind of tactics that drove back Syrian and Egyptian armies could uproot an urban guerrilla group from its natural habitat. There was no reasonable prospect of success of doing so, and so the Israeli offensive was unjustifiable.

Against Fairness

The probability of success condition may not require that one always have a better than even chance of winning. But I think it does require one to take advantage of everything that would make victory more likely. It would not be morally acceptable to content oneself with a 75 percent chance of winning if one knew that certain strategies would raise that to a 95 percent chance and those strategies were to hand. After all, the goal is to achieve or protect certain goods or prevent certain evils. If it should become possible to improve one's strategic position to the point where the other side recognizes that it has no realistic chance of winning and accordingly surrenders or withdraws, victory has been won, and won without bloodshed or loss of life. War is too serious not to intend winning, and doing so as soon as possible and as bloodlessly as possible.

Accordingly, I have difficulty with David Rodin's claim that fairness is a value in the just war tradition, and that the interests of fairness in the fight require placing a heavier moral burden on the stronger side. He states:

> Yet there are forms of war that do not embody the symmetry and equality implicit in the chessboard image of war. It will be the argument of this chapter that when conflict diverges too drastically from the assumptions implicit in the chessboard image of war we experience serious difficulties in interpreting and applying standard judgments of just war theory. In short, when war ceases to be roughly equal and symmetrical the considerations of justice and fairness, rather than supporting and reinforcing each other in a symbiotic relationship, begin to dangerously diverge. (2006, 153)

> Recalling the image of chess, we may observe that, as well as justice, fairness is a form of moral assessment relevant to war. In a conflict that is highly unequal, how can it be fair to require the overwhelmingly weaker party to abide by the same rules as the stronger? . . . The tactics of asymmetry may be the only way the weak can restore any measure of equality to a conflict. Although asymmetric tactics conflict with principles of justice in that they attack or expose non-combatants to excessive risks, they are justified by a principle of fairness to restore balance in radically unequal conflicts. (2006, 158–59)

The chessboard image of war, which appears to be a controlling metaphor in the passages quoted, is analogous to the idea of war as a duel to be played by the rules and monitored by a referee and seconds. While that line of thought about war was not uncommon in the early modern period, it is at odds with classical or contemporary just war thought and with any view of war as analogous to law enforcement against criminals.[15]

For a start, fairness does not turn up in any list of criteria that I know of, either for *jus ad bellum* or for *jus in bello*. Rodin's advocacy of fairness introduces a novelty into just war thought, and he offers no supportive argument for introducing it. As he himself admits, it collides with other values in the just war tradition. He thinks this a theoretical problem to be solved; I think the problem artificial, and the mistake is to introduce fairness into just war thought at all.

The analogy of a game or a duel misleads when applied to war. It is reasonable to assume that war is a rule-bound activity with respect to *jus in bello* for the treatment of prisoners and noncombatants. But that does not suffice to warrant taking war to be analogous to a game. The practice of the courts is also rule-bound yet not assimilable or analogous to a game. Even when we allow that the courts are concerned with fairness to all sides, their goal is not the drama of a trial but the doing of justice. Fairness is merely a procedural value in court proceedings. By contrast, in duels or games, fairness is more than merely instrumental since the goal of the game is the playing of the game regardless of who wins or loses.

Rodin's approach has elements of the idea that war ought to be a gentlemanly duel. A fair fight would mean trying to level the playing field to give all sides an even chance of winning. But good governance should seek the opposite for the sake of the public good. It should aim to have the greatest possible chance of winning, ideally so great that the other side caves in without fighting. That's the moral ideal, and it points against fairness. Deontological constraints are allowed, but fairness is not one of them.

Rodin's pitch is for the weaker side in a war to be given a certain moral leeway or permission with respect to using "asymmetric tactics" under which he in-

cludes chemical, biological, and nuclear weapons; terrorism; guerrilla warfare; hostage taking; various innovative methods in cyberwarfare; and more. Use of some of those weapons and tactics would violate just war norms on discrimination between combatants and noncombatants as well as norms on proportionality (of the *jus in bello* kind). What is ironic, in view of his concern for fairness, is his suggestion that one side be given moral permission to break some of the rules—and for no other reason than that it is the weaker side. His argument is not along the lines of holding that the side of justice should, *in extremis* and facing defeat, be allowed to ignore those deontological moral constraints. It is purely because one side is weak that it should be allowed to do so. But it is an odd notion of fairness that would seek to make the rules of the game optional.

Rodin's position may arise from a confused notion of what *jus in bello* prescribes.

> The problem [whether justice or fairness is to be preferred when the two values conflict] is a component of the well-known tension between *jus ad bellum* and *jus in bello*. . . . The one set of rules tells us when fighting is morally appropriate and why, indeed, it may be morally valuable and important to fight and to win. The other places constraints on the means of fighting, even though this may impinge on the ability to fight effectively and to win. . . . In this sense, at least, the just war theory represents the subordination of *jus ad bellum* to *jus in bello*. This is made absolutely explicit in just war theory, for fighting in accordance with the *jus in bello* is one of the necessary conditions classically identified for war to be *ad bellum just*. (2006, 160)

There are a number of points on which I differ. First, the *jus ad bellum* rules are described in an oddly weak way. They cannot tell us that fighting is morally appropriate without also telling us that it is morally appropriate for only one side. There's no "may be" about the moral value of winning a war fought for just cause to achieve a right intention. If it is morally necessary to go to war, it is morally obligatory to win. One has no business going to war except to win, and one shouldn't go to war unless one has a substantial probability of success.

Second, *jus in bello* rules place deontological constraints upon what may be done in the conduct of war: avoid intentional attacks on noncombatants or civilians, treat prisoners humanely, and observe proportionality in the use of weapons and infliction of death and destruction. All can be justified on grounds independent of other moral considerations bearing upon war. It is mistaken to analogize them to the rules of fair play in a game. Their purpose

is not to limit or obstruct a decisive result in the interests of giving both sides a "sporting chance."

Third, following from the second point, there is no good reason for thinking that fairness is a kind of *jus in bello* rule. It is possible that the idea of fairness as morally relevant to just war thought arises from thinking that there is some neutral standpoint from which to assess the moral nature of a war, but it is not clear that there can be any such standpoint from which to judge equally the armed criminal and the police, the rogue state and the United Nations. Further, the leeway Rodin suggests might allow actions that would violate other *jus in bello* rules.

Fourth, it seems exaggerated to take the deontological limits imposed by *jus in bello* as amounting to a subordination of *jus ad bellum* to *jus in bello*, or that violation of them also nullifies the *jus ad bellum* moral case for going to war. The two parts of just war thinking can stand more or less independently of each other. Fulfilling the reasonable probability of success criterion requires doing what is possible to raise that probability. But that does not involve violation of *jus in bello* prescriptions since *jus ad bellum* is not concerned with the conduct of war but with the prior decision to go to war and with whether it can be justified.

Whether such *jus ad bellum* criteria as competent authority, just cause, and right intention are met has nothing to do with how the war is conducted later. A state might be justified in going to war, and its conduct and those of its troops in war-fighting might be morally appalling. The state's bad behavior does not mean it was unjustified in going to war. Merely because one can give definite answers to questions like "Was country *A* justified in going to war?" and "Did country *A* show morally appropriate restraint in fighting it?" does not mean that one can add up the answers to give an answer to some question like "Was the war just?" Moral evaluation of war is primarily moral evaluation of action, and *jus ad bellum* and *jus in bello* concern different actions. No coherent sense, I submit, can be made of interpretations of just war thinking that see *jus ad bellum* as subordinate to *jus in bello*.

Jus in bello conditions impose deontological constraints on what may be done to win the war. However, the right intention condition also imposes deontological constraints of a more immediate and significant kind on what may be done. Intentions to annihilate or subjugate peoples are ruled out as morally wrong. Intentions that would destroy the very good that the war aims at are similarly excluded. A well-conceived right intention is broadly consistent with *jus in bello* criteria such as not directly attacking noncombatants, using minimum necessary force, and respecting the rights of prisoners. Consistency between *jus ad bellum* and *jus in bello* is not the same as subordination of one to the other.

Conclusion

The success criterion is the most practical in nature of the *jus ad bellum* criteria. Even if its development as a criterion was relatively late in the history of just war thought, one can see how it follows naturally from the right intention condition. If right intention is concerned with goals to be achieved and broad strategic policies implemented to achieve those goals, the success criterion asks whether those goals are actually achievable and how likely those strategic policies are to work.

The success criterion also directs us to other practical matters. One is the issue of when to go to war, which turns out to be at the time when success is most likely. Another concerns other success-making factors, including the attitude of one's own citizens as well as the winning of hearts and minds of the population where military operations are to be conducted. Finally, taking the success criterion seriously means rejecting the claim that fairness is a criterion that can be integrated into just war thought.

Notes

1. See Fotion and Coppieters 2002, 79, 89n1, and Statman 2008, 659, for the suggestion that Grotius may have been the first to identify success as a requirement in *jus ad bellum*.

2. After the mid-1970s, many senior US Army officers believed that the US military had labored under a lack of clarity about the strategic goals of their involvement in Vietnam in the 1960s, thereby rendering battlefield victories ineffectual and ultimately demoralizing the troops. Unless the government identifies the goal of going to war clearly, the generals won't know what will count as victory and hence cannot win.

3. On the relationship, see Smith 2006, 12. In 2008–10, US generals concerned identified various political goals (e.g., eliminating or reducing political corruption, reform of the Afghani government, stabilizing local law enforcement) as necessary to ensure a NATO victory in Afghanistan. The generals were aware of the wider political benefit and significance of achieving such goals, but their interest in achieving them arose primarily from their likely contribution to achieving military victory.

4. Johnson 2005a comments: "Exactly when and under what circumstances these began to be used is unclear. John Eppstein, writing *The Catholic Tradition of the Law of Nations* between the World Wars, argues that proportionality and last resort are to be found in the arguments of the Neoscholastics, but the texts he cites do not clearly make the case. It is likely that these prudential criteria reflect the same uneasiness with modern war that gave rise to modern-war pacifism. Argu-

ably they are elements in the prudent exercise of statecraft, but including them as specific requirements of the *jus ad bellum* is a comparatively recent development."

5. The US secretary of defense and the Joint Chiefs of Staff had strongly opposed the mission on the grounds that it had no clear goal and that the marines were likely to become a target.

6. Lincoln's leadership in the US Civil War (1861–65) and Churchill's leadership of Britain after the fall of France in 1940 made just such a difference. In both cases, powerful and influential figures (many of Lincoln's cabinet and generals such as Winfield Scott and George McClellan at the beginning of the war, and British foreign secretary Lord Halifax and former prime minister Lloyd George in May 1940) wanted to stop fighting and come to terms with the other side. In Britain's case, with the Britain-and-France versus Germany phase of the war over and Germany decisively victorious, it is not obvious that Britain had a reasonable probability of success. With the USSR technically Germany's ally and the United States sympathetic but determinedly neutral, Britain had at best a 20 percent chance of defeating Germany. Even after the United States and the USSR became its allies, the failure of the Anglo-Canadian sea-borne assault on Dieppe in 1942 was a forceful reminder that victory was by no means highly probable.

7. See Clausewitz 1976, 89: "As a total phenomenon its dominant tendencies always make war a paradoxical trinity—composed of primordial violence, hatred, and enmity, which are to be regarded as a blind natural force; of the play of chance and probability within which the creative spirit is free to roam; and of the element of subordination, as an instrument of policy, which makes it subject to reason alone. The first . . . concerns the people; the second the commander and his army; the third the government. . . . Our task is to develop a theory that maintains a balance between these three tendencies."

8. In an updating of US policy on use of troops in 1984, Secretary of Defense Caspar Weinberger listed a number of conditions for committing US troops, which became known as the Weinberger Doctrine. The fifth condition was that "troops should not be committed to battle without a 'reasonable assurance' of the support of US public opinion and Congress." See Weinberger 1984.

9. Although hard to quantify, it appears that the casualties suffered by the USSR in Afghanistan in the 1980s played a role in discrediting the Soviet political system. The state of Somalia did not survive its protracted war with Ethiopia in the 1980s.

10. US general George C. Marshall, chief of staff during World War II, is supposed to have remarked once: "Democracies cannot fight a 7-year war."

11. Kennan 1951, 65–66, emphasizes the point. See also Kagan 1995, 202–4, on Britain's vacillation in 1914: as late as August 1, 1914, three days before Britain declared war on Germany, Foreign Secretary Sir Edward Grey had not succeeded in persuading his cabinet colleagues that they would have to stand by France.

12. Perhaps it should be noted that the general public the government must persuade is not to be likened to a group of ethicists or professors; different standards apply (not necessarily lower ones). At the same time, logical arguments are often persuasive; they can make good propaganda.

13. Quinlan 1997, 19: "A nuclear state is a state that no-one can afford to make desperate."

14. See Seybolt 2007, 15, on the absence and the need of serious work on probability of success.

15. Nor would it find any sympathy in Clausewitz, who holds that the nature of war is incompatible with the duelist's ideal of a fair fight.