

## **Liability, Just Cause, and Limits on the Multiplication of Purposes in War**

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### **Introduction**

Can wars be fought for purposes beyond defense against grave injustices? Can several lesser purposes, independently insufficient to justify war, combine to constitute a just cause? Drawing on a liability theory of just cause, this paper takes a skeptical view about additional and multiple causes, noting conditions and limits on their validity.

### **Just Cause and Liability**

Looking to go beyond the legalist defense paradigm and the mere enumeration of exceptions to this paradigm, just war theorists have proposed new principled statements of what constitutes just cause for war. I take as paradigmatic of this recent thought and promising as a general definition, a recent proposal by Jeff McMahan. He states, "There is just cause for war when one group of people ... is morally responsible for action that threatens to wrong or has already wronged other people in certain ways, and that makes the perpetrators liable to military attack as a means of preventing the threatened wrong or redressing or correcting the wrong that has already been done."<sup>1</sup> McMahan argues, "For it to be justifiable to wage war on a group, they must be liable to attack. To be liable to attack they must have perpetrated or be perpetrating a wrong." This is the reason that wars to secure some greater good such as national wealth or the improvement of a foreign state are not normally justified: the attacked party has not made itself liable. It is also a reason that preventive war cannot possibly be

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<sup>1</sup> Jeff McMahan, "Just Cause for War," in *Military Ethics*, eds. C.A.J. Coady and Igor Primoratz (Burlington, Vermont: Ashgate Publishing Company, 2008) p. 82.

justifiable unless the party preventively attacked has already culpably committed crimes or entered into a conspiracy to commit the threatened crime.<sup>2</sup>

Not every injustice makes a party liable to attack. A wrong and the importance of combating that wrong must be of sufficient *magnitude* to justify a war. Larry May defines just cause as follows: “Preventing or stopping a wrong committed ... *which is sufficiently morally serious to be analogous to the risk of large loss of life that war involves.*”<sup>3</sup> He argues, rightly in my view, that a rudimentary proportionality consideration is involved in just cause. A just cause must involve combating a wrongdoing of a kind and magnitude that makes a party liable to attack, justifying war. This is not to fold the proportionality criterion completely into just cause as some would do.<sup>4</sup> A war with a just cause of combating a wrongdoing large enough and of the right kind to make a party liable to attack might in some cases be disproportionate because expected consequences are so severe that they outweigh any good that could be done by fighting the war. Although McMahan at times suggests that all proportionality judgments are independent of just cause, he seems to concur with May’s rudimentary proportionality component when he, McMahan, stipulates that “only aims that are sufficiently serious and significant to justify killing can be just causes.”<sup>5</sup>

A potential target’s culpability for a wrong of sufficient magnitude to make it liable to attack does not alone constitute a just cause for war.<sup>6</sup> The just use of force must have a positive purpose

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<sup>2</sup> McMahan justifies some preemptive or preventive wars on the model of conspiracy, “Just Cause for War,” p. 89. I use the conspiracy model to defend a limited doctrine of preventive war in my “Preventive War and Lawful Constraints on the Use of Force: an Argument Against International Vigilantism,” in Michael Brough et al., eds., *Rethinking the Just War Tradition* (State University of New York Press: Albany, 2007). Michael Walzer’s argument in *Just and Unjust Wars* similarly includes the requirement that there is an ongoing unjust threat rather than a simple possibility of future attack.

<sup>3</sup> Larry May, “The Principle of Just Cause,” in May, ed., *War: Essays in Political Philosophy* (Cambridge University Press, 2008), p. 57.

<sup>4</sup> E.g. Ian Holliday, “When is a Cause Just?” in Coady and Primoratz, eds., *Military Ethics*.

<sup>5</sup> McMahan, “Just Cause for War,” p. 85.

<sup>6</sup> There is a question about the relationship between the injustice committed, liability to attack, and the cause for war. I am distinguishing the three. Injustice is necessary for liability to attack, but not sufficient (as it must be an

which it is trying to achieve in response to the wrongdoing which triggers it. It is this response to the wrongdoing which is the actual *cause* for the war, serving as its purpose. We saw that May limits just causes for war to “Preventing or stopping a wrong.”<sup>7</sup> This could involve defense against ongoing attacks or preemptive or preventive strikes against reasonably expected unjust attacks, if the threat is made culpably. McMahan’s definition cited above includes not just “preventing the threatened wrong” but also “redressing or correcting the wrong that has already been done.” Correcting the wrong involves things such as returning stolen territory and thus could be argued to fall under May’s “stopping a wrong.” What is involved in “Redress” for wrongdoing and whether and how it justifies war is less certain. I take up the sense in which punishment can be a just cause shortly.

### **Additional War Aims as Conditional Just Causes**

With this background theory of just cause as stopping, preventing, or otherwise justly responding to injustices of a magnitude that make a party liable to attack, I take up my central questions about causes for war. First, must a war’s purpose be limited to the prevention of wrongdoing, or can other just causes emerge in conjunction with defense and prevention or after the achievement of such defensive and preventive aims? If normally war can only be justified as defense against aggression or the prevention of other serious violations of human rights, can wars already justified on such grounds be pursued – either simultaneously or after the completion of its defensive aims -- for other purposes, such as disarmament, deterrence and stopping or preventing lesser injustices and rights violations? The consideration of multiple causes for war raises another question: whether several purposes, each of which independently would not justify war, could combine to provide a just cause. These questions are

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injustice of the right kind and magnitude). Liability to attack in turn is necessary but not sufficient for just cause for war against that party. A party must have a cause of responding justly to the wrongdoing of the liable party.

<sup>7</sup> May, p. 57.

illustrated in the recent U.S. interventions in Afghanistan and Iraq, in which the purpose of intervention shifted over time and in which the interventions are potentially justified by several compounded purposes, rather than a singular cause.

My first question is about the relationship between the wrongdoing that is to be opposed and the purpose of the war. I defend a view suggested by the concept of liability, that the purpose of the war should involve undoing or otherwise justly responding to the wrongdoing committed. If the cause justifying a war is defense against unjust aggression by another state, the war cannot be fought for additional purposes not connected to defense, such as deterring future attacks from other states or correcting injustices within the state attacked. Therefore if the cause justifying U.S. intervention in Afghanistan has been defense of the U.S. against terrorist attacks, once this aim is achieved, the war ought not to be continued for different purposes, such as democratizing Afghanistan, furthering women's rights, or sending a deterrent message that the U.S. is willing to fight a prolonged war. These could not justify waging war and killing on their own and should not be pursued as purposes for additional killing and war-waging beyond that for which there is a sufficient cause.

This limit of just cause to purposes which independently are sufficient to make a party liable to attack has been criticized by Thomas Hurka<sup>8</sup> and called into question by a recent piece by McMahan himself. I take up these objections and then further develop the restrictions implied by the liability theory of just cause.

Hurka accepts McMahan's view that a war requires an independently justifying cause, involving the prevention of or just response to some grave wrongdoing, along the lines of the traditional conditions of defending against aggression and preventing humanitarian catastrophes. However, he goes on to argue that these causes give a "global liability" to attack, such that a state that fights for

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<sup>8</sup> Thomas Hurka, "Liability and Just Cause," *Ethics and International Affairs* 21, no. 2 (2007), pp. 199-218.

these causes can also pursue other “conditional causes” by means of war. “If one has only conditional causes one is not permitted to fight.” However, “once another, independent just cause is present, a conditional cause can become a legitimate goal of war.”<sup>9</sup> These conditional causes become additional war aims that can be pursued not just alongside the independent cause but even “can sometimes permit continuing a war after its independent just causes have been achieved.”<sup>10</sup>

According to Hurka, “Three main conditional just causes have been recognized: forcibly disarming an aggressor, deterring future aggression, and preventing humanitarian crimes that, while serious, do not mount to the level of an independent just cause.”<sup>11</sup> He goes on to give examples of each of these three causes becoming a seemingly just reason for war following a prior independent just cause. The disarmament of Germany and Japan following World War Two is thought just even though, Hurka contends, the danger posed by these states, and thus any defensive justification for military action against them, had largely passed. Disarmament had become a separate just cause for continuing the war, albeit contingent on the prior independent just cause of countering the Axis powers’ aggression.

Regarding deterrence, Hurka cites the example of the Falklands War, where Britain’s ostensible justification was defense of its territory. Hurka argues that an additional purpose, in fact the main concern for Britain, and one without which the war would not have been proportionate, was deterrence of future aggression. Again, Hurka contends that once aggression or a massive violation of human rights has occurred, independently justifying war, deterrence becomes an additional cause to be justly pursued by military action against the same state.

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<sup>9</sup> Hurka, “Liability and Just Cause,” p. 201. He adds that conditional causes can contribute to the justification of war by making a war for the independent cause proportionate and a last resort. I agree with Hurka and against McMahan that additional benefits of war can contribute to proportionality, but this is distinct from their being legitimate war aims or reasons to continue a war.

<sup>10</sup> Hurka, p. 201.

<sup>11</sup> Hurka, p. 201.

As an example of fighting to prevent crimes against humanity insufficiently grave to justify war on their own, Hurka cites the U.S. remaining in Afghanistan to ensure the rights of women against the Taliban. Though not the initial justifying cause of U.S. intervention, the contingent cause of liberating women becomes a just war goal to be pursued during and after the completion of the U.S.'s war of self defense.

Hurka thinks that these judgments about causes for war are supported by a domestic analogy to the theory of just punishment for individuals. While punishment is only acceptable when an individual is guilty of a crime, this does not necessarily mean that stopping the guilty act or giving retribution for it are punishment's only purposes. Incapacitation and deterrence are also widely accepted goals of punishment. Indeed punishment occurs after a crime is committed and retribution is itself a controversial justification. Under a condition of individual criminal liability, incapacitation and deterrence are seen to take over as goals of punishment. Hurka adds that reformation of the criminal is also sometimes accepted and this reformation can involve improving the individual in ways beyond prevention of the crime which made him or her liable to punishment. This suggests an analogue for the correction of other injustices beyond the wrongdoing which initially generated liability to attack. Having engaged in the cessation of Afghanistan's harboring of terrorists committing aggression against the United States, the allied forces are justified in using their force to implement just reforms in Afghan society and prevent the reinstatement of Taliban authority.

### **Critique of Additional War Purposes as Just Causes**

In my view, Hurka's global liability and contingent causes are mistaken attempts to justify war for purposes other than the wrongdoing that makes a group liable to attack. If a cause cannot justify

fighting and killing, then that cause cannot be pursued by means of fighting and killing. I will seek to further illustrate this with each of Hurka's suggested contingent causes.

I don't deny that disarmament can be a just purpose of war following a war of defense. However, I see disarmament as a defensive incapacitation that completes a defensive war. A plausible interpretation of defense includes not just repulsion of enemy attacks that have already commenced, but also attacks that are likely to follow in the days or years to come. It is in this sense that the U.S. invasion of Afghanistan after the 2001 terrorist attacks could be called self-defense. It did not repel the attacks to which it responded, but its main purpose was to prevent continuing attacks that could be understood as part of the same conflict. Contra Hurka I suggest that the reasons for disarming Germany and Japan at the end of World War II was similarly defensive. Although weakened at end of the war, the nature of both regimes gave reason to think that they could not be easily trusted with weapons. Disarmament seeks to prevent similar wrongful attacks and is thus a kind of defense. Separate from any concern about the wrongful use of weapons, disarmament would have no valid purpose. The disarmament of Germany and Japan was not done independently of concern over their aggressive wars, on the technicality that they had made themselves globally liable to any measures the allies thought beneficial. Rather it was precisely because these regimes were repeat aggressors, with aggression thought to be endemic in their natures, that they were disarmed.

With regard to the analogy to the incapacitation of domestic criminals, moral intuition supports my view over Hurka's. Incapacitation of criminals is justified only insofar as their commission of a crime implies that they are particularly dangerous. While incapacitating people who are not particularly dangerous would prevent some crimes, this good cannot justify any additional incarceration (much less other physical incapacitation or execution!) beyond that warranted for retribution for his or her crimes. By analogy, states can be justly disarmed following their commission of acts of aggression, but only to

the extent that disarmament completes the defensive response to which the aggressor made itself liable.

Deterrence cannot, I argue, be a just cause for war, even contingently. It is not just to kill people in order to deter others. In Kantian terms this is to use people as a mere means. In war, deterrence of parties B through Z not actively involved in committing wrongs cannot be the purpose of attacking and killing members of A. The deterrent effects of justified defense are to be welcomed, but they cannot be pursued as independent causes for additional war without becoming immoral purposes. I suggest that the same is true of deterrence in punishment. Although deterrence is a benefit of punishment, it is not a purpose that justifies punishing individuals or one that could serve as the guiding purpose in determining the form and extent of punishment. It is not accepted that an individual could be subjected to additional punishment beyond that to which his or her crime otherwise made him or her liable merely for the utilitarian benefits of deterrence in the future.<sup>12</sup>

In the Falklands case, it may be that deterrence helped to justify the war. However, it did this by making the pursuit of the just cause of defense proportionate. Deterrence became a benefit to be achieved in the process of defense, not a purpose to be pursued separate from defense. The aim of defending the Falklands having been achieved, it would not be acceptable to deal additional punitive blows to the Argentines just for the sake of sending a deterrent message to other would-be attackers.

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<sup>12</sup> Anthony Ellis ("Punishment as Deterrence: Reply to Sprague," *Philosophical Quarterly*, 55 (218), 98-101) defends a deterrence theory of punishment, attempting to answer the objection that it treats the criminal as a mere means. He answers this by arguing that deterrence justifies a general policy or law of punishment for state defense. When the law is applied to the individual, the individual is simply being treated consistently according to stated policy and in order to uphold the law. There is no thought of gaining deterrence in any individual act of punishment, even though deterrence justifies punishment generally. By analogy, a general policy about when to wage war, if it were to be followed regularly and fairly automatically, might take into account deterrence. Deterrence would not be the cause for which individual wars are waged, but rather law enforcement. In our current system, without a general law, much less one applied consistently, each war is justified separately. This fits with my view that while deterrence is to be welcomed, it cannot be a guiding purpose or justification of war.

Since deterrence is valuable, it may be worthy of pursuit by means short of war and killing. In the course of conducting a defensive war, a state might publicize its successful attacks on the enemy for deterrent reasons. Here deterrence justifies not the attacks but their publication. Similarly, in criminal justice, the justice system might consider ways of gaining deterrence by publicizing what has happened to criminals. It is the publicity of the punishment rather than its nature or severity that is justified by deterrence.

McMahan notes one sort of case in which deterrence could be connected with one's wrongdoing in a way that made deterrence a just cause for war. If an act of aggression threatened to undermine the system of deterrence, the state would have made itself responsible for this harm and be liable to be deterred. "For in that case the country's wrongful action would make it to some degree responsible for the increased risk of further wrongful action by others. That responsibility makes it liable to belligerent action necessary to deter the wrongs that its own action had made more likely." However, as McMahan acknowledges, in such cases there will almost always also be another just cause: defense against the ongoing attack and its continuance by the initiating party. Moreover, in the international arena, where responses are inevitably inconsistent, deterrence will not be of great value. The extent to which an attack undermines deterrence will likely to small and difficult to predictably measure. Thus, the assault on deterrence will rarely be serious enough to make an aggressor or rights violator subject to attack. The state may be liable for breaking international law, a law designed to deter. Fairness and stability would then be favored by enforcing the law. However, such arguments are currently much weaker with regard to the international system than the domestic punishment of criminals.

For all of these reasons, I think that McMahan confuses matters in his most recent work on just cause and punishment when he writes that “deterrence can be an independent just cause for war.”<sup>13</sup> He gives an example which he thinks shows that deterrence can serve as a sole just cause for continuing a war. “Once a war is in progress, it may be permissible to prolong it beyond the point at which the defensive aims have been achieved in order to capture individuals believed to be guilty of the wrongs that have been stopped or prevented and make them available for trial... What could justify the continuation of war is the enhancement of deterrence that might be achieved by capturing suspected war criminals.”<sup>14</sup> I disagree that deterrence of other parties could itself justify the war in this case. It is stopping the further commission of crimes by these individuals and punishing them for what they have already done that constitutes the cause. Deterrence may be an additional benefit, possibly without which it would not be proportionate to pursue the just causes of defense and limited retribution.

With respect to the issue of redress or punishment as a just cause for war, then, I argue that it is normally justified only insofar as the responsive measure aims to stop or undo wrongdoing, but not in order to deter others from repeating it. Several authors have argued for recovering the traditional war aim of punishment,<sup>15</sup> pointing out that many seemingly just wars have been punitive.<sup>16</sup> While it may be right that some just wars are punitive in the sense of fighting after the act of aggression has stopped, my arguments regarding the connection of war to liability suggest limits on punitive war. In particular, punitive war should seek to defend against the repetition of wrongdoings already committed, such that valid punishment is normally defensive. In rare cases retribution can serve as a just cause, since it involves the direct redress of wrongdoings. However, as McMahan<sup>17</sup> and other commentators argue, retribution is not well pursued by war and rarely important enough to justify war. In cases where

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<sup>13</sup> McMahan, “Aggression and Punishment,” in May, ed., *War: Essays in Political Philosophy*, p. 79.

<sup>14</sup> Ibid, p. 84.

<sup>15</sup> James Turner Johnson, “The Idea of Defense in Historical and Contemporary Thinking About Just War,” *Journal of Religious Ethics* 36 (4), 543-556.

<sup>16</sup> Kenneth W. Kemp, “Punishment as Just Cause for War,” *Public Affairs Quarterly* 10 (4), 335-353.

<sup>17</sup> McMahan, “Aggression and Punishment,” in May, ed., *War: Essays in Political Philosophy*, pp. 82-84.

retribution is being sought, there will normally be a cause of defense against aggression or human rights violations. I have argued that deterrent punishment does not justify war.<sup>18</sup>

My rejection of the bellicose pursuit of additional goods such as the equality of women in Afghanistan follows from what I said about deterrence. If liberating women or ending other Taliban rights-infringements could not justify an invasion of Afghanistan (as the lack of calls for invasion of the country before the 2001 terror attack suggests), it is problematic to use the same ends to justify continuing military occupation of Afghanistan a few years later. If national defense was the only cause justifying U.S. intervention, then the defensive mission having been completed, the presumably U.S. is not justified in continuing to occupy Afghanistan and fight in its civil war in order to safeguard women's rights.

To say that the pursuit of just goals such as women's equality cannot be a just cause for war is not to say that this goal cannot be pursued by other means. Obviously, non-violent measures such as diplomacy and, potentially, economic coercion, could be directed at securing equality and justice for women. Furthermore, while fighting a war for an independent (presumably just) cause, military force could be justifiably used to achieve other lesser ends, without these "side" missions being the purpose of the war. Soldiers fighting terrorism could intervene to stop the Taliban from significant violations of women's rights. While such an action would not justify starting or continuing a war – and cannot be the

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<sup>18</sup> Kemp lists several cases of the use of military force by the United States, seemingly aimed at redressing injustices following their completion, to support his case that "punishment" is a just cause for war. I lack both the space and expertise to assess all of these cases. I will make a few general comments. First, many of these cases could be assimilated to defense. Although these uses of force do not interdict enemy attacks in progress, stopping the party from repeating the same acts is a primary concern. This is typical of national defense. Second, most of these reprisals for wrongs can be seen as measures short of war, to quote Walzer's phrase. While Kemp considers this a quibbling distinction, the distinction between a war involving large mobilization of forces, significant casualties, and invasion and occupation of foreign territory, on one hand and either police actions targeting criminal wrongdoers or reprisal strikes targeting property rather than lives, on the other, is sensible to me. Not only does it follow common sense, but it has a moral basis. I am inclined to say that these lesser measures short of war can be justified by a lower threshold of just cause and liability than full-scale war. With this said, I suggest that the cause for these reprisals will still involve stopping, preventing, or giving retribution to the party that has made itself liable to attack and not achieving the greater good of deterring other parties.

guiding purpose of the continuing intervention -- the action itself is justified given the presence of the soldiers. Having already intervened, soldiers are justified in policing against relatively minor injustices, but the combat of these injustices cannot justify military intervention, with its assault on sovereignty and cause of loss of life. Righting injustice could be the purpose of individual actions but not the war mission. Any benefits regarding furthering the equality of women in Afghanistan could contribute to making the war proportionate but do not become a justifying cause.

I do not wish to deny that new causes can develop in the course of a war. I have argued elsewhere<sup>19</sup> that although the initial invasion of Iraq lacked justification, the continuing occupation by the U.S. was justified as a humanitarian intervention to prevent the country from falling into chaos and genocide following the overthrow of the Hussein regime.<sup>20</sup> My point here is that a new cause or shift in cause must be evaluated on its own terms and in light of new circumstances, which is to say that it must be justified by a wrongdoing of a magnitude which makes a state or group liable to attack. If there is no cause of such magnitude in Afghanistan, then I propose that just cause is lacking.

### **Compound Just Causes?**

The role of liability in just cause also has implications for cases in which there is no single independently sufficient just cause for war, but rather multiple causes involving less serious or potential injustices which are considered as possible just causes for war *in combination*. Arguably this is the case in Afghanistan today. There are mix of causes that motivate, and potentially justify, ongoing U.S.

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<sup>19</sup> Jordy Rocheleau, "From Aggression to Just Occupation: the Temporal Application of Jus Ad Bellum Principles and the Case of Iraq," *Journal of Military Ethics* 9 (2), pp. 123-138.

<sup>20</sup> Such a cause might justify a continuing U.S. presence in Afghanistan following the overthrow of the Taliban. However, the threat of a humanitarian catastrophe if we leave Afghanistan is less clear and the possibility of our helping to avoid the threats that do exist with our continued presence seem less promising. Unlike Iraq, where the U.S. itself was responsible for the destabilization of the state after its unjustified overthrow of the government, in Afghanistan the U.S. has reduced responsibility for helping to rebuild the state.

involvement. It is not clear whether the war can still be called one of U.S. defense against the terrorists who carried out the 9/11 attacks, the main perpetrators having been disbanded and attacks not continuing on the U.S. homeland. There is concern to prevent repeat attacks, but the prevention of distant threats is considered a dubious cause in and of itself.<sup>21</sup> The U.S. also hopes to prevent a Taliban return to power, installing a less just government, although intervention in a civil war may be dubious in general and the legitimacy of the Karzai regime supported against the Taliban is questionable. There is a case for humanitarian intervention, but most of the obvious results of a return to Taliban rule over some or all of Afghanistan involve injustices of a lesser magnitude than those normally thought required to justify armed intervention. Since replacing the Taliban regime was not generally viewed as a just cause for war before the 2001 terror attacks, preventing its return cannot be assumed to be a just cause for war today.<sup>22</sup> There is a risk of a massive civil war resulting in genocide, but this is speculative and seems insufficiently clear to justify intervention at this time.<sup>23</sup>

If none of these past or ongoing threatened wrongs are sufficient to justify a war, the question arises whether they can do so jointly. If a great and clear threat to human rights justifies a war, then it seems that several lesser threats could add up to a great threat, justifying a war. Moreover, if a certain threat justifies a war, then it seems that a large number of less certain threats justify a war. For example, say that a war is justified if there is a 66% chance of a grave violation of human rights; then if

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<sup>21</sup> It could be argued that the ongoing war against the Taliban continues the war of self-defense that began after the 9/11 terrorist attacks, with combating continuing threats from a Taliban-supported Al Qaeda the ongoing cause of the war. Assessment of this argument involves both empirical and analytic issues about the nature of the current threat and its relationship to the initial attack. Though it is not my purpose to argue this here, my sense is that the threat is small enough and disconnected in time and personnel from the forces that attacked the U.S. on 9/11 that there is not a cause of continuing national defense that is sufficient in itself to justify war in Afghanistan.

<sup>22</sup> One could argue that today since there is a new government of Afghanistan, the Taliban can be justly fought to prevent the thwarting of Afghan self-determination embodied in the Karzai government. However, since the Taliban are a local movement, engaged in civil war with the government, and the government is itself of questionable legitimacy, there is a good case to be made that self-determination is best furthered by non-interference in the conflict.

<sup>23</sup> John W. Lango, "Is There a Just Cause for Current U.S. Military Operations in Afghanistan?," *International Journal of Applied Philosophy* 24:1 (Spring 2010), pp. 9-21.

there are three different worrisome actions which each have a 30% chance of leading to a violation of human rights then there is a 66% chance that at least one will come to fruition, justifying war.<sup>24</sup>

Compound justification would make wars easier to justify. In the Afghan case, John Lango argues that the U.S. cause for war in Afghanistan can be understood as a compound of “(1) to combat al Qaeda in Afghanistan and prevent their return ... in the future and (2) to combat the Taliban insurgency, in order to secure key population centers, for the sake of facilitating Afghan Reconstruction, in order to protect the Afghan people from extreme violations of their basic human rights.”<sup>25</sup> Lango argues that while either of these two causes independently would not be sufficiently clear or of sufficient magnitude to justify war, in combination they might be reasonably concluded to do so.

Compound justification would help to justify not only continuing U.S. involvement in Afghanistan, but potentially the 2003 invasion of Iraq. Prevention of Saddam Hussein’s development and use of weapons of mass destruction was a dubious prevention of a distant threat, as was that of his handing these weapons to terrorists. Nor was Iraq engaged in the commission of gross human rights violations of its own people as of the 2003 invasion. While none of these singularly are very plausible as a just cause for war, preventing Iraq’s development and future use of weapons of mass destruction, its future support of terrorism or other international aggression, future crimes against its people, as well as punishment of Saddam Hussein and his co-conspirators for past crimes, in combination might be thought to justify the attack. Can multiple inadequate justifications add up to an adequate justification?

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<sup>24</sup> I owe this idea of compounding mathematical justifications to David Luban, who presents a similar example in his “Preventive War,” *Philosophy & Public Affairs* 32 (3), pp. 233-234. Luban means to point out the problematic implications of adding risks in this way, a point I reiterate and give further support through the liability concept of just cause.

<sup>25</sup> Lango, p. 17.

Generally, I think the answer is no, at least not straightforwardly. I think this follows from the principle that just cause is only created by liability stemming from wrongdoing. A state is only liable to attack if it is responsible for injustice. A situation in which threats exist but a state has not committed a manifest injustice involved in those threats does not justify war. Several cases which are worrisome but do not involve wrongdoing sufficient to give liability cannot add up to a justification. If preventing future nuclear weapons development and use on one hand or crimes against its own people on the other could not independently constitute just causes for war against Iraq, they cannot do so in conjunction.

This denial of additive justifications might seem to contradict my earlier argument regarding magnitude as condition for just cause. If wars of defense against aggression and defense of human rights must confront a harm of sufficient magnitude, this suggests that multiple acts of killing can justify a war that were not justified by small violations of human rights. This already suggests that just causes are compound. However, I suggest that when we think of a group of acts as a just cause, we are thinking of it as single plan of action or a single result of action for which a party is responsible for some decision or policy. A single unjust policy that foreseeably will lead to a genocide is a different sort of action than a single policy that will lead to one person being killed unjustly. Large injustices are not just the compilation of small injustices; they must be of the right kind, where a single action by a single agent is of sufficient magnitude to make it liable to war.<sup>26</sup>

It is intuitively plausible that a state or group that has committed *more* wrongs should be more liable to attack. In some cases, these wrongs can be viewed as part of a compound policy or strategy of assault on human rights or a compound culpable unwillingness to protect human rights, which is a single grave wrong, justifying attack. In his suggestion of a just cause in Afghanistan, Lango combines the causes noted above into what he calls the compound cause of “countering violent spoilers of

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<sup>26</sup> Lango argues that the magnitude criterion is scalar, unlike the criteria of kind and clarity of cause. On his view, two wrongdoings of the right kind and sufficient clarity, lacking sufficient magnitude to be a just cause independently could add together to achieve sufficient magnitude to be a just cause.

peacebuilding.” This composite wrongdoing of “violently spoiling peacebuilding” makes the offenders liable to attack to counter their attempts. Lango argues that if each threat is of the right kind and is sufficiently clear, then their magnitudes may be combined to justify an attack that would not be justified by either threat singly. However, I am skeptical about whether the threat of current Taliban attacks, a future Taliban regime and a possible future re-emergence of Al Qaeda in Afghanistan can be seen as a single threat from a single agent with a general project of spoiling peacebuilding. On my understanding of liability to attack, if the acts and agents are distinguishable, then the magnitudes cannot combine to constitute a just cause. It is not my purpose here to defend the view that none of the causes for war in Afghanistan provide sufficient justification; my contention is that if none are independently sufficient, the combination of these insufficient causes cannot justify war. For a party to be liable, giving just cause for war, there must be a single injustice of sufficient magnitude carried out by the party that is to be attacked.

It is frequent for aggressors to give a long list of grievances against the party which they attack, the number of complaints distracting from the fact that none of them justify war.<sup>27</sup> Minor wrongdoings or small threats of larger wrongdoings might always be compounded to look like a major threat in combination viewed over time or across a large number of incidents. David Luban illustrates this problem of additive justifications in his comments on the need to limit preventive war. He points out that if there is a 10% percent chance of one state attacking another each year, that over the course of many years, the attack becomes probable. In any conflict between rival states, the parties pose some threat to attack each other, such that preventive war might be justified mathematically by either side. Luban condemns such an approach as a harmful policy, the endorsement of which would lead to

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<sup>27</sup> To give recent examples, Iraq offered several complaints against Kuwait as justification for its 1991 invasion and Al Qaeda leaders have offered justifications of their invasion of the United States. Some of the complaints of injustice are valid, but none warrant war.

“innumerable fruitless wars.”<sup>28</sup> The concept of liability strengthens this argument. It is not just that allowing cumulative causes to count would justify a lot of dangerous wars – many of which could have been avoided. Risks of harms and potential benefits of war are not the sort of the things that can make a party liable to attack. Only an actual injustice of a sufficient magnitude can justify waging war against another party.

Similar problems arise from compounding lesser injustices which are already under way. One might catalogue a fairly long list of injustices committed by the United States: careless crimes against citizens in attacks in Iraq and Afghanistan, violations of international laws of war and humanitarian treaties in its treatment of detainees, unauthorized intervention in the affairs of other states (Iraq, Kosovo); as well as economic, health care, and prison systems which are inhumane and perpetuate inequality, thereby constituting serious injustices. I take it that the injustices in this list are independently insufficient to justify war against the United States. However, all combined the effects of these actions may be as negative as a genocide or an act of aggression. If a regime came to power in the United States with the plan to implement all of these policies anew, it would provide a just cause for waging war against the United States to prevent this grave injustice. However, as it is, these varied U.S. actions and policies are not a single plan conceived by a single agent that makes the U.S. liable to war. They are a series of independent actions, some planned and some not, that cumulatively lead to large injustices.

To give a domestic law analogy, to be liable to punishment an individual must have been found guilty of breaking the law beyond a shadow of doubt. It is not enough that there is a 50% chance that

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<sup>28</sup> Luban, “Preventive War,” *Philosophy & Public Affairs* 32 (3), pp. 207-248. Luban goes on to justify preventive war against specifically rogue states. I would emphasize that it is the rogue’s already having engaged in conspiracy, committing wrongful threats, or in committing illegal weapons development, that makes it liable to attack. For an internationalist conception of limited preventive war, see my “Preventive War and Lawful Constraints on the Use of Force: an Argument Against International Vigilantism.”

they broke two different crimes. Nor it is enough that they did four things that were all legal that combined are as harmful as most things that are illegal.

The move toward accepting combined causes reflects a consequentialist analysis of just cause, wherein if there is enough bad to be averted or good to be done, war is justified. On my view this makes the mistake of collapsing just cause into proportionality. Rather, just cause should be understood deontologically as combating those who have made themselves liable through a wrongdoing of a particular kind and magnitude. In addition to an array of minor injustices just not being of the right kind to justify war, embracing a compound model of just cause would have bad consequences. Given the infirmities of judgment, tendency to nationalistic passion, and self-interested manipulation of states, a list of minor injustices could be too readily used to justify a misguided war, whether by mistake or deception. Principled and practical reasons suggest that just cause be understood as a threshold that must be crossed by a single injustice rather than an accumulation of several.

With all this said, I want to clarify that there are ways in which additional causes and purposes can contribute to the justification of war. One way is that a repeat offender can become more liable to attack, just as a repeat offender in criminal law becomes liable to more serious punishment. Thus, it is plausible that states that have used weapons of mass destruction in the past are given less right to develop them in the future. The past action will help to establish a state as a rogue which is more susceptible to punitive measures. However, the just cause will still be singular: “developing weapons of mass destruction as a rogue state which has previously misused them” or “which has been warned not to do this.” It won’t be the conjunction of two unrelated charges such as violating its peoples’ rights and seeking to develop illegal weapons of mass destruction.

Also, as I indicated in the discussion of new purposes for war in the first half the paper, additional causes can contribute to the satisfaction of the *proportionality* criterion, in the event that an

independent just cause for war exists but the pursuit of this cause alone would not be proportionate. Thus, if a rogue state's engagement with terrorists or development of weapons of mass destruction were thought to be a just cause, but a war to end these would be so costly as to be disproportionate, the additional prevention of future human rights abuses and ending of other injustices committed by the rogue state could tip the balance in favor of proportionality of the war. In Afghanistan, if one of the purposes is of the right sort and magnitude to serve as a just cause, the other desirable effects of an intervention noted above could play a role in offsetting costs and supporting the proportionality of the intervention. However, these independent purposes cannot combine to constitute a just *cause* if neither does individually.<sup>29</sup>

## Conclusion

I have argued that a consideration of the requirement of liability to attack for just cause suggests greater limits on the justification of war than sometimes thought. In fact, while just war theorists are rightly engaged in rethinking just cause to go beyond the defense paradigm, the necessity of linking war to a wrongdoing of sufficient magnitude suggests limits on war that is close to the defense paradigm, if defense is taken to include the preventive defense of human rights as well as national sovereignty.

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<sup>29</sup> I should note that on this point of allowing lesser purposes to contribute to the proportionality criterion of a war, I am disagreeing with McMahan ("Just Cause for War"), who argues that only the good of achieving the just cause can contribute to proportionality. While I have argued even more firmly than McMahan to limit what can count as a just cause, I suggest that once a war has a just cause of sufficient magnitude, other benefits of fighting the war can help to offset the costs of fighting that war, thus keeping it worthwhile to fight the war. The force of McMahan's argument is that it does not make sense that a purpose that does not justify war could make the difference in whether a war is fought. Although he says it does not make sense, I think he ignores the presence of the independent just cause. The war is not fought just for reason of the additional insufficient cause; it is fought primarily for the just cause, which just becomes worth a war because of the additional cause.